Division of Public Defender Services
State of Connecticut

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DIRECTOR OF DELINQUENCY DEFENSE & CHILD PROTECTION

Testimony of Christine Rapillo
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Judiciary Committee Public Hearing – March 16, 2015
Senate Bill 1087
An Act Concerning Sexual Offender Registration Laws, Residency Restrictions For Registered Sexual Offenders and Reentry Housing

The Office of the Chief Public Defender strongly opposes passage of ***S. B. 1087, An Act Concerning Sexual Offender Registration Laws, Residency Restrictions for Registered Sexual Offenders and Reentry Housing.*** First, the bill would prohibit sex offenders from residing within 1000 feet of a public or private elementary or secondary school or a child care facility, Any person who convicted of violating this new statute, an A misdemeanor, could be sentenced up to one year of incarceration. Such a zone impacts upon the registrants residing in cities especially due to the existence of numerous schools and day cares. With the current obstacles already confronting a person convicted of a felony seeking housing, this additional prohibition would make it essentially impossible for persons who are required to register as a sex offender to obtain housing. Those seeking housing will be prohibited from living in cities and may need to seek housing outside of their communities in the more rural areas, thus also impacting upon their access to treatment and transportation.

Secondly, the Office of Chief Public Defender is not entirely opposed to the creation of a tier registry. However, this office opposes the tier registry as proposed in this bill as it is based only upon the type of offense and sentence imposed. The Office of Chief Public Defender urges this Committee to study and review other jurisdictions which have created tier registries which utilize evidence based risk assessment tools in order to categorize sex offenders. This office believes that using such provides a better idea of those persons who demonstrate a risk to public safety or those who are likely not to offend again.

Lastly, this Office is opposed to requiring juveniles who are adjudicated delinquent, not convicted as an adult, for a crime of a sexual nature to be added to the Connecticut Sex Offender Registry. Section 1 appears to be an effort to insure compliance with the federal Adam Walsh Child Protection and Safety Act, PL 109-248. This requirement is unnecessary and absolutely contrary to the rehabilitative purpose of the juvenile court. The idea that juveniles should be

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held accountable in a way that allows for redemption has been recognized by the United States Supreme Court as they have outlawed the death penalty and mandatory life without parole for juveniles. Just as public policy and jurisprudence has moved away from the concept that "adult time for adult crimes" is the correct correctional approach, the country is moving away from the idea that children convicted of sexual offenses as juveniles should be subject to permanent registration.

The Adam Walsh Act is administered by the United States Justice Department SMART office. Just this month, they issued a publication *SMART Summary: Prosecution, Transfer, and Registration of Serious Juvenile Sex Offenders* . This publication went into detail about state's efforts to meet the requirements of the Adam Wash act and indicated that states had options besides mandatory registration of convicted juveniles. The Justice Department cited juvenile transfer laws like the ones currently in place in Connecticut as examples of procedures that adequately protect the public and fulfill the policy purpose of the Adam Walsh Act.
Connecticut law is likely already sufficient to meet the Adam Walsh Act requirements. Connecticut's current statutory scheme for dealing with juveniles charged with serious sex offenses should bring the state into compliance with SORNA without adopting specific juvenile registration requirements.

Section 1 of the Adam Walsh Act, known as the Sex Offender Registration and Notification Act or SORNA, requires that youth age 14 or older who are adjudicated delinquent for an aggravated sexual assault to be placed on state sex offender registries. The SORNA guidelines published by the United States Department of Justice define aggravated sexual assault as an offense comparable to or more severe than Section 2241 of Title 18 of the U.S. Code – aggravated sexual abuse[1]. The guidelines give this description of what is needed for "substantial compliance".

> "Considering the relevant aspects of the federal "aggravated sexual abuse" offense referenced in section 111(8), it suffices for substantial implementation if a jurisdiction applies SORNA's requirements to juveniles at least 14 years old at the time of the offense who are adjudicated delinquent for committing (or

[1] New Registration Requirements for Juvenile Sex Offenders: The Adam Walsh Child Protection and Safety Act of 2006, H.R. 4472, NJJN Fact Sheet, April 2008

attempting or conspiring to commit) offenses under laws that cover:

- engaging in a sexual act with another by force or the threat of serious violence;
- or engaging in a sexual act with another by rendering unconscious or involuntarily drugging the victim."

Connecticut law does not allow for delinquency adjudication in these cases, so it is unnecessary to change Connecticut law to comply with the SORNA requirements. The crimes outlined in Section 2241 of Title 18 of the U.S. Code are the statutory equivalent of Conn. Gen. Stat. 53a-70 through 71, all of which deal with aggravated sexual assault or sexual assault on a minor. All of these crimes are classified as Class A or B felonies which, pursuant to Conn. Gen. Stat. Sec. 46b-127 **must** be transferred to adult court if the accused is age 14 or older. The juvenile court does not maintain any jurisdiction over these type of offenses. Conn. Gen. Stat. Sec. 46b-127 even prohibits arguments of counsel in the pro forma transfer hearing in juvenile court. SORNA clearly requires that juveniles prosecuted as adults must register according to the home state's adult registration requirements. Connecticut law treats all juveniles transferred to the criminal docket as adults and Conn. Gen. Stat. Sec. 54-250 (1) defines conviction for registration as "a judgment of the Superior Court... after upon a plea of guilty, a plea of nolo contendere or a finding of guilty by a jury or the court notwithstanding any pending appeal or habeas corpus proceeding arising from such judgment". There is no exception for juveniles who are being prosecuted as adults.

The juvenile justice system uses the transfer laws which mandate that serious sexual offenses be moved to adult court for all individuals over the age of 14. For cases that merit a less serious charge, prosecutors have the ability to move cases to the adult court. If a sexual assault case stays in juvenile court, it is only because a prosecutor has decided it is appropriate. This high amount of discretion provides significant protection to the public and allows for more rehabilitative treatment when appropriate. Public safety is protected by Connecticut's stringent transfer laws and registration of juvenile offenders is not necessary.

The direct financial costs of expanded registration are also daunting, as the federal law requires retroactive application of this requirement. Connecticut does not need statutory changes

to comply with the Adam Walsh Act. Even if the federal authorities were to find Connecticut law does not meet the SORNA requirements, the cost of the penalty is significantly less than the cost of compliance.

A state that fails to comply with the registration requirements of the Adam Walsh Act faces a penalty equal to 10% of the state's total Byrne Grant money from the federal government. Many states, including Texas, Ohio, and New York are struggling to decide whether to implement the terms of SORNA because they realized that implementation will cost significantly more than the money to be lost in penalties. Attached to this testimony is a chart prepared by the Justice Policy Institute. The chart shows the estimated cost for compliance with SORNA and the amount of BYRNE grant funding lost by failing to comply. Connecticut's estimated cost for implementation in 2009 was $5,680,602. The estimated penalty for noncompliance is $218,900.[2]

Connecticut has never required juveniles adjudicated of sexual offenses to appear on the registry. Both the Department of Children and Families and Judicial Branch, CSSD provide secure and community based treatment for offenders remaining in the juvenile court. This treatment is age appropriate and shown to have the best chance at preventing reoffending. Juvenile registration undermines the essential rehabilitative purpose of the juvenile court and will discourage young people with emerging issues from seeking the treatment and services available in the delinquency system. The social cost of such a policy is high, creating a whole group of young people who, despite being the most amenable to treatment, will be doomed to a life of stigma and economic dependence. Registration for juvenile delinquents is bad public policy, as it leaves the offender with no chance for successful reintegration in to the community-the overarching goal of our juvenile justice system. Requiring registration for children adversely affects their ability to go to school, work, or even live with their families, all factors proven to help decrease recidivism in youth.

Even the Justice Department recognizes this. The SMART publication closes with the following description of the development al approach:

[2] Registering Harm; How Sex Offense Registries Fail Youth and Communities, Amanda Petterutl and Nastassia Walsh, Justice Policy Institute, November 21, 2008

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"Generally speaking, serious collateral consequences of a juvenile adjudication (such as lifetime sex offender registration) are viewed by developmental approach adherents as "fundamentally at odds" with an effective juvenile justice system. In addition, adherents are in favor of *judicial* waiver, when it is necessary, as opposed to *legislative* or *prosecutorial* waiver."

In conclusion, the Office of the Chief Public Defender strongly urges this committee to reject this bill. Connecticut does not need to implement this costly federal mandate. Our current laws on both juvenile and adult sex offenders are sufficient to ensure public safety.

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