



# State of Connecticut

## DIVISION OF PUBLIC DEFENDER SERVICES

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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

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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 5.3, 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.