



State of Connecticut

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Judiciary Committee
Wednesday, March 9, 2011
Public Hearing Testimony

RE: H.B. No. 6367 (RAISED) AN ACT CONCERNING THE FAILURE OF A WITNESS TO REPORT A SERIOUS CRIME.

Good morning Chairman Fox, Chairman Coleman, Ranking Members Kissel and Hetherington, and members of the Judiciary Committee. For the record, my name is Penny Bacchiochi and I represent Stafford, Somers and Union. I am here today to say thank you for raising House Bill 6367, AAC The Failure Of A Witness To Report A Serious Crime.

Some of you may recall that I came before you last year to testify on a similar, but more specific bill, that made it a crime not to report a serious crime against a child. It still seems unbelievable to me that a person can witness a serious crime, such as murder or rape, and not be required to report it.

I became interested in this when I learned that a young constituent of mine was raped, and the rapists mother was in the next room. She was aware that her son was raping a woman, but she did nothing to prevent it. During the trial of the rapist, it became apparent that the mother (the witness to the crime), was not breaking any law.

I come before you today to ask you to use your expertise to craft a bill that will appropriately punish individuals who neglect their responsibility as members of our society to report a serious crime. By serious crime, I believe it could be defined as murder or sexual assault. This bill should allow exceptions for individuals who fear that reporting the crime would expose them to personal risk.

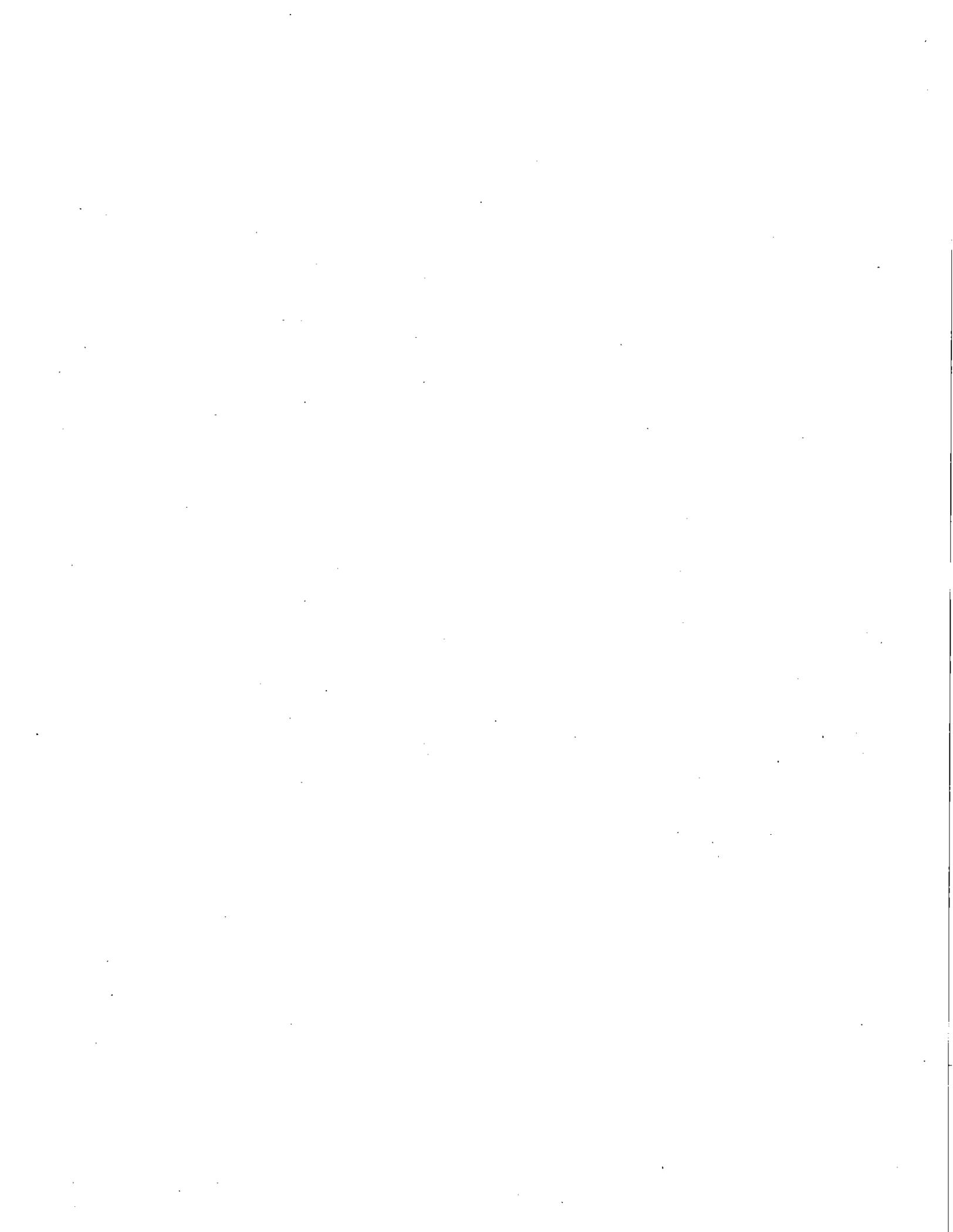
Other states have already taken the lead by acknowledging that failing to report a serious crime must be addressed, especially in crimes against children. In Alaska, failure to report a crime against children is a Class A misdemeanor and in Ohio, it is a crime to fail to report a felony against adults of children.

In Nevada, legislation was passed after the murder of Sherrice Iverson in 1997. She was a 7 year old who was murdered at a Nevada casino. David Cash, friend of the murderer, knew of Sherrice's rape and murder, but did not report it and he was not guilty of a crime.

For your assistance in further drafting this bill, should you agree that this would be a step forward in our society, I am attaching the statutory language from Ohio and Alaska.

Thank you for your time and your consideration of this bill.

Attachment



Ohio statute-

CHAPTER 2921. OFFENSES AGAINST JUSTICE AND PUBLIC ADMINISTRATION

COMPOUNDING

>> 2921.22 Reporting felony; medical personnel to report gunshot,

>> stabbing,

and burn injuries and suspected domestic violence

(A)(1) Except as provided in division (A)(2) of this section, no person, knowing that a felony has been or is being committed, shall knowingly fail to report such information to law enforcement authorities.

(2) No person, knowing that a violation of division (B) of section 2913.04 of the Revised Code has been, or is being committed or that the person has received information derived from such a violation, shall knowingly fail to report the violation to law enforcement authorities.

(B) Except for conditions that are within the scope of division (E) of this section, no physician, limited practitioner, nurse, or other person giving aid to a sick or injured person shall negligently fail to report to law enforcement authorities any gunshot or stab wound treated or observed by the physician, limited practitioner, nurse, or person, or any serious physical harm to persons that the physician, limited practitioner, nurse, or person knows or has reasonable cause to believe resulted from an offense of violence.

(C) No person who discovers the body or acquires the first knowledge of the death of a person shall fail to report the death immediately to a physician whom the person knows to be treating the deceased for a condition from which death at such time would not be unexpected, or to a law enforcement officer, an ambulance service, an emergency squad, or the coroner in a political subdivision in which the body is discovered, the death is believed to have occurred, or knowledge concerning the death is obtained.

(D) No person shall fail to provide upon request of the person to whom a report required by division (C) of this section was made, or to any law enforcement officer who has reasonable cause to assert the authority to investigate the circumstances surrounding the death, any facts within the person's knowledge that may have a bearing on the investigation of the death.

(E)(1) As used in this division, "burn injury" means any of the following:

(a) Second or third degree burns;

(b) Any burns to the upper respiratory tract or laryngeal edema due to the inhalation of superheated air;

(c) Any burn injury or wound that may result in death;

(d) Any physical harm to persons caused by or as the result of the use of fireworks, novelties and trick noisemakers, and wire sparklers, as each is defined by section 3743.01 of the Revised Code.

(2) No physician, nurse, or limited practitioner who, outside a hospital, sanitarium, or other medical facility, attends or treats a person who has sustained a burn injury that is inflicted by an explosion or other incendiary device or that shows evidence of having been inflicted in a violent, malicious, or criminal manner shall fail to report the burn injury immediately to the local arson, or fire and explosion investigation, bureau, if there is a bureau of this type in the jurisdiction in which the person is attended or treated, or otherwise to local law enforcement authorities.

(3) No manager, superintendent, or other person in charge of a hospital, sanitarium, or other medical facility in which a person is attended or treated for any burn injury that is inflicted by an explosion or other incendiary device or that shows evidence of having been inflicted in a violent, malicious, or criminal manner shall fail to report the burn injury immediately to the local arson, or fire and explosion investigation, bureau, if there is a bureau of this type in the jurisdiction in which the person is attended or treated, or otherwise to local law enforcement authorities.

(4) No person who is required to report any burn injury under division (E)(2) or

(3) of this section shall fail to file, within three working days after attending or treating the victim, a written report of the burn injury with the office of the state fire marshal. The report shall comply with the uniform standard developed by the state fire marshal pursuant to division (A)(15) of section 3737.22 of the Revised Code.

(5) Anyone participating in the making of reports under division (E) of this section or anyone participating in a judicial proceeding resulting from the reports is immune from any civil or criminal liability that otherwise might be incurred or imposed as a result of such actions. Notwithstanding section 4731.22 of the Revised Code, the physician-patient relationship is not a ground for excluding evidence regarding a person's burn injury or the cause of the burn injury in any judicial proceeding resulting from a report submitted under division

(E) of this section.

(F)(1) Any doctor of medicine or osteopathic medicine, hospital intern or resident, registered or licensed practical nurse, psychologist, social worker, independent social worker, social work assistant, professional clinical counselor, or professional counselor who knows or has reasonable cause to believe that a patient or client has been the victim of domestic violence, as defined in section

3113.31 of the Revised Code, shall note that knowledge or belief and the basis for it in the patient's or client's records.

(2) Notwithstanding section 4731.22 of the Revised Code, the doctor-patient privilege shall not be a ground for excluding any information regarding the report containing the knowledge or belief noted under division (F)(1) of this section, and the information may be admitted as evidence in accordance with the Rules of Evidence.

(G) Divisions (A) and (D) of this section do not require disclosure of information, when any of the following applies:

(1) The information is privileged by reason of the relationship between attorney and client; doctor and patient; licensed psychologist or licensed school psychologist and client; member of the clergy, rabbi, minister, or priest and any person communicating information confidentially to the member of the clergy, rabbi, minister, or priest for a religious counseling purpose of a

professional character; husband and wife; or a communications assistant and those who are a party to a telecommunications relay service call.

(2) The information would tend to incriminate a member of the actor's immediate family.

(3) Disclosure of the information would amount to revealing a news source, privileged under section 2739.04 or 2739.12 of the Revised Code.

(4) Disclosure of the information would amount to disclosure by a member of the ordained clergy of an organized religious body of a confidential communication made to that member of the clergy in that member's capacity as a member of the clergy by a person seeking the aid or counsel of that member of the clergy.

(5) Disclosure would amount to revealing information acquired by the actor in the course of the actor's duties in connection with a bona fide program of treatment or services for drug dependent persons or persons in danger of drug dependence, which program is maintained or conducted by a hospital, clinic, person, agency, or organization certified pursuant to section 3793.06 of the Revised Code.

(6) Disclosure would amount to revealing information acquired by the actor in the course of the actor's duties in connection with a bona fide program for providing counseling services to victims of crimes that are violations of section 2907.02 or

2907.05 of the Revised Code or to victims of felonious sexual penetration in violation of former section 2907.12 of the Revised Code. As used in this division, "counseling services" include services provided in an informal setting by a person who, by education or experience, is competent to provide those services.

(H) No disclosure of information pursuant to this section gives rise to any liability or recrimination for a breach of privilege or confidence.

(I) Whoever violates division (A) or (B) of this section is guilty of failure to report a crime. Violation of division (A)(1) of this section is a misdemeanor of the fourth degree. Violation of division (A)(2) or (B) of this section is a misdemeanor of the second degree.

(J) Whoever violates division (C) or (D) of this section is guilty of failure to report knowledge of a death, a misdemeanor of the fourth degree.

(K)(1) Whoever negligently violates division (E) of this section is guilty of a minor misdemeanor.

(2) Whoever knowingly violates division (E) of this section is guilty of a misdemeanor of the second degree.

Current through 2009 File 17 of the 128th GA (2009-2010),

apv. by 1/20/10 and filed with the Secretary of State by 1/20/10.

Alaska statute

AS 11.56.765. Failure to Report a Violent Crime Committed Against a Child.

(a) A person, other than the victim, commits the crime of failure to report a violent crime committed against a child if the person

(1) witnesses what the person knows or reasonably should know is

- (A) the murder or attempted murder of a child by another;
- (B) the kidnapping or attempted kidnapping of a child by another;
- (C) the sexual penetration or attempted sexual penetration by another

- (i) of a child without consent of the child;
- (ii) of a child that is mentally incapable;
- (iii) of a child that is incapacitated; or
- (iv) of a child that is unaware that a sexual act is being committed; or

(D) the assault of a child by another causing serious physical injury to the child;

- (2) knows or reasonably should know that the child is under 16 years of age; and
- (3) does not in a timely manner report that crime to a peace officer or law enforcement agency.

(b) In a prosecution under this section, it is an affirmative defense that the defendant

- (1) did not report in a timely manner because the defendant reasonably believed that doing so would have exposed the defendant or others to a substantial risk of physical injury; or
- (2) acted to stop the commission of the crime and stopped

- (A) the commission of the crime; or
- (B) the completion of the crime being attempted.

(c) In this section,

- (1) "incapacitated" has the meaning given in AS 11.41.470 ;
- (2) "mentally incapable" has the meaning given in AS 11.41.470 ;
- (3) "sexual act" has the meaning given in AS 11.41.470 ;
- (4) "without consent" has the meaning given in AS 11.41.470 .

(d) Failure to report a violent crime committed against a child is a class A misdemeanor