

PA13-297

HB6342

House	10198-10209	12
Judiciary	687-693, 720-722, 789-795	17
Senate	5461, 5467-5468	3
		32

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**CONNECTICUT
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HOUSE**

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the opening day of Session and I still believe it today that the way we get things done is by doing it in a cooperative way. With the two leaders that we have on both sides of the aisle, that made that possible. It could not have happened without the leadership of the Majority Leader, Representative Aresimowicz and the Minority Leader, Representative Cafero. You two gentlemen are extraordinary leaders of both of your caucuses, and you are the ones who made this happen. So I think we all need to thank you for your leadership.

Okay; so before I get too emotional, let's get back to the Calendar.

Will the Clerk please call Calendar Number 470.

THE CLERK:

Good morning, Mr. Speaker.

On Page 15, House Calendar 470, the Favorable Report of the joint standing Committee on Judiciary, House Bill 6342, AN ACT CONCERNING CRIMINAL PENALTIES FOR FAILURE TO REPORT CHILD ABUSE.

SPEAKER SHARKEY:

Representative Gerry Fox.

REP. G. FOX (146th):

Thank you, and good morning, Mr. Speaker.

I move for the acceptance of the joint committee's Favorable Report and passage of the bill.

SPEAKER SHARKEY:

The question before the Chamber is acceptance of the joint committee's Favorable Report and passage of the bill. Will you remark, sir?

REP. G. FOX (146th):

Thank you, Mr. Speaker.

As the -- the title of the bill states, this is a bill that deals with the penalties that go with the failure to report child abuse.

The Clerk has an amendment, LCO Number 7999. I would ask that that be called and I be given leave to summarize.

SPEAKER SHARKEY:

Will the Clerk please call LCO 7999, which will be designated House Amendment "A."

THE CLERK:

House Amendment "A," LCO 7999, introduced by Representative Fox, of the 146th.

SPEAKER SHARKEY:

The gentleman seeks leave of the Chamber to summarize.

Is there objection?

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Seeing none, you may proceed with summarization,
sir.

REP. G. FOX (146th):

Thank you, Mr. Speaker.

The amendment is a technical amendment, and
recommended by LCO, that merely numbers the paragraphs
in an, in a better order than the underlying file
copy. And I -- I move adoption.

SPEAKER SHARKEY:

The question before the Chamber is adoption.

Will you remark, sir?

REP. G. FOX (146th):

Thank you, Mr. Speaker.

The -- the underlying bill and this amendment
address what many of us have seen over the years when
we -- we hear of situation that there's been a pattern
or an ongoing period of child abuse, where those who
have an obligation to report and those who are
required by law to report it fail to do so. And what
the, what the bill does is it -- it really just makes
it clear that rather than facing a -- a monetary fine,
you'll be facing a criminal penalty if you or if -- if
you're in a supervisory position you choose to protect
your organization over the reporting of a potential

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child abuser when you have evidence and -- and information that would prove that the person, that's somebody who works for you or is under your, perhaps control, under -- under a work environment is, in fact, engaged in this. So, Mr. Speaker, I -- I believe this is an important bill.

And I'd also like to, before I relinquish the floor, I'd like to also thank Representative Bacchiochi for her continued advocacy for a -- a bill along these issues, as well as the Ranking Member, Representative Rebimbas.

SPEAKER SHARKEY:

Thank you, sir.

The question before the Chamber is adoption of House Amendment "A."

Will you remark?

Representative Bacchiochi.

REP. BACCHIOCHI (52nd):

Thank you, Mr. Speaker.

I rise in support of this amendment. I think this is something that this Chamber has worked very hard on for many years to find the best way to hopefully improve the ability for mandated reporters to report crimes against children.

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Long before the Penn State incident became public, I know many of us in the Chamber have had long discussions about the failure of individuals, especially or specifically mandated reporters, to report crimes against children.

Through you, Mr. Speaker, just a couple questions to the proponent of the amendment.

SPEAKER SHARKEY:

Please proceed, madam.

REP. BACCHIOCHI (52nd):

Yes; thank you.

Representative Fox, could you just explain for those of us who are not familiar with the penalty system what the original penalty would be for not -- failure to report a crime against a child, and what will be the penalty now.

SPEAKER SHARKEY:

Representative Fox.

REP. G. FOX (146th):

Thank you, Mr. Speaker.

The penalty is a, for failure to report is a monetary fine of anywhere from \$500 to \$2500.

SPEAKER SHARKEY:

Representative Bacchiochi.

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REP. BACCHIOCHI (52nd):

Thank you.

So then there is no criminal penalty in it or no criminal penalty, it is a -- a monetary fine only?

Through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Fox.

REP. G. FOX (146th):

Through you, Mr. Speaker.

That is correct. And I will say that prosecutors do, you know, have attempted to find a criminal penalty, and there may be times where facts would warrant it. But this, but it is something that is a -- a challenge for them when they are faced with a situation where one intentionally and knowingly fails to report or -- or encourages someone else not to report suspected child abuse.

SPEAKER SHARKEY:

Representative Bacchiochi.

REP. BACCHIOCHI (52nd):

Thank you, Mr. Speaker.

And I do want to say that I do think this is a step forward. We are adding additional requirements to our mandated reporters, which I think is important.

Personally, I wish at some point in this legislative body we can take further steps. I've shared with my colleagues, many times, my involvement, and this comes from a minor in my own district who was brutally attacked and beaten while an adult was there and witnessed it. And at no time could that adult who witnessed that crime and did not report it receive any type of sanction, whether that be a monetary fine or a criminal fine or a criminal penalty. But I do think this is a step forward.

I do want to add that I think that we need to continue to work on education for our mandated reporters. I think we all know that the very best thing we can hope for is to try to prevent any abuse against children, and the sooner that the mandated reporters are trained to see that these types of activities are going on and that they can intervene, the better off our children will be, the safer our society will be.

Thank -- thank you, Mr. Speaker.

SPEAKER SHARKEY:

Thank you, madam.

Would you care to remark further on House Amendment "A?"

Representative Hovey, of the 112th.

REP. HOVEY (112th):

Thank you, Mr. Speaker.

Through you, a question to the proponent of the bill or the amendment.

SPEAKER SHARKEY:

Please proceed, madam.

REP. HOVEY (112th):

Thank you, sir.

In Section 2(b), I'm just trying to figure out exactly what this language means. So this -- this is the penalty for someone who does not report?

Through you, Mr. Speaker, am I correct?

SPEAKER SHARKEY:

Representative Fox.

REP. G. FOX (146th):

Thank you Mr. Speaker.

Through you, yes, it is.

SPEAKER SHARKEY:

Representative Hovey.

REP. HOVEY (112th):

Thank you, Mr. Speaker.

And that penalty would be a class A misdemeanor, which in the scale of misdemeanors goes from A to D,

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so it would be considered the most severe penalty. Am I correct?

Through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Fox.

REP. G. FOX (146th):

Thank you, Mr. Speaker.

Yes, as a misdemeanor, it's the highest class of misdemeanor.

SPEAKER SHARKEY:

Representative Hovey.

REP. HOVEY (112th):

Thank you, Mr. Speaker.

And through you, Mr. Speaker, the question I would have is that we were looking at this idea of needing to report or mandated reporters. There's a piece of this here that talks about the participation in the education and training program. And I'm wondering if there's a way to have that education and training program happen earlier, prior to the infraction of that misdemeanor.

Through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Fox.

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REP. G. FOX (146th):

Through you, Mr. Speaker.

I mean, I certainly agree with the Representative that training is critical in this area. I can say that in my conversations with the Department of Children and Families, that they -- they strongly support this bill.

Also, they -- they strongly support training, and they are embarking on an extensive training program for all mandated reporters; they want to make sure that everybody knows what they're supposed to do. And that's something that they're working hard on, and I'm sure everybody here supports them.

SPEAKER SHARKEY:

Representative Hovey.

REP. HOVEY (112th):

Thank you, Mr. Speaker.

And I thank the good gentleman for his answers.

SPEAKER SHARKEY:

Thank you, madam.

Would you care to remark further on House Amendment "A?" Would you care to remark further?

If not, let me try your minds. All those in favor of House Amendment "A," please signify by saying

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Aye.

REPRESENTATIVES:

Aye.

SPEAKER SHARKEY:

Those opposed, Nay.

The Ayes have it. The amendment is adopted.

Would you care to remark further on the bill as amended? Would you care to remark further on the bill as amended?

If not, staff and guests to the Well of the House. Members, take your seats. The machine will be open.

THE CLERK:

The House of Representatives is voting by roll.

The House of Representatives is voting by roll. Will members please return to the Chamber immediately.

SPEAKER SHARKEY:

Have all the members voted? If all members voted, will members please check the board to make sure your vote is properly cast?

If all the members have voted, the machine will be locked, and the Clerk will take a tally.

THE CLERK:

One-twenty-nine, zero, twenty-one.

A VOICE:

Sorry; what's the last one?

A VOICE:

Zero, twenty-one.

SPEAKER SHARKEY:

Clerk, please announce the tally.

THE CLERK:

Mr. Speaker, House Bill 6342, as amended by House
"A."

Total Voting	129
Necessary for Passage	65
Those voting Yea	129
Voting Nay	0
Not voting	21

SPEAKER SHARKEY:

The bill, as amended, passes.

Chamber will stand at ease for just a moment.

(Chamber at ease.)

(Deputy Speaker Ryan in the Chair.)

DEPUTY SPEAKER RYAN:

The Chamber will come back to order.

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THE CHAIR:

If all members have voted? If all members have voted,
the machine will be closed.

Mr. Clerk, will you call the tally please?

THE CLERK:

House Bill 6706

Total Number Voting	35
Those voting Yea	20
Those voting Nay	15
Those absent and not voting	1

THE CHAIR:

The bill passes.

Senator Looney.

SENATOR LOONEY:

Thank you, Madam President.

Madam President, we have a few more items to begin a
new Consent Calendar with. First, Madam President,
from Agenda Number 1, previously adopted, the first
item is under "House Bills Favorably Reported" from
the Judiciary Committee House Bill Number 6342. Madam
President, move to place that item on the Consent
Calendar.

THE CHAIR:

Seeing no objection, so ordered, sir.

SENATOR LOONEY:

Thank you, Madam President.

THE CHAIR:

Senator Looney.

SENATOR LOONEY:

Yes, Madam President. Madam President, if the clerk would now list the items on the Consent Calendar and then if we might move immediately for a vote on the Consent Calendar.

THE CHAIR:

Mr. Clerk.

THE CLERK:

House Bill 6342, Senate Bill 430.

On page 9, Calendar 626, House Bill 6451.

On page 13, Calendar 683, House Bill 6694.

And on page 21, Calendar 209, Senate Bill 1033.

THE CHAIR:

At this point, I call for a roll call vote. The machine will be open for the last Consent Calendar of this session.

THE CLERK:

Immediate roll call has been ordered in the Senate.
Senators please return to the chamber. Immediate roll call on Consent Calendar Number 3 has been ordered in the Senate.

THE CHAIR:

Senator Bartolomeo, would you like to join us in a vote. Thank you, ma'am.

Since all members have voted, all members have voted the machine shall be closed.

Mr. Clerk, will you call the tally.

THE CLERK:

Consent Calendar Number 3

Total Number Voting	35
Those voting Yea	35
Those voting Nay	0
Those absent and not voting	1

THE CHAIR:

The Consent Calendar has passed.

At this time, I just want everybody to know that under Senate Resolution Number 33, I will appoint three members to inform the House of Representatives that the Senate is ready to meet in a joint convention.

Senator Bartolomeo, Senator Ayala and Senator Linares, take your time because they're not ready, but you're the three that are going to go when it's time to go.

Senator Looney.

SENATOR LOONEY:

Thank you, Madam President.

Madam President, we have completed our work for the 2013 session with about 17 minutes to spare and thank everyone for their extraordinary work and dedication and commitment to institution of the General Assembly in the State of Connecticut and, Madam President, would move that the Senate stand adjourned sine die.

THE CHAIR:

Mozel Tov.

Ladies and gentlemen, congratulations.

Senator Williams.

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office and go over it, all the details. You -- you want the staff to be professional. There have been little to no issues of great merit regarding riots and disturbances and things like that, knock on wood, exactly. And I think it all comes from -- from your leadership.

And I think that you've spent your whole life in state service in so many aspects of working to turn people's lives around. There's a reason why we just don't call it prison, it's correction, we're trying to turn lives around. And I just wanted that for the record, although I reserve the right, Mr. Chairman, to proceed with further adulations should the Commissioner come before us once again in the future. Thank you.

COMMISSIONER LEO C. ARNONE: Thank you, Senator.

REP. FOX: Chairman Coleman.

SENATOR COLEMAN: Commissioner, I just also wanted to take the opportunity to express how much I've enjoyed working with you. And I guess we've got a couple more months to continue to work together. I'll look forward to that. And I just want to wish you well in whatever you do after April Fool's Day.

COMMISSIONER LEO C. ARNONE: Thank you very much. I appreciate it.

REP. FOX: Thank you, Commissioner.

COMMISSIONER LEO C. ARNONE: You're welcome.

REP. FOX: Thank you for your testimony today.

I see Representative Bacchiochi is here. Good afternoon.

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REP. BACCHIOCHI: -- the intention remains the same and that is to have a further discussion on the failure of adults to report crimes against children. Five years ago when I first came to you with a different -- a much broader draft of this bill, it was because of my exposure to a constituent who had been raped. And unfortunately the rapist's mother remained in the room next door and was well aware of what was taking place, but she couldn't be charged with any crime because nowhere in our statute, from what I'm told by the many people I have talked about it with, was there a suitable crime for her to be charged with. There's no way to charge someone. The police did not feel she was an accomplice -- accomplice to the crime, she had merely knowledge of it, and she didn't have to report it. And after meeting with the constituent many times, this pained the family as much as anything else that happened that an adult could be part of a crime but in no way have to take responsibility for it.

So that's how I find myself coming before you year after year to see if there is some area within this law -- and I'm not an attorney and I'm not on the Judiciary Committee, so I really don't know exactly what the answer is, but I do know that it's within our ability to make it more and more difficult for adults not to report serious crimes against children. On my way in today, I heard a radio announcement that I've heard on the radio and seen on television so many times and it said if you see something, say something.

There's something growing within our culture that seems to me more and more we're understanding that we have a moral responsibility to stand up for people, especially children. And I think when Penn

State, you know, the tragedies and the abuse that took place in Penn State, I believe it was last year another group of Legislators entered a bill before you again to talk about why we have to mandate that when you have knowledge of a crime against a child, in this case it was sexual abuse, why aren't we forcing people to have some repercussions for not reporting that crime?

You hear of it within the Boy Scouts, within religious organizations, within sports and athletic associations. I'm here today basically to say I support the bill that's in front of you. There's pieces of it I'm not quite sure I understand the language, but I believe that the intention is to expand the number of people who have to report a crime against a child and to change the classification from a civil offense, in some cases, to a felony.

But, of course, those are decisions that all of you will have to make. So I thank you again for the opportunity to bring this attention -- bring this matter to your attention, and I hope that time, you know, can be spent within your committee to determine if there is some way for us to demand more from our society for the children. Thank you.

REP. FOX: Thank you. Thank you, Penny, and it's good to see you again. I know you've been here several times on -- the bill that -- this bill is a little different, you're correct. Because one -- the failure of a witness to report a crime, we did raise that actually today, as well. So -- so the connection between the two, maybe we can figure out a way to link them.

Because on this -- part of the goal on this bill was to look at the organizations that you

-- you referenced, when they try to -- rather than report somebody who is under their employ or their -- their authority who they know is committing these terrible acts, they instead try to handle it themselves, they try to handle it within the organization in some manner. And the only thing you can really do -- the penalty is a fine. You're right. It's a 500 or 2,500 dollar fine.

And yet, you know, they -- these individuals continue to go on and perform the terrible acts that they're doing, and more victims keep coming about. So maybe there's a way we can -- can work on it because the language -- there's difficulty in the language sometimes too because you don't want to build a tent that's so big that it includes everybody, you know, from every naïve camp counselor or school teacher who might be a first-year teacher or something like that who just doesn't know any better, but you want to -- but you do want to get those who are really trying to cover it up.

REP. BACCHIOCHI: Representative Fox, I think that would be a huge step forward. I came in here naively five years ago and really couldn't understand why we couldn't just open this up and, you know, start forcing people to report things, and why couldn't we do that. And I have been educated by many members on the Judiciary Committee as to why that wouldn't work, and I understand that now. But I think if we can take small steps, such as what you just said, we would be doing such a great service.

REP. FOX: Yeah. Okay. Well, thank you, and I look forward to working with you on it.

REP. BACCHIOCI: Okay.

REP. FOX: Are there any questions?

Senator Kissel.

SENATOR KISSEL: I just want to say what a pleasure it is serving the district with you. You're one of my constituents, and I just think you do an incredibly great job for the Town of Somers and Stafford and everyone in North Central Connecticut. It's great to see you. Appreciate the messages that you left with me, and I know that you've got a lot of ambitions for this session, and I -- I wish you the very best. And I think I wouldn't characterize it as naively came before us five years ago because you get things done in this building.

REP. BACCHIOCHI: They just take ten years --

SENATOR KISSEL: Well, you know, maybe if we were in the majority a little more often. But -- but a lot of times even the best of ideas in this building take three years, at least, to gestate and to become law. And so keeping the champion that you are and I think that maybe, given the colloquy that you just had with Chairman Fox, that there might be some -- some room where we can move this issue forward. So thank you for testifying.

REP. BACCHIOCHI: Thank you, Senator Kissel.

REP. FOX: Representative Rebimbas.

REP. REBIMBAS: Thank you, Mr. Chair, and thank you Representative for coming before us. I can certainly also echo what Chairman Fox had said earlier: You certainly have our attention. These are children that don't have their own voices, so they rely on other people's voices to report things. And I think the intent of your legislation is a very admirable one and

one that is certainly workable.

We're not trying to get to people who may have heard secondhand, thirdhand, whatever the case is that there might be something going on. These are people, presumably, with actual knowledge. At which time, if we did stiffen the penalty because the damages that these children are facing are severe -- and it's not just a fine that these people should be facing. And we certainly then have the officers who will investigate it and the prosecutors who then decide whether or not it's something that should be pursued.

So again, you know, as to whether or not this would be too broad, let's let the professionals deal with that, but let's put the penalties in place in order to again protect the children. So I just want to say you have my attention. You have our attention, and I certainly look forward to continuing to work on this with you to make sure that it certainly hopefully gets passed.

REP. BACCHIOCI: Thank you, Representative.

REP. FOX: Are there other questions for Representative Bacchioci?

Representative Adinolfi.

REP. ADINOLFI: Just a thought I had about your bill, I like it because I think it would affect a lot of day care centers too where the owner of the day care will find a child coming in that looks or appears to be abused, have black and blue marks on them, you know, and so on. And many times they don't want to report it because they don't want to lose a -- a student and lose the money. So I think this law would have a very good effect on a lot of businesses

that care for children. So I think it's good.
Thank you.

REP. BACCHIOCI: Thank you, Representative. I do have to say, though, I -- I don't get credit for the bill. I believe it's one of the committee bills that's being raised.

REP. FOX: Excuse me. It is consistent, though, with the other bill that we raised --

REP. BACCHIOCI: Right.

REP. FOX: -- and it's one that we can talk about kind of -- come up with something.

REP. BACCHIOCI: Definitely.

REP. FOX: Any other questions?

REP. BACCHIOCI: Thank you for your time.

REP. FOX: Thank you.

Before I move on to the members of the public, is Senator Looney here? No. Okay.

Well, then I'll turn to the first member of the public is Thomas Welsh.

THOMAS WELSH: Good afternoon.

REP. FOX: Good afternoon.

THOMAS WELSH: Sorry about that. We've held meetings in here too, so I should know that. I'm a member of the Connecticut Law Revision Commission as well as a practicing lawyer. And I'm testifying today to support the House Bill 6341, AN ACT ADOPTING THE UNIFORM CERTIFICATE OF TITLE FOR VESSELS ACT. As you said earlier, it passed the Senate. And I thought it was a

REP. FOX: Deborah Del Prete Sullivan.

DEBORAH DEL PRETE SULLIVAN: Good afternoon. With the Chair's permission, can Christine Rapillo come up with me from our office?

REP. FOX: Sure. I mean it's -- there's only a couple more left, but, I mean, sure.

DEBORAH DEL PRETE SULLIVAN: We'll be short. My name is Deborah Del Prete Sullivan. Thank you, Representative Fox and Senator Coleman and members of the Judiciary Committee. My name is Deborah Del Prete Sullivan. I'm legal counsel to the Chief Public Defender's Office. I'm just here today on four bills that we've submitted testimony on.

I did bring Christine Rapillo with me. She's the director of Delinquency and Child Protection. As you will recall, the Legislature did put the Child Protection Commission into our agency a couple of years ago, and she will be just speaking very briefly on one of the bills, which happens to be 5516.

I've submitted testimony on three other bills, 238, 828, and just briefly would like to speak to 6342. What I did in this particular piece of testimony was highlight a dilemma that our social workers that are employed by our agency, as well as doctors and -- and other people that we retain as experts in our criminal defense cases, are faced with as they represent indigent clients here in the State of Connecticut.

We're not unique. I just want you to know that. This is throughout the United States, as all 50 states have mandated reporter statutes. But we do have a situation where we try to

abide by the ethical rules that are here in place for attorneys. And in doing that and abiding by the rules of ethics and the rules of confidentiality, we also have nonlawyer assistants that work for us or are retained for us and become part of the defense team.

And under the rules of ethics, specifically 5.3, we are obligated and required under the rules to make sure that anyone who works for us also abides by the rules of confidentiality and any other rules that may -- may come up. So in this -- in the end result, what happens is -- is that, in trying to abide by confidentiality, our social workers, though, may come upon a case where there is an incident of child abuse or other child neglect that they are also mandated to report under the mandated reporter statutes. Yet trying to deal with it ethically, it puts them in a dilemma, of course, because there's a statutory requirement.

So when we saw this bill, we were very concerned because not only does it still keep those employees who are part of the criminal defense team trying to adhere to the ethics that we have to, but it would subject them to criminal penalties. And what we're asking in this is suggesting as perhaps a carve-out for people who are part of the criminal defense team.

There are opinions that are out there. Geoffrey Hazard, from the Yale School of Law, had written an ethical opinion to former Chief Public Defender Joseph Shortall equating social workers to paralegals that work for us and saying that they would also be subject to the rules and treat them as a paralegal, and they would not have to reveal certain information. But our problem is we know that there's a

statute that's there, and we will not tell our social workers not to abide by the statutory mandate. So we have a bit of a dilemma there.

There's another opinion from the CBA Ethics Opinion which, although the committee, which I'm a member, would not opine on any of the statutory mandates and requirements that are in place, did opine that you should look to the role that the person is in. And that particular opinion, which I can provide to the committee, was a nurse who became an attorney, and in her role as an attorney, discovered something to do with child abuse or neglect. And what happened is did she have an obligation?

The committee would only opine as to the rules, of course, not the statutory mandate that she's a mandated reporter. And so look to the role that you are in at the time. And as an attorney, this is something that's come up, not in your role as a social worker. And so it creates a problem for us. So I wanted to bring it to the attention of the committee and ask that we might be included in any -- in any discussions.

As Representative Fox was discussing earlier, there may be certain individuals who may be carved out or, you know, you're not really looking to have this enforced against. But we'd ask, if there is any discussion that is ongoing, that we could possibly be included. Thank you.

CHRISTINE RAPILLO: Just very briefly, the office is also in support of Raised Bill 5516, AN ACT CONCERNING THE REMOVAL OF INDIVIDUALS FROM THE STATE CHILD ABUSE REGISTRY. What this does is it sets up a procedure for people, after five years has passed from a finding of abuse and

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2013



Connecticut Sexual Assault Crisis Services, Inc.

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Testimony of Connecticut Sexual Assault Crisis Services
Regarding HB 6342, AN ACT CONSIDERING CRIMINAL PENALTIES
FOR FAILURE TO REPORT CHILD ABUSE

Anna Doroghazi, Director of Public Policy and Communication
 Wednesday, February 13, 2013

Senator Coleman, Representative Fox, and members of the Judiciary Committee: my name is Anna Doroghazi, and I am the Director of Public Policy and Communication for Connecticut Sexual Assault Crisis Services (CONNSACS). CONNSACS is the coalition of Connecticut's nine community-based sexual assault crisis services programs, which provide sexual assault counseling and victim advocacy to men, women, and children of all ages. During our last fiscal year, advocates throughout the state provided hospital and court accompaniment, support groups, individual counseling, 24/7 hotline support, and post-conviction services to over 7,000 victims and survivors of sexual violence. Over 1,100 of these victims were children and adolescents.

Based on our experience and expertise working with survivors of child sexual abuse and their families - and as mandated reporters - we are pleased to have this opportunity to comment on HB 6342, AN ACT CONCERNING CRIMINAL PENALTIES FOR FAILURE TO REPORT CHILD ABUSE.

Section 1: We support changes to Section 53-21 of the general statutes that would create penalties for interfering with or preventing a report of suspected child abuse or neglect. In recent years, abuse cover-ups at Penn State and various Catholic dioceses have demonstrated the devastating consequences of individuals and institutions putting their reputations above the interests of children. When mandated reporters observe abuse and attempt to report it, they should be able to meet their legal and moral obligations to children without interference. Because we know that child abuse is likely to continue in the absence of intervention, it is reasonable to assign criminal penalties to individuals who actively thwart reporting and allow abuse to continue.

Section 2: While we appreciate the intent behind the proposed changes to Section 17a-101a and support penalties for individuals who willfully fail to report abuse, we are concerned that the threat of criminal penalties may not be effective in increasing overall compliance with mandated reporter laws. Connecticut is one of just a handful of states that do not use a misdemeanor designation for failure to report; currently, failure to report carries a fine of \$500 to \$2500 and requires participation in an educational and training program.

One investigation conducted in the wake of the Penn State scandal found that very few individuals are charged with failure to report, regardless of the associated penalties: of the twenty-five states reviewed in the investigation, sixteen averaged fewer than two charges for failure to report each year.¹ In the past decade, only fifteen people in Connecticut have been cited

¹ Heath, Brad. "Few penalties for keeping child abuse secret." *USA Today* 16 December 2011.

for failure to report, and all but two of those cases were dropped.² To put these numbers in context, Connecticut's Department of Children and Families substantiated approximately 6,800 reports of child abuse or neglect in 2010 alone. A misdemeanor charge may be suitable punishment for individuals who willfully neglect to report known or suspected abused, but if the punishment is not regularly pursued and evenly applied, it seems unlikely that it will produce tangible benefits for children.

Additional thoughts: Although not addressed in HB 6342, education has potential to improve mandated reporting rates. Connecticut currently requires the Commissioner of Children and Families to "develop an educational training program for the accurate and prompt identification and reporting of child abuse and neglect. Such training shall be *made available* to all persons mandated to report child abuse and neglect..." [Sec. 17a-101(c)]. Instead of making training *available*, Connecticut could make training *required* for all persons mandated to report child abuse and neglect.

When mandated reporters fail to report abuse and neglect, it is often because they do not understand their obligations, they do not feel confident in their ability to identify abuse, they are not comfortable with some aspect of being involved in the reporting process, or they do not understand how reporting will improve outcomes for the child involved. Required education for mandated reporters could address these issues. It could also help mandated reporters understand how to respond to abused children in a manner that is supportive, that does not cause further trauma, and that does not harm future criminal investigations.

Effective mandated reporter training would include information about how to identify abuse, how to file a report, and what to expect once a report has been made. It would also acknowledge the conflicted feelings and emotional difficulty of filing a report, especially when potential abusers are known to the reporter, and it would reinforce the fact that mandated reporters are not and do not need to be investigators. Mandated reporters do not need to interrogate children before filing a report, and they should realize that extensively questioning a child could both traumatize the child and jeopardize legal proceedings.

There is some precedent for states requiring training for mandated reporters – this seems to be especially true of mandated reporters who are licensed through the state. Examples of states that include at least some state-licensed mandated reporters to complete training on child abuse identification and reporting include: New York, Massachusetts, Iowa, and Minnesota. Requiring training for even a portion of mandated reporters (such as those licensed through the state) could dramatically improve the overall response to victims of child abuse and neglect.

Thank you for this opportunity to comment on HB 6342, AN ACT CONCERNING CRIMINAL PENALTIES FOR FAILURE TO REPORT CHILD ABUSE. We appreciate the Judiciary Committee's efforts to improve mandated reporting and protect victims of child abuse.

² Heath, Brad. "Few penalties for keeping child abuse secret." *USA Today* 16 December 2011.

CCDLA
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February 13, 2013

Hon. Eric D. Coleman, Co-Chair
Hon. Gerald M. Fox, Co-Chair
Joint Committee on Judiciary
Room 2500, Legislative Office Building
Hartford, CT 06106

Re: Raised Bill 6342

Dear Chairmen Coleman and Fox:

CCDLA is a not-for-profit organization of approximately three hundred lawyers who are dedicated to defending persons accused of criminal offenses. Founded in 1988, CCDLA is the only statewide criminal defense lawyers' organization in Connecticut. An affiliate of the National Association of Criminal Defense Lawyers, CCDLA works to improve the criminal justice system by insuring that the individual rights guaranteed by the Connecticut and United States constitutions are applied fairly and equally and that those rights are not diminished.

CCDLA opposes Raised Bill No. 6342 which amends the Risk of Injury Statute (CGS § 53-21) to encompass the conduct of "any person who . . . intentionally and unreasonably interferes with or prevents the making of a report of suspected child abuse or neglect required under section 17a-101a . . .," and designates this conduct a Class D felony.

Raised bill 6342, Section 1 contains terms that are impermissibly vague. Those terms are "unreasonably" and "interfere" The bill provides no guidance or notice as to the sort of conduct that would be deemed "unreasonable", or what sort of conduct constitutes "interference" with the mandated reporter's obligation to report abuse or neglect of a child. The bill requires the reader to guess its meaning, which will lead to inconsistent and overly broad application.

Raised bill 6342 would enable police, prosecutors and DCF to apply fluctuating standards to conduct with no consistent application of a clearly defined law. To one law enforcement official, a mother who has a good faith belief that her child has not been abused, and who tries to convince a teacher not to report alleged abuse to DCF, would be deemed to have acted intentionally and unreasonably, and to have interfered with the teacher/mandated reporter in making the report. To another, this conduct would not be considered unreasonable.

I and other members of CCDLA have represented clients in DCF matters who were substantiated for child abuse or neglect, however, after demanding a review of those findings, have, on occasion, won reversal of the substantiation findings. Raised bill 6342 would enable the prosecution simply because the parent tried to convince the mandated reporter not to make a report, even when they have been exonerated of the underlying allegations. Raised bill 6342 offers no relief to that parent once they are exonerated of abuse or neglect, but only adds insult to injury.

Raised bill 6342 could also be construed as criminalizing the conduct of an attorney who offers legal counseling to a mandated reporter on whether they have an obligation to make a report. It offers no exception for good faith legal advice.

Raised bill 6342 is unnecessary since there are various provisions in the Connecticut General Statutes that allow for the prosecution of individuals engaged in the sort of conduct that the bill seeks to proscribe. For instance, if the person who is allegedly interfering with the mandated reporting is a mandated reporter himself, he too could be charged with a violation of 17a-101a. Additionally, whether the person who is allegedly interfering with or preventing a report is a mandated reporter or not, depending on their conduct in preventing or interfering, they could be charged with a violation of 17a-101a as an accessory¹, or be charged with conspiracy² to violate 17a-101a.

Finally, Raised bill 6342, with no justification or explanation, imposes a greater penalty on someone who may not even be a mandated reporter, than the penalty imposed on the mandated reporter who violates 17a-101a, without considering the culpability of either actor. A distraught parent who tries to convince a teacher that his child is not the victim of abuse and not to report the alleged abuse, would be treated more harshly than a mandated reporter who saw clear signs of abuse but ignores the signs or otherwise acts in derogation of his duty. Such application is unfair and inconsistent with the interest of justice.

¹ Sec. 53a-8. Criminal liability for acts of another.

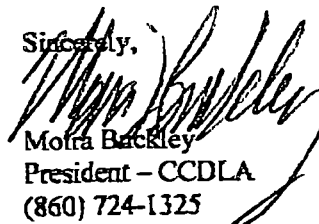
(a) A person, acting with the mental state required for commission of an offense, who solicits, requests, commands, importunes or intentionally aids another person to engage in conduct which constitutes an offense shall be criminally liable for such conduct and may be prosecuted and punished as if he were the principal offender.

² Sec. 53a-48. Conspiracy

(a) A person is guilty of conspiracy when, with intent that conduct constituting a crime be performed, he agrees with one or more persons to engage in or cause the performance of such conduct, and any one of them commits an overt act in pursuance of such conspiracy.

Please feel free to contact me if you wish to discuss this further. Thank you for your time and consideration.

Sincerely,



Mofra Backley
President - CCDLA
(860) 724-1325



State of Connecticut

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Testimony of Deborah Del Prete Sullivan, Legal Counsel Office of Chief Public Defender

Raised Bill No. 6342 An Act Concerning Criminal Penalties For Failure To Report Child Abuse

Judiciary Committee Public Hearing February 13, 2013

The Office of Chief Public Defender has concerns in regard to Raised Bill No. 6342, An Act Concerning Criminal Penalties For Failure to Report Child Abuse. Section 1 of this proposed bill would amend the Risk of Injury statute by making it a crime for a person to "intentionally and unreasonably" interfere with or prevent the making of a report of suspected child abuse or neglect as required by law.

Section 2 of this proposed bill would subject a mandated reporter to criminal prosecution, instead of the current civil fine, for failure to report child abuse or neglect. The bill proposes a new class A misdemeanor, punishable by up to 1 year in jail, for a person who fails to report such. The Office of Chief Public Defender is concerned that this change will result in unwarranted and unnecessary prosecutions. A similar bill is currently pending before the Joint Committee on Children, Raised Bill 821, An Act Concerning Responsibilities of Mandated Reporters of Child Abuse and Neglect. That proposal tightens protections for mandated reporters and places civil penalties on employers who interfere with mandated reporting. This office believes that civil penalties are a more appropriate response to this issue. As a result, this office requests that it be included in any discussions pertaining to enhanced penalties and this bill.

In addition, this office requests an amendment to the mandated reporter statutes that would exempt from the reporting obligation a social worker or expert employed by or retained by the defense when defending against criminal charges. The Division currently employs social workers in each of its offices throughout the state. In addition, the Division routinely retains experts to

*R.B. 6342-An Act Concerning Criminal Penalties For Failure To Report Child Abuse
Testimony for Judiciary Public Hearing - February 13, 2013*
Deborah Del Prete Sullivan - Legal Counsel, Office of Chief Public Defender

evaluate its clients in preparation for presenting a defense against criminal charges. Under the Connecticut Rules of Professional Conduct, specifically Rule 1.6, an attorney is bound by the rule of confidentiality. Conversations between attorneys and their clients are considered as privileged. Currently under the ethics rules, if a client tells his attorney that he has previously committed a crime, the attorney is not required ethically to disclose the information to anyone.

However, subsection (b) of Rule 1.6, the Confidentiality rule, imposes a mandatory obligation for an attorney to reveal information and/or communications in the following circumstance:

(b) A lawyer shall reveal such information to the extent the lawyer reasonably believes necessary to prevent the client from committing a criminal or fraudulent act that the lawyer believes is likely to result in death or substantial bodily harm.

Therefore, if an attorney receives information regarding future conduct of the client that the "lawyer believes is likely to result in death or substantial bodily harm" the lawyer is absolutely obligated to reveal the information. Such disclosure can be to the court, the prosecutor or law enforcement.

Pursuant to Rule 53, of the Rules of Professional Conduct regarding Non-Lawyer Assistants, attorneys have an obligation to reasonably assure that non-lawyer assistants who are employed or retained by the defense team also comply with the ethics rules including the rule of confidentiality. As a result, the social workers, investigators, paralegals, clerical staff employed by the Division and the doctors retained by the Division are considered non lawyer assistants who are required to maintain confidentiality as an attorney would. An ethics opinion by Geoffrey Hazard, formerly of the Yale Law School, analogizes the role of a social worker employed by the Division to a paralegal and opines that both are subject to the confidentiality rule.

The dilemma confronting social workers employed or retained by the defense and experts retained on the criminal defense team is that while ethically they are prohibited from revealing prior acts disclosed to them by the client, the mandated reporter statutes require disclosure. As a result, the statutes not only require the non-lawyer assistants to violate the confidentiality rule but also subject an attorney to a claim that he/she committed an ethical violation. Most importantly, the mandated reporting requirement prohibits the social workers and retained experts from establishing a relationship with the client in order to obtain all of the information necessary to effectively carry out their role. As a result, defense counsel can be ineffective and lack essential information necessary to carry out the defense function.

As a result, this office respectfully requests that an exemption be created in the law.