



State of Connecticut  
DIVISION OF CRIMINAL JUSTICE

**TESTIMONY OF THE DIVISION OF CRIMINAL JUSTICE**

**S.B. No. 444 (RAISED) AN ACT CONCERNING PENALTIES FOR FAMILY VIOLENCE CRIMES THAT A CHILD WITNESSES AND ESTABLISHING A WORKING GROUP CONCERNING INFORMATION AND COMMUNICATIONS RELATED TO VICTIMS OF FAMILY VIOLENCE**

JOINT COMMITTEE ON JUDICIARY

March 14, 2016

The Division of Criminal Justice opposes Section 1 of S.B. No. 444, An Act Concerning Penalties for Family Violence Crimes that a Child Witnesses and Establishing a Working Group Concerning Information and Communications Related to Victims of Family Violence. The Division would respectfully recommend the Committee delete Section 1 from this bill.

Section 1 would establish a new sentence enhancement for certain crimes involving family violence where the crime is witnessed by a minor child. While the Division appreciates the intent behind this legislation, it is confusing and the phrasing awkward. For example, would this provision apply if a minimum sentence is mandatory as opposed to simply authorized? Would it automatically apply when the child is the victim of the crime? Further, the sentence enhancement envisioned in S.B. No. 444 may not be necessary nor wise. In many cases such as these, the defendant is also charged with Risk of Injury under Section 53-21, a class C felony punishable itself by up to 10 years' incarceration.

Section 1 also raises concerns with regard to *Apprendi v. New Jersey*, 530 U.S. 466 (2000). This United States Supreme Court decision imposed the requirement that the government prove beyond a reasonable doubt the existence of a fact authorizing the imposition of a sentence in excess of the statutory maximum. This means that the prosecution must prove beyond a reasonable doubt to either the jury or judge, as the case may be, that the crime was committed within the vision or hearing of the minor child. In some cases, this could result in a separate, "mini-trial." It also raises questions such as what constitutes the vision and hearing range of a newborn, or what happens if the child was present, but asleep the whole time?

In conclusion, the Division of Criminal Justice respectfully opposes Section 1 of S.B. No. 444 and recommends the Committee delete this section of the bill. The Division supports Section 2 of the bill and stands ready to participate in the working group that would be established under that section. We thank the Committee for affording this opportunity to provide input on this matter and would be happy to provide any additional information you might require.