Connecticut for One Standard of Justice, Inc.
Testimony on Raised House Bill 5578

AN ACT CONCERNING THE RECOMMENDATIONS OF THE CONNECTICUT SENTENCING COMMISSION WITH RESPECT TO THE SEXUAL OFFENDER REGISTRY

March 26, 2018

"***When will our consciences grow so tender that we will act to prevent human misery rather than avenge it?***" – **Eleanor Roosevelt**

Connecticut for One Standard of Justice, Inc. (CTOSJ) is a volunteer-based civil rights organization committed to ensuring that persons accused or convicted of sex offenses in Connecticut are treated constitutionally and fairly by the state before, during, and after their sentences through the use of evidence-based policies.

RHB 5578 is before the Judiciary Committee as a result of the recommendations of the Connecticut Sentencing Commission (CSC) and the work of the subcommittee established by CSC, the Special Committee on Sex Offenders (SCSO). We have submitted along with our testimony today on RHB 5578, our testimony to the SCSO and CSC concerning the recommendations to modify the registry as well as on the full report to the Sentencing Commission.

CTOSJ does not support a sex offender registry (SOR). As our attached previous testimonies state, registries have been found to be of little to no use at making communities safer or reducing sex offending in our communities.

Before getting into the substance of our comments, we feel a need to share how familiar this conversation about the registry specifically, and sex offender policies generally, is to the conversation that took place in the 90's over mass incarceration policies. What we have learned is how new research led to policies that have reduced incarceration levels while simultaneously reducing crime. But it was a decades long fight where reformers, with strong academic research, had to fight the forces of the status quo, along with their self-perpetuating research, before real change started happening.

If we are willing to learn from history, we can take a lot less time to change the failed policies of the registry and other expensive offender management schemes now, with the resulting benefits of saving scarce public dollars while restoring families and healing communities. Ultimately, then as now, political leadership was needed to help educate the public and their peers that change was, in fact, good.

Thankfully, in deciding what kind of reforms to make to its own sex offender registry (SOR), Connecticut can turn to its own research to obliterate the media driven myth that all sex offenders will continue to re-offend. Connecticut's Office of Policy and Management (OPM) has twice studied offender new sex crime arrest rates among released inmates over five year periods, giving us a 10-year long data base. What do they show? Two things: low rates of new sex offenses for released offenders and low sex crime arrest counts versus all released inmates.

In 2012, OPM released a study that showed only 3.6 percent of the sex offenders released from prison were arrested for a new sex crime within five years of release. While that figure alone should be enough to undermine the common perception about how all offenders are going to keep committing sex crimes, a second number from the study directly challenges the political underpinnings of who the registry should target.

The OPM study showed that while the released non-sex offender prisoners sexually offended at a rate about half that of released convicted sex offenders (1.9% to 3.6%), the non-offenders were arrested for sex offenses by volume at a rate almost *ten times greater* than the former sex-offenders within the first five years (259 to 27). Those numbers are not significantly different from the DOJ meta study that found non-sex offender prisoners were arrested for 750% more sex crimes than the original sex offender group. In fact non-sex offenders were responsible for 87% of all sex offenses committed by former prisoners within three years of release. (Langan, Schmitt & Durose, Bureau of Justice Statistics, p. 2-3).

Last summer OPM released a new five-year recidivism study. It showed a slightly higher, but comparable, recidivism rate for new offenses by released offenders at 4.1 percent. Interestingly, OPM chose to break out the rate for violent sexual offenses (not including commercial sex crimes or morals charges) and found the rate to be only 2.2 percent. And while not as dramatic as the 2012 study, total new arrests for sex offenses by released non-offenders were committed at a rate, by volume, almost seven times as frequently, 188-28. That is a grand total of 55 new offender arrests for a sex crime over a 10-year period, or 5.5 per year, versus 488 for non-offenders.

So we know that sex offenders have low recidivism rates for committing new sex crimes and that they are, among released prisoners, far less likely, by volume, to offend.

It should be noted that CTOSJ always uses arrest rates, not the appreciably lower conviction rates. As the recent rape trial in New Haven showed, memories and circumstances can color perceptions about events. CTOSJ believes, however, that in a criminal justice and societal system that already mitigates against reporting, the accuser's voice should be respected.

So who are future offenders? The state of New York did a study to look at the impact of their registry at lowering levels of offending. In a 20-year study in New York of over 160,000 people, 10 years beforeand 10 years after creation of the registry in their state, they found that 95.9% of all arrests for any sex related offenses were committed by first time offenders and 94.1% of all arrests for crimes against children were likewise by first-time offenders. The same study found that over-all "only about 4% of all arrests for sexual offenses involved individuals with a prior sexual offense conviction."

These recidivism numbers and identification that roughly 95 percent of new sex crime arrests will be first time offenders are in line with other studies that we will make available to committee members at their request.

This begs another important question. Do sex offender registration laws either act as a deterrent from, or an impact on, the number of sexual assaults committed? Again the researchers in New York concluded a resounding "NO." The imposition of a SOR in New York "had no significant impact on rates of total sexual offending, rape, or child molestation." It also had no significant impact on first time offending or repeat offending. Further, based on analysis of studies conducted in ten other states

the same researchers concluded that "community notification plans" including sex offender registries are of "limited" value (Sandler, Freeman & Socia, K., Psychology, Public Policy and Law, pp. 297, 287).

As the research demonstrates, SOR programs like Connecticut's do not protect the public and do not serve as a meaningful deterrent. Not only is the efficacy of such programs unsupported by empirical evidence but a growing body of research shows that the they are actually counter-productive. They reduce employment opportunities, harm the families of offenders and create a fearful community environment that is conducive to vigilantism, vandalism and harassment. All of these factors contribute to recidivism rather than reduce it. (Tewksbury & Levenson, National Association of Criminal Defense Lawyers, 2010).

Simple logic and all available evidence indicate that an employed individual with a stable living situation is less likely to suffer from the kinds of mental illnesses and irrational thinking that contribute to offending behavior. Clearly individuals who can work, provide for their families and engage in healthy social activities are less likely to offend than those who are fearful, unemployed and isolated (Tewksbury & Levenson, 2010). These results have been duplicated by other researchers. See our SCSO testimony, p. 3.

These conclusions were also reenforced by the questionnaire done by the SCSO. (it should be noted that the results of this study were not included in the study when voted on by the SCSO.) A summary of a survey of people on the registry is included as Appendix D of the CSC's report.

Among the important results of the survey are the following: 1. 47% replied affirmatively to the question "Have you ever been harassed because you're on the registry? Has a family member?" ; 2. "Have you ever been denied employment, or fired, because of being on the registry?" 54% replied yes to one, two or many times; 3. 29% responded "yes" to "Have you ever been denied housing or been evicted from housing, because of being on the registry?".

A typical anecdotal story of harassment was of a man on the SOR who took his dog out for a walk in a town in the greater Hartford area. What he found were placards stapled to phone poles telling residents of the area where he, a registered offender, lived. The irony is the placards were outside the condo association where he lived and where he had been elected by his co-owners as president of the association!

It isn't just offenders and their families who suffer from being on the SOR. A study titled "Estimates of the Impact of Crime Risk on Property Values from Megan's Laws" by Leigh Linden and Jonah E. Rockoff* showed a 4% decline within .1 mile of a registrant. Other studies have shown up to a double digit loss of value. In other words, it isn't just the registrant and their family that feel the collateral damages of the SOR.

Given all these facts, it is hard to reach any other conclusion but that this expensive regime of registry related schemes, along with other expensive offender management schemes, are for the sole purpose of public shaming, banishment, punishment and retribution, not public safety.

Before making specific recommendations to this flawed proposal, it is important to understand that not all individuals belong on the registry to begin with. Every expert has recognized the reality that all offenders are different. According to Robin Wilson and other national experts of renown, the more interventions to low risk individuals (prison, probation, treatment, registration) the more harm that is being done to them. At one of the SCSO's first presentations, Dr. Randall Wallace, formerly of The Connection Inc. also made this point. The entire system is creating unhealthy adult males.

For example, teenagers and young adults who have been in an age inappropriate relationships are blocked by parole and probation from seeing the children in their families other than their biological children. We are doing untold damage treating them in this harmful way.

While CTOSJ does not support the existence of the registry, we provided in our testimony to the SCSO, which you have, a number of recommendations that we believe can provide for a fairer registry. Summarizing those recommendations, we believe:

-The new risk based system should be fully retroactive. All registrants, no matter whether they were required to register before or after the creation of the registry, should be able to immediately petition the proposed Sexual Offender Registry Board (SORB) for removal from the public SOR.

Among the states that have implemented or are in the process of implementing a new registration scheme, none have failed to reclassify all registrants and given all of themomitted a (any) (sub) group of people on the registry as CSC's recommendations have. All were reclassified and given the same opportunity for relief- as everyone else.

-The new removal mechanism should be fully retroactive. Registrants who have been required to register since the creation of the SOR should be able to petition either the court (following the proposed procedure) or the SORB for removal from the registry.

Among the states that have implemented or are in the process of implementing a new registration scheme, all have given the same opportunity to all registrants the same ability for removal.

-All terms on the LEO registry should now be shorter than 20 years. As evidenced at the August 22 meeting of the Subcommittee on Sex Offender Sentencing, there is no evidence-based justification for such a long term on a police-only registry. Current 10 years terms, retroactively and prospectively, should be limited to ten years.

-The membership of the SORB should only contain clinically trained individuals. The board should consist only of clinicians who meet the criteria for clinical membership in the Connecticut Association for the Treatment of Sexual Offenders (CATSO) or the Association for the Treatment of Sexual Abusers (ATSA) and who have at least five years of experience in the assessment of sexual offenders. To best serve the stated goal of unbiased risk assessment, no member should be in the employ of any entity contracting with any branch of Connecticut state government to provide treatment or therapy to sex offenders on the SOR or as advocates. It has been proposed that prosecutors, parole and/or probation officers, and victims and victims advocates should either be a member of the SORB or be allowed to present to the board. A SORB is not a second chance to prosecute. It is a review of actuarial risk.

-The burden of proof at removal hearings should be on the state, not the defendant.

-The victim and/or victim advocate, probation and parole should not be involved in risk assessment. The assessment is a clinical judgment of *future* risk, for which past crimes have decreased importance compared to a sentencing judgment. While past crimes are still relevant, the SORB should have sufficient information about these crimes if it is given access to the offender's entire criminal record and the related documentation.

If you choose to continue forward with an amended SOR, we would also make the following additional

recommendations based on what other states have done:
-All registrants should be given a new risk assessment and, if warranted, reclassification if this legislation passes. Illinois, which just finished a process similar to Connecticut, proposed that change.

Before moving on to recent relevant court rulings, we want to make one other important recommendation relating to sex offender policies. It is worth mentioning because of the proposed membership of the SORB. Under current practices, probation staff and victim advocates are allowed into group therapy sessions. In fact many therapy sessions are co-located with probation to facilitate that convenience.

We recommend that **no** probation staff or advocates be allowed into those sessions. Putting aside that allowing non-therapeutic staff to be present violates every professional ethic of therapy, we accept that group therapy has the potential to provide positive outcomes for offenders. The important point, though, is if it is actually the purpose to provide meaningful behavioral therapy, then allowing probation and advocates to attend sessions destroys the opportunity to get honest, productive participation from offenders. Plus, therapists are already mandatory reporters in the case where a participant reveals further offending.

We understand that the CSC is comfortable with the legality of the proposed changes to the registry. We are not attorneys, but just a simple reading of a number of cases raises enough concerns that we feel should be brought to your attention. We especially believe that certain underpinnings of previous rulings are undergoing new challenges, and reversals, as time has passed.

Let's start with **CONNECTICUT DEPARTMENT OF PUBLIC SAFETY, *et al.*, PETITIONERS *v.* JOHN DOE, *individually and on behalf of all others similarly situated*.** This was a case the Supreme Court of the United States of America (SCOTUS) took up on writ of certiorari in 2003 from a decision by the 2nd Circuit of the United States Court of Appeals. Chief Justice Rehnquist, writing for a unanimous court wrote, "We granted certiorari to determine whether the United States Court of Appeals for the Second Circuit properly enjoined the public disclosure of Connecticut's sex offender registry. The Court of Appeals concluded that such disclosure both deprived registered sex offenders of a "liberty interest," and violated the Due Process Clause because officials did not afford registrants a predeprivation hearing to determine whether they are likely to be "currently dangerous."

SCOTUS overturned the 2nd Circuit ruling, saying, "In short, even if respondent could prove that he is not likely to be currently dangerous, Connecticut has decided that the registry information of *all* sex offenders--currently dangerous or not--must be publicly disclosed. Unless respondent can show that that *substantive* rule of law is defective (by conflicting with a provision of the Constitution), any hearing on current dangerousness is a bootless exercise."

Most interesting, and more relevant given the proposal for changes to the registry before you, was Justice Souter's (with Justice Ginsburg) concurring opinion. He wrote that since the legislature has allowed certain exemptions to being placed on the registry and that those decisions are made by the courts, then, "The State thus recognizes that some offenders within the sweep of the publication requirement are not dangerous to others in any way justifying special publicity on the Internet, and the legislative decision to make courts responsible for granting exemptions belies the State's argument that courts are unequipped to separate offenders who warrant special publication from those who do not."

Souter goes on writing, "The line drawn by the legislature between offenders who are sensibly considered eligible to seek discretionary relief from the courts and those who are not is, like all

The Rest of This Testimony is Available for Public Review in:

Judiciary Committee, Room 2500