



THE EFFECTS OF RESIDENCY RESTRICTIONS IN NEW YORK STATE

ACSOL Conference 2018

The Sexual Assault Reform Act (SARA)

- Executive Law § 259-c(14) [2000]

- *“[W]here a person serving a sentence for an [eligible] offense . . . is released on parole or conditionally released . . . The board shall require, as a mandatory condition of such release, that such sentenced offender shall refrain from knowingly entering into or upon any school grounds”*

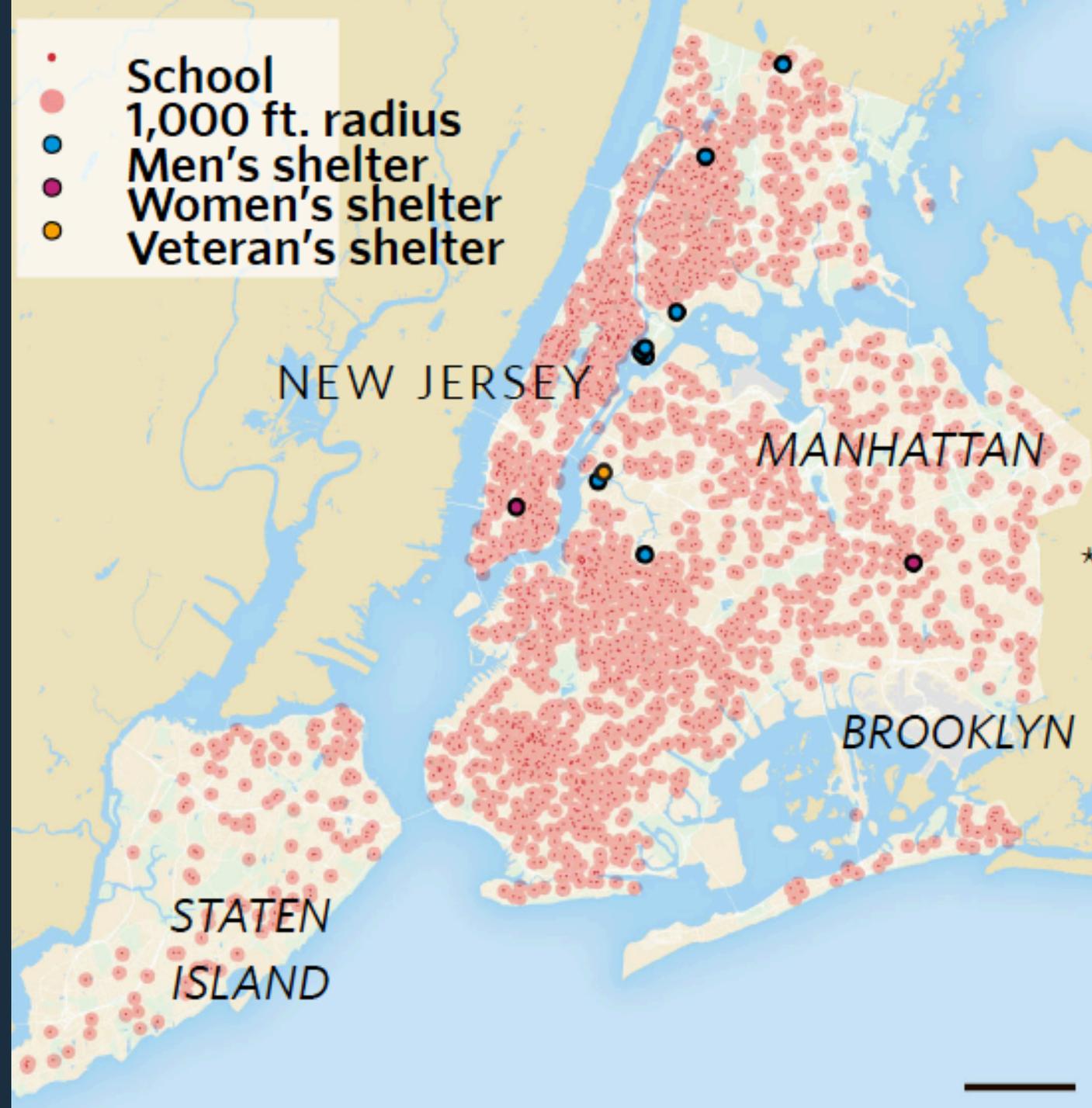
- Who is subject:

- *All people assessed a “Level 3” (highest level), regardless of age of complainant*
- *Anyone whose complainant was under age 18*
- *Not lifetime; while on parole or community supervision*

The realities of complying with SARA in NYC

What's left?

- Handful of shelters (“colony” of undesirables on Wards Island)
- Certain neighborhoods in Staten Island, Bronx, Brooklyn, Queens; Manhattan virtually impossible.



Residential Treatment Facilities (RTF)

- If an incarcerated person is on PRS, DOCCS can “release” them to an “RTF” (P.L. § 70.45(3))
 - *“community based residence in or near a community where employment, educational and training opportunities are readily available for persons [on PRS] who intend to reside in or near that community when released” (Corr. L. § 2(6))*
 - *In reality: identical to prison*
- Regardless of “good time” (CR) or even ME

What can we do?

- Article 78/Habeas Corpus after ME
 - *Starting to file proceedings when reach CR, though no “RTF” and we lack resources to do for everyone*
- *Interstate parole*
 - *But, usually only accept if immediate family*
- *Help our clients find housing/encourage family to find housing*

Article 78/Habeas Litigation: Statutory Arguments

- *RTF is not a “real” RTF*
 - Not “in or near community”
 - Not “community based residence”
 - No programs geared toward rehabilitation or training/employment/education
- *Not ever “released” so RTF condition not triggered*
- *Exemption from SARA is required by the ADA*
 - There are no shelters that can accommodate people requiring assistance with daily living
- *DOCCS’ insufficient assistance in securing housing (Corr. L. § 201(5); Gonzalez v. Annucci, 149 A.D.3d 256, 262 (3d Dep’t), lv granted, 29 N.Y.3d 912 (2017))*

Gonzalez v. Annucci (March 23, 2017)

- “Correction Law § 201(5) imposes an obligation upon DOCCS to assist inmates who are on community supervision in securing . . . housing . . . During the period of petitioner’s stay at [RTF], **DOCCS thus had a legal duty to assist him in finding appropriate housing**” (internal quotations omitted).
- “. . . Virtually the only ‘assistance’ offered to petitioner involved waiting for him – then confined in an RTF located within the walls of a medium security prison, without access to the Internet, without the ability to leave the facility to visit libraries, housing offices or potential residences, and with strictly limited access to telephone and correspondence privileges – to identify potential residences and then investigate his proposals.”

Article 78/Habeas Litigation: Constitutional Arguments

- Equal Protection
 - *Wealth-based discrimination*
- Due Process
 - *Rational basis; no correlation between SARA and protecting children*
 - *Freedom of Association, right to travel*
- Ex Post Facto
- Eighth Amendment?

What now?

- While significant opposition to residency restrictions from practitioners and those directly affected, still powerful force in support of these laws.
- Though Cuomo's February 2018 bill was not adopted, our clients fear that similar bills will be.

The New York Times

OP-ED CONTRIBUTOR

When Junk Science About Sex Offenders Infects the Supreme Court

THE WALL STREET JOURNAL.

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<http://www.wsj.com/articles/sex-offenders-sue-city-state-1466643719>

U.S. | NEW YORK | NY CRIME

Sex Offenders Sue City, State

Parolees say they are being kept behind bars because of shelter rule; sticking point is schools

FEBRUARY 12, 2018 Albany, NY

Governor Cuomo Announces 30-Day Budget Amendment to Protect New York's Children from Sex Offenders

Action Will Prohibit Level 2 and 3 Sex Offenders From Being Within 1,000 Feet of Kindergarten and Pre-K Schools

Ban Sex Offenders From Staying in Temporary Emergency Housing or Shelters Where Families Live

The New York Times | <http://nyp1.ms/1qv6jWn>

N.Y. / REGION

Housing Restrictions Keep Sex Offenders in Prison Beyond Release Dates

COMMITTEE REPORT

Opposition to Further Residency Restrictions for Sex Offenders – 2019 NYS Executive Budget