

CCDLA
“Ready in the Defense of Liberty”
Founded 1988

**Connecticut Criminal Defense
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March 19, 2010

Hon. Andrew J. McDonald, Senator
Hon. Michael P. Lawlor, House Representative
Chairmen, Judiciary Committee
Room 2500, Legislative Office Building
Hartford, CT 06106

Re: **Raised House Bill No. 5484, An Act Concerning the Failure of a Witness to Report a Serious Crime Committed Against a Child**

Dear Chairmen and Committee Members:

My name is Conrad Ost Seifert and I am an attorney practicing in Old Lyme. I am the President of the Connecticut Criminal Defense Lawyers Association, CCDLA, and I am submitting this testimony on behalf of the CCDLA, as well as on behalf of myself. Attorney Jennifer Zito is President-Elect of the CCDLA and submits this written testimony as well.

CCDLA is a statewide organization of approximately 350 lawyers in both the public and private sectors dedicated to defending persons accused of criminal offenses. Founded in 1988, 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 5484, *An Act Concerning the Failure of a Witness to Report a Serious Crime Committed Against a Child*. This proposed bill appears to be a limited version

of last year's *Raised Bill 6009, An Act Concerning the Failure of a Witness to Report a Serious Crime*. That proposed bill criminalized the failure of a citizen to report a variety of serious crimes perpetrated on either adults or children. The current bill limits the reporting requirement to a witness who knows or "reasonably should know" that the child victim is under sixteen years of age and does not report the witnessed murder, sexual assault, assault or attempted assault to law enforcement. The difference in the two bills is that this year's bill only requires the reporting of such crimes against children, not adults. CCDLA opposed last year's bill and also opposes this year's proposed bill even though it eliminates criminalizing non-reporting of crimes against adult victims. Consider the following example. A group of teenagers attends a summer pool party at someone's home and some of the teens are fifteen years old and some are sixteen through eighteen years old. An older teen makes an unwanted serious physical advance and touches the fifteen year old in doing so. The fifteen year old teen may or may not report this to her parents or to the police and other teens saw the event happen. If passed, this new statute requires these witnesses to come forward and tell the police what they saw on penalty of being arrested and being treated as criminals themselves. Although well-intentioned, such a statute goes too far.

This proposed act criminalizes the failure to report these serious crimes by any person who merely witnesses these crimes but who is otherwise not involved. It makes all citizens who witness these serious crimes mandatory reporters to law enforcement. This would be a radical and dramatic change and would give law enforcement a powerful investigative tool - compelling people to tell police what they witnessed or else face criminal arrest. If this Bill is passed, you will have enacted something we believe the State of Connecticut has never had, the old British common law crime of misprision of a felony. In 13th century England, it was a citizen's duty to

raise the hue and cry by reporting felonies and the failure to report a crime was itself a crime. Connecticut and 48 states don't recognize this to be a crime. There is a federal misprision of felony statute, 18 U.S. Code §4:

“Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined under this title or imprisoned not more than three years, or both.”

Please note that the federal misprision of felony statute is rarely prosecuted but it does require that a defendant take affirmative steps to conceal someone else's felony, such as destroying evidence or lying to or misleading law enforcement, it requires that the witness do something more besides just being there and doing nothing. The proposed bill does not require such obstruction-like steps and the person will be guilty simply because they did nothing.

If this Bill is passed, it imposes an affirmative duty on witnesses to, in a sense, become an arm of law enforcement. If an arrested person has the constitutional right to remain silent, does it make sense to force an innocent witness to talk? Under this Act, mere silence and nonreporting is sufficient; the witness does not even have to actively conceal or mislead to be guilty as is the case with Federal statute. In that regard, it is worse than the federal misprision statute.

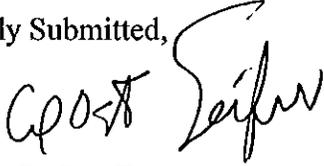
In 1967, even England, after centuries of common law history, repealed its misprision of felony crime in its 1967 Criminal Law Act. And decades ago, the drafters of the American Law Institute's Model Penal Code saw no need to have the offense of misprision of a felony.

Law enforcement does not need this passed in order to do its job and there is no compelling need for law enforcement to have this powerful tool. Although the proposed Bill

refers to witnessing murder, sexual assault, or assault of a child, or the attempt thereof and does not refer to all felonies, passing this Bill would be passing a state misprision of felony statute and would be inconsistent with modern principles of personal freedom and the right to privacy.

Thank you.

Respectfully Submitted,



Conrad Ost Seifert, Esquire
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