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To: Members of the Committee on Judiciary

From: Sandra J. Staub, ACLU-CT Legal Director

**Written Testimony Opposing Raised Bill No. 6473
An Act Concerning the Persistent Dangerous Felony Offenders**

Good afternoon Senator Coleman, Representative Fox and members of the Judiciary Committee. My name is Sandra Staub and I am the Legal Director at the ACLU of Connecticut and I am here today to oppose Raised Bill No. 6473.

For decades, state and federal crime control policies have been based on the belief that harsh and non-negotiable sentencing laws will deter people from committing crimes. But today, with the state budget depleted by the huge costs of prison, we are no safer than before. New approaches to the problem of crime are needed. This proposed legislation, commonly referred to as a "Three Strikes" law, is part of the old, unsuccessful strategy. It would impose a mandatory life sentence without parole on offenders convicted of certain crimes. Despite the catchy baseball metaphor given to this bill, this law is a loser.

Three Strikes Takes All Sentencing Discretion Away From Judges

This proposal makes life sentences without parole mandatory. Thus, the hands of judges who have traditionally been responsible for weighing both mitigating and aggravating circumstances before imposing sentence are tied. Judicial discretion in sentencing, which is admired all over the world for treating people as individuals, is one of the hallmarks of our justice system. But the rigid formula imposed by Three Strikes renders the role of sentencing judges almost superfluous.

Eliminating the possibility of parole ignores the fact that even the most incorrigible offenders can be transformed while in prison. There are countless offenders who have reformed themselves through study, good works, religious conversion or other efforts during years spent behind bars. Three Strikes makes that second chance impossible.

Three Strikes Creates Prohibitively High Prison Expense

Three Strikes could create a huge, geriatric prison population that would be far more expensive to care for. The estimated cost of maintaining an older prisoner much greater than that required for a younger prisoner. The cost might be worth it if older prisoners

represented a danger to society. But experts tell us that age is the most powerful crime reducer. Most crimes are committed by men between the ages of 15 and 24. Only one percent of all serious crimes are committed by people over age 60.

Three Strikes Will Have a Disproportionate Impact on Minority Offenders

Racial bias in the criminal justice system is rampant. African American men, in particular, are overrepresented in all criminal justice statistics: arrests, victimizations, incarceration and executions. Connecticut already has one of the worst disparities in rates of incarceration in the country. For every 100,000 residents Connecticut incarcerates 211 whites; 2,532 blacks and 1,401 Hispanics.¹ Today, one in four young black men is under some form of criminal sanction, be it incarceration, probation or parole.

Let the Punishment Fit the Crime -- A Constitutional Principle

Under our system of criminal justice, the punishment must fit the crime. Individuals should not be executed for burglarizing a house nor incarcerated for life for committing relatively minor offenses, even when they commit several of them. This principle, known as "proportionality," is expressed in the Eighth Amendment to the Bill of Rights:

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

Three Strikes departs sharply from the proportionality rule by failing to take into consideration the gravity of the offense.

Three Strikes Will Not Deter Most Violent Crimes

This law will probably not stop many criminals from committing violent acts. For one thing, most violent crimes are not premeditated. They are committed in anger, in the heat of passion or under the influence of alcohol. The prospect of a life sentence is not going to stop people who are acting impulsively, without thought to the likely consequences of their actions.

Another reason why repeat offenders do not consider the penalties they face before acting is because they do not anticipate being caught. According to the American Bar Association, out of the approximately 34 million serious crimes committed each year in the U.S., only 3 million result in arrests. Something must be done to prevent those crimes from happening in the first place. Today, the U.S. has the dubious distinction of leading the industrialized world in per capita prison population. The typical inmate in our prisons is minority, male, young and uneducated. More than 40 percent of inmates are illiterate; one-third were unemployed when arrested. This profile should tell us something important about the link between crime and lack of opportunity, between crime and lack of hope. Only when we begin to deal with the conditions that cause so many of our young people to turn to crime and violence will we begin to realize a less crime ridden society.

¹ State By State Statistics, The Sentencing Project, Washington, DC, 2004.

Three Strikes Could Lead To an Increase in Violence

This law could spur a dramatic increase in violence against police, corrections officers and the public. A criminal facing the prospect of a mandatory life sentence will be far more likely to resist arrest, to kill witnesses or to attempt a prison escape. Dave Paul, a corrections officer from Milwaukie, Oregon, wrote in a newspaper article: "Imagine a law enforcement officer trying to arrest a twice-convicted felon who has nothing to lose by using any means necessary to escape. Expect assaults on police and correctional officers to rise precipitously." (Portland Oregonian, 3/94). Ironically, these laws may cause more, not less, loss of life.

Three Strikes Will Clog the Courts

The Connecticut courts already suffer from serious backlogs. The Three Strikes law will make a bad situation even worse. Faced with a mandatory life sentence, repeat offenders will demand costly and time-consuming trials rather than submit to plea bargaining. Since most of the defendants will be indigent and require public defenders, the expense of their defense will be borne by taxpayers.

The ACLU-CT urges this committee to reject Raised Bill 6473.