



NYCLU

NEW YORK CIVIL LIBERTIES UNION

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December 11, 2006

Governor George Pataki
The Executive Chamber
State Capitol
Albany, New York 12224

Senate Majority Leader Joseph Bruno
State Capitol, Room 330C
Albany, New York 12247

Assembly Speaker Sheldon Silver
State Capitol, Room 349C
Albany, New York 12248

Re: Proposed legislation regarding civil commitment of sex offenders

Dear Governor Pataki, Majority Leader Bruno and Assembly Speaker Silver:

It is our understanding that you and representatives of your offices are negotiating legislation that would broaden significantly the state's authority to incarcerate, pursuant to civil commitment proceedings, individuals who have completed serving a sentence for a sex offense. It has been reported that the legislation may be voted on in the special session that is scheduled to convene on Wednesday of this week.

The NYCLU has just completed an analysis of the demographics of persons designated Level 3 sex offenders in New York State. Level 3 offenders are, by statute, deemed to pose the greatest risk of harm to the community and therefore are most likely to face civil commitment. These data reveal stark racial and ethnic disparities in the population of persons designated Level 3 offenders relative to their representation in the general population.

It is our view that the racial disparities in the Level 3 offender population raise serious concerns about racial bias in the investigation and prosecution of sex offenders; the adequacy of

legal representation provided the accused; and the techniques and procedures used to classify sex offenders regarding the level of risk they pose to public safety.

We therefore urge you to suspend further negotiations regarding the proposed legislation pending a thorough review and analysis of these data, which appear in an attachment to this letter. Our findings (which are based upon offender profiles that appear in the state's on-line registry of Level 3 offenders) include the following:

- Blacks make up 15.9 percent of the New York State population but represent 37.2 percent of Level 3 offenders. Relative to their numbers in the general population blacks are overrepresented by 134 percent among Level 3 offenders.
- In the three upstate counties of Albany, Onondaga and Monroe blacks are nearly three times more prevalent in the Level 3 population than in the general population.
- Blacks represent 11.1 percent of the Albany County population, but 33.3 percent of the county's Level 3 offenders. In Onondaga County, blacks represent 9.4 percent of the population, but 28 percent of Level 3 offenders. Monroe County's black population is 13.7, but 39.1 percent of the county's Level 3 offenders are black.
- On Long Island blacks are overrepresented among Level 3 offenders by 485 percent relative to their numbers in the general population.
- In Suffolk county blacks represent just under 7 percent of the general population but 42 percent of persons designated Level 3 offenders.
- In Nassau County blacks represent approximately 10 percent of the general population but nearly 56 percent of those designated as Level 3 offenders.

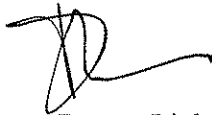
A review of the empirical evidence raises serious doubt that the over-representation of blacks among Level 3 offenders reflects the actual rate of offending among that population. The data referred to above demonstrate strikingly consistent racial disparities among Level 3 offenders in the Long Island region and in the upstate region of Albany, Onondaga and Monroe counties -- but the racial disparity among Level 3 offenders differs greatly between these two regions. What's more, the racial disparity among Level 3 offenders statewide varies significantly from the disparities seen in both of these two regions. If the over-representation of blacks among Level 3 offenders (and the under-representation of whites) reflected the actual rate of offending among racial groups, it would be expected that the racial disparity would be consistent across the state or that the disparity would vary randomly. The data suggest a very different phenomenon: racial bias that appears to have a significant but varying effect in different regions of the state.¹

¹ Blacks are over-represented in national crime victim survey data, but there is a far greater over-representation of blacks among individuals designated Level 3 offenders in New York State. The most recently released national crime victims survey indicates that a black person was the perceived offender in 24.4 percent of rape and sexual assault crimes (U.S. Dep't. of Justice, National Crime Victims Survey, 2003). Even if each of these perceived offenders were found to have committed a sex crime, these data indicate that blacks, who comprise about 12 percent of the national population, represent a far smaller percent of the sex offender population nationwide as compared with blacks' representation among those designated Level 3 offenders in New York State. The over-

Analysis of the demographic data on Level 3 offenders must include an examination of New York's Risk Assessment Guidelines, the instrument used to evaluate and assess the danger of re-offense by sex offenders. These Guidelines are seriously flawed.² They were developed in 1995 and have not been revised to incorporate scientific research that identifies particular characteristics and behaviors that correlate with a propensity to re-offend. What's more, although the Guidelines purport to rely on objective scoring measures, evaluators can ignore those results based upon "special circumstances," without providing an explanation as to what those circumstances are. According to one expert in the field, New York designates far more Level 3 offenders as would be expected based upon scientific research and the experience of other states.³

It can be expected that individuals designated Level 3 offenders will be deemed most likely to pose a grave risk to public safety. It is these individuals therefore who are most likely to become the subject of a civil commitment petition. And, based upon the experience of states that have adopted civil commitment statutes, an offender who is civilly committed is rarely, if ever, released.⁴ In light of the appearance of racial bias in the designation of Level 3 offenders and the flawed assessment procedures by which this designation is determined, we strongly urge that you withdraw the proposed civil commitment legislation.

Yours sincerely,



Donna Lieberman
Executive Director



Robert A. Perry
Legislative Director



Christian Smith-Socariss
Legislative Associate

representation of blacks among Level 3 offenders in New York is approximately 50 percent greater than the over-representation of blacks in the national crime survey.

² See Laurie Guidry, Ph.D., "Doe v. Pataki: Court Offers 9,000 Sex Offenders Opportunity to Appeal Risk Level, *The Alliance* [Quarterly Publication of the New York State Alliance of Sex Offender Service Providers], vol. 7, issue 1, Winter 2004/2005.

³ *Ibid.*

⁴ See John Q. LaFond and Bruce J. Winick, "Doing More Than Their Time," *New York Times* (Op-ed), May 21, 2006.