Connecticut Sentencing Commission Public Hearing
December 6, 2018

Testimony of One Standard of Justice, Inc.

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

We are here to testify in support of reforming the **child pornography statutes.**

Over the last 30 years mandatory minimum sentences have exploded for many crimes at both the state and federal level. With the benefit of time and the clear evidence that sentencing reform can take place alongside with reductions in crime, people from across the political spectrum have come together to take a fresh look at sentencing reform.

While we haven't seen the exact proposed language, OSJ strongly favors the elimination of inflexible mandatory minimum sentences for possession of child pornography. A consistent finding in offending research is that the offending population is heterogeneous with a broad range of threat for recidivism. Despite that, sentencing inflexibility through mandatory minimums has taken away discretion from judges and prosecutors in finding appropriate balance.

While the proposed language has not been seen, OSJ does not support the compromise of sentence enhancements of ten years for an offender with a prior contact offense for contact crime with a person under 16, although our understanding is the enhancement is also waive-able.

Legislative Proposal 1.

OSJ continues to fiercely object to the proposed reforms to the sex offense registry as they fall overwhelmingly short of evidence-based policies. (See testimony from December 2017 and testimony presented to the Judiciary Committee 2018, both resubmitted.)

One Standard of Justice (OSJ) believes the philosophy applied to offending, for both the victim and the offender, should be "Do No More Harm". CT has created an adversarial system that pits victim against offender with only one possible outcome: a tougher path to healing. The proposed reforms to the registry simply reinforce that adversarial system.

OSJ has resubmitted our testimony from December 2017 which includes a number of suggested changes. Even more importantly, CT cannot and should not continue to approach policy making by casting victims and offenders as enemies. Rachel Bandy, who has done the only academic research centered on in depth interviews of advocates and victims, wrote "Fittingly, several respondents (victims, for clarification) in this study advised against policies in which a zero-sum relationship is falsely created between victims and offenders." "Sex Offender Laws – Failed Policies, New Directions" (Springer Publishing, 2008), p.505.

OSJ is generally supportive of any reforms that seek to provide judicial flexibility.

Reforming laws and policies surrounding sex offending is challenging. It is a helpful reminder when thinking about sexual harassment and violence to listen to the words of Tarana Burke, the founder of #MeToo, in a recent (10/15/18) New York Times interview in which she said, "We don't believe in collecting stories of people's trauma because I don't think the trauma should be curated. We believe in sharing peoples' stories of healing. When you start talking about what you've done to cope and how you have developed practices around healing, that's something that people need to see." The reporter wrote, "Burke has been working to ensure that Me Too doesn't lose sight of its mission: to connect survivors of sexual assault to the resources they need in order to heal."

Unfortunately, policies developed around sex offending over the last couple of decades have had the typical law and order, non-evidence-based approach of longer sentences, tougher restrictions, and more shaming for both the victim and, paradoxically, the offender. The result brings massive new spending for post-conviction policies of limited utility while stoking the fires of rage. The end result is simply ensuring more harm for the victim and the offender.

The key to moving toward just results is through open dialogue where the policy makers welcome the ***voices of all those impacted***.

Specific recommendations for the CSC to adopt in its report to the legislature as per OSJ earlier testimonies:

1) The new risk-based system should be fully retroactive.
2) The new removal mechanism should be fully retroactive.
3) All terms on the LEO registry should now be shorter than 20 years.
4) The membership of the SORB should contain clinicians, social workers, mental health professionals. The SORB should not include a Victim Advocate. For this board to be successful it must be impartial therefore no one in the employ of any entity contracting with any branch of CT state government to provide treatment or therapy to a person convicted of a sexual offense should sit on the SORB.
5) The burden of proof at removal hearings should be on the state, not the defendant.
6) The victim should not be involved in the risk assessment.
7) A risk assessment or actuarial tool should not be diminished because of subjectivity based on any conditions: nature of the offense, victim and community impact, any overrides from Probation/Parole. It should stand on its own.
8) Probation/parole officers and the state's attorney should not be permitted to request that an offender's risk level be elevated because of a failure to meet the conditions of probation/parole or because of additional criminal activity.
9) The "grandfathered group" i.e. the group convicted prior to 1999, before the registry existed, should not have to petition before a board or judge to be removed if he has been offense free for 20 years. The removal from the registry should be automatic.

Testimony submitted:
December 11, 2017 testimony before the CSC

CONNECTICUT SENTENCING COMMISSION Public Hearing
December 11, 2017

Comments submitted by One Standard of Justice on proposed Reform of the Sex Offense Registry and other recommendations of the Special Committee on people convicted of sexual offenses.

One Standard of Justice (OSJ) 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.

"Should you think that I am soft on violent and sexual crime, let me assure you that there is a dark painful part of my soul that wants people who hurt other people to never take another comfortable breath. However let us be intelligent. Given that we are a society of law, let us demand that the laws we do enact achieve their intended mission. Let us stop creating a false sense of security and wasting our precious resources on laws that simply do not work."

Andrea Casanova
Founding Director of the ALLY Foundation
Mother of Alexandra (Ally) Zapp, who was sexually assaulted and murdered

OSJ agrees with Ms. Casanova. That is why we believe the Connecticut Sentencing Commission (CSC) should ideally ask the Special Committee on Sex Offense (SCSO) to start again. The report, regrettably, is an uncredible attempt at reform of Connecticut's sex offender laws and management scheme. It is a report with a predetermined outcome by virtue of a panel overpopulated with people who are paid by state taxpayers to administer current policies and devoid of offenders (many of whom identify as survivors), their family members, their friends, community leaders who deal with the downside of current policy and therapists who counsel offenders and are not employed by any level of government.

Most regrettable in the report is how many non-high -risk offenders will be left on the registry, the lack of retroactivity on the registry, the extension of time on the registry for mid-level offenders and the creation of a Sex Offender Registry Board (SORB) whose membership is not independent clinician led along with a majority of members composed of independent clinicians and offenders. We believe if the SCSO had been more broadly representative of all parties impacted by state offender policy it would have produced a different outcome.

The report is especially disturbing to have come out just after Governor Malloy announced that the prison population in CT has dropped to under 14,000 from a high of over 19,000. All while

crime continues to drop. There is a reason for that. Connecticut has been able to introduce new policies allowing those seemingly opposed concepts of reducing prison populations while also reducing crime because of the creation of a coalition, both nationally and in CT, bringing together people on the right and left who recognized, through evidence-based research, how our mass incarceration policies were blowing up our state budget and ripping apart families, our communities, and our inner cities. That same positive opportunity exists for sex offender policy – just not with this report.

Additionally, the SCS, which is a working example of new coalitions willing to re-examine past criminal justice policies, is reviewing this report soon after the General Assembly had to go four

months into the new fiscal year before it could find agreement on a budget. One would never know, with the proposed creation of a new Sex Offend Registry Board (SORB) and the continuation of other practices of legitimately questionable effectiveness, that money was an issue for the SCSO. The costs could have been partially mitigated but for the lack of retroactivity for the registry combined with the creation of a SORB that is non independent clinician led and non-data driven.

This has been an incredibly short sighted and missed opportunity to bring science to bear on sex offender policy that would save Connecticut money, lower recidivism rates, reduce sexual violence and more closely conform state policy to what victims both want and need.

We have attached to our testimony today our previous testimony to the Special Committee on Sex Offenders, which covers the proposed changes to the sex offender registry and the draft report. We have also attached the testimony of Subcommittee on Sex Offender Sentencing member Erin Miller on retroactivity for the sex offender registry. We hope that you will take the time to review those testimonies. We believe the testimonies speak well, and in more detail, to our concerns, which are primarily threefold: 1. Connecticut is investing millions of dollars a year in an elaborate sex offender management scheme about which even the hired consultant, Robin Wilson, says might have only an incremental impact; 2. Connecticut is being asked to continue, despite some proposed changes, operating a sex offender registry. Registries nationally have consistently been found to have no effect on reducing recidivism or making communities safer. Quite the opposite. Registries have been found to put registrants more at risk for re-offending while also causing significant collateral damages to registrants, their families and the communities where registrants live; and, 3. As the 2012 OPM study showed, arrests for a new sex offense by released prisoners in their first five years was only 3.6%. In addition, 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 in numbers almost *ten times greater* than the former sex-offenders within the first five years of release (259 to 27). Why are we spending so much money chasing so few while ignoring that the real danger for new offending comes primarily from people we know?

It is worth spending a little time reviewing why the special committee was created. In 2015, the Judiciary Committee was once again dealing with a slew of dueling legislative proposals dealing with sex offender policy. Among them was SB 1087, essentially the annual attempt to make Connecticut conform to the Adam Walsh Act. As a result of much conflicting testimony, the

Judiciary Committee substituted language asking the Connecticut Sentencing Commission (CSC) to study ten specific issues, a portion of which was dealt with in the Special Committee on Sex Offenders (SCSO) report.

When the legislature asks either a task force, or in this case the CSC, to tackle a specific issue, it is usually because there is a lack of consensus on a contentious issue. In this case the Judiciary Committee knew the CSC had established itself as a sober thinking group in following its charge to,"review the existing criminal sentencing structure in the state and any proposed changes thereto, including existing statutes, proposed criminal justice legislation and existing and proposed sentencing policies and practices" while "sentencing should have as an overriding goal the reduction of criminal activity, the imposition of just punishment and the provision of meaningful and effective rehabilitation and reintegration of the offender..."

That's a fancy way of saying the legislature (read: politicians) in the past needed cover from a credible independent body to begin to reverse the expensive and discredited policies of mass incarceration. And now they were looking for more credible work (and cover) on an even more volatile issue: sex offending. But because of the membership of the SCSO, that cover is less that needed to start a new

political conversation about sex offender policy.

One issue not addressed in our previous testimony, and which the CSC should be aware of, is the racial disparities of people on the registry. While not as extreme as in the general prison population as a whole, minorities are still significantly overrepresented on the registry. While whites are 67.7% of the state population, they make up 53.3% of the registry. For blacks, they make up 11.8% of the state's population according to the 2016 census figures for Connecticut, yet their presence on the registry is more than double at 26.4%. If the impact of mass incarceration on minority communities, through disproportionate application of law, doesn't create enough social and financial chaos already, the registry only adds to the collateral damages.

Another issue not covered in our previous testimony also deserves some attention. In Appendix C, the Subcommittee on Community and Victim Needs reports extensively on a Survey Monkey survey they commissioned to try and better understand the public's sentiments on sex offender policy. We are not statisticians, but there are common sense reasons to doubt at least some of the results of the survey. We can, however, comment on how the survey shows the need for better public education about the reality of sex offending. In the survey, by a ratio of about 9-1, the public believed "sex offenders are likely to commit similar crimes in the future". The truth is the other way around. Adoption of this report will do nothing to begin the education of the public and policy makers about what the truths, and untruths, are about sex offending and offenders.

The subsequent section, Appendix D, "Summary of offender survey responses" tells a different, and more compelling, story - one of the clear collateral damages of the registry.

With about 90% of the respondents saying their crimes involved someone they knew, it reenforces the well know data about the public misperception of stranger danger. The surveys also reenforce the science around collateral damages. Over half the respondents were fired or

denied employment and are not working or only working part time because of their presence on the registry. And more than a third say they, or their family, have been harassed because of their presence on the registry. The surveys have great potential as a management feedback tool and provide interesting insights that are consistent with Robin Wilson's interviews with probation/parole staff's questioning of the effectiveness and usefulness of a one-size-fits-all approach sex offender management. It is the kind of feedback loop missing in the SCSO report.

The information from the offender survey was only added to the report very recently, after all voting by the SCSO had taken place. CTOSJ believes if these results were considered by the full SCSO, it could have impacted the recommendations for the registry.

We live in a time of unusual turmoil. The impacts of the #MeToo movement and the enlightening stories of brave, primarily, women who have been empowered to come forward to tell their stories about sexual harassment and assault are changing attitudes on almost a daily basis. We encourage the dialogue.

At its core, the real story is of a system where women, primarily, have felt little confidence that the criminal justice process, including counseling and advocacy, gave them the right kind of supports they needed to stand up for themselves, both in the short and long term.

It all screams out for a questioning of the support system we have in place for victims. It goes to the heart of our current sex offense structuring, how we allocate our scarce state resources and, most

importantly, what victims actually want and need. In order to find out what victims and advocates actually need and want, Rachel Kate Bandy, an academic researcher on sex offender policy, conducted in depth interviews with 18 sex assault victims (two males) and five regionally dispersed sexual assault coalitions (CASA). Her findings are included in Professor Richard D. Wright's book "*Sex Offender Laws – Failed Policies, New Directions*" (Springer Publishing, 2008). Because of copyright laws, we cannot distribute the chapter written by Ms. Bandy, but we will quote at some length because of the importance of her unique work. They are only snapshots of the testimony she received but are directly relevant to your work. Bandy writes:

"By drawing public attention and scrutiny towards the most egregious offenders and offenses, sex offender laws detract attention and scrutiny from the most common type of offenders and victims. It is this distraction that potentially decreases public safety and increases victimization risk. The Northeast CASA offered, "If these sex offender laws have done anything, they have confused the public by emphasizing the least common offender""

"Some sex offender laws have served to reify a victim hierarchy – that is, a spectrum of victim types categorized according to the sympathy (or lack thereof) each evokes from the public and policy makers...The victims for whom these laws have been named do not reflect the common story of victimization or victim type...As a result, several CASAs reported that they and the service providers they support have heard from victims that they do not see any reflection of self...This has made it hard for some victims to acknowledge and act upon their needs for support

and self-care because their assaults were not as 'bad' as those suffered by victims for whom laws were named."

"Several participants observed that their healing has been a process, noting that although immediate assistance from a victim advocate is helpful, access to free, confidential long-term therapy services and/or support groups was more helpful."

"According to several of the coalitions interviewed, the majority of state funds earmarked to address sexual violence are directed to agencies that provide services to offenders, thereby leaving fewer resources available for victim services."

"The West coast CASA stated, "Vulnerability (for sexual abuse) is actually reinforced by these laws because it turns attention (of the public and criminal justice systems towards) one-percent of the crime." The Southwest CASA argued that laws such as notification, offender GPS tracking, and residency restrictions have actually impeded public safety because they have reinforced to the public grossly inaccurate depictions of the type of sexual assault risk one is most likely to face. The Southwest CASA noted that by focusing on the 'stranger danger' myth, people are less aware of a more likely assailant: a person they know."

"Several CASAs observed that sex offender laws really have nothing to do with victims. They argued that victims may be used as a political tool to pass the law but in reality, few – if any – tangible benefits are realized by victims"

"CASAs are invested in the outcomes these laws have on offenders, as well. According to several CASAs, these expensive laws have demonstrated little to no discernible impact on reducing recidivism. Instead they eat up scarce resources...The West Coast CASA believes, "These policies are about a *sense* of safety, not *real* safety" (author's italics) The unintended byproduct of these laws, then, may well be the creation of more victims."

"...policy makers must not presume to know what victims need and want; they must ask victims how they can best be served through legislative initiatives that seek to redress sexual violence as a social problem."

"Fittingly, several respondents (victims, for clarification) in this study advised against policies in which a zero-sum relationship is falsely created between victims and offenders."

If anything in our testimony best reinforces the structural problem we face, it is Bandy's work. Connecticut has simply created a system that is upside-down, emphasizing tough laws and policies for sex offense management to respond to sensational, horrific one-off crimes, while doing pitifully little to prevent sex crimes and provide the care victims actually need. The hatred of those who pretend to advocate for victims toward offenders blinds them to the real work that needs to be done.

The language we have used in our testimony is often defined by angry adjectives. We are angry. We also appreciate the power of words and know there is the possibility that our choice of words have the potential of blunting the substance of our content. We trust the CSC will make the effort

to differentiate between the two. It isn't just that our attempts to introduce actual empirically validated information was belittled that makes us angry. It isn't just that our personal stories of the collateral damages imposed by current policies were scoffed at. It isn't just having to listen to the demeaning joke made by a former legislator and the wildly inaccurate characterizations about offenders made by paid state employees who have significant roles in carrying out sex offender policies. And it isn't just that a process funded by our taxpayer dollars chose to deny any meaningful input into its work by offenders, their families, friends and community and other professionals with working knowledge of these issues which isn't defined by where they get their paycheck.

Our anger is due in large part because we, OSJ, and other parties interested in the work of the SCSO, came prepared to be part of an engaged, informed and collaborative effort to build trust in developing rational, empirically supported policies that support victims, rebuild families and save money while also reducing sexual violence and building safer communities. We don't believe that happened here. And that is a tremendous loss, not just for offenders and their families, but for the state of Connecticut. We firmly believe that good processes that encourage collaboration, conversation and the development of trust benefit everyone.

To reemphasize the need for an inclusive process, we include several long, but insightful, quotes from the work of sex crime researchers that goes directly to our recommendations. The evolution of sex offender policy was best described by sex crime researchers Alissa Ackerman, PhD (who also identifies as a survivor), David Prescott, LICSW, & Kieran McCartan, PhD in a recent, November, 2017, blog entry on the ATSA site, Sexual Abuse: A Journal of Research & Treatment titled, "The Importance of User Voices". They wrote, "As we reconceptualize sexual harm/abuse from being a criminal justice issue to a joint public health/health/criminal justice issue, the idea of the service user becomes essential...We need to understand the service user (both those who have been sexually harmed and those who have caused sexual harm) and make them part of the research process in order to develop a fully rounded service."

They continue, in part, "The prevention of sexual abuse requires a multi-faceted approach that encompasses victim advocates, treatment providers, researchers, individuals who have sexually harmed, and individuals who have been sexually harmed. Prevention takes a village. To privilege one group of voices over others silences groups that could have important insight."

They conclude writing, "At the front lines of treatment and policy, it is clear that including the service- user's voice can improve services, identify methods that aren't working, and produce ideas for innovation. However, we need to be brave in engaging the service user voice as it may be seen as inappropriate, useful, biased and divisive by some groups (including, policy makers). Businesses in the tech world and restaurant industry know that once you respond to a customer's feedback, you very often have a customer for life. It's time for deeper listening to all who are involved in these services."

Ultimately, it is up to you, The Connecticut Sentencing Commission, to decide whether to forward this report to the General Assembly. We are not so naïve as to believe, no matter how grounded our testimony is in science, that you will not do so. Even though we would like you to reject this report, we would like to offer several alternatives.

First, in addition to some no votes, we would hope there would be a minority report. If you find any or all of our collective testimonies useful, you have our permission to use them in any way you deem appropriate. A member of the SCSO is also willing to provide help in writing a minority report.

Second, if you decide the work of the SCSO should continue, we would ask that membership be changed so that there is close to, if not full, parity between the people who gain their livelihood from a position in this process and any combination of offenders, their families or friends, academic researchers, therapists who treat offenders but who are not primarily employed by any organization contracting with the state of Connecticut and victims' advocates who are not employed by any organization contracting with the state of Connecticut.

Third, we recognize the power of politics, as was seen in the SCSO work. We would recommend the hiring of a consultant trained in "Getting to Yes" or a similar group consensus building process to facilitate the continued work.

Fourth, and in many ways most important, we would like you to charge the SCSO to approach their work in the way one would in adopting a zero-based budget. Make the work product not about validating the status quo, but actually casting a wide net that examines the actual science about what the best legislative and management approach is for offenders and for victims, including processes like restorative justice.

When James Naisbitt wrote "*Megatrends*" in 1982 Connecticut was one of five states he looked to for new trends in social invention. He wrote, "When we trace back new trends or positions on issues eventually adopted by most states, we find again and again they began in one or more of those bellwether states." What Connecticut, and the CSC and SCSO, need to do to reassert some sense of national leadership in social invention, and sex offense policy, is to take to heart the words of Dr. Ackerman and associates. Real reform of Connecticut's policies will only happen when there is a willingness to have a collaborative re-visioning of what works and what doesn't. Let this be the time.

Testimony submitted:

December 6, 2018 Testimony
December 11, 2017 Testimony before the CSC