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Testimony of
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Raised Bill No. 5040
An Act Concerning the Department of Children and Families And the Protection of Children

Committee on Children
February 18, 2014

The Office of Chief Public Defender has concerns in regard to ***Raised Bill No. 5040* An Act Concerning the Department of Children and Families and the Protection of Children.** Section 6 (14) of this proposed bill would amend Subsection (b) of section 17a-101 of the C.G.S. 2014 supplement to "clarify" persons who are included as mandated reporters as "any" social worker. Such language could be interpreted to include Public Defender Social Workers who are an integral part of the attorney-client team and who are supervised by and assist the attorneys for the sole purpose of representing adults and children in cases handled by the Division.

The Connecticut Division of Public Defender Services was one of the first indigent defense organizations in the nation to employ social workers in offices throughout the state. The success of the Connecticut team approach of defense attorney and non-attorney support staff has served as a best practices model for indigent defense organizations throughout the country. Public Defender Social Workers have become essential to providing effective assistance of counsel in adult and juvenile proceedings. The Social Workers work with the attorneys by providing client social histories, sentencing mitigation, diversion and treatment recommendations, and critical networking with CSSD, DOC DCF, DMHAS and non-profit agencies that provide rehabilitative services to our clients. The Office of Policy and Management and the Appropriations Committee have consistently supported funding for the expansion of the Agency's social work initiative for the past three decades in recognition of the value of social workers to the criminal and juvenile justice system.

The primary role of Public Defender Social Workers is to assist in the legal representation of clients at the direction of attorneys. Under the Connecticut **Rules of Professional Conduct,**

specifically Rule 1.6, attorneys are bound by the rules of confidentiality. Conversations between attorneys and their clients, both juvenile and adult, are privileged and information obtained from the client cannot be disclosed without the client's consent. However, the attorney client privilege and confidentiality is not unqualified. **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. Division of Public Defender Services attorneys are obligated to report such information if it comes to their attention.

Furthermore, 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 and non-disclosure of privileged information. As a result, non-attorney public defender staff are also advised to comply with Rule 1.6 of the Rules of Professional Conduct. In 1990 former Chief Public Defender, now Superior Court Judge Joseph Shortall requested an ethics opinion from nationally recognized legal ethics expert, Geoffrey C. Hazard, Jr., then Sterling Professor of Law at Yale Law School. This request was for the purpose of seeking clarification of whether or not Public Defender Social Workers also had a duty of confidentiality to the clients or were mandated reporters. In his written opinion Professor Hazard analogized the role of a social worker employed by the Division to that of a paralegal or non-lawyer assistant and expressed his opinion that the standards of confidentiality that apply to the lawyers also applied to those who assist them in providing the representation. In reliance on this ethics opinion, Connecticut Public Defender Social Workers have been complying with Rule 5.3 since the social work program began.

The language of Raised Bill No. 5040 presents confusion for our Agency staff as to whether our social workers should continue to comply with the Rules of Professional Conduct or the mandated reporter statutes. If they are considered mandated reporters solely by virtue of their educational degree or licensure rather than in accordance with their legal function, then their role may become significantly more limited to the detriment of the justice system. Such changes in reporting requirements also place attorneys and social workers at untenable legal odds with each other and potentially could subject them to civil and/or criminal prosecution. P.A. 13-53 and P.A. 13-297 passed during the last session allow for civil and criminal penalties for anyone who hinders, prevents or intentionally or unreasonably interferes with an employee making a report of suspected child abuse or neglect. Attorneys and non-lawyer staff in our offices must be able to

work together to establish a trusting and confidential relationship with juvenile and adult clients in order to obtain all information necessary to effectively carry out their role. Often the client may only feel comfortable telling the lawyer and the social worker information about a client's situation that is critical to effectively resolving a case. Without establishing such trusting relationship, counsel can be ineffective and lack essential information necessary to carry out the defense function as constitutionally required by the 6th Amendment.

In juvenile court, the lawyer for a child has an ethical obligation to advocate in accord with the child's expressed interest, as long as the client is competent. The Department of Children and Families website lists the broad definitions for neglect of a child that should be reported. One or more of the definitions of neglect listed can be applied to nearly every child represented by our office who lives in poverty and disadvantaged circumstances. If a public defender social worker questioned the conditions of a client's home, i.e. cleanliness, lack of food, during a home visit then they may feel they have to make a report rather than addressing or resolving the situation in another manner. Such report could result in a client being removed from the home against his or her expressed wishes to remain in the home or community. The client then feels betrayed by the attorney and social worker and has no real advocate or voice in the courtroom as required by the United States Supreme Court. It is important to note however, that it is also not unusual for juvenile public defenders representing children in delinquency cases to file neglect petitions on behalf of clients, or to contact DCF regarding issues of child abuse.

The Division of Public Defender Services is entrusted with representing children and adults in the criminal and delinquency courts, and since 2011 in the child welfare court systems. One of the Agency's expressed goals in agreeing to merge the two agencies was to more effectively represent children and parents in child welfare matters. If the child has both a delinquency and neglect petition pending before the court then it seems to make sense that the public defender attorney and social worker should be allowed to be involved in both cases order to provide more holistic representation for the child's situation. When there is an abuse or neglect petition pending in juvenile court there are usually many other professionals involved in the case who are mandated reporters and aware of the child's circumstances.

Furthermore, it is our goal to have social workers as part of the attorney–client child protection teams representing parents in neglect proceedings. It is important to provide more social work resources and assistance to parents who are willing and able to take steps to reunite with their children to do so more effectively and safely. This plan has been put on hold awaiting clarification of our social workers' legal status as mandated reporters. If you agree that this is a worthy goal then you I would respectfully request that you amend Raised Bill 5040 to clarify that the attorney -client privilege and rule of confidentiality as expressed in Rule 1.6 of the Rules of Professional Conduct extend to non-attorney social worker legal team members under Rule 5.3 who are employed or retained for the specific purpose of assisting attorneys with the representation of individual clients.