STATE OF CONNECTICUT

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Submitted to the Gun Control Working Group of the Bi-Partisan Task Force on Gun Violence and Children's Safety
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Good morning Senator Looney, Representative Miner and distinguished members of the Gun Control Working Group. For the record, my name is Michelle Cruz and I am the Victim Advocate for the State of Connecticut. Thank you for the opportunity to present testimony concerning gun violence and the safety of our children and communities.

The Office of the Victim Advocate (OVA) was created to ensure the protection and advocacy of the constitutional and statutory rights of crime victims throughout the state. Further, the OVA is mandated to review the policies and procedures established by any state agency or other entity to ensure that the services available to crime victims are timely, accurate and appropriate. In doing so, in part, the OVA has conducted a number of investigations, some which have led to sweeping changes in our response to crime victims throughout the criminal justice process.

Undoubtedly, in the coming days and months, there will be many recommendations and proposals to restrict the sale of guns, the type of guns available and the eligibility to obtain guns. The OVA does not currently take a position on the various proposed new legislation, even though many of the proposals are valid and appropriate, such as the proposal to require a firearms permit to purchase ammunition; however prior to enacting new legislation there is a need to address the current laws involving firearms and those who sell firearms, compliance and prosecution. The OVA would highly recommend that the Working Group first evaluate the existing laws, requirements and enforcement of those laws. Too often new laws are enacted, promising change in response to a tragedy. Take for example the creation of the home invasion statute after the horrendous triple murder in Cheshire. The legislative intent was to carve out a specific crime targeted at holding those who invade a home while occupants are present in a different class of criminals and designate the home invasion crimes as a crime deserving a mandatory 10 year sentence with no availability of earned credit. The reality, despite the legislative intent has not been realized. For your information, the OVA requested information from the Judicial Branch regarding the number of convictions for home invasion since its creation in 2008. During 2008 through 2011, there were 634 arrests where the newly created home invasion crime was charged. Of the 634 cases, 266 were changed to a non-home invasion charge; 138 resulted in a conviction for a charge other than the home invasion charge and only 27 cases resulted in a conviction for the home invasion charge. Sadly, as a result of the exploitation of the plea bargain process in our criminal courts, the failure to fully prosecute and when necessary, go to trial, the legislative intent has become meaningless.

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How does Connecticut's Criminal Justice System respond to gun offenses? Are violators of our gun laws held accountable? Take for instance Carl Small. On January 12, 2009, Carl Small was charged with Possession of a Controlled Substance CGS 21a-279 (c)[i], Possession of a Sawed off Shotgun/Silencer violation of CGS 53a-211 a Class D Felony[ii]; Reckless Endangerment 1st Degree 53a-63[iii], and Illegal Alteration of a Firearm Identification[iv] CGS 29-36. Small's exposure was up to 12 years and yet he was sentence to 3 years incarceration, a flat sentence or no probation. Shortly after his release, on August 2, 2012, Carl Small was arrested for the murder of Christopher Donata on June 16, 2012, after absconding to PA. It should be noted that the current penalties attached to possession of a sawed off shotgun and to illegal alteration of a fire identification are currently too lenient. Many states, such as MA, hold that possession of a sawed off shot gun (an illegal gun) holds a sentence from 18 months minimum to life, and forbids the offender to obtain good time credit or furlough, thereby identifying those who possess an illegal gun and who tamper with the identification of the gun, will be punished. Carl Small, who should have been identified as a high risk offender, having been convicted of possession of a sawed off shot gun, reckless engenderment, and tampering with a firearm identification, was released, with no supervision, in to our community, only to be charged with murder a short few months later.

Consider how our Criminal Justice System responds to habitual gun theft offenders and gun stores that are complacent in allowing the larcenies. The Riverview Gun Sales in East Windsor is the latest example of the existing enforcement and compliance failures in our state. Jordan Marsh walked into Riverview Gun Sales and walked out with an AR-15 without detection. Additionally, management of Riverview Gun Sales had no idea that Marsh had stolen about eleven guns last year until they were notified by police. In 2007, state police confiscated several stolen guns from a Somers home that also traced back to Riverview Gun Sales. The obvious question here is how was this store able to continue its operation with this record of failures and non-compliance?

Jordan Marsh was on probation since June of 2011, after pleading guilty to one count of stealing a firearm (the remaining eleven counts of stealing a firearm were nolled or otherwise not pursued) when he was charged on December 15, 2012 for robbery 1st; stealing a firearm (CGS 53a – 212); larceny, and carrying a dangerous weapon (CGS 53-206). On January 8, 2013, Marsh was arrested again for a December 14, 2012 incident and charged with stealing a firearm (CGS 53a-212) and criminal possession of a firearm (53a-217c). The OVA requested information from the Judicial Branch relating to the number of criminal cases involving the illegal sale of firearms (C.G.S. § 29-33) and the stealing of firearms (C.G.S. § 53a-212) for the time period of January 1, 2011 – January 17, 2013. There were a total of 560 criminal cases involving at least one charge for a violation of C.G.S. § 53a-212 and/or C.G.S. § 29-33. Of those 560 cases, 123 cases were disposed of with a guilty finding; 165 were NOLLED; and 11 were dismissed. Further, of the 123 cases involving a guilty finding, 27% were sentenced to a fully suspended sentence; 30% were sentenced to an average of 20.4 months in jail; and 43% were sentenced to 33.4 months. The remaining 261 cases were pending at the time the information was obtained by the OVA. I suspect that the statistics for other gun related criminal offenses, such as criminal possession of a firearm, would be equally troubling.

These statistics demonstrate the critical need to review the manner in which our criminal courts are responding to these cases. Laws can be created and law enforcement can make arrests, however, if the criminal courts continue to fail to respond and hold those accountable for these crimes, the efforts are for not. The solution is not always to merely pass a new law; it is the results from the enforcement of the law that will measure its effectiveness. You can't fix the problem at the front end, without fixing the problem at the back end. The only accomplishment then becomes an empty solution which leads to a false sense of security, and allowed high risk offenders to continually be returned to our communities.

The Marsh example identifies not only the failure to prosecute guns crimes, the failure to ensure gun stores are held accountable for lost merchandise, but also the failure to supervise a probationer. The OVA recommends a high risk firearm probation/parole team to strictly supervise habitual gun violators, however there needs to first be a review and overhaul on our probation and parole services to ensure that when these dangerous offenders are violating probation or parole, that offender will be immediately immobilized and held accountable. Take for instance Frederick Weller. Mr. Weller was on probation for a drunk driving offense out of the Bridgeport Court and supervised out of the Danbury Court. In February 2010, when Mr. Weller was arrested and detained in NY for a subsequent drunk driving (his 6th) , the Danbury Probation Officer issued two warrants for violation of probation against Weller in April of 2010. However the VOP warrant was sent to Bridgeport were it sat for months waiting for one of the two warrant probation officers, who had upwards of over 500 violation of probation (VOP) warrants, to process. When Mr. Weller finally appeared in Court to answer to the VOP in October of 2011, the Court states the defendant did nothing wrong and dismissed the VOP; there is no comments from the probation Department. At the time Weller was facing 41 months in jail as well as 9 months in jail. The CT Probation Department in its policies and procedures indicate that a subsequent drunk driving is a serious violation. Sadly, on February 28th, 2012, it is alleged that at 6:30 pm in Sheffield MA, Fredrick Weller, once again behind the wheel, took the life of Moria Banks-Dobson, one week before her birthday. Once again a known threat is ignored and a life is lost. The CT Probation Officer from Danbury wrote a letter in favor of Fredrick Weller being held in MA as a danger to the public, and concurred Fredrick Weller was a danger based on her experience with the probationer. The problem is, before any high risk offender program can be established, we need to address the gaping holes in our probation department and the lack of accountability when a probationer violates probation.

Next there is accountability and compliance with current laws involving establishments that sell guns. On November 30, 2009, the OVA released its investigative report, "Murder of Jennifer Gauthier Magnano." For those of you that are unfamiliar with this investigative report, it is available on the OVA's website. Jennifer Magnano was a victim of domestic violence tragically murdered in front of her children by her estranged husband, Scott Magnano, on August 23, 2007. Less than one month before killing Jennifer, Scott Magnano visited a small, independently owned gun store and asked several questions about firearms. Scott returned to the same store two days later and asked to see three Glock hand guns. The clerk laid out three hand guns along with a least one magazine of ammunition from the glass display case for Scott

to examine. The clerk did not ask for Scott's name or request a license, or any other identifying information from Scott prior to displaying the guns. The clerk then left Scott unsupervised and alone, and went to the back of the store to the office area. Scott took full advantage of the clerk's negligence, took one of the handguns and ammunition and left the store. The gun was reported missing three days later.

The OVA's investigative report highlighted serious concerns for gun safety in the state regarding small independent gun stores, and made specific recommendations to better enhance the safety of citizens in Connecticut. Among the recommendations:

- Requirement that the consumer provide valid state identification prior to viewing and handling a gun;
- Limit the number of guns being viewed and handled to one at a time;
- Requirement that the seller be present at all times;
- Requirement that ammunition be viewed separately;
- Provide for the enforcement of existing statutes involving requirements of gun establishments and provide for a penalty for non-compliance.

Unfortunately, the OVA's recommendations were not adopted. The OVA recommends that the Working Group revisit those recommendations which are simply, commons sense recommendations which will undoubtedly enhance public safety.

The is a need to actively work to ensure our independent gun store and our department stores are in compliance with the stores various gun laws. For instances, consider PA 99 – 212 (6), which provides,

> No person, firm or corporation that engages in the retail sale of goods, where the principal part of such trade or business is the retail sale of goods other than firearms, shall employ a person to sell firearms in a retail store unless such person (1) is at least eighteen years of age, (2) has submitted to state and national criminal history records checks and such checks indicate that such person has not been convicted of a felony or a violation specified in subdivision (2) of subsection (b) of section 29-36f of the general statutes, and (3) has successfully completed a course or testing approved by the Commissioner of Public Safety in firearms safety and statutory procedures relating to the sale of firearms. The sale of firearms by such person, firm or corporation shall be accomplished only by an employee qualified pursuant to this section. Any employer who employs a person to sell firearms in violation of the provisions of this section shall be liable for a civil penalty of not more than ten thousand dollars per day for each violation. The Attorney General shall institute a civil action to recover such penalty.

However, there are no checks to ensure compliance with this law. The fix is easy. An agency such as Consumer Protection, who conducts sting operations to indentify establishments selling alcohol to underage persons, could equally conduct stings to ensure our Department stores are

in compliance with PA 99-212 (6). We need to take steps to ensure our communities are protected and the laws designed, once again, to protect the public are being adhered to. Finally, we must address the lackluster the response of our prosecutors and Courts to habitual violent offenders. Consider the Criminal Justice System's handling of Daniel Candales' various criminal endeavors.

- **Arraignment**: There must be proper screening of cases for risk, dangerousness, seriousness, victim safety, public safety, witness protection screening and bond. Adoption of a dangerousness hearing to deny bail for cases where an offender has been identified as a danger and risk to the victim and/or the community.
  - Daniel Candales, a convicted sex offender in 1998; conviction for breach of peace in 2005; ***conviction for criminal possession of a firearm*** and violation of probation in 2007.
    - Arrested on 7/18/2011 for assault 3rd; disorderly conduct; risk of injury; interfere with 911 call (2) counts; unlawful restraint 2nd; and ***criminal possession of a firearm***. Released.
    - Arrested on 7/22/2011 for violation of a protective order. Released.
    - Arrested on 8/3/2011 for violation of a protective order and criminal violation of a restraining order. Released.
    - Arrested on 9/19/2011 for violation of a protective order and criminal violation of a restraining order. Released.
    - Arrested on 9/20/2011 (offense date 8/11/2011) for violation of a protective order; criminal violation of a restraining order; and harassment 2nd. Released.
    - Arrested on 9/21/2011 (offense date 8/22/2011) for violation of a protective order; stalking 2nd; breach of peace 2nd; criminal violation of a restraining order; operating a M/V with intent to harass/intimidate; reckless driving. Released.
- **Pre-trial and Sentence**: Our state's various diversion programs must be limited to non-violent offenses and first time offenders only; eligibility must be limited to certain non-violent offenses and strictly enforced. Further, plea agreements must be reflective of the offense committed; the criminal history of the offender; the offender's compliance with previous sentences; and an enhanced consequence for repeat offenders. Require prosecutors to detail the terms and conditions of every proposed plea agreement on the record and the reasons for any substitution of charges, nolle or dismissal.
  - Daniel Candales, a repeat offender, including repeat offenses for domestic violence, pleaded no contest in January 2012 to five counts of violation of a protective order and one count of assault 3rd. He was participating in domestic violence diversion programming in the hopes of a suspended sentence.
    - Although Candales entered pleas to five counts of violation of a protective order and assault 3rd, the following charges were not

pursued: disorderly conduct; risk of injury; (2) counts of interfere with 911; unlawful restraint 2nd; criminal possession of a firearm; (4) counts of criminal violation of a restraining order; harassment 2nd; stalking 2nd; breach of peace; operating a M/V with intent to harass/intimidate; reckless driving. **Of the 21 total pending criminal charges, only 6 charges were pursued, which is not reflective of the crimes committed. Additionally, Candales was participating in domestic violence diversion programming in the hopes of a suspended sentence if completed. Candales has yet to be sentenced.**

- **Supervision and Violation of probation**: Establish a high risk firearms offender and a domestic violence supervision units to ensure that those convicted of certain offenses, and that have been identified as high risk offenders, are supervised appropriately and aggressively. Adopt a true zero tolerance police for offenders being supervised by the high risk offender supervision unit; the domestic violence supervision unit and the sex offender supervision unit to enhance victim and public safety and to respond immediately to immobilize the offender. Prevent mistakes like the one involving Fredrick Weller.
  - After pleading no contest in January of 2012 and participating in domestic violence diversion programming, Candales was arrested on 2/3/2012 (offense date 7/28/2011) for violation of a protective order and again on 9/24/2012 for violation of a protective order and breach of peace 2nd. **Further, Candales is accused of fleeing with a 9-year old girl in his car on New Year's Eve and leading police on a high speed chase, eventually being captured by Rhode Island authorities. He has been charged with (2) counts risk of injury; breach of peace 2nd; unlawful restraint 1st; engaging police in pursuit; and reckless driving. Yet, Candales was able to post bond again. On 1/14/2013, Candales was arrested by state police and charged with criminal possession of a firearm after probation officers found a rifle during an unannounced visit to his resident. He again posted bond. Two days later, on 1/16/2013, Candales was arrested by warrant for violation of a protective order. The judge signed the warrant and set bond at $1 million after receiving a call from a state's attorney who informed him that Candales made a statement to his probation officer that indicated he may abscond. He has also been charged with failure to register as a sex offender dating back to 12/25/2009. Candales currently has 14 criminal cases pending.**
- **Incarceration and Release**: Expand the list of offenses that exclude an inmate from eligibility to earn risk reduction credits to include any offense involving the use, attempted use or threatened use of threats or violence against another; any firearms offense; a violation of probation or conditions of release; any sexual assault offense; or any domestic violence offense as defined. Additionally, require the Department of Correction to conduct a risk and dangerousness

assessment of every inmate prior to the inmate's release, and further, to notify the appropriate law enforcement agencies upon the release of any inmate identified as a high risk or dangerous offender.

- Although Candales is facing significant criminal charges and it should be anticipated that he will be sentenced to a substantial period of incarceration, conviction of the current charges will not exclude Candales from earning up to five days a month/60 days a year off the end of his sentence, pursuant to the Risk Reduction Earned Credit Program.

Although the Office of Policy and Management has a Criminal Justice Policy and Planning Division (CJPPD) who is statutorily required to develop a plan to promote a more effective and cohesive state criminal justice system, these numerous problems have remained. Specifically the CJPPD is supposed to "***identify critical problems in the criminal justice system and recommend strategies to solve those problems***" and ***Advise and assist the General Assembly in developing plans, programs and proposed legislation for improving the effectiveness of the criminal justice system***", yet these problems remain.

Thus the OVA recommends the creation of a Task Force, similar to the Task Force created last year to study Law Enforcement's Reponses to Family Violence, which meeting regularly and as a result, proposed a model policy and comprehensive changes to our state's laws involving family violence. The work was intensive, the result was life saving. This proposed Task Force should review all laws impacting guns, laws affecting gun sales, policing related to law enforcements response to gun larcenies, and our Criminal Justice System's response to gun law violators and gun sale violators, including prosecution, probation, incarcerations, and parole. We need a systems response to repair our broken system

The foundation is already there. It is now time for the work to begin, without delay.

Thank you for the opportunity to provide testimony and consideration of the OVA's recommendations.

Respectfully submitted,

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State Victim Advocate

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[i] (c) Any person who possesses or has under his control any quantity of any controlled substance other than a narcotic substance, or a hallucinogenic substance other than marijuana or who possesses or has under his control less than four ounces of a cannabis-type substance, except as authorized in this chapter, for a first offense, may be fined not more than one thousand dollars or be imprisoned not more than one year, or be both fined and imprisoned; and for a subsequent offense, may be fined not more than three thousand dollars or be imprisoned not more than five years, or be both fined and imprisoned.

[ii] A Class D Felony sentence exposure is 1 – 5 years.

[iii] (a) A person is guilty of reckless endangerment in the first degree when, with extreme indifference to human life, he recklessly engages in conduct which creates a risk of serious physical injury to another person. (b) Reckless

endangerment in the first degree is a class A misdemeanor. The penalty for this offense should probably be address as it involves reckless extreme indifference to human life.

[iv] C.G.S 26- 36 (b) Any person who violates any provision of this section shall be fined not more than one thousand dollars or imprisoned not more than five years or both and any firearm found in the possession of any person in violation of said provision shall be forfeited.