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H.B. 5484 -- Failure to report

Judiciary Committee public hearing -- March 19, 2010

Testimony of Raphael L. Podolsky

Recommended Committee action : REJECTION OF THE BILL

This bill makes it a Class A misdemeanor for a person who witnesses a murder, sexual assault, or assault against a child to fail to report it to the police as soon as reasonably practicable. "Assault" is any intentional or reckless conduct that causes physical injury. We oppose this bill for three reasons, especially in regard to the inclusion of assault. First, it is counterproductive in cases of domestic violence and will actually discourage reporting by criminalizing the victim. Second, it puts members of the public in the extraordinary position of being arrested and charged if they fail to recognize what constitutes an assault. Third, in appropriate cases, a failure to report can already be prosecuted under existing criminal statutes.

- * **Domestic violence**: Central to domestic violence is the victim's fear of the abuser, a fear that anyone who has read recent newspapers knows can be justified. Helping such victims move past that fear is an important part of freeing them from abusers. It is counterproductive to create a legal environment in which a victim who steps forward to report the conduct of an abuser against a child may well be arrested and charged because the victim did not report "as soon as reasonably practicable." The fact that fear of injury is an affirmative defense under the bill means only that the victim can raise the defense at trial or, more likely, try to plea bargain for a reduced sentence; but it does not prevent arrest, potential incarceration, and likely involvement by DCF that could cost the victim access to the child.
- * **Casual observers**: While murder may be a fairly obvious crime, assault and its variations are not. Many of us have seen people treat their children in public in ways that we think inappropriate, from slapping young children to jerking and dragging them. This bill, in effect, turns every one of us into a mandatory reporter, subject to arrest for a Class A misdemeanor if we fail to call the police. While mandatory reporting may be a proper duty for certain categories of licensed professionals, applying the concept to the general public turns us all into vigilantes. In a free society, persons unconnected to an offense need to be allowed to use their discretion as to whether something that they observe should be reported to the police; and, in any event, they should not face criminal prosecution if their judgment is subsequently deemed incorrect.
- * **Other tools**: If the witness has a duty to the child, failure to report is already a violation of the risk of injury statute (C.G.S. 53-21). If the witness is an accessory or a participant, it is a violation of C.G.S. 53a-8. Where prosecution is appropriate, the capacity to charge already exists.