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COMMUNITY BOARD NO. 2, MANHATTAN

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Human Services

The Human Services Committee of Community Board No. 2, Manhattan held its regular monthly meeting by Zoom on September 30, 2021, at 6:30pm.

Committee Members Present: Susanna Aaron, Chair; Adam Zeldin, Vice Chair; Ivy Kwan Arce; William Benesh, Keen Berger, Ritu Chattree,

Committee Members Absent With Notice: Wayne Kawadler

Committee Members Absent Without Notice: John Paul Deverna

Other CB2 Members Present: Carter Booth, Valeria de la Rosa, Jeannine Kiely (Chair), Ryder Kessler, Lois Rakoff, Eugene Yoo

CB2 Staff Present: Josh Thompson, Asst District Manager

Public Members Present: Rachel Yarmolinsky

Agenda:

1) **What is the Sex Offender Registry and how does it work? A discussion on balancing neighborhood protection and civil rights.**

2) **Discussion of budget priorities for Fiscal Year 2023. (This * is a mistake, as we will not actually be writing a resolution from this meeting.)**

SEX OFFENDERS

PANELISTS:

NICOLE Geoglis, Senior Appellate Counsel at the Center for Appellant Litigation, an appellate public defender in Manhattan. She also serves on a Sex Offense working group at the NYC Bar Association.

ERIC Rosenbaum, resident of CB2. Chief of the Special Victims Bureau at the Queens District Attorney's Office. He has been a prosecutor since the inception of the state's registry act. He also acts as Co-Chair of the Legislative Subcommittee on Special Victims and Domestic Violence for the District Attorney's Association of the State of New York.

NB: NICOLE Geoglis and ERIC Rosenbaum appeared in an UNOFFICIAL capacity. The views expressed here are their own and are not intended to represent those of their organizations or to constitute legal advice.

BACKGROUND: CB2 Manhattan held two public meetings (March and May, 2021) to hear of plans to develop a homeless shelter for single adult men at 349 Canal Street. During those conversations several residents expressed concern over the possibility that the shelter would house sex offenders. The NYC Department of Social Services specified that, because of its proximity to schools, the shelter would not house sex offenders with living restrictions. This left many questions unanswered, however, and revealed a lack of familiarity among our community with the laws that apply to sex offenders. Tonight's meeting seeks to increase our community's familiarity with these.

WHAT ARE SORA AND SARA?

NICOLE: SORA is the Sex Offender Registry of Act. This law was enacted in 1996 to require registration and community notification for individuals convicted of a sex offense. When enacted, the law was not just prospective, but also covered anyone incarcerated at the time for conviction of such an offense or under community supervision, which could be parole or post-release supervision. (See <https://www.criminaljustice.ny.gov/nsor/legalinfo.htm>)

SARA is the Sexual Assault Reform Act. One of the provisions of this law was that it created a mandatory condition as part of an individual's parole or post-release supervision, whereby that individual can't enter certain locations that are within 1000 feet of school grounds. So when we talk about residency restrictions, we're often talking about the provisions that were adopted under SARA. (See <https://www.nysenate.gov/legislation/laws/EXC/259>)

ERIC: The qualifying offenses are found primarily in Article 130 of the penal law, which is the sex crimes section. Section 130 are all the sex offenses. These range from touching someone on the subway furtively who doesn't want to be touched, to gunpoint rape in an alley, and they include sexual conduct against children, to statutory rape offenses, for instance, against children or minors. The older the child, the lower the offense. The age of consent in New York is 17, so if a 22 year old were to engage in sexual activity with a 16 year old it could be an offense that's viewed somewhat at the lower end of the harm spectrum than someone engaging with a six year old. So it's a whole range of offenses and includes certain kidnapping offenses involving children. The crimes that are covered are crimes of violence that are predatory against strangers, or domestic violence crimes that occur within the home. They can be against children, they can be against adults, they can be against consenting people (to the extent the public conceives of consent).

For instance, if a 16 year old were to present a false ID in a bar and represent themselves to be 18, and someone who was 22 was engaged in activity with them, that's a strict liability offense and they have committed a crime. So the wide range of crimes is covered, from the violent sex crimes we see on TV to sex crimes within a marriage or involving teens.

We think of sex offenders in the registration as predators, but those being tracked include people who are not only NOT predators but who have never done anything with a stranger, and have instead committed crimes within the home against people who were already known to them.

NICOLE: The registration law does not place restrictions on individuals. It places an obligation on them after they've completed their sentence. You are obligated to notify the registry and the sex offender monitoring unit of changes in your address, enrollment or work in education in certain educational institutions. You have to keep that information current with the registry and you must verify that information at certain intervals depending on what is called your risk level.

HOW IS RISK ASSESSED?

ERIC: About 30 days prior to release from incarceration, or at the time of sentencing if there will be no jail sentence, there is a court hearing to determine what level of risk will be assigned to someone who has to register. There are three levels of risk, with number one being the lowest and three the highest. Ordinarily the New York State Board of Sexual Examiners will issue a report to the Court and the attorneys with its recommendation, and the recommendation is based on a matrix of points. Setting aside the question of whether the chart accurately assesses someone's risk, this is the tool we use.

You use this chart and come up with a point totals. I don't remember the point ranges but it's something like 0-70 is Level 1, 75-105 is Level 2, and beyond that is Level 3. How are these points calculated? Some examples: if there's intercourse, that's 25 points; physical injury, another 25 points. Do you have a prior conviction? Was it a felony or a misdemeanor? Etc.

Something that isn't captured in the matrix might prompt a prosecutor to recommend an upward or downward departure, which is more discretionary.

And there are certain per se categories that land you in the highest level, which include, for example, a prior sex offense conviction. If you fall into one of these categories, an offender would automatically be designated a Level 3 risk.

Depending on your risk level, you have certain obligations and there are certain consequences. Levels 2 and 3 are searchable on the internet. You can search by a name, or you can search registrants living within your zip code. You will find a description of their crimes as well. Those classified Level 1 are known to the police but not to the public.

NICOLE: A homeless shelter counts as a valid address for sex offender registration. In fact, when residents were being moved from one shelter to another during Covid, there was a lot of concern among registrants on how to notify the registry in order to remain compliant.

NICOLE: The idea of residency restrictions is not tied so much to your registration as to whether you are on parole or under post-release supervision. There are harsh collateral consequences to registration, but it isn't intended to restrict how you live as much as it is to give law enforcement and the public notice about your criminal history.

If you are considered a Level 3 and you are subject to post-release supervision you're not allowed to live in certain areas and that's where the residency restrictions come into play.

And those residency restrictions also apply if your offense involved a minor, no matter what your risk level is deemed to be.

Post-release supervision for felony sex offenses can range anywhere from five to 25 years. If you have a sentence where you were granted parole it could last until your sentence ends, so 10-20 years.

If you've been convicted of what's termed a sexually violent offense – which is a wide range of offenses that don't necessarily involve actual violence – regardless of your risk level, you have to register for life.

These are just some examples. The regulations are very complex.

ERIC: But realize, it is not as if a knife-point rapist is getting a Level 1 assessment.

WHO ARE SEX OFFENDERS AND ARE THEY RECIDIVISTS?

NICOLE: 95% of sex offenses in New York are committed by individuals who have not previously been convicted.

ERIC: I work in a county of 2.4 million people, and if I get three cases a year of a new arrest for someone who has a prior sex offense, that's about the most I've ever seen in a year. My bureau handles only felonies, and we see about 600 new cases a year, and of those maybe 5-10% involve strangers. More often it's an intimate partner and in the case of children, the danger posed is not by a stranger but rather by a non-biologically-related male living in the home. That's the person who's most dangerous, not the men lurking in the playground.

The DNA data bank transformed the serial nature of a lot of the offenders. I've seen, in the arc of my career (I'm not talking as an FBI statistician), that in the early 2000s, when the data banks really came online, we were getting hit after hit on serial rapists. I've put more serial rapists in prison, maybe, than any active prosecutor in New York State. However, because of DNA we catch them the first time much more often now. As a consequence, we don't often see serial sex offenders a lot anymore. The DNA data banks help us catch them after their first offense. Then there is programming, more supervision, and SORA registration, all of which have a rehabilitative and deterrent effect.

I can't remember the last time I saw a serial offender. The landscape looks different today than it used to. I'm not saying those individuals aren't out there, but it's not like they're around every corner.

My concern is that people who are supposed to register DO register. The more you marginalize a person and make it so they have nowhere to live, the less likely they are to register and the greater the threat they pose because no one's checking in on them.

Having an address, I believe, decreases your risk of recidivism because you can be monitored. It's when you make that impossible that you're adding fuel to the marginalization and the stressors and whatever else it is that cause these people to act out.

NICOLE: I was on a call recently with one of the leading experts in treatment of individuals convicted of sex offenses and he noted that the ability to get a stable residence and have stable employment significantly reduces risk of recidivism.

QUESTIONS

Question: Let's say that this homeless shelter opens and neighbors go online and can see who in the area is on the sex offender list, and they see that one or two people are engaged in that shelter, what can they do with that information?

NICOLE: I think you just incorporate it into the matrix of information that you have about your environment. At any time, no matter where you live, you should always be aware of your environment and take whatever actions you see fit.

ERIC: You might just want to look to see if things become out of balance, if this shelter seems to be a dumping ground with a grossly higher number of sex offenders residing there.

Question: How many rape kits does New York City hold onto?

ERIC: There's been a false narrative based on the nation's issues, which are very different than New York. New York led the way on this. As soon as we got access to those DNA data banks – which was authorized in 1996 – we began a comprehensive inventory of every rape kit in New York City. There were 16,000 of them and they were all tested. Before that, there was no point in testing if you didn't have a suspect because there was no one's DNA to compare to any DNA found in the rape kit. But with the advent of the DNA data banks, we could run the kits through the data bank looking for matches to known offenders with DNA samples in the data banks. So between 2000 and 2004, essentially, we tested every single kit and since that time we've kept up with every single kit. There are only certain situations now when a kit wouldn't be tested: for example, if a patient doesn't want to turn the kit over to the police. Even then, we still save that kit for at least 20 years now, and if the person changes their mind we can go back and do the testing. If you are convicted of a crime in New York State – other than certain marijuana offenses – a misdemeanor or a felony, DNA is collected and you're in the DNA data bank. We have the most robust DNA data bank in the country.

Question: What if a sex offender moves to New York from another state?

NICOLE: A person who moves from out of state or who enrolls in certain schools or works in certain schools and has been convicted of a sex offense in another jurisdiction is required to register in New York. The board of sex offender examiners will obtain information about that individual and will prepare an assessment.

ERIC: It's not a safe haven from any jurisdiction, and vice versa.

NICOLE: It's really a disincentive to move, because now you're registered in multiple states because it follows you. There are significant criminal penalties for failing to register. It's very unlikely that you would fall through the cracks if you've been convicted of a crime in New York, because those cracks are sealed. But there is always the possibility, based on certain statutes of limitations or when offenses occurred as to whether registration is required. That is why I say, we are not at this meeting to offer legal advice! It can be very confusing.

ERIC: We haven't mentioned SOMU – the Sex Offender Monitoring Unit. That is a law enforcement unit that goes after people who've failed to register.

Question: What if someone commits a sex offense inside a homeless shelter?

ERIC: It's up to the complainant. If the victim of a crime reports a crime, it will be investigated, regardless of their status or residence.

Question: How does bail reform interplay with rules about registration?

ERIC: Bail is not set in response to the danger one poses to the community. That's an illegal standard of bail. Bail is based entirely on whether someone is likely to return to court on the next court date. You shouldn't be using bail to keep someone in jail. That's not what bail is for. If you want them in jail, you are perfectly able as a prosecutor to tell the judge that this person should be held without bail, and here are the reasons – which makes more sense than saying, say, set \$2 million bail on this person because I know they can't make it and they'll stay in jail.

Question: Sex offenders with living restrictions will be excluded from a shelter within 1000 feet of a school, right? But maybe they won't be restricted from living in a different shelter?

NICOLE: It also depends on whether they are still subject to supervision. If it's been decades since their offense, say, and they're no longer subject to supervision, but they're living in a shelter, they may not have those residency restrictions.

Question: Is there a bias to prosecute those individuals who are easier to catch?

ERIC: I prosecute what I am brought. I can't say what the police are clearing and what they're not.

Question: And if someone lives upstairs who has been committing sex crimes for years and never been caught, he won't be registered, right?

ERIC: Right. And many victims of these crimes don't report them – especially the children, but there are lots of reasons why adults don't report these crimes either.

Question: The Department of Homeless Services keeps a lot of information private and won't even post the addresses of shelters. How are we supposed to get the information?

ERIC: If someone is a Level 2 or Level 3, you can find them on the internet and don't need any organization to disclose that to you. You can find it yourself. Level 1 will not be known to anyone but the police, for the most part, and the court systems and the attorneys.

For the Sex Offender Registry, see <https://www.criminaljustice.ny.gov/nsor/>

Question: What about a parent's terror that their child might get flashed on a street corner, say, by someone living in the shelter?

NICOLE: I can say that in my professional experience, an individual who has been convicted of doing something more than once, regardless of the severity of that action, is likely to be considered a Level 3 high-risk registrant.

ERIC: And for the worst of the worst – what we think of only in our nightmares – there is something called civil commitment; that is, when they're finished with their criminal sentence, if they're determined to have a mental disease or defect that prevents them from controlling these sexual behaviors they can be held civilly beyond their criminal sentence and separated from society. That is a very, very small number of people.

ERIC: Speaking as a neighbor, the questions I want to know are, what sort of mental health support services are available for the residents? Will people be able to get what they need in terms of staying healthy? Are there social services and advocates available for them so they can be productive and healthy?

NICOLE: We are seeing the recognition that we need mental health intervention in prison, we need it in the community, because so much of the conduct we see that is treated with criminal punishment is born of a lack of mental health and other support services.

ERIC: In fact, there is a lot of motivation for engaging in programming while incarcerated because it will take points off in that risk assessment matrix we discussed earlier.

STATEMENT OF NEEDS AND BUDGET PRIORITY REQUESTS