State of Connecticut

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Testimony of
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Raised Bill No. 6464, An Act Concerning Shaken Baby Syndrome

Children Committee-Public Hearing, February 26, 2013

The Office of Chief Public Defender opposes ***Raised Bill No. 6464, An Act Concerning Shaken Baby Syndrome***. This proposed bill would eliminate the requirement that the prosecution prove the defendant had the required mental state to inflict the injuries (*mens rea*), and would relegate this offense to a general intent crime where the state needs only to prove that injuries were sustained as the result of "intentional shaking". Passage of this proposed bill could result in persons being convicted based primarily upon medical opinion testimony on an ultimate issue in the case, namely what caused a baby's injuries, regardless of the intent of the defendant. This proposed bill will not only invite constitutional challenges based on vagueness and/or overbreadth, but it may also lead to the conviction of innocent persons.

In cases where SBS is alleged, the constellation of injuries as testified to by a medical expert referred to as the triad[1], without an alternative explanation as to genesis of those injuries, may be sufficient to support a diagnosis of "Shaken Baby Syndrome" and thus a conviction of this offense. However, the medical literature and scientific underpinnings of the *Shaken Baby Syndrome* (SBS) diagnosis are hotly debated and in a current state of flux. The SBS "diagnosis" dates back to early 1970's and was offered to explain the unexpected collapse or death of an infant who had intracranial injuries but no external signs of injury. For decades, the medical theory of SBS went without challenge and resulted in parents and caretakers being charged and convicted of physical child abuse. Many will recall the 1997 case of Louise Woodward which drew national attention. Thereafter, many medical experts began to question the underpinnings of the SBS "diagnosis". In 2009, Audrey Edmonds was freed after a Wisconsin court questioned the sufficiency and reliability of the medical testimony which had supported her conviction a decade earlier. Due to the current consensus in the medical community that the triad alone is not enough to form the basis to establish a valid diagnosis of "shaking", there must be a concomitant concern that such evidence should not be relied upon to establish criminal liability. For these reasons, this Office urges rejection of this proposal.

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[1] The components of the triad are blood on brain, retinal hemorrhage and damage to the brain; the definitional language of the proposed bill relies upon this medical definition.