

Legislative History for Connecticut Act

HB 7200	(PA 177)	1989
Use: 5676-5685-		(10p.)
Sen: 2157-2159, 2159-2160		(4p.)
Jud: 453-454, 461, 463-464, 469 479-480, 481-482, 485-491, 491-492, 493, 495, 498-499, 503, 521-522, 524-525 552-555, 556, 563, 580, 584-587, 595, 598, 610-611, 616		57p.

Transcripts from the Joint Standing Committee Public Hearing(s) and/or Senate
and House of Representatives Proceedings

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H-529

CONNECTICUT
GEN. ASSEMBLY
HOUSE

PROCEEDINGS
1989

VOL. 32
PART 17
5668-6028

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colleagues on the other side of the aisle that there is an amendment to be offered, apparently misdrafted, and it is in the process of being reworked. So, I would move that this item be passed temporarily.

DEPUTY SPEAKER SMOKO:

Is there objection? Seeing none, the item is passed temporarily.

CLERK:

Page 7, Calendar 474, Substitute HB7200. AN ACT CONCERNING TESTIMONY OF CHILDREN IN SEXUAL ABUSE OR CHILD ABUSE CASES.

Favorable Report of the Committee on JUDICIARY.

REP. MINTZ: (140th)

Mr. Speaker?

DEPUTY SPEAKER SMOKO:

Representative Mintz of the 140th District.

REP. MINTZ: (140th)

Thank you, Mr. Speaker. I move acceptance of the Joint Committee's Favorable Report and passage of the bill.

DEPUTY SPEAKER SMOKO:

The question is on acceptance and passage. Will you remark, sir?

REP. MINTZ: (140th)

Yes, Mr. Speaker. This bill concerns the criminal

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prosecution and testimony of children in any assault, sexual assault or abuse of a child 12 years of age or younger. What this bill does, the statute as it stands right now allows for the testimony of the child to be taken in a room outside the court room, in the presence and supervision of a judge, or televised by closed-circuit equipment or recorded for later showing before the court or the trier of fact.

What this bill does, it states that only the judge and the defendant himself or the attorneys for the defendant and the state can be present, except that the court may order that the defendant may be excluded from the room or screened from the sight and hearing of the child, if the state proves by clear and convincing evidence that the child would be intimidated or otherwise inhibited by the physical presence of the defendant from being able to testify. And they have to prove this by, that there is a compelling need to take the testimony outside of the physical presence of the defendant, to ensure the reliability of the testimony. The court shall ensure that the defendant is able to observe the testimony and hear the testimony of the child, but that the child cannot see or hear the defendant. At all times, the defendant shall be able to consult with his attorney.

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Also what the bill does, in these same kinds of criminal prosecutions, on a motion by any of the parties, that certain procedures shall be maintained. The procedures shall be that a person shall be prohibited from entering or leaving the courtroom during the child's testimony. An adult who is known to the child and who makes the child feel comfortable shall be able to sit in close proximity to the child, but not screen the child from the view of the defendant or the trier of fact. The child shall be allowed to use anatomically correct dolls for the purposes of testifying. And when the child is questioned, the attorney shall remain seated. And any objection to any questions, they shall remain seated, to allow the child to not be intimidated by the atmosphere of the courtroom.

The question of the competency of the child shall be determined by the judge, prior to the time of trial. The final thing that the bill does is it sets up a new oath for any child under the age of 12. The new oath just states: you promise that you will tell the true. It's an oath that a child of that age would be able to understand.

I urge passage of this bill, because it balances the rights of the defendant to a fair trial and

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confront his witnesses against him, and the interests of the child in being able to testify in a courtroom setting that will allow the truth to come out in these type of sensitive cases. We are on the cutting edge in this area. We are establishing a new frontier, and being able to fight child abuse.

And I urge passage.

DEPUTY SPEAKER SMOKO:

Thank you, sir. Will you remark further on this bill? Will you remark? Representative Belden of the 113th District.

REP. BELDEN: (113th)

Thank you, Mr. Speaker. I wholeheartedly agree with the bill, but I would like to, for clarification purposes, pose a question to the introducer of the legislation.

DEPUTY SPEAKER SMOKO:

Please pose your question, sir.

REP. BELDEN: (113th)

On line, roughly around line 30, 29 and 30 of the bill, it indicates that if the defendant is excluded from the room or screened from the hearing or sight of the child, the court shall ensure that the defendant is able to observe and hear the testimony, but that the child cannot see or hear the defendant. That's fairly

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clear.

When you get down - and I agree with that wholeheartedly. When you get down to line 60, it's talking about, 56 or so, allowing someone to sit with the child, whom the child feels comfortable with, shall be allowed to sit in close proximity to the child during the child's testimony, provided such person shall not obscure the child from the view of the defendant. For the record, I just wanted to make sure that obscuring the view of the defendant, around line 60 there, does not take precedence over the language in around line 30, where the defendant may be excluded from the view, etc., of the child.

Through you, Mr. Speaker?

REP. MINTZ: (140th)

Through you, Mr. Speaker?

DEPUTY SPEAKER SMOKO:

Do you care to respond, Representative Mintz?

REP. MINTZ: (140th)

Yes. The intent of the legislation is that if the defendant is excluded from the room and he still can view the testimony by television, and the person sitting in close proximity would not sit in front of the television camera and exclude the view.

REP. BELDEN: (113th)

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Thank you. I just wanted to get that on the record. Thank you.

DEPUTY SPEAKER SMOKO:

Thank you, sir. Will you remark further on this bill? Will you remark?

REP. RADCLIFFE: (123rd)

Mr. Speaker?

DEPUTY SPEAKER SMOKO:

Representative Radcliffe of the 123rd.

REP. RADCLIFFE: (123rd)

Thank you. Mr. Speaker, through you, to the proponent of the bill.

DEPUTY SPEAKER SMOKO:

Please frame your question.

REP. RADCLIFFE: (123rd)

On lines 32 and 33, the defendant is excluded if the clear and convincing evidence standard is met, as I understand it, from the presence of the witness and can be excluded from the courtroom. What about the right of cross-examination or even direct examination by a prosecuting attorney or by the defense counsel, who might ask the individual to speak, if that individual had a distinctive voice or something, for purposes of identification. Would that still be permitted, in light of this language, either by the prosecutor or by

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defense counsel, in terms of establishing
identification?

Through you, Mr. Speaker?

DEPUTY SPEAKER SMOKO:

Would you care to respond, Representative Mintz.

REP. MINTZ: (140th)

Yes. Through you, Mr. Speaker, I believe that this
legislation does not exclude that type of questioning.

REP. RADCLIFFE: (123rd)

Fine--

DEPUTY SPEAKER SMOKO:

Representative Radcliffe.

REP. RADCLIFFE: (123rd)

Then, through you, Mr. Speaker, again for purposes
of legislative intent, if identification, if
identification were an issue, and the prosecuting
attorney asked the defendant to speak or to stand or
something of that nature, for purposes of
identification, that would not be precluded by lines 33
and 34? Through you, Mr. Speaker?

DEPUTY SPEAKER SMOKO:

Do you care to respond?

REP. MINTZ: (140th)

Yes, through you, Mr. Speaker, no. The defendant
would be allowed to be present for the identification

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and would then be excluded again after that.

REP. RADCLIFFE: (123rd)

I only asked that question, Mr. Speaker, because line 33 indicates that the child should not be able to hear the defendant. And I would ask again, through you, to the proponent, if there would be an exception to the requirement in line 32, in the event of direct examination or cross-examination, it was necessary for the defendant either to be seen or to be heard, for purposes of identification. I would not want a defense counsel to be able to eliminate that particular possibility in a prosecution.

Through you, Mr. Speaker.

DEPUTY SPEAKER SMOKO:

Do you care to respond, Representative Mintz?

REP. MINTZ: (140th)

Yes, thank you. Through you, Mr. Speaker, I agree with you. The purpose and intent of the legislation is during the questioning and answer period, there is normal interchange between defendants and attorneys and defendants with other people in the court, and that is the purposes, during that time, not to allow the defendant to be heard.

REP. RADCLIFFE: (123rd)

And I would only add, Mr. Speaker, that for

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purposes of standing or speaking, a defendant is not protected by any 5th Amendment privileges. That is non-testimonial evidence, in that regard, and that would still be admissible in this case, I would assume, based on the Vice-Chairman of the Judiciary Committee's remarks. Thank you.

DEPUTY SPEAKER SMOKO:

Thank you, sir. Will you remark further on this bill? Will you remark? If not, will all staff and guests please come to the Well of the House? The machine will be opened.

CLERK:

The House of Representatives is voting by roll.

Members, to the Chamber. The House is voting by roll call. Members, to the Chamber please.

DEPUTY SPEAKER SMOKO:

Have all the members voted? Please check the roll call machine to make sure that your vote is accurately recorded. If all the members have voted, the machine will be locked. Clerk will take a tally. Clerk, please announce the tally.

CLERK:

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DEPUTY	HB7200:	
	Total Number Voting	148
BILL	Necessary for Passage	75
REP.	Those Voting Yea	148
	Those Voting Nay	0
POINT	Those absent and not Voting	3

DEPUTY SPEAKER SMOKO:

The bill is passed.

CLERK:

Page 17, Calendar 306, Substitute SB86. AN ACT
CONCERNING BIRTH CERTIFICATES. (As amended by Senate
Amendment Schedule "A").

Favorable Report of the Committee on PUBLIC HEALTH.

DEPUTY SPEAKER SMOKO:

Representative Lawlor.

CLERK:

The Committee recommends passage with Senate "A"
and with an additional amendment, as incorporated in
LCO6348.

DEPUTY SPEAKER SMOKO:

Representative Lawlor.

REP. LAWLOR: (99th)

Thank you, Mr. Speaker. I urge acceptance of the
Joint Committee's Favorable Report and passage of the
bill.

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THE CHAIR:

Now, on the bill as amended by Senate "A". Senator Meotti.

SENATOR MEOTTI:

Thank you, Mr. President. The bill would basically provide a process for protecting from disclosure the home addresses of sensitive employees in the Judicial Branch, and now, with the Amendment, the police departments as well.

THE CHAIR:

Further remarks. Senator Meotti.

SENATOR MEOTTI:

Mr. President, I move that this be referred to the Committee on Appropriations.

THE CHAIR:

Without objection, the item is to be referred to the Committee on Appropriations.

THE CLERK:

Calendar #445, File #577. Substitute HB7200. AN ACT CONCERNING TESTIMONY OF CHILDREN IN SEXUAL ABUSE OR CHILD ABUSE CASES.

Favorable Report of the Committee on JUDICIARY.

THE CHAIR:

Senator Avallone.

SENATOR AVALLONE:

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Yes, Mr. President, I would move the Joint Committee's Favorable Report and adoption of the bill.

THE CHAIR:

Are there any amendments?

SENATOR AVALONE:

No amendments, Mr. President.

THE CHAIR:

Senator Avallone.

SENATOR AVALONE:

Yes, Mr. President, this bill would change some of the current procedures and establish a few new procedures for circumstances when a child under 12 years of age testifies in a sexual abuse or child abuse case.

We have passed an outstanding law in the past few years here in Connecticut, but we needed to refine it in light of some Federal court decision, so that we wouldn't lose a very fine bill.

It indicates that the defendant has a right to be present under certain circumstances while the videotape or the child's testimony is being videotaped. It authorizes the court to use special procedures in such cases. Any of the following steps are permissible prohibiting spectators from entering or leaving during testimony, allowing someone the child trusts to sit

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with him as long as the person does not screen the child from the judge, the jury or the defendant.

It's a very important bill for children, and it's also an important bill to put perpetrators where they belong, behind bars.

If there's no objection, I move it to Consent.

THE CHAIR:

Without objection, placed on the Consent Calendar.

Clerk, please announce we will have an immediate roll call on the second Consent Calendar.

THE CLERK:

Immediate roll call has been ordered in the Senate on the second Consent Calendar. Will all Senators please return to the Chamber. Immediate roll call has been ordered in the Senate on the second Consent Calendar. Will all Senators please return to the Chamber.

THE CHAIR:

Please give your attention to the Clerk who will read the items that have been referred to the Consent Calendar. Mr. Clerk.

THE CLERK:

Second Consent Calendar begins on Calendar Page 4, Calendar #358, HB7122.

Calendar #371, SB1018.

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Calendar #372, SB985.

Calendar Page 6, Calendar #398, Substitute SB905.

Calendar #400, Substitute HB5743.

Calendar Page 7, Calendar #405, Substitute HB7126.

Calendar #411, Substitute HB7511.

Calendar Page 9, Calendar #421, HB6301.

Calendar Page 10, Calendar #424, Substitute SB819.

Calendar Page 12, Calendar #436, Substitute HB6642.

Calendar #439, Substitute HB5319.

Calendar Page 14, Calendar #445, Substitute HB7200.

Mr. President, that completes the second Consent
Calendar.

THE CHAIR:

Are there any changes or omissions? The machine is
open, please record your vote.

Senator Barrows, Senator Daniels.

The machine is closed.

Clerk, please tally the vote.

The result of the vote:

33 Yea

0 Nay

The second Consent Calendar is adopted.

We have Senate Agenda #3.

THE CLERK:

Mr. President, the Clerk is in possession of Senate

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The second would, I think, present major evidentiary problem and that would be Subsection 2 where there is a two year difference. I can envision where we have the complainant being 14 years of age and 1, 2 or 22 days of age and the defendant being 16 years old, very close to his 17th birthday. It's really not a two year difference, it's almost a three year difference. So I would just point that out if this did pass in this form it could present some evidentiary problems.

Next would be HB6885, AN ACT CONCERNING SPEEDING. This would allow those people who are issued a summons for speeding where the speed is greater than 55 but not greater than 65, rather than having to appear in court to have this infraction be paid by mail. I think this is a worthwhile endeavor to cut down on the number of people to appear in court and to cut down on the backlog of cases now that have to be processed by prosecutors and judges and we support it.

The next is HB7199, AN ACT CONCERNING INVESTIGATION OF CHILD ABUSE. This was a proposal that the Division introduced last year. We think it had merit last year, we obviously think it does again have merit. Particularly in those cases where there is some reason to believe there is a bona fide physical injury to a child and the person or persons suspected of having perpetrated that injury may be a parent or guardian and they are willing to have the police do those things necessary and proper, not only to complete the investigation, but to protect the child.

It would allow a police officer to get an X-party order in such a case. We support that concept.

The next would be Raised HB7200, AN ACT CONCERNING TESTIMONY OF CHILDREN IN SEXUAL ASSAULT OR CHILD ABUSE CASES. I would address a number of these provisions. The first would be and I realize this language is necessary because of State vs. Jarzbeck and Coy vs. Iowa. But the standard of proof can be clear and convincing evidence. I realize there may

not be an awful lot of leeway in that standard, but that, in some cases, may be a difficult standard to comply with.

The second would be in subsection B, and this would be from Lines 51 through 69, procedures which would make it easier for a child to testify in court. The Division obviously supports all these proposals, but I would mention one caution. I think we are all aware of the line of cases from our Connecticut Supreme Court that say the distinction to be made when we are speaking of procedures to be used in the courtroom is that these have to be enacted by the judges of the Superior Court through the practice book rather than by legislation.

I think you can make a distinction here, we do support these, but do not be surprised if they may not be in the future, if this becomes law, an attack based on that premise, that this was something the judges had to do through the practice book rather than the Legislature through legislation.

And the final would be in Lines 178 and 179, this mirrors a proposal by the Division of Criminal Justice for witnesses 12 years of age or younger rather than taking what I would term the formalistic oath now on the books. They would merely be required to tell the truth. I think it would make it much easier for children, 12 years of age, or younger to testify in these difficult cases and we support that proposal.

The next would be HB7235, AN ACT CONCERNING STATES ATTORNEYS DISCIPLINE. I think the statement of purpose says it all. There is currently an ambiguity between the statutes and the collective bargaining agreement. We now have with the Connecticut Prosecutors Union as to where does the discipline authority lie. If this were enacted the two deputy chiefs states attorneys, the chief states attorney and the 12 states attorneys would be subject to the discipline of the Criminal Justice Commission. All other prosecutors would be subject to the protections they bargain for in good faith through the collective bargaining agreement and we support this proposal.

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we now go through an entire process of making motions and putting in papers and then we become exempt for each case as we go along.

Over the last three years we have been involved in over 35 lawsuits in Superior Court and two in the Supreme Court. The Court, after we file the waiver request, in all of these case the Court has approved all the waivers except for three. Those three cost us \$220. The average cost to us for any filing fee would be \$70. So we are putting in an awful lot of time to get a waiver from something that cost...that would cost us about \$2500. We would like to be part of the statute so we don't have to put our people through the time. It just seems like a common sense kind of a bill.

SEN. AVALLONE: What were the three instances? What was the reason you were not allowed?

ELINOR BUDRYK: I did not ask that but I can find out for you.

SEN. AVALLONE: Would you find out for us?

ELINOR BUDRYK: I will. I just went to the Business Office and asked if we had ever been denied, how much we had paid out, that's it.

SEN. AVALLONE: Could you give that to our staff?

ELINOR BUDRYK: Sure. Anything else?

SEN. AVALLONE: Representative Knopp. I'm sorry. Pat Wilson. I'm sorry Representative. Or his designee.

PAT WILSON-COKER: Good afternoon, my name is Pat Wilson-Coker and I am speaking on behalf of Amy Wheaton, the Commissioner of the Department of Children and Youth Services.

We are very pleased that the Judiciary Committee has an active interest in the children of this State. This is evident in the bills affecting children which appear on your agenda today and I wish to comment very briefly on several of these bills.

We believe the examination should be more comprehensive than simply X-Rays, since in certain types of injuries no evidence is available through an X-Ray. For example, this would be the case in sexual assault or certain head injuries. We recommend further that careful consideration be given to the developing standards for obtaining such examinations, as well as establishing a mechanism for obtaining permission for such tests in a timely fashion.

Finally, Raised HB7200, AN ACT CONCERNING TESTIMONY OF CHILDREN IN SEXUAL ABUSE OR CHILD ABUSE CASES. The Department strongly supports the intent of this bill. Commissioner Wheaton and Dr. Frederick Adams, Commissioner of the Health Department were appointed to co-chair the Governor's Task Force on Justice for Abused Children. The Investigative, Administrative and Judicial Committee aptly chaired by Acting Attorney General Clarine Riddle reviewed the courtroom (inaudible) our child witnesses so often face.

They have suggested ways to make the court less frightening and intimidating as well as more responsive to the limitations that children face because of their age. Some of these suggestions you will find appended to our written testimony. For years it was assumed that children were not competent to be witnesses. Fortunately we now recognize that each child must be considered in terms of their age, stage of development and situation, children do have the capacity to understand the truth and to testify accurately.

Each case and child witness, we believe, must be considered individually, as should the accommodations required for an individual child. Inherent in our justice system is the principle that our search for truth must be between evenly matched opponents. Judge Chilstein of California who recently has been part of a series of video presentations entitled, "When Children are Witnesses", frequently makes the comparison between a courtroom and the World Series.

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She states that when you see two teams you expect a battle of evenly matched opponents. Our court system expects the same. Just as we would not ask one of the World Series to play against a Little League team, we should not ask a child to play in the arena of adult witnesses. The accommodation places the witness, the child witness on an unequal level, therefore we believe that such accommodations should be responsive to the cognitive, social and emotional developmental stage of the child.

They should allow the child to feel more comfortable. In addition to some of the suggestions noted in the bill, other helpful accommodations which you might consider include frequent rest breaks during testimony, the idea that questions by counsel be asked plainly, simply and quietly and that legal arguments be out of the presence of the child.

Also, a judge should certainly feel free with child experts in regard to courtroom procedure. We would be happy to assist in refining the language of this particular bill as you would find appropriate. Are there any questions with respect to any of these?

SEN. AVALLONE: Yes. Representative O'Neill.

REP. O'NEILL: I just have one ma'am. You are with DCYS?

PAT WILSON-COKER: Yes, sir.

REP. O'NEILL: Does your organization have any information to furnish us, or do you support or not support HB5860, consensual sexual intercourse between minors?

PAT WILSON-COKER: I believe we could supply you with some information with respect to that. We chose not to take a position on this particular bill at this time.

REP. O'NEILL: You have no position whatsoever?

PAT WILSON-COKER: Not at this time.

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We have submitted written testimony for the Committee members and I am here to answer any questions that you may have. We request favorable action be taken on both bills.

SEN. AVALONE: Thank you. John Ford.

JOHN FORD: Senator Avallone, Representative Tulisano, members of the Judiciary Committee, I am John Ford, the Administrator for the Commission on Victim Services. We would like to recommend for your favorable consideration SB832, HB5113, HB5119, HB7200, HB7285.

Most specifically, we would ask your favorable consideration on HB7177 which is AN ACT CONCERNING PAYMENT OF COMPENSATION OF VICTIMS OF DRUNK DRIVERS. The Connecticut General Statute, 54-208D states that an order to seek compensation may be made under this section whether or not any person is prosecuted or convicted of any offense arising out of such an act.

However, the innocent victim of a drunk driver is only eligible for compensation if the accused is convicted as indicated under 54-209A, Subsection 3. This presents a huge obstacle for victims of drunk drivers, since there are several instances where the offender may not be prosecuted or convicted. These include the offender that dies as a result of the said accident, the offender who enters a pre-trial alcohol education program, the offender plea bargains to a lesser charge or the situation where the prosecutor decides to seek the conviction on a more serious charge.

In these instances there may be clear indication that the offender had indeed been under the influence of alcohol while driving and due to that fact no...due to the fact that no conviction was attained, the innocent victim is unable to receive a compensation that he or she deserves.

Statutory change, beginning on Line 28, permitting

(gap between Side 1A and 1B)
reasonably conclude that the elements of 14-227A, 53A-56B or 53A-60D do apply and is most

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SEN. FREEDMAN: Thank you.

REP. TULISANO: Representative Grabarz.

REP. GRABARZ: I'm not going to make a plug for (inaudible) The Secretary of State testified before that the bill be changed to include notification within 10 days? Is that a suggestion you would support?

SEN. FREEDMAN: Was that the Secretary of the State or the Department of Health on the changes in the language?

REP. TULISANO: Yes.

SEN. FREEDMAN: I have no problem with the changes in the language. I think if there is going to be a change on the certificate they should be notifying the local town hall that has that copy, the secondary copy.

And I do go to McLevey Hall. Thank you.

REP. TULISANO: Diane Edell.

DIANE EDELL: Senator Avallone, Representative Tulisano, committee members, good afternoon. My name is Diane Edell. I am the Public Policy Liaison for the Connecticut Commission on Children. I am here today on behalf of the Commission to support Committee HB5113, Raised HB7199 and Raised HB7200.

Over the past three years Commission members and staff have been involved in a number of projects aimed at strengthening our child protective system. Our Executive Director served on the Governor's Task Force on Justice for Abuse Children and we have been active participants on the Child Abuse Prevention legislation Committee, a group of approximately 50 members representing service provider agencies and child protection teams statewide.

Our positions on these proposed bills have evolved

from these activities and from years of experience of commission members and staff as direct service providers.

Committee HB5113, AN ACT CONCERNING SEXUAL ASSAULT OF CHILDREN, is to be applauded for the clarity of intent and its recognition that reliance on the use of force or threat of force is the determining factor of guilt is inappropriate and inadequate in cases of child sexual abuse.

To strengthen the bill we recommend raising the age above 11, except in cases of emancipated minors. We would prefer a teen, we would settle for 16. We make this recommendation on the unique nature of children's dependence on their parents and other adults and also because most incidents of child sexual abuse involve persons related or known to the child.

If raising the age closer to 18 or to 18 is not consistent with the judgement, we respectfully suggest raising the age at least to 12 to reflect consistency with other relevant statutes.

Raised HB7199, AN ACT CONCERNING INVESTIGATION OF CHILD ABUSE, clearly enhances the ability to protect Connecticut's children. Medical information too often unobtainable at present would be more available to assist authorities in conducting more thorough investigations than are possible without that information. Medical findings can contribute definitive evidence frequently not available in any other form.

Due to the significance of medical evidence in certain situations we believe that Raised HB7199 is unnecessarily limited in scope. We believe it would be reasonable to enact legislation to authorize the police and the Department of Children and Youth Services to petition the court for authority for physicians to perform any necessary diagnostic tests or procedures without parental consent.

If there is reason to believe that physical injuries have been inflicted on the child by the person responsible for that child or if there is reason to believe that person has failed to protect the child from physical injury...

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REP. TULISANO: Excuse me, what kind of standard, cause it is not very clear from this proposal, what kind of standard do you think the court should have when you say, reason to believe? Some sort of evidence or someone comes in and say I think you ought to have a test?

DIANE EDELL: I believe that the Department of Children and Youth Services...the bill is unclear and I think that it would have to be written better into the legislation, but I think that DCYS has standards for themselves in terms of...

REP. TULISANO: You guys are all testifying and I read this now and I say it's unclear to me...

DIANE EDELL: And nobody is providing language.

REP. TULISANO: We want a good law.

DIANE EDELL: Then I think that's fair to ask us to make suggestions of language.

REP. TULISANO: Including the standards...I mean we don't want people just saying we think that kid has, so a cop can go in and say, we have reason to believe because someone told me and therefore start interfering in households. It has to be something more than that, don't you think?

DIANE EDELL: Yes. And I think that there are a number of us testifying today that would be willing to work on that language and should.

One last comment about that. We are supportive, obviously, of parental rights. However, in cases of child abuse, we feel the child's right to protection should take precedence.

Lastly, we applaud the procedural changes outlined in Raised HB7200, AN ACT CONCERNING TESTIMONY OF CHILDREN IN SEXUAL ABUSE OR CHILD ABUSE CASES. This bill importantly gives the court clear authority to better accommodate the needs of child victim witnesses in the courtroom, does a great deal to minimize revictimizing in the child through the court proceedings. The presence of a support person, the use of anatomically dolls and the

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requirement of nonintimidating and seating arrangements all contribute to the creation of accurate testimony from children.

In addition to the wording in the current bill there are many other procedures that could be used to better accommodate the individual needs of a child and other techniques in addition to the anatomically correct dolls. We hope that language could be introduced into the bill that would permit the consideration of such procedures on an individual case basis.

Furthermore, we recognize the importance of the provision of the court to order the defendant excluded from the room or screened from the hearing of the child when the reliability of the child's testimony would be compromised otherwise. In this bill, as with the previous bill, we believe that it would be strengthened if the age of the victim was raised to 18. (1165113)

REP. TULISANO: Excuse me, could I ask you about that? I am going to ask this every time someone tells me that. How can we try kids as adults at 16 and you want to treat them as babies at 18? I don't understand how that makes sense in our criminal law?

DIANE EDELL: It doesn't make sense.

REP. TULISANO: I mean, why aren't you advocating very strongly why don't we raise juveniles to 18? Have you done that?

DIANE EDELL: No.

REP. TULISANO: You think you should?

DIANE EDELL: Perhaps, it's not something we have taken a position on.

REP. TULISANO: I would like to hear how you as a Department can come up here and say they are babies until they are 18, but we can try them as an adult sometimes at 14 years old. Why aren't you saying there is no way you can do that? Why do you succumb to what makes it sound good, but what may not be a good way of implementing law?

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DIANE EDELL: We have not testified on the bill that relates to consensual involvement between two children that are close in age. So it makes it more difficult to relate to that. I think that the issue here is whether or not the child or the victim that we are talking about was an active participant. It's hard for me to relate to that because we haven't talked about consensual and what makes consensual.

REP. LOONEY: If I may follow up on that...

DIANE EDELL: I know you are talking about where the age difference is very different.

REP. LOONEY: Given the set of facts that Senator Spellman mentioned. If in that case instead of an adult man the actor in that case was a, say a 13 year old boy and the girl was 11 or 12, should it be treated differently? If the girl might have been conceivably equally frightened, passive, what about the relevance of age difference under that set of circumstances?

DIANE EDELL: I think one item you have to take into consideration is your description that the girl was just as frightened and in that case I don't think there is a difference, but I don't want to speak on behalf of the Commission because we haven't talked about...in that case it is no longer consensual and I don't think the age matters if it is not consensual.

REP. LOONEY: Thank you.

SEN. AVALLONE: Thank you very much. We have overstepped our bounds in terms of time under agency heads so we will go right to the public sector. Margaret Levy.

MARGARET LEVY: Senator Avallone, members of the Committee, I am here as a member of the Board of Connecticut Civil Liberties Union and speaking as the Chair of its subcommittee regarding videotaping testimony of child victims. The Connecticut Civil Liberties Union which has submitted written testimony supports the passage of HB7200. We consider that the bill is a significant improvement

over the existing statute, 54-86G in terms of protecting a criminal defendants right to confront the witnesses against him or her.

The right is clearly guaranteed by both the 6th Amendment to the Federal Constitution and by Article 1, Section 8 of the Connecticut Constitution. Since the Judiciary Committee and the Legislature reviewed this issue last year, United States Supreme Court has analyzed circumstances under which testimony of a child victim may be given outside the physical presence of a defendant. The court has held that the right of an accused to confront his accuser face to face is at the court of the values furthered by the confrontation clause of the U.S. Constitution but that there may be exceptions to the right of face to face constitution when necessary to further important public policies.

We note that the Connecticut Supreme Court, in 1987, in the Jarsbeck case, essentially anticipated the U.S. Supreme Court's decision by requiring that the State prove by clear and convincing evidence a compelling need to exclude a defendant from the room during the testimony of a young person alleged to have been the victim of sexual abuse or child abuse.

The Connecticut Supreme Court emphasized that it is widely recognized that physical confrontation contributes significantly and tangibly to the truth seeking process. The Connecticut in Jarsbeck held that there is no constitutional justification for automatically depriving all criminal defendants of the right of physical confrontation during videotaping of a minor victim's testimony. Before a defendant's valuable right of direct physical confrontation can be sacrificed individual findings need to be made under Connecticut case law at this point indicating that the reliability of the child witnesses testimony would be damaged if he or she were forced to testify in the presence of the accused.

The Civil Liberties Union notes that Raised HB7200 appears to incorporate into the statute the

safeguards which both the Connecticut Supreme Court and the United States Supreme Court have added since the existing statute was formulated.

We understand, we are not insensitive to the fact that the cases in which these issues get raised are ones about which the public is very often concerned. They tend to be cases in which there is very substantial sympathy for alleged child victims and little hesitation to condemn an accused adult. It is precisely in this type of case that the need to guarantee the defendants' rights to confront witnesses and to test their voracity is most important.

We would urge the passage of Raised HB7200 and in addition would note that the effect of that bill may be diluted by the way that it is acted upon or implemented by the court systems. We see, only two weeks ago, in the case of State vs. Binello, which the Connecticut Supreme Court decided, as its first opportunity to apply both Jarsbeck and the U.S. Supreme Court of Coy vs. Iowa, that the court made a finding in the words which tracked clearly to the words of this bill, but yes, there was clear and convincing evidence that the defendant's physical presence would have seriously called into question the minor victims reliability.

We note that the defendant in that case claims and that from a reading of the reported case may very well have been correct that the expert witnesses were both ambiguous and decisive in their evaluations of the degree to which the victims reliability was damaged, and so it has to be recognized that if the courts fail to recognize this statute then the value if the change in legislation will be lost. I thank you for the opportunity to testify and will be glad to attempt to answer any questions you may have.

REP. RADCLIFFE: Thank you Mr. Chairman. You talked about the rights to face ones accuser, but you didn't talk about the right to a meaningful cross examination. This particular bill, if I am reading it correctly, would require or would allow the court to place a child in a position where the child could not see or hear the defendant. Could this perhaps inhibit meaningful cross examination

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in the case where identification was an issue, and I am thinking of identification as either physical, identification of a voice, where a defendant might be compelled to speak so that a child will hear that for purposes of identification...do you see any problems in terms of the right of cross examination as opposed to confrontation from a constitutional standpoint?

MARGARET LEVY: Well, the right of confrontation is one of the major aspects of the constitutional right to cross examination. I think certainly, if there are questions as to identification, there may need to be adjustments made. It's not my reading of the bill...not my memory of it, that we are talking about a child being unable to hear...

REP. RADCLIFFE: I'm reading from Line 38, the court shall insure that the defendant is able to observe and hear the testimony of the child, but the child cannot see or hear the defendant. Now if the child cannot see or hear the defendant and the issue is identification, does that perhaps deny the right of cross examination?

MARGARET LEVY: I think that that is a problem and it's obviously one that I am not adequately prepared to address. I think that the bill is clearly a compromise between the right to confrontation of the defendant.

REP. RADCLIFFE: One other question along those lines. How would that reserve either a defendant or the prosecution for that matter, the right to obtain physical evidence, voice print or that sort of thing, if in fact the child could not hear and make a decision as to the...some distinctive characteristics in a voice for which identification might be proven, or an alibi might be disproven.

MARGARET LEVY: I don't think there is anything that prevents the taking of a voice print. As I understand it is a procedure that normally would not be done in a courtroom situation at any rate, so I am not sure that that is a problem. I'm afraid that you are raising good points and is simply one that I am not adequately prepared to respond to at this time. I'm sorry.

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REP. TULISANO: Richard.

REP. LUBY: Could you just explain to me, let's say we didn't have this statute, would the procedures be different?

MARGARET LEVY: I think that under existing law the majority of the procedures outlined in this statute would be required by force of case law, both Connecticut case law and United States Supreme Court case law at this point. The details including the use of anatomical dolls and so on would not necessarily be required, but certainly as I understand recent cases would be well within the discretion of the courts to use in terms of implementing the rights of the defendant to cross examination and limited types of protection given to the child with the aim at preserving the reliability of the testimony rather than simply on the notion of protecting the child.

REP. LUBY: That's what I am trying to sort of understand is that some of this is just repeating what the existing case law is. But there are some things that we are doing in here that will change what is done. And I am trying to identify what in here changes, rather than just repeats the status quo?

MARGARET LEVY: It's my...

REP. LUBY: I'm not putting an unfair burden on you, am I?

MARGARET LEVY: No, that's okay. My personal opinion rather than the position of the Civil Liberties Union or of the Subcommittee, which has not taken a formal position as to the details regarding the items from Lines 55 through 69. Those details of how the hearing will be conducted, that persons will be prohibited from entering or leaving the courtroom during the child's testimony, that an adult who is comfortable and known to the child will be present, anatomical dolls and the fact that attorneys shall be seated, frankly, my personal opinion is that those items are more appropriate to regulations than to statute, that the use of specific techniques may be deemed by child experts

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to be useful this year and perhaps not useful next year and I think that it doesn't make sense to write some of those things into the statute itself.

But I think it's that portion of the bill which goes beyond what the case law required and that the Civil Liberties Union has addressed itself more primarily to the constitutional issues and that although I may be skipping something it may be difficult for me to see the question of whether someone comes in or out of the room during testimony, by itself as a constitutional issue.

REP. LUBY: Are there parts of this, lines 55 to 69 or so, that are not regarded as acceptable practice currently by the court? In other words, I mean, are there other things here that aren't being done normally.

MARGARET LEVY: I am not clear as to the use and acceptance of evidence in Connecticut State courts of anatomical dolls. I think that that may be the one item that is of some question.

REP. LUBY: And, could you just let us know the two sides of that? I mean, I am not sure what is wrong with dolls. Most people's anatomies are somewhat similar, depending on what side of the fence they are on. I mean, what's the problem with the dolls? (laughter) Of course, in this Committee, I guess that varies.

MARGARET LEVY: I think that there are certain attitudes as to in a court proceeding where one is attempting to get as much as possible at the truth of what happened at a particular time in a particular place, where there were no dolls present, and where the best you can do in terms of recreating those situations is to get testimony from the people who were there, that there may be some evidentiary question as to whether the use of the doll is entering an extraneous item which does not directly affect the truth finding process as to what happened at that time.

Now, clearly, diagrams are used all the time, to show how traffic accidents occurred or buildings fell down, or whatever is involved, and I am not clear...

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REP. LUBY: All right. Let me... To sum up on the issue of the anatomical dolls, the problem is that it is in a sense too leading? In other words, it is too suggestive?

MARGARET LEVY: I think that it... It is my personal feeling that it may very well be a question that should be up to the individual judge, as to whether in a particular instance, that is an appropriate way of introducing evidence. It is not clear to me that that should be in the statute. But, frankly, I don't have the backing of the Civil Liberties Union for that comment and really haven't examined it as to what current practice is.

REP. LUBY: Thank you.

MARGARET LEVY: Yes, I would like to mention that Sue Wise, who was signed up as the next speaker, will be unable to be here from New Haven. Thank you.

SEN. AVALLONE: Ann Minard.

ANN MINARD: My name is Ann Minard. I am the Executive Director of the Connecticut Coalition Against Domestic Violence. CCADV urges the Committee's support for three specific bills related to the investigation and prosecution of sexual assault. Our testimony is brief, primarily due to the other detailed testimony you have already received, and we understand, will receive on these bills.

The first is Committee HB5113, AN ACT CONCERNING SEXUAL ASSAULT OF CHILDREN. As you have heard, this bill provides important recognition of the dynamics involved in the sexual assault of children and the reality that perpetrators are often to accomplish their goal without the use of force. We strongly support passage of HB5113 and appreciate the large number of Senate and House co-sponsors.

The next bill I would like to speak on is HB7200, AN ACT CONCERNING TESTIMONY OF CHILDREN IN SEXUAL ABUSE OR CHILD ABUSE CASES. We support passage of this bill. Balancing the needs of child victims of child or physical abuse with the right of those accused of committing such crimes, to fair trial and fair treatment by the courts is an important

challenge. In our view, this bill strikes that balance. It provides courts with the flexibility to provide a more comfortable and safe environment for child witnesses, which is more likely to produce accurate testimony, while at the same time ensuring that the civil liberties of those accused of committing sex offenses against minor children are protected by a requirement that certain standards be met before the state can exercise such flexibility. CCADV urges your support for HB7200.

We also support suggestions that you have heard from a number of speakers that the ages mentioned in the different bills affecting child sexual abuse and physical abuse be made consistent. I think we are most comfortable at this point with the age of 12. I mean, HB5113 uses the age of 11. HB7220 talks about 12. I think what we have learned from the domestic violence statutes is that it is important to be clear around how minor children will be dealt with.

HB7285, AN ACT PROHIBITING POLYGRAPH EXAMINATIONS OF ASSAULT VICTIMS. This bill would prohibit police, both state and municipal, and State's Attorneys from requesting a sexual assault victim to take a lie detector test. We support this bill for a number of reasons. The first, polygraphs have been shown to be generally unreliable by independent researchers. This basic unreliability is exacerbated when polygraphs are used with rape victims, who are likely to be anxious, tense and nervous, not only as a result of their recent victimization, but also because of being asked to take a test that implies that the victim is lying. Polygraphs are discriminatory when used to prove the voracity of sexual assault victims. No other class of victims are assumed to be lying, unless proven otherwise.

Probable cause, based on victims' statements and other evidence should be the basis of an arrest for a sexual assault crime, not passage of failure of an unreliable polygraph test, taken by a recently traumatized rape victim. Sexual assault is a serious and violent crime. Neither a victim nor an alleged offender's future should depend on a test

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that is as unreliable and discriminatorily used as polygraphs. We strongly urge your support for HB7285.

Thank you.

SEN. AVALLONE: Mark Waxenberg.

MARK WAXENBERG: Good afternoon. Representative Tulisano, my name is Mark Waxenberg, President of the Connecticut Education Association, representing over 30,000 teachers. I am appearing here before you this afternoon in support of two bills, Raised HB7199 and Raised HB7200.

(cass 2)

AN ACT CONCERNING INVESTIGATION OF CHILD ABUSE, which will give police officers the right to seek a court order directing that a child be x-rayed when there is just cause to suspect that a child has been abused.

Child abuse is not a private matter. It is an issue of public concern. Our society must work harder and smarter to protect its most vulnerable citizens. This bill will give the courts an opportunity to step in represent a child's best interest when it appears that the child's guardians are either unable or unwilling to do so.

This bill is sensible and asks for reasonable outcome. We would hope that the committee would support this particular piece of legislation.

REP. TULISANO: You were here...

MARK WAXENBERG: Yes.

REP. TULISANO: ...when the teachers, when I asked the question, what kind of standards should the court use. Teachers have to have under another law...

MARK WAXENBERG: Yes.

REP. TULISANO: ...a way of reporting. Is the standard clear enough for you under that law? Or is that even unclear...

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MARK WAXENBERG: This is concerning Raised HB7200, AN ACT CONCERNING TESTIMONY OF CHILDREN IN SEXUAL ABUSE OR CHILD ABUSE CASES. Of all the different classes, sexes, races, and creeds of people that make up our society, children have the least power and because of this they should have the most protection.

This protection is not expense of a defendant's right to a fair trial though. There's no reason for intimidating or inhibiting the testimony of a witness except for her testis, or to ensure an outcome that is not in the best interest of the truth.

We believe that this bill is in the best interest of society. We would ask for your support. It allows the court to establish a child's competence to testify and it gives the same child a chance to tell his or her side of the story without having to confront the person who has allegedly caused harm. Though there has been certain provisions made for the defendant in this area. So we would hope that you would consider acting favorable on this piece of legislation also.

REP. TULISANO: Thank you.

MARK WAXENBERG: Thank you. Ed Grady?

REP. GRADY: Representative Tulisano, members of the committee, my name is Ed Grady. I'm speaking this afternoon on behalf of the Connecticut Trial Lawyers Association. I wish to direct my opposition to Raised HB7233, AN ACT CONCERNING LIABILITY FOR DOUBLE OR TREBLE DAMAGES FOR CERTAIN TRAFFIC VIOLATIONS.

I'm speaking in opposition to this because, it in essence, is creating a special protection for lessors of automobiles in situations which rarely occur but which do occur because of absolutely outrageous conduct.

I further speak in opposition to it because it is in contravention of Section 14-154A, which is the lessor, lessee statute presently on the books which holds that the lessor of an automobile in a rental

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NORMA SCHATZ: Senator Avallone and Representative Tulisano, members of the committee. My name is Norma Schatz. I'm here in response to the request of Senator Spellman to members of the Governor's task force on justice for abused children.

While making clear that I'm not speaking for the task force, but for myself as an individual and a long-time volunteer child advocate. I'd like to comment on two bills before you today.

The purpose of HB5113, concerning sexual of children is important and commendable. As stated in the report of the task force, children can be compelled to participate in sexual activities through a variety of psychological and emotional ploys.

Force, in fact, is rarely used. When children know the abuser, which is true in the vast majority of these situations. I would, however, respectfully question drawing the line arbitrarily in relation to children only up to ten years of age.

Age fourteen is often used to define the mature minor, and this is the age used in a similar Rhode Island statute. Massachusetts uses age sixteen in this connection. At a minimum, Connecticut should apply this protection to children twelve or under.

I support your...I urge your support of HB5113 but with an upward revision of the age in line 23. In the report, which I understand the Governor will receive today, a number of recommendations are made to minimize trauma to the child victim in court, without impinging on the constitutional rights of the defendant.

HB7200, concerning the testimony of children makes a start in this direction and should be supported. I hope that all the members of this committee will give their careful consideration to the report of the task force and will help implement those recommendations which requires statutory changes.

Children who are harmed physically or sexually,

must not be further harmed by the system which purports to protect them and to seek justice for them. Thank you.

REP. TULISANO: Thank you. Denis Caron.

DENIS CARON: Mr. Chairman, Mr. Chairman, members of the committee, I am here as a member of the Standards of Title Committee of the Connecticut Bar Association to speak with respect to two bills. The first of which is Bill 7234 which is the biennial validating act bill, which as you know, validates acts and deeds and conveyances that may have been the subject of technical defects within the proceeding two years.

The Standards of Title Committee re-wrote, essentially, this...this act in 1985 and reorganized it in order to make it somewhat more understandable than prior versions.

HB7234 is substantially the 1985 act, and in that respect we do support it. There is, however, another bill which is Bill 5870, which is entitled Validation of Late Filed Municipal Tax Liens. The format of that bill is that it seeks to amend a provision of the SA8712, which was the prior validating act.

Our suggestion is that this bill be amended, or considered as a proposed amendment to HB 7234, which is the general validating act. The purpose of HB5870 is to validate tax liens after certificates have been filed...have been recorded even if the statutory time period for that lien has expired.

Under current law, the time limitation for filing a tax lien is set at one year following the date when the tax bill is first payable. That is to say, a grand list comes out on October 1, the first payment on that bill is usually set for the following June 1st and the tax collector under the statutes has until June 30th of the following year to file a tax lien.

What this proposed bill does is essentially eliminate any limit whatsoever with respect to when the tax collector can file his certificate continuing that lien. Because, no matter when he

LINDA DIPALMA: Mr. Chairman, members of the committee, My name is Linda DiPalma. I live in Gales Ferry, Connecticut, and I've come here to voice my support also for Committee Bill HB5113, AN ACT CONCERNING SEXUAL ASSAULT OF CHILDREN.

I am also in support of Committee Bill HB5860, An Act Concerning Consensual Intercourse Between Minors, and Raised HB7200, AN ACT CONCERNING TESTIMONY OF CHILDREN IN SEXUAL ABUSE OR CHILD ABUSE CASES.

I believe these three bills provide the necessary framework to prosecute cases of sexual abuse as the serious crime that it is. I appreciate the opportunity to speak to this issue and in the interest of time, will limit my comments to concerns regarding Bill No. 5113.

The key factor in this proposed bill is the issue of force as it applies to the sexual assault of children. The present statutes restrict the application of first-degree sexual assault to cases where physical force or verbal threat of force can be shown.

It is now understood that in cases of sexual abuse of children, perpetrators use the power of their authority or well-planned strategies of enticement to engage children in a variety of sexual behaviors. The victims of this crime suffer confusion, fear, and isolation. Child victims are unable to ward the intrusive violations imposed on them.

It has been demonstrated that the power of an authority figure is an overwhelming force that robs victims of personal control. In cases of incestuous abuse, the wordless action or gesture of a parent is an absolutely compelling force for a dependent child and the threat of loss of love or loss of family security is more frightening to the child than any threat of violence.

I've spent the past year conducting research on child sexual abuse, from the prospective of adult survivors as a master's degree requirement at Yale

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GAIL BURNS-SMITH: We did two things, Senator. We actually sent out a letter to every state's attorney and asked them what the policy was regarding the use of polygraphs. It was...

SEN. AVALLONE: And the results of that was?

GAIL BURNS-SMITH: The results were that they said that they had "no policy." What we should have asked instead was their practice. And indeed we know anecdotically that there are several prosecutors that utilize them.

SEN. AVALLONE: State. You're talking about the state's attorneys or...

GAIL BURNS-SMITH: That's correct.

SEN. AVALLONE: Okay. (background talking). No, no, I just, never mind. Okay, thank you.

GAIL BURNS-SMITH: I'd like to talk briefly about Committee Bill 5113, AN ACT CONCERNING SEXUAL ASSAULT OF CHILDREN. CONNSACS strongly supports this passage because it would facilitate the prosecution of persons who sexually abuse young children.

This bill recognizes the element of subtle coercion and bribery that may take place in cases of child sexual abuse. We would wish to make one change, however. And that would be to raise the age of the statute to twelve years of age or under. This would then be consistent with other protections currently offered and proposed to help young children.

On Committee Bill HB7200, AN ACT CONCERNING TESTIMONY OF CHILDREN IN SEXUAL ABUSE OF CHILD ABUSE CASES, CONNSACS strongly supports passage of this bill. We're all too aware of how frightening and intimidating the courtroom may be for children. We applaud efforts to minimize the potential trauma to child witnesses that may make their testimony unreliable.

Although we do not set the standard that has been outlined by the courts, we know that this must be currently be utilized until it can be overturned. Until such time, we support a safe environment that will allow the courts to get to the truth and make the proceedings as least traumatic as possible for the children involved.

And lastly, Raised Committee Bill SB832, AN ACT CONCERNING EVIDENCE OF PRIOR CONSISTENT STATEMENTS IN SEXUAL ASSAULT CASES. The Connecticut Sexual Crisis Services strongly urges you to defeat this bill. Sexual assault is the ultimate violation of an individual's person. And as such, is a unique form of victimization.

It is one of the only crimes in which there is investigation into the victim's consent, behaviors and motives. Every aspect of the victim's past and present life is subject to humiliating scrutiny in an attempt to satisfy the requirements of the judicial process.

In no other crime is the victim subjected to invasive questioning and treated as if he or she has caused their own victimization. The myths and attitudes that still prevail in all arenas of our society contribute to this inequitable treatment of the unempowered--women, children and the disabled who are thus doubly victimized.

Because we believe that victims of sexual assault experience needing to meet a higher standard, we cannot support removal of the hearsay exception regarding constancy of accusation. This inclusion has been upheld by the courts and is necessary and important to victims of sexual assault, both adults and children. And we urge you to defeat this proposal. Thank you. Are there any questions? Thank you.

REP. TULISANO: Anthony Polvino.

ANTHONY POLVINO: Good afternoon Senator Avallone, Representative Tulisano, members of the committee. I'm Anthony Polvino, and I am a member of the board of directors of the Connecticut Criminal Defense Lawyers Association. I will be speaking to some

ought to be exposed to having evidence that we would say no one else must stand against under those circumstances.

There's no position taken by the Criminal Defense Lawyers Association regarding the polygraph examinations. I would suggest, however, that if such a bill were to be considered, to permit the taking of the polygraph, even under rigorously regulated conditions, there would be required to be some language in there preventing that from ever being considered as admissible evidence.

I think there's just a generalized concern that the closer we come to regulating it and approving in any circumstances, the closer we get to the day when the polygraph examination will be admissible despite its infirmities, and I suggest that would be an additional hearsay problem that none of our clients would care to stand.

As to Bill HB7200, the position of the commission of the organization rather is that to the degree that it tracks the Jahrsbach Ruling. And tracks the ruling in McCain, Iowa. It's a good bill.

I would suggest, however, that you might give attention to the consideration of the oath to be prescribed for witnesses twelve years of age or younger. Everything else and the changes that this bill proposes, proposes to tailor the courtroom circumstances very particularly to the unique child alleged to be the victim of the sexual abuse.

This makes a presumption that any witness twelve years of age or younger is going to be so terrified or awed or confused by the normal witness oath, that a smaller and less overbearing oath ought to be offered for them.

We require, or you will require, under line 67, 68, and 69 of your bill, that the question of the competency of the child as a witness shall be resolved prior to the time of the trial. I would suggest that at that same time, language could be inserted that would require the trial court to make a determination as to the appropriateness of the standard oath or of a more limited oath for the child.

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We already have the capacity to do standard competency examinations during trial, I see no reason why this all couldn't be lumped together at that point.

That concludes my oral remarks unless there's any questions from any member of the committee. Thank you.

REP. TULISANO: Eleanor Weissberg.

ELEANOR WEISSBERG: Chairman Avallone, Chairman Tulisano and members of the judiciary committee, my name is Eleanor Weissberg. I'm a pediatrician and an adoptive mother of a son who is a product of a surrogate mother and I would like to speak to urge you to defeat Bill HB7057, AN ACT CONCERNING SURROGATE PARENTING AGREEMENTS.

If this bill were passed, it would outlaw surrogate parenting altogether in Connecticut and I don't think that's justified in light of my experience. My very favorable experience with the practice as it stands, as it has stood in my case.

My husband and I have a fourteen year-old daughter, which I had naturally, by way of Caesarean section, but because of complications with that procedure, I had subsequently, I subsequently became infertile and underwent extensive evaluation for the problem until such a time I was able to become pregnant.

This is kind of abbreviating the whole sequence of events. But then, suffered five miscarriages. Because of my age, at the time, which was 40, I...the option of adoption was virtually not open to me or my husband and the only way we could ever hope to have a child at that age, as circumstances presented themselves to us then, was to go through a surrogate mother.

We accomplished this approximately ten months ago and we're now the parents of a wonderful baby boy. Like Mrs. Ragazini, we've had a wonderful experience with our relationship with the surrogate mother. We've remained in contact with her and she with us.

TO: JUDICIARY COMMITTEE

RE: RAISED BILL NO. 7200

AN ACT CONCERNING TESTIMONY OF CHILDREN IN SEXUAL
ABUSE OR CHILD ABUSE CASES

FROM: CONNECTICUT CIVIL LIBERTIES UNION

DATE: FEBRUARY 27, 1989

The Connecticut Civil Liberties Union supports the passage of Raised Bill No. 7200. This bill is a significant improvement over the existing statute, C.G.S. 54-86g, in terms of protecting a criminal defendant's right to confront the witnesses against him or her. That right is guaranteed by the Sixth Amendment to the federal Constitution and by Article I, Section 8 of the Connecticut Constitution.

Since the legislature reviewed this issue last year, the United States Supreme Court has analyzed the circumstances under which testimony of a child victim may be given outside the physical presence of a defendant. The Court has held that the right of an accused to confront his accuser "face-to-face" is at the "core of the values furthered by the Confrontation Clause," but that there may be exceptions to the right to face-to-face confrontation when necessary to further an important public policy. Coy v. Iowa, June 29, 1988. The Supreme Court emphasized the need for "individualized findings that (the) particular witnesses

needed special protection."

We note that in 1987 the Connecticut Supreme Court anticipated the decision in Coy v. Iowa, supra, in the Jarzbek decision, State of Connecticut v. Jarzbek, 204 Conn. 683 (1987) which required the state to prove by clear and convincing evidence a compelling need to exclude a defendant from the room during the testimony of a young person alleged to have been the victim of sexual abuse of child abuse. The Court emphasized that "It is widely recognized that physical confrontation contributes significantly, albeit intangibly, to the truth-seeking process..(and) furthers other goals of our criminal justice system, in that it reflects respect for the defendant's dignity and the presumption that he is innocent until proven guilty." Jarzbek, at 695.

The Jarzbek court held that "There is no constitutional justification for automatically depriving all criminal defendants of the right of physical confrontation during the videotaping of a minor victim's testimony." Before a defendant's valuable right of direct physical confrontation can be sacrificed, individualized findings must be made which indicate that the reliability of the child witness' testimony would be impaired by requiring him or her to testify in the

presence of the accused.

The Civil Liberties Union notes that Raised Bill No. 7200 appears to incorporate the safeguards which the Connecticut Supreme Court outlined in 1987 in Jarzbek and which the U.S. Supreme Court stated in Coy v. Iowa. The bill appropriately requires the state to prove by clear and convincing evidence a compelling need to exclude a defendant from the room during the testimony of a young person alleged to have been the victim of sexual abuse or child abuse.

The Civil Liberties Union believes that the proposed bill, as drafted, strikes a balance between a defendant's right to confrontation and the situation in which a young victim may be so intimidated that his or her testimony loses reliability.

We realize that the cases in which this issue is raised are ones about which the public is often very concerned. They tend to be cases in which there is substantial sympathy for alleged child victims and little hesitation to condemn an accused adult. It is precisely in this type of case that the need to guarantee a defendant's right to confront witnesses and to test their veracity is most important.

We want to bring to the committee's attention our concern that the intent of this bill may be undercut in practice with the result that the standards set by Jarzbek

and Coy v. Iowa may be diluted. The beginning of such dilution may be seen in the very recent case of State.v. Bonello, 210 Conn. 51 (1989), decided February 14, 1989. in which the Connecticut Supreme Court first applied the standards of both Jarzbek and Coy v. Iowa. The court found that "the evidence was clear and convincing that the defendant's physical presence would have seriously called into question the minor victim's reliability during the videotaping procedure..." Bonello, at 67. However, it appears that the level of evidence required as to the damage to the witness's reliability may well have been both "ambiguous and indecisive", as was claimed by the defendant. It must be recognized that if the courts fail to rigorously enforce the standards set forth in Raised Bill No. 7200, the value of this legislation will be lost.

Respectfully submitted,

Margaret P. Levy

Margaret P. Levy
Chair, Videotaping Subcommittee
Connecticut Civil Liberties Union

February 27, 1989

Mr. Chairman, Members of the Judiciary Committee:

My name is Linda DiPalma. I live in Gales Ferry, CT, and I have come here today to voice my support for Committee Bill No. 5113 - An Act Concerning Sexual Assault of Children. I am also in support of Committee Bill No. 5860 - An Act Concerning Consensual Intercourse Between Minors, and Raised Bill No. 7200 - An Act Concerning Testimony of Children in Sexual Abuse or Child Abuse Cases. I believe these three bills provide the necessary framework to prosecute cases of sexual abuse as the serious crime that it is.

I appreciate the opportunity to speak to this issue and in consideration of the committee's time constraints, I will address my comments to my concerns regarding Bill No. 5113.

The key factor in this proposed bill is the issue of force as it applies to the sexual assault of children. The present statutes restrict the application of first degree sexual assault to cases where physical force or verbal threat of force can be shown. It is now understood that in cases of child sexual abuse, perpetrators use the power of their authority or well planned strategies of enticement to engage children into a variety of sexual behaviors. The victims of this crime suffer confusion, fear and isolation. Child victims are unable to ward off the intrusive violations imposed on them. It has been demonstrated that the power of an authority figure is an overwhelming force that robs victims of personal control. In cases of incestuous abuse "the wordless action or gesture of a parent is an absolutely compelling force for a dependent child and the threat of loss of love or loss of family security is more frightening to the child than any threat of violence" (Summit, 1983, p.183).

I have spent the past year conducting research on child sexual abuse from the perspective of adult survivors as a Master's degree requirement at Yale University School of Nursing. My findings verify the understanding that children feel powerless to resist the abuse. While most survivors describe extreme efforts to avoid their abuser, once alone with the perpetrator, they were unable to escape the abuse. Given the overwhelming power of authority inherent in the adult and the utter sense of powerlessness experienced by children who are abused, I urge this committee to

State of Connecticut
GENERAL ASSEMBLY

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COMMISSION ON CHILDREN

450 BROAD STREET
HARTFORD, CONNECTICUT 06106-1401
(203) 566-1338

CONNECTICUT COMMISSION ON CHILDREN

TESTIMONY BEFORE THE JUDICIARY COMMITTEE

FEBRUARY 27, 1989

Good afternoon. My name is Diane Edell and I am the Public Policy Liaison for the Connecticut Commission on Children. I am here on behalf of the Commission to support RB 7199, RB 7200, and CB 5113. Over the past three years Commission members and staff have been involved in a number of projects aimed at strengthening our child protective system. Our Executive Director served on the Governor's Task Force on Justice for Abused Children and we have been active participants on the Child Abuse Prevention Legislation Committee, a group of approximately 50 members representing service provider agencies and child protection teams statewide. Our positions on the proposed bills have evolved from these activities and from years of experience of Commission members and staff as direct service providers.

Good afternoon, my name is Patricia Wilson-Coker and I am speaking on behalf of Amy Wheaton, the Commissioner of the Department of Children and Youth Services.

We are pleased that the Judiciary Committee has an active interest in the children of this state. This is evident in the bills affecting children which appear on your agenda today. I wish to comment very briefly on several of these bills:

Raised Bill No. 7200**An Act Concerning Testimony of Children in Sexual Abuse
or Child Abuse Cases.**

The Department strongly supports the intent of this bill.

Commissioner Wheaton and Dr. Frederick Adams, Commissioner of the Health Department, were appointed to Co-Chair the Governor's Task Force on Justice for Abused Children. The Investigative, Administrative and Judicial Committee ably chaired by Acting Attorney General Clarine Nardi-Riddle, reviewed the courtroom arena our child witnesses so often face. They have suggested ways to make the court room less frightening and intimidating, as well as more responsive to the limitations that children face because of their age. Some of the Task Force recommendations are attached.

For years it was assumed that children were not competent to be witnesses. Fortunately, we now recognize that while each child must be considered in terms of their age, stage of development and situation, children do have the capacity to understand the truth and to testify accurately.

Each case and child witness, we believe, must be considered individually, as should the accommodations required for an individual child. Inherent in our justice system, is the principle that our search for truth be between evenly matched opponents. Judge Chilstein of California who, recently has been a part of a video presentation entitled "When Children are Witnesses", frequently makes the comparison between a court room and the world series. She states that when you see the two teams you expect a battle of evenly matched opponents. Our court system expects the same. Just as we would not ask one of the world series teams to play with a little league team, we should not ask a child witness to "play" against a group of adult witnesses. The accommodations place the witness on an equal level.

Therefore, we believe such accommodations should be responsive to the cognitive, social and emotional developmental stage of the child. They should allow the child to feel more comfortable. In addition to some of the suggestions noted in the bill, other helpful accommodations could include frequent rest breaks during the testimony, questions of counsel being asked plainly, simply and quietly and having legal arguments out of the presence of the child. A Judge should be free to consult with child experts with regard to court room procedure.

We would be happy to assist you in refining the language with respect to appropriate accommodation.

Governor's Task Force on Justice for Abused Children
Recommendation Excerpt

The Rules Committee of the Superior Court should establish uniform comprehensive rules governing procedures in cases which involve child victims and/or child witnesses. The specific recommendations of the Task Force include:

The Judicial Department should establish guidelines for guardians ad litem appointed to represent the interests of children. These guidelines should specify their duties and responsibilities. Particularly, Judges should be encouraged to exercise their judicial discretion to accommodate the needs of child victims or witnesses in the courtroom, without impinging on the constitutional rights of the defendant to confront his accuser.

The Task Force recognizes that the child witness deserves special consideration and treatment to ensure accurate testimony and avoid revictimizing the child. The California Child Victim Witness Judicial Advisory Committee recently issued a study on this subject. That group suggested guidelines that could be developed which would allow judges to:

- . facilitate the speedy handling of cases;
- . schedule testimony with sensitivity to the child's daily routine to minimize fatigue and distractibility;
- . give children frequent breaks from testifying;
- . rearrange the courtroom to make it a less intimidating place for children, whenever possible;

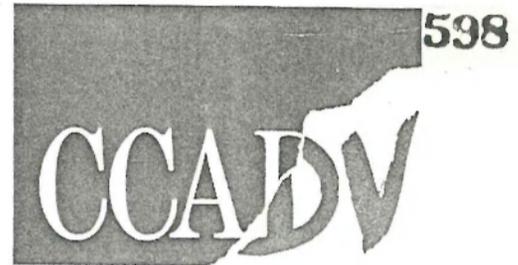
- . require objections to be argued when the child is excused or at the side bar out of the child's earshot;
- . allow support persons of the child's choice to be with the child in court;
- . control the questioning of children by all attorneys to ensure questions are age-appropriate and not threatening; and
- . use child development experts to advise the court on guidelines for courtroom examination of a child. Such experts could assist the court by providing information on the characteristics, capabilities and limitations of children in specific age ranges or with particular developmental or emotional disorders.

CONNECTICUT COMMISSION ON CHILDREN
RB 7200 AAC TESTIMONY OF CHILDREN IN SEXUAL ABUSE
OR CHILD ABUSE CASES

Lastly, we applaud the procedural changes outlined in RB 7200 - An Act Concerning Testimony of Children in Sexual Abuse or Child Abuse Cases. This bill importantly gives the court clear authority to better accommodate the needs of child victim witnesses in the courtroom and does a great deal to minimize re-victimizing the child through the court proceedings. The presence of a support person, the use of anatomically correct dolls, and the requirement of non-intimidating questioning and seating arrangements all contribute to the creation of a child appropriate environment that is more likely to elicit detailed accurate testimony from children. In addition, there are many other procedures that could be used to better accommodate the individual needs of a child. We hope that language could be introduced into the bill that would permit the consideration of such procedures on an individual case basis.

Furthermore, we recognize the importance of the provision of the court to order the defendant excluded from the room or screened from the room or screened from the sight and hearing of the child when the reliability of the child's testimony would be compromised by the presence of the defendant.

In this bill as with the previous bill, we believe that it would be strengthened if the age of the victim was raised to 18. However, we support the bill as is, as an important step forward for children.



TO: Members of the Judiciary Committee
Senator Anthony Avallone
Representative Richard Tulisano

FROM: Anne Menard
Executive Director

DATE: February 27, 1989

RE: Testimony Before Judiciary Committee
February Public Hearing

CONNECTICUT
COALITION
AGAINST
DOMESTIC
VIOLENCE

22 Maple Avenue
Hartford, CT 06114
(203) 524-5890

CCADV urges the Committee's support for the following three bills related to the investigation and prosecution of sexual assault:

1. Committee Bill #5113: AAC Sexual Assault of Children

This bill provides important recognition of the dynamics involved in the sexual assault of children and the reality that perpetrators are often able to accomplish their goal without the use of force. We strongly support passage of Bill #5113 and appreciate the large number of Senate and House co-sponsors.

2. House Bill #7200: AAC Testimony of Children in Sexual Abuse or Children Abuse Cases

Balancing the needs of child victims of physical or sexual abuse with the rights of those accused of committing such crimes to fair trial and fair treatment by the courts is an important challenge. In our view, this bill strikes that balance - it provides courts with the flexibility to provide a more comfortable and safe environment for child witnesses, which is more likely to produce accurate testimony, while at the same time, ensuring that the civil liberties of those accused of committing sex offenses against minor children are protected by a requirement that certain standards be met before the state can exercise such flexibility. CCADV urges your support for Committee Bill #7200.

-over-



Connecticut Sexual
Assault Crisis Services

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CONN SACS
763 Burnside Ave.
East Hartford, CT 06108
(203) 282-9881 Office

Centers:

Bridgeport YWCA-RCS
(203) 334-6154 Office
(203) 333-2233 Hotline

Danbury RCS
(203) 743-9463 Office/Hotline

Hartford YWCA-SACS
(203) 525-1163 Office
(203) 522-6666 Hotline

Meriden YWCA-SACS
(203) 235-9297 Office
(203) 235-4444 Hotline

SACS of Middlesex County
(203) 346-7233 Office/Hotline

Milford RCS
(203) 874-8712 Office
(203) 878-1212 Hotline

New Britain YWCA-RCS
(203) 225-4681 Office
(203) 223-1787 Hotline

New Haven YWCA-RCS
(203) 789-1425 Office
(203) 624-2273 Hotline

Women's Center of
Southeastern CT-RCS
(203) 447-0366 Office
(203) 442-4357 Hotline

Stamford Rape and Sexual
Abuse Crisis Center
(203) 349-9316 Office
(203) 329-2929 Hotline

Susan B. Anthony
Project for Women
(203) 489-3796 Office
(203) 482-7133 Hotline

Waterbury YWCA-SACS
(203) 753-3613 Office/Hotline

Northeastern Conn. SACS
(203) 423-9201, ext. 2577 Office
(203) 423-9201, ext. 2515 Hotline

To: Sen Avallone and Rep. Tulisano and Members of the Judiciary Committee

From: Gail Burns-Smith
Executive Director

RE: CB 7200 "An Act Concerning Testimony of Children In Sexual Abuse
or Child Abuse Cases"

The Connecticut Sexual Assault Crisis Services, Inc. strongly support passage of this bill. We are all too aware of how frightening and intimidating the courtroom may be for children. We applaud efforts to minimize the potential trauma to child witnesses that may make their testimony unreliable. Although we do not support the standard that has been outlined by the courts, we know that this must currently be utilized until it can be overturned. Until such time, we support a safe environment that will allow the courts to get to the truth AND make the proceedings as least traumatic as possible for the children involved.

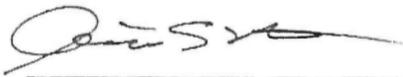
DATE: February 24, 1989
TO: Senator Avallone, Representative Tulisano and Members of the
Judiciary Committee
SUBJECT: Bill # 7200 Concerning Testimony of Child Sexual Assault Victims

My name is Iliia Castro and I am Director, Sexual Assault Crisis Services of the Hartford Region YWCA. As one of thirteen SACS organizations in Connecticut, I am here today to state our support for the passage of Bill # 7200 for the following reasons:

1. The change to accept video taped testimony and/or allowing the screening of the victim from the defendant would enable the victims to give important testimony and avoid a potentially threatening situation for them.
2. The change in the swearing in uses language that is much more understandable to the child providing testimony.
3. The procedures that are proposed for witnesses 12 years of age or under provides a safe and productive environment for the witnesses to provide accurate, useful testimony with a minimum of impact to them.

We appreciate your consideration and hope for your support.

Respectfully submitted,



Iliia Castro
Director, SACS

My name is Norma Schatz. I am here in response to the request of Senator Spellman to members of the Governor's Task Force on Justice for Abused Children. While making clear that I am not speaking for the Task Force - but for myself as an individual and long-time volunteer child advocate - I would like to comment on two bills before you today.

The purpose of H.B. 5113 Concerning Sexual Assault of Children is important and commendable. As stated in the report of the Task Force: "...Children can be compelled to participate in sexual activities through a variety of psychological and emotional ploys..." Force, in fact, is rarely used when children know the abuser - which is true in the vast majority of these situations. I would, however, respectfully question drawing the line arbitrarily in relation to children only up to 10 years of age. Age 14 is often used to define the 'mature minor'; this is the age used in a similar Rhode Island statute. Massachusetts uses age 16 in this connection. At a minimum, Connecticut should apply this protection to children 12 or under. I urge your support of HB 5113, but with an upward revision of the age in line 23.

In the report which I understand the Governor will receive today, a number of recommendations are made to minimize trauma to the child victim in court, without impinging on the constitutional rights of the defendant. H.B. 7200 Concerning the Testimony of Children... makes a start in this direction and should be supported.

I hope that all members of this committee will give their careful consideration to the Report of the Task Force and will help implement those recommendations which require statutory changes. Children who are harmed physically or sexually must not be further harmed by the system which purports to protect them and to seek justice for them.