



State of Connecticut
DIVISION OF CRIMINAL JUSTICE

TESTIMONY

JOINT COMMITTEE ON JUDICIARY

In support of:

S.B. No. 1165 (RAISED):
An Act Concerning Criminal Liability of Corporations, Other Legal Entities and Their Agents

March 25, 2011

The Division of Criminal Justice respectfully requests and recommends the Committee's Joint Favorable Report for S.B. No. 1165, An Act Concerning Criminal Liability of Corporations, Other Legal Entities and Their Agents. This bill is among the Division's 2011 Legislative Recommendations and is the product of meetings and discussions between the Medicaid Fraud Control Unit (MFCU) in the Office of the Chief State's Attorney and members of the General Assembly concerning various issues involving nursing homes. The Division wishes to thank all who worked to develop this concept and in particular extends its gratitude to the Legislative Commissioners Office for assistance in drafting the specific language.

The Medicaid Fraud Control Unit was established in 1978 as a result of federal legislation authorizing the states to investigate and prosecute fraud and abuse in Medicaid, the state and federally funded health care program for low-income individuals. The unit employs a professional staff that includes prosecutors, criminal investigators (Inspectors) and auditors experienced in financial investigations. In addition to investigating and prosecuting fraud by those who provide health care services, the MFCU investigates cases of abuse of patients who reside in facilities that receive Medicaid funding. Its jurisdiction extends to all facilities and all providers that receive Medicaid funding. It does not matter if the victim of the fraud or abuse is on Medicaid; as long as the facility receives Medicaid funding the MFCU can investigate and prosecute.

The discussions between the Medicaid Fraud Control Unit and legislators focused on the question of whether and how the State of Connecticut can hold the owners of nursing homes responsible for the level of care provided in their facilities. Under our current statutes, we generally have jurisdiction only over conduct which occurs within this state; we have no statutes speaking to results caused here by conduct that occurs elsewhere. Thus the out-of-state corporation and its executives who are making decisions that result in a danger or harm to

patients the nursing home their corporation owns and operates in Connecticut cannot be held criminally accountable for those decisions and their ramifications.

In layman's terms, the idea behind this bill is that you may no longer engage in conduct outside of the State of Connecticut that causes a bad result within the State of Connecticut and then escape liability because the conduct did not occur here. It is not by any means a new or uncommon concept. Of the 18 states surveyed by the Medicaid Fraud Control Unit all had some statute or statutes already in place on this subject. The basic framework for S.B. No. 1165 in fact is borrowed in large part from Pennsylvania law, although numerous modifications have been made by the Medicaid Fraud Control Unit and the Legislative Commissioners Office in order to fit the resulting product into our Connecticut statutory scheme.

Although the bill was drafted by the Medicaid Fraud Control Unit, its provisions would not be limited to the prosecution of cases involving Medicaid fraud or otherwise under the jurisdiction of the Medicaid Fraud Control Unit. It would apply to any person who performs or causes to be performed any illegal conduct - *in the name of a corporation or a company* - which regardless of where the conduct is performed has an illegal result in this state. The principal application will be to cases in which there is an out-of-state person or entity pulling the strings on something occurring here. The bill is limited in its reach only to persons who perform or cause to be performed conduct *in the name of a corporation or company*. It targets the unusual group of cases where in the springboard conduct occurs elsewhere but causes an actionable result here. A common thread in such cases is absentee ownership or management. In most other criminal cases the conduct and the result both occur within the State of Connecticut because the crime is committed by someone located here.

We would stress that S.B. No. 1165 contains important safeguards against overreaching. If the conduct in question is *legal* in the state where it occurs, then the statute could not apply unless the person had acted intentionally or knowingly to cause an illegal result in this state. Also if the crime is conspiracy then the overt act that is already required pursuant to Section 53a-48 has to have occurred in this state. S.B. No. 1165 also contains "reasonable relationship" language to address any due process concerns.

In conclusion, what this bill does is to make clear that conduct occurring outside this state is sufficient to establish the commission or attempted commission of a crime in this state. Furthermore, the bill expressly recognizes and criminalizes conduct occurring elsewhere that causes an illegal result in this state. The Division of Criminal Justice expresses its gratitude to the Committee for your consideration of this important issue. We would be happy to provide any additional information the Committee might require or to answer any questions that you might have.