STATE OF CONNECTICUT
SENTENCING COMMISSION

Testimony of Alex Tsarkov and Honorable Judge Robert Devlin before the Judiciary Committee on SB 1113, An Act Concerning the Recommendations of the Connecticut Sentencing Commission with Respect to the Sexual Offender Registry, Petitions to Terminate parental Rights of incarcerated Parents and Sentence Review

Senator Winfield, Representative Stafstrom, Senator Kissel, Representative Rebimbas, and members of the Judiciary Committee. For the record, my name is Alex Tsarkov and I am the Executive Director of the Connecticut Sentencing Commission. With me is Judge Robert Devlin Jr., a superior court judge and chair of the Sentencing Commission. We are here to testify in favor on SB 1113, *An Act Concerning the Recommendations of the Connecticut Sentencing Commission with Respect to the Sexual Offender Registry, Petitions to Terminate parental Rights of incarcerated Parents and Sentence Review.*

We would first like to give you some brief background about the Sentencing Commission. We are a permanent statutory commission created seven years ago, consisting of all the stakeholders in Connecticut's criminal justice system. Our membership includes four judges; the Chief State's Attorney; the Chief Public Defender; the State Victim Advocate; the commissioners of Correction and Emergency Services and Public Protection; community activists interested in the criminal justice system; the chair of the Board of Pardons and Paroles; municipal police chiefs; the undersecretary of the Office of Policy and Management's Criminal Justice Policy and Planning Division; as well as others vitally engaged in the criminal justice system. We operate by consensus among all Commission members. Our work is informed by all the major stakeholders of the criminal justice system and aims to adhere to the best legal and evidence-based research and practices.

SB 1113 includes several unrelated recommendations of the Sentencing Commission.

Sex Offender Registry Reform

Section 1-20 are aimed at improving the state's sex offender registry. *Special Act 15-2* required the Commission to examine sex offender sentencing, registration and management system in the state and make policy recommendations to the Governor and General Assembly. This proposal is based on the Commission's recommendations and is the result of two years of rigorous study and discussions with multiple stakeholders – academics, practitioners, as well as state and national experts on this subject matter.

The legislation both strengthens and focuses the Connecticut sex offender registry. The key aspect of the proposal is a move from a conviction-based registry to a risk-based registry focused on the risk, needs and responsivity model supported by research and evidence-based practices.

Under current law, the crime that the offender was convicted of determines the requirement to register and the length of time the person will be on the registry. Under this proposal, the categories of sex offenders who must register with the Department of Emergency Services and Public Protection (DESPP) based on the crime for which they were convicted remain the same. However, the length of time on the registry and whether someone is placed a public registry or a law enforcement-only registry will be determined by evaluating the registrant's risk of reoffending. The Sexual Offender Registration Board, comprised of subject matter experts, will be responsible for making these classifications of risk based on the actuarial risk assessment instruments, the nature and circumstances of the offense, any aggravating or mitigating factors, and the impact to the victim and the community.

The current registry does not incentivize a registrant's appropriate behavior or sanction a registrant's inappropriate behavior, other than making the failure to report a change of address, a class D felony. Placement on the public registry can impede the registrant's successful reentry into society by making it more difficult to find housing and employment. This proposal will penalize registrant's inappropriate behavior and incentivize appropriate behavior. All registrants will have an opportunity to petition the Sexual Offender Registration Board to shorten their registration period or apply to be moved from the public registry to the law enforcement registry. To do so, registrants will have to show, by their conduct, that they have reduced their risk to the community. This proposal will eventually result in fewer offenders on the public sex offender registry, thus allowing law enforcement, probation and parole, and the public to focus more attention and resources on the higher-risk offenders.

Connecticut is one of the few jurisdictions that currently does not allow the opportunity for individuals to be removed from the registry. The removal provision of the proposal, which would be prospective only, establishes a process to petition the superior court for removal from the registry. However, some individuals who were retroactively placed on the registry at the time the registry went into effect (i.e., offenders who were convicted prior to January 1, 1998, without knowledge that they would be subject to registration requirements) would be eligible to petition the court for removal. Others currently on the registry could be reclassified by the Board to the law enforcement registry but could, not petition the court for removal from the registry entirely.

Under the new system, some registrants will be on the registry for shorter periods than under the current system, and others may be on for longer periods. However, that determination will be based on the registrant's risk to the community. The registrants will have an opportunity to lower their risk profile by participating in programming for behavioral health, vocational

training, and other services designed to enhance community reintegration and by avoiding re-arrests for any new criminal activity.

The proposal would allow for more focused monitoring and management of individuals who have engaged in sexual violence, and at the same time provide mechanisms for individuals who have rehabilitated themselves to more fully reintegrate into their communities.

Children of Incarcerated Parents

Sections 21-24 are intended to protect children from the permanent severance of their relationship with an incarcerated parent due to unintended consequences of the federal Adoption and Safe Families Act (ASFA). ASFA mandates states' child welfare agencies to begin termination of parental rights in cases of children who have been in foster care for 15 of the previous 22 months. The intent of ASFA is to prevent children from being in temporary foster placements for several years and increase adoption of children. Despite ASFA's purpose, this federal law may actually contribute to the permanent severance of parent-child relationships against the best interests of the child in certain cases.

At the end of last year, the Commission worked with the Connecticut Children of Incarcerated Parents Initiative, the Chief Public Defender's Office and the Department of Children and Families to craft language that seeks to rectify the unintended negative consequences of ASFA for children whose parents are incarcerated.

Under the proposal, a petition for termination of parental rights, as well as the case plan for a child under DCF supervision, must include considerations of incarcerated parent's efforts to stay engaged with his or her child. Specifically, the bill would:

- Require the Department of Children and Families to assess available programs/treatments at the correctional facility within which the parent is confined in order to create a more achievable reunification plan; provide visitation (except when not in the best interests of the child); and allow an incarcerated parent to participate in case reviews in their entirety via teleconference or videoconference.
- Provide specific criteria for determining that termination of an incarcerated parent's rights is not in the best interests of the child, and provide a list of factors to consider when assessing whether an incarcerated parent maintains a meaningful role in the child's life.

Sentence Review and Modification

Section 25 and Section 26 make important changes to the sentence review and sentence modification statutes. Current law permits any inmate who is sentenced to a term of three or more years of incarceration, with certain exceptions, to request the Sentence Review Division of the Superior Court to review and reduce their sentence. The statute makes any such inmate ineligible to apply for and receive a sentence reduction if his sentence is the result of a plea

agreement. This bill would prohibit review of any sentence that is the result of a "cap agreement," or what criminal law practitioners commonly refer to as a "cap with the right to argue for less" – i.e., an agreement between the parties that sets a maximum term of incarceration, but gives the defendant the right to argue to the trial court for a prison sentence that is less than the agreed upon maximum term.

The statutory change with respect to sentence modification would allow a defendant, without agreement from the prosecutor, to petition the court to modify any sentence which includes three years or less of *actual incarceration* after a hearing and a showing of good cause. If, however, the sentence includes more than three years of actual incarceration, then the defendant must still first obtain consent from the prosecutor in order to have a modification hearing. The current law on Sentence Modification prohibits the court from holding a hearing without the agreement of the prosecutor if the entire sentence – i.e., the executed period of incarceration together with any period of suspended incarceration – exceeds three years. This legislation would allow the court to hold a modification hearing for any sentence without the state's consent as long as the defendant is serving a sentence of three years or less of actual incarceration.

It should be noted that sentence review has rarely been a successful post-conviction remedy. According to the Office of Legislative Research Report from June 27, 2008, out of 997 applications for sentence review over the course of 6 years, only 13 sentences received a reduction or modification. The expansion of eligibility for Sentence Modification, however, would provide for a more meaningful opportunity for release to many deserving individuals.

We ask the Committee to recognize an extraordinary broad coalition of stakeholders, state and national experts who have spent many hours coming to a consensus on these proposal. We thank the Committee for raising this important legislation and urge the Committee's JOINT FAVORABLE Report.