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Testimony of Eric Tennen:

I appreciate the opportunity to address the Commission. By virtue of my practice, I have worked on behalf of countless clients charged and convicted of sex offenses. I have come to understand very well the policies in place which result in virtually eliminating (or attempting to eliminate) the offender from ever assimilating back into society after he is released.

I believe our policies are not rational or evidence based. Some problems are just the result of holes in the system that need to be addressed. But I want to focus on a series of issues that I think need to be reformed. Reforming these policies is good for everyone: it is good for society if we provide better and more realistic support for offenders; it is good for the offenders to have the ability to live a law-abiding, fulfilling life; and it is good for our coffers to have policies that are not wasteful.

1) Treatment Center/Preparation for release

Let me start with how the Department of Corrections prepares men for release. Those least prepared are, ironically, men leaving the Massachusetts Treatment Center. The very place whose single mission is aimed at treating and helping transition sex offenders in the community fails to do that.

To begin with, there is no Community Access Program. Though legislation requires it, there is none. I was part of a federal lawsuit against the Treatment Center and one of the findings after a trial by a federal judge is that there exists no Community Access Program.

There is no realistic release planning and absolutely no safety net or guidance once the men are released.

Most men who have been committed for a long term have lost all connections to friends or family (or least friends or families willing to provide support). Thus, they have little options available upon release. There is no transitional housing. Many choose to come to Boston, live in shelters, and try and build their life up again.

But released individuals are not prepared for the realities of life on the outside. They are given no guidance or instruction on the following: how to get an identification, how to sign up for food stamps, how to navigate around Boston, how to find where the shelters are or how to actually get

a bed at the shelter, where to get a meal, how to cash the check they are given (for whatever savings they have) upon release, or how to take the T.

More importantly, for those on probation, they are not told where or how to find their probation officer. For all offenders, they are not told or explained the process of registration with the police.

To the extent they have property, it is contained within boxes that are packed up for them; but they have no place in the world to store this.

They are not given a cell phone or instructions on how to get one.

They are not given extra clothes, a bag to store their belongings, or a secured locker to store their possessions.

In short, sex offenders released from prison are among the most ill-equipped to navigate our society even though we believe they are most in need of support and stability.

There needs to be better, more realistic release planning. The men need to be given better guidance and a more realistic understanding of the tasks that lay ahead. This is true of men released from the Treatment Center and others from jails or prisons. I am the point person for many of my clients, regardless of where they leave from. My office or home basement is their storage space; they come to my office use my phone or drink water on a hot day. I connect them with former clients who know how to help. This should not be so. The Commonwealth should not rely on the kindness of lawyers or formerly incarcerated men to help men transition.

2) Supervision

Some men are supervised by probation; an extremely, extremely small number are supervised by parole.

Supervision does little to help, and much to interfere. This is primarily because the conditions imposed on probation are not normally appropriate for the individual. Instead, they create more red-tape for the offender and more ways in which to violate probation. Additionally, for those generally low-risk offenders, supervision is not necessary. If someone poses a low risk, there is no need to have them strictly supervised. Rather, supervision creates stress and series of unnecessary conditions that may result in an otherwise law-abiding person to get snagged again in the criminal justice system.

Most offenders have mandatory conditions of treatment. For some, this may be a valid condition; for many, who have done a lot of treatment while incarcerated (indeed, that is why they are being released), it is an onerous and unnecessary condition. But men who need, at most, a monthly check-in group are required to attend mandatory group sessions where they gain nothing. And if a therapist says they are not participating, they can be kicked out of group (and then violated).

Some men have cognitive limitations and cannot possibly understand what is happening in a group setting. But nothing is done to aid them.

Probation officers are more afraid of someone they supervise committing a new crime than helping them transition. They are normally harder on sex offenders than other people on probation. They cut them less slack and are quick to violate them.

Men are expected to pay a monthly fee; but as you know, they cannot find work and possibly pay that fee.

For men on parole (and again, this is hardly ever—but was more common under lifetime parole) and many on probation, they cannot have a computer or camera or use the internet without monitoring. This day and age, we all require access to the internet and computers to function in the world. But in cutting off sex offenders from these vital tools, we make it even harder for them to reintegrate.

We know that for low risk offenders, intensive or sustained probation is extremely stressful and can create the kind of emotional states that led men to offend in the first place. But we do not tailor probation to actually meet the needs of the individual; and when we require monitoring for life, or even extended periods (like 10 or 15 years), we do not allow the individual to ever normalize his life.

3) GPS

The one condition I have not mentioned yet is GPS. Mandatory GPS of all persons on probation is simply unnecessary. GPS monitoring does not prevent crimes; it does not decrease recidivism. There have been studies confirming this for two main reasons: 1) If you are going to offend then you are going to offend. GPS only helps tell where you were when the offense took place 2) most men pose a low risk to reoffend and thus would be law-abiding whether or not they are monitored by GPS.

But GPS is extremely limiting and prevents men from living anything close to a normal life. First, the equipment is horrible. It is unreliable. I have clients constantly telling me they get calls from ELMO all the time because they can't be located. They are woken up in the middle of the night or, if they work, during work, to go outside and get a signal. You have to charge the base a few consecutive hours a day (or night). You cannot go swimming. You cannot travel out of state.

It is hard to be homeless; it is even harder to be homeless on GPS. Where do you charge your phone at night? Not at the shelter. What if you do not have a cell phone for ELMO to reach you if they cannot get a signal?

Most men on GPS have been arrested for violating the conditions of GPS; but these arrests are not because they were somewhere they could not be; they are for equipment malfunctions. It is not at all unusual for the police to find men exactly where they are supposed to be—in their home—but still arrest them because a warrant has issued.

For many men, you cannot hide the stigma of the bracelet. Pants can barely cover it. You cannot wear different clothes or shoes because they do not fit right. I have clients with medical conditions in which the bracelet can be painful.

The SJC has already held that the imposition of GPS is undoubtedly a punishment. If that is the intent of the law, to add an extra layer of punishment to every person convicted of a sex offense regardless of the circumstances, then it is working. But if the intent is to improve public safety, it is a sadly misguided law.

There is one very simple solution: restore discretion to judges as to whether or not to impose GPS. For judges who want to use it as a form a punishment, they can; for judges who believe it is necessary for public safety (e.g. to monitor if an offender is somewhere he is forbidden from being), then they can use it for that; and for judges who recognize the offender poses a low risk to reoffend and is not prohibited from being anywhere (e.g. someone convicted of an internet only offense), they need not impose GPS.

I firmly believe that most judges would not impose GPS if it were a matter of discretion. We know this because most did not prior to the law. We should trust judges to make these decisions and individualize the imposition of GPS to the specific offender.

4) Registration

With respect to registration, there is a problem with how we classify and communicate that classification to the public.

What does it mean to be a high-risk, level 3 offender? There is no real definition. But it cannot possibly mean these are the most dangerous men. Because the most dangerous men are those who are civilly committed. If you are not committed, then by definition, you are not one of the most dangerous.

So, at best, a Level 3 is a relative term that compares those offenders to the other men who are in the community. Level 3's are more likely to reoffend than Level 2's, who in turn are more likely to reoffend than Level 1s. But that still does not tell you or the public just how likely a Level 3 offender is to reoffend.

But the perception of Level 3's (or just that people are classified generally) is far from that. Men who participate in years of treatment, and are released when doctors unanimously say they are no longer dangerous, are Level 3's.

So the language we use is horribly prejudicial. Because the public does not see the language of registration as relative; they see Level 3, high risk, and presume these men should still be in jail.

In turn, Level 3's or anyone outed as a sex offender cannot get work or find housing. They lose jobs (when they have them) and are not protected in any way. They are fired and cannot even collect unemployment, normally, because they were fired for being a sex offender.

I have one anecdotal story that really shows how being classified can hurt. I had a client who was on parole in the federal system. His crime occurred in the early 80's and he was incarcerated for about 25 years. Upon release, he was not required to register. He was married, had a good job, bought a house, and had two kids. He never had a problem with parole.

Five years after his release, SORB said he had to register. He fought it, but had to register while his case played out. As soon as he had to register, and did (as a Level 3)—again, five years without incident and SORB said he was a high risk offender—as soon as he registered, he lost his job. Because they found out he was a Level 3. He found another job but once he registered the address he lost that one too. He had a long stretch where he could not work. Ultimately, he began working as a handy man, under the table, to make some cash to help his family. He was charged with failing to register (because he did not report his work) and his parole was violated. He then spent 18 months incarcerated while his wife struggled to take care of the two kids (both of which were special needs) with just her salary and without his help.

Ultimately, the Appeals Court said he did not have to register. So all that hardship was for not.

But this is a paradigm example of how registration really does eliminate an offender from participating in society. Here is someone who was doing great and everything you would hope and registration turned him from a productive member of society into a criminal, with a broken and struggling family.

5) SORB Reclassification:

Another real problem with SORB is that it is supposed to represent a present assessment of the person's risk. But once SORB classifies someone, the only time their level will change is if SORB petitions to increase it or the offender requests to decrease it.

But because SORB does not unilaterally review classifications on a regular basis, there is nothing showing that someone's classification is current. Once again, this results in poor information being transmitted to the public. If someone is classified as a Level 3, but they have been in the community long enough that they are now less of risk, their classification should reflect that.

Further exacerbating the problem is that when an offender now does seek to be reclassified, they have to now wait for over a year and a half to get a hearing, then many additional months to get a decision.

So there are many, many men who have classifications that are over 5 years old; some over 10. These are men who have done everything right. And SORB itself recognizes how risk decreases the longer you are out and the older you get. But unless these men ask SORB to change their classification, it remains.

And the public is thus left with inaccurate information and misperception of the men on the registry.