

PRESIDENT-ELECT
GERALD F. MOLLEN
BROOME COUNTY

1st VICE PRESIDENT
CINDY F. INTSCHERT
JEFFERSON COUNTY

2nd VICE PRESIDENT
THOMAS P. ZUGIBE
ROCKLAND COUNTY

3rd VICE PRESIDENT
SCOTT D. McNAMARA
ONEIDA COUNTY

SECRETARY
EDWARD D. SASLAW
ADA, QUEENS COUNTY

TREASURER
REBECCA WINER
ADA, NASSAU COUNTY

BOARD OF DIRECTORS

CHAIRPERSON
KATHLEEN RICE
NASSAU COUNTY

ROBERT T. JOHNSON*
BRONX COUNTY

JON E. BUDELMANN
CAYUGA COUNTY

WEEDEN A. WETMORE
CHEMUNG COUNTY

ANDREW J. WYLIE
CLINTON COUNTY

KRISTY L. SPRAGUE
ESSEX COUNTY

DEREK P. CHAMPAGNE*
FRANKLIN COUNTY

LAWRENCE FRIEDMAN
GENESEE COUNTY

KENNETH THOMPSON
KINGS COUNTY

LEANNE K. MOSER
LEWIS COUNTY

SANDRA DOORLEY
MONROE COUNTY

CYRUS R. VANCE, JR.*
NEW YORK COUNTY

WILLIAM J. FITZPATRICK*
ONONDAGA COUNTY

R. MICHAEL TANTILLO
ONTARIO COUNTY

ADAM B. LEVY
PUTNAM COUNTY

RICHARD A. BROWN*
QUEENS COUNTY

DANIEL M. DONOVAN, JR*
RICHMOND COUNTY

JAMES A. MURPHY, III*
SARATOGA COUNTY

ROBERT M. CARNEY*
SCHENECTADY COUNTY

JOSEPH G. FAZZARY
SCHUYLER COUNTY

BRIDGET G. BRENNAN
SPECIAL NARCOTICS

THOMAS J. SPOTA, III
SUFFOLK COUNTY

HOLLEY CARNRIGHT
ULSTER COUNTY

KATHLEEN B. HOGAN*
WARREN COUNTY

RICHARD M. HEALY
WAYNE COUNTY

JANET DIFIORE*
WESTCHESTER COUNTY

DONALD O'GEEN
WYOMING COUNTY

* PAST PRESIDENT OF DAASNY

DISTRICT ATTORNEYS ASSOCIATION OF THE STATE OF NEW YORK

PRESIDENT
FRANK A. SEDITA, III
ERIE COUNTY



July 28, 2014

The Honorable Andrew Cuomo
New York State Capitol Building
Albany, NY 12224

Re: S612, A2711 (Gianaris, Simotas) Persistent Sex Abuse

Dear Governor Cuomo:

I am writing on behalf of the District Attorneys Association of the State of New York ("DAASNY") to support the above-referenced legislation. **S612, A2711** (Gianaris, Simotas), will close an important loophole from the Persistent Sexual Abuse statute that perversely benefits some of the worst repeat offenders.

Sexual abuse is a problem throughout New York. While repeat offenders are perhaps found most frequently in New York City¹, where crowded subway trains and public places make crimes like Forcible Touching easier to commit, every district attorney in this state can provide examples of defendants whose rap sheets contain numerous misdemeanor sex crimes.

Recognizing the reality that people who engage in such sexual abuse are often repeat offenders, the legislature passed, and the governor signed into law, the Persistent Sexual Abuse statute in 2000. Prior to that law, no matter how many times an offender committed a misdemeanor sex crime, there was no commensurate felony charge to reflect the severity of the behavior. In other words, the one hundred and first offense was charged with the same misdemeanor as the first offense. Starting in 2001 with the advent of this new law, however, these sexual predators could be charged with an E felony -- Persistent Sexual Abuse -- if they had two prior sex crimes convictions within the previous 10 years.

¹ NYPD made 128 arrests on charges of sex abuse or forcible touching from January 1, 2014 through July 20, 2014, compared to 104 such collars by the same point in 2013 — a 23% increase (New York Daily News, "Cops cracking down on subway sex crimes after adding more plainclothes officers" July 24, 2014, available at

<http://www.nydailynews.com/new-york/exclusive-cops-cracking-subway-sex-crimes-article-1.1878260>

107 COLUMBIA STREET, ALBANY, NEW YORK 12210
TEL: (518) 598-8968 EMAIL: PRESIDENT@DAASNY.ORG
WWW.DAASNY.ORG

DISTRICT ATTORNEYS ASSOCIATION OF THE STATE OF NEW YORK

Unfortunately, the statute contained an unintended shortcoming: It did not provide a tolling provision for periods of time when the defendant was incarcerated. That means that the worst offenders, people who are serving jail time for their sex crimes and their other crimes – often receive only a misdemeanor for their third conviction because they were behind bars while portions of the 10 years passed.

S612, A2711 (Gianaris, Simotas) resolves this issue by excluding any time served from the 10-year time period.

There is a sense of urgency that this bill not only be signed, but be signed as soon as possible. Just the other week, a case in New York County highlighted the injustice inflicted upon victims in the absence of enacting this amendment. Gilbert Welsh, a repeat sex offender, was charged with forcible touching and sexual abuse after a June assault against a woman on a subway train. Despite a 30-year rap sheet and many qualifying convictions, Welsh could not be charged with the felony because of his extensive time behind bars, including seven years for stabbing someone.

Once **S612, A2711** is enacted, a serial predator like Welsh will not be free to roam the trains sexually assaulting victims as soon as he is released, secure in the knowledge that he will not serve felony time. On the contrary, the law will function the way it was intended to – punishing the most severe offenders like Welsh with state prison time.

DAASNY strongly supports **S612, A2711** and urges you to sign this bill.

Sincerely,



Frank A. Sedita III
President, DAASNY
District Attorney, Erie County