

Legislative History for Connecticut Act

HB 6437 P.A. 340 1993

Sen: 4584-4589 (6)
House: 4966, 6581, 10447-10574,
13158-13161 (134)

Judiciary 2734-2736, 2743-2748,
2825-2826, 2828, 2930-2947,
2949-2962 (44)

TOTAL 184

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

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CONNECTICUT
GEN. ASSEMBLY
SENATE

PROCEEDINGS
1993

VOL. 36
PART 13
4482-4828

MONDAY
June 7, 1993

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item to the House?

SENATOR HARP:

I so move, Madam President.

THE CHAIR: ~~you very much~~

Thank you very much. Is there any objection to the immediate transmittal of Senate Calendar 626 to the House? Is there any objection? Hearing none, so ordered.

THE CLERK:

Calendar Page 14, Calendar No. 637, File No. 1027, Substitute for House Bill 6437, AN ACT CONCERNING SEXUAL ASSAULT. (As amended by House Amendment Schedules "A" and "B").

Favorable Report of the Committee on Government Administration and Elections.

The Clerk is in possession of one amendment.

THE CHAIR:

Thank you very much. The Chair would recognize Senator Jepsen.

SENATOR JEPSEN:

Thank you, Madam President. I move acceptance of the Joint Committee's Favorable Report and adoption of the bill in concurrence with the House.

THE CLERK:

LC09320, which will be designated Senate Amendment

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Schedule "A". It's offered by Senator Jepsen of the
27th District.

THE CHAIR:

Thank you very much. Senator Jepsen.

SENATOR JEPSEN:

Thank you, Madam President. This amendment cleans
up what we had intended originally in the language
which to ensure when intercourse occurs between two
individuals, two minors who are less than two years
apart in age, that the matter would be handled by the
DCYS' -- the name of the agency, Family and Child
Services.

THE CHAIR:

Thank you very much. Would anybody else wish to
remark on LCO No. 9320? Are there any further remarks?
If not, then please let me know your mind. All those
in favor of LCO No. 9320, designated by the Clerk as
Senate Amendment "A", please signify by saying aye.

SENATORS:

Aye.

THE CHAIR:

Opposed.

The ayes have it.

The amendment is adopted.

Mr. Clerk, do you have any further --?

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THE CLERK:

No further amendments.

THE CHAIR:

Senator Jepsen, you now have before you Senate Calendar 637, as amended by House Amendments "A" and "B" and Senate "A".

SENATOR JEPSEN:

Thank you, Madam President. This is a comprehensive bill that updates our sexual assault statutes. It's long overdue. It represents the very hard work of a good commission and a number of different committees. It does a number of things, among them, the subject of the amendment, which we just adopted being one. Second, for those who commit sexual assault on those under the age of 11, it requires counseling in addition to the criminal charges. It requires further that -- and this I think goes a long ways to dealing with the sexual predator issue which has become somewhat in vogue.

It extends -- a long extended probation of up to 35 years for those who commit sexual assault to basically children. This will allow an opportunity to review those who are found to be a problem in that respect. It increases penalties for sexual assault in general. It creates a new category of sexual assault between

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those in a position of trust, such as psychotherapists and their patients and a number of other minor things that have to do with statistical reporting of sexual assault as it exists in our state. I urge your support.

THE CHAIR:

Thank you very much, Senator Jepsen. Would anybody else wish to remark on Senate Calendar No. 637? Yes, Senator Aniskovich.

SENATOR ANISKOVICH:

Thank you, Madam President. Madam President, just a question, through you, to the proponent of the bill.

THE CHAIR:

Yes, sir.

SENATOR ANISKOVICH:

Would the Senator -- it has been represented to me, this is just for the purposes of clarity and for the benefit of other members, it's been represented to me that this bill in effect decriminalizes what is now statutory rape so long as both parties are under the age of 16 or whatever it is that the statutory rape age is under current law. Is that a correct assessment of this bill?

SENATOR JEPSEN:

That's pretty close to it with an additional

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restriction that the two individuals involved be within two years of one another in age. For example, if you have someone who is just short of 18 having sex with someone who is 13 and a month, that would continue to be a crime.

SENATOR ANISKOVICH:

That's all, Madam President. Thank you very much.

THE CHAIR:

Thank you very much. Would anybody else wish to remark? Are there any further remarks? If not, Senator Jepsen, would you like to move to place this item on the Consent Calendar?

SENATOR JEPSEN:

I believe this has to go back to the House, so I would ask for a roll call vote.

THE CHAIR:

Thank you very much. Anybody else wish to remark on Senate Calendar 637? That's right, excuse me, I forgot. Mr. Clerk, would you please make the necessary announcement for a roll call vote.

THE CLERK:

An immediate roll call has been ordered in the Senate. Will all Senators please return to the Chamber. An immediate roll call has been ordered in the Senate. Will all Senators please return to the

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Chamber.

THE CHAIR:

Thank you very much, Mr. Clerk. The issue before the Chamber is Senate Calendar 637, House Bill 6437, as amended by LCO No. 9320. The machine is on. You may record your vote.

Senator Crisco. Thank you. Have all Senators voted and are your votes properly recorded? Have all Senators voted and are your votes properly recorded? The machine is closed.

The result of the vote:

33 Aye

2 Nay

1 Absent

The bill passes.

Do you want to move to have this immediately transmitted to the House.

SENATOR JEPSEN:

I would so move. Thank you very much.

THE CHAIR:

Is there any objection to Senator Jepsen's motion for the immediate transmittal of this item to the House. Any objection? Hearing none, so ordered.

THE CLERK:

Calendar Page 18, Calendar No. 413, File No. 722,

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4778-5152

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House of Representatives

Thursday, May 13, 1993

SPEAKER RITTER:

Representative Luby.

REP. LUBY: (82nd)

I move that that matter be referred to the
Committee on Planning and Development.

SPEAKER RITTER:

Without objection, so ordered.

CLERK:

Calendar 547, Substitute for House Bill 6437, AN
ACT CONCERNING SEXUAL ASSAULT. Favorable Report of the
Committee on Judiciary.

SPEAKER RITTER:

Representative Luby.

REP. LUBY: (82nd)

I move that that matter be referred to the
Committee on Public Health.

SPEAKER RITTER:

Without objection, so ordered.

CLERK:

Calendar 549, Substitute for House Bill 5176, AN
ACT CONCERNING AUTOMOBILE INSURANCE REFORM. Favorable
Report of the Committee on Judiciary.

SPEAKER RITTER:

Representative Luby.

REP. LUBY: (82nd)

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6521-6922

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House of Representatives

Friday, May 21, 1993

REP. DILLON: (92nd)

Refer to the Human Services Committee.

DEPUTY SPEAKER COLEMAN:

Motion is to refer to the Committee on Human Services. Is there objection? Seeing none, so ordered.

CLERK:

On Page 40, Calendar 547, Substitute for House Bill 6437, AN ACT CONCERNING SEXUAL ASSAULT. Favorable Report of the Committee on Public Health.

DEPUTY SPEAKER COLEMAN:

Representative Dillon.

REP. DILLON: (92nd)

Refer to the Committee on Government Administration and Elections.

DEPUTY SPEAKER COLEMAN:

Motion is to refer this item to the Committee on Government Administration and Elections. Is there objection? Seeing none, so ordered.

CLERK:

On Page 40, Calendar 550, Substitute for House Joint Resolution 12, RESOLUTION CONCERNING THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD. Favorable Report of the Committee on Government Administration and Elections.

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10,244-10,605

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House of Representatives

Thursday, June 3, 1993

THE CLERK:

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

DEPUTY SPEAKER PUDLIN:

The machine will be locked. Clerk will take the tally. Representative Luby.

REP. LUBY: (82nd)

Mr. Speaker, in the affirmative, please.

DEPUTY SPEAKER PUDLIN:

Representative Luby in the affirmative.

The Clerk will take the tally. Will the Clerk please announce that tally?

THE CLERK:

House Bill 6842, as amended by House A" and "C"

| | |
|---------------------|-----|
| Total number Voting | 142 |
|---------------------|-----|

| | |
|-----------------------|----|
| Necessary for Passage | 72 |
|-----------------------|----|

| | |
|------------------|-----|
| Those voting Yea | 125 |
|------------------|-----|

| | |
|------------------|----|
| Those voting Nay | 17 |
|------------------|----|

| | |
|-----------------------------|---|
| Those absent and not Voting | 9 |
|-----------------------------|---|

DEPUTY SPEAKER PUDLIN:

The bill, as amended passes.

THE CLERK:

Please turn to page 29. Calendar 547. Substitute for House Bill 6437, AN ACT CONCERNING SEXUAL ASSAULT.

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Favorable report of the Committee of Governmental Administration and Elections.

DEPUTY SPEAKER LYONS:

Representative Tulisano.

REP. TULISANO: (29th)

Madam Speaker, I move for acceptance of the Joint Committee's favorable report and passage of the bill.

DEPUTY SPEAKER LYONS:

The question before the Chamber is on acceptance and passage. Will you remark?

REP. TULISANO: (29th)

Yes, Madam Speaker. The bill before us makes a number of changes to our sexual assault statutes.

It specifically includes in it, special language dealing with psychotherapists and psychologists, etc. and including them in a higher degree of penalty for being sexually involved with affectively, patients of theirs.

The reason for that is, of course, that they are in a power situation with their patients much as you might think of as teacher with a child or somebody involved with a mentally retarded person and as they are very vulnerable and therefore, that is a prohibited act.

It also makes some changes to the sentencing law which allows probation to be up to twenty years for

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people who are convicted of sexual assault.

Madam Speaker, the Clerk has amendment LCO7198.

DEPUTY SPEAKER LYONS:

The Clerk has in his possession LCO7198. Would the Clerk please call the the Representative has asked leave to summarize?

REP. TULISANO: (29th)

Thank you, Madam Speaker.

THE CLERK:

LCO7198, designated House "A" offered by
Representative Tulisano, et al.

DEPUTY SPEAKER LYONS:

Representative Tulisano.

REP. TULISANO: (29th)

Madam Speaker, the amendment includes in it a number of ideas from various legislators. One, it clarifies in one section of the bill, who are people who can and are required to report abuse as well as the belief of sexual assault to expand to a number of people and it makes it even in both sections of the statute, including school principals, guidance counsellors, certified marital therapists, etc. and of course, includes in the file copy, people who are involved in sexual assault crisis counselors and battered women counselors.

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It also modifies the language of the strictness of our law when the sexual activity is between people within two years age of each other and it also changes the file copy from a twenty year possible probation up to thirty-five year probation period.

I move for its adoption.

DEPUTY SPEAKER LYONS:

The question before the chamber is on adoption.

Will you remark?

REP. TULISANO: (29th)

I think that is what's in there, Madam Speaker.

DEPUTY SPEAKER LYONS:

Well done, Representative Tulisano. Will you remark further on the amendment that is before us? Will you remark? If not, let me try...Representative Winkler.

REP. WINKLER: (41st)

Yes. Thank you, Madam Speaker. I rise in support of the amendment and through you, Madam Speaker, I have one question for Representative Tulisano.

DEPUTY SPEAKER LYONS:

Please frame your question, Madam.

REP. WINKLER: (41st)

Yes. Representative Tulisano, in section 15 dealing with the psychological counselling, for

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legislative intent, does that require all individuals that are convicted of the violations to receive psychological counseling?

REP. TULISANO: (29th)

Through you, Madam Speaker. That is correct and generally speaking, that will be specialized counseling for sexual therapy. Although, there may be some individuals who are just bad people and other kinds of counselling will be necessary, but it will be for all people who are convicted of these crimes when the victim is under ten years of age.

DEPUTY SPEAKER LYONS:

Representative Winkler.

REP. WINKLER: (41st)

Yes, thank you, Madam Speaker. My compliments to Representative Tulisano for a job well done on this particular piece of legislation. It is much needed and I urge the Chamber's adoption. Thank you.

DEPUTY SPEAKER LYONS:

Thank you, Madam. Representative Cutler.

REP. CUTLER: (51st)

Thank you, Madam Speaker. A question through you to the proponent of the amendment.

DEPUTY SPEAKER LYONS:

Please frame your question.

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REP. CUTLER: (51st)

Representative Tulisano, through you, Madam Speaker, the only conduct or action, I should say, in this amendment described is the act of intercourse. My question to you is, does that include every kind of assault or action taken by the perpetrator such as fondling and so on and so forth because I think that is a very important part of an amendment like this?

DEPUTY SPEAKER LYONS:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Madam Speaker. Well it goes to fourth degree sexual assault. If in fact we are talking about the piece that Representative Winkler was just talking about, the mandatory counselling piece?

REP. CUTLER: (51st)

Madam Speaker, no Sir.

DEPUTY SPEAKER LYONS:

Representative Cutler, perhaps you could just clarify the question.

REP. CUTLER: (51st)

Okay. In section 14, part A, subsection 1 and 2, it talks about engages in sexual intercourse. My question, through you, Madam Speaker is does that include all kinds of sexual assault or just the act of

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intercourse?

DEPUTY SPEAKER LYONS:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Madam Speaker. This deals with sexual assault in the first degree which is not include fondling or touching.

DEPUTY SPEAKER LYONS:

Representative Cutler.

REP. CUTLER: (51st)

Thank you, Madam Speaker. I would just like to say that this is an excellent amendment. I just wish it went further because sexual assault is much more than the act of intercourse. It involves many other actions taken by a perpetrator against the youngster or anyone and I just wished we went a little bit further with this, but this is great.

Thank you, Madam Speaker.

DEPUTY SPEAKER LYONS:

Thank you for your comments. Will your remark further on the amendment that is before us?

Representative Nystrom.

REP. NYSTROM: (46th)

Thank you, Madam Speaker. A question to Representative Tulisano, through you.

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DEPUTY SPEAKER LYONS:

Please frame your question, Sir.

REP. NYSTROM: (46th)

Thank you, Madam Speaker. Representative Tulisano, section 15 with the imposition of psychological counseling, is there any intended purpose of this counseling other than to have the individual become well? Could this counseling be used in the future for someone convicted following the adoption of this as a State law and not someone who is already incarcerated? Could it be used to require continued treatment following someone placed on probation as long as they are still in the custody of the Department of Corrections?

DEPUTY SPEAKER LYONS:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Madam Speaker. I suspect it means that if under the other provisions of the bill, someone is going to get fifteen years additional probation, and through this psychological counseling and psychology, they were reported to the probation officer that they needed additional treatment, yeah, I think that is exactly one of the reasons why we have the extended probation period so that additional items of control

could be put on the person for that long of a period of time.

Example, if after you are convicted and you spend some time in jail, say you get a twenty year period of time, normally a sentence would include to continue to engage in treatment during the probation or checking out with as much as the probation department as necessary and they make that information, probably sign a release form, get it and then make some decisions based on that. Yes, Madam Speaker, through you.

DEPUTY SPEAKER LYONS:

Representative Nystrom.

REP. NYSTROM: (46th)

Thank you, Madam Speaker. I think that is a very good thing about this amendment. Thank you.

DEPUTY SPEAKER LYONS:

Thank you, Sir. Will you remark further on the amendment that is before us? Will you remark? If not, let me try your minds. All those in favor, please signify by saying Aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER LYONS:

Those opposed, nay.

The ayes have it. The amendment is adopted and

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ruled technical.

Will you remark further on the bill, as amended?

Representative Tulisano.

REP. TULISANO: (29th)

Madam Speaker, as I indicated, this bill does go into some new areas that we have never done before. Currently, there is a limitation on the amount of probation that we have allowed the State to impose. This is a much longer period now with the amendment.

Thirty five years, let's allow for those cases as an example where deprava has been ordered, you have a longer period of monitoring period, you have as Representative Nystrom indicated, additional psychological checking on people under that probation, so it allows a judge much more lead way in controlling and the State much more lead way in controlling.

It does include, as I indicated, a greater number of people in a higher crime, when they fit into these categories, who take advantage of others who may be convicted of a sexual assault. It also makes some technical changes in the law dealing with how you take rape evidence and who has to do what, the protocol developed.

I think I have covered most. I move its passage and adoption.

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DEPUTY SPEAKER LYONS:

Thank you, Sir. Will you remark further on the bill, as amended? Will you remark further on the bill as amended?

Representative Jones.

REP. JONES: (141st)

Thank you, Madam Speaker. The Clerk has an amendment, LCO9014. May I ask that it be called and that I be given permission to summarize?

DEPUTY SPEAKER LYONS:

The Clerk has in his possession LCO9014 which will be designated House "B". Would the Clerk please call and the Representative has asked leave to summarize.

THE CLERK:

LCO9014, designated House "B" offered by Representative Jones.

DEPUTY SPEAKER LYONS:

Representative Jones, please proceed, Sir.

DEPUTY SPEAKER LYONS:

Thank you, Madam Speaker. Within the context of a number of items in this particular file, we deal with one class of sexual activity which is removed from the statutory rape sanctions in our current statutes and that is where children between the ages of 13 and 18 engage in sexual intercourse and they are within two

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years of each other in age. There is no longer considered to be any infraction of Connecticut statutes.

This was troubling to me because, as a State, we are spending millions of dollars on sex education in schools, on teen pregnancy prevention programs and on various other programs to reduce and eliminate or try to reduce the amount of sexual activity of our young people.

And so, it seemed to me, that it was not good public policy to amend our statutes to remove from any concern or sanctions, sexual activities among children between thirteen and eighteen years of age who happen to be within two years of each other in age.

The purpose of this amendment, therefore, is to provide that rather go a criminal route through the courts, that such circumstances could be treated through Youth Service Bureaus by identifying youngsters in this situation by identifying their families as families with service needs. And in that category of classification, the youngsters could be referred to a youth service bureau for sanctions such as community service, referral to a teen pregnancy prevention program or support services in a community hospital.

And I believe that this would preserve in our

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statutes, at least public policy understanding that we do not sanction our teenagers engaging in sexual activity in this State and I move adoption of the amendment, Madam Speaker.

DEPUTY SPEAKER LYONS:

The question before the chamber is on adoption. Will you remark on the amendment before us?

Representative Tulisano.

REP. TULISANO: (29th)

Madam Speaker, just a question, at this point.

DEPUTY SPEAKER LYONS:

Please frame your question.

REP. TULISANO: (29th)

I am reading some language, through you, Madam Speaker, on lines 48 through 52 and just to clarify, this does not try to modify the removing of it from the statutory rape provision. Is that correct, through you, Madam Speaker?

DEPUTY SPEAKER LYONS:

Representative Jones.

REP. JONES: (141st)

I am sorry. I didn't hear the question. Could it be repeated?

DEPUTY SPEAKER LYONS:

Representative Tulisano, if you could repeat the

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question.

REP. TULISANO: (29th)

I just want to make sure those lines of 47 through 48 are not attempting to modify the amendment that was recently passed. I don't think it does that. I want to clarify that.

DEPUTY SPEAKER LYONS:

Representative Jones, you have the floor.

REP. JONES: (141st)

No, the answer to that is no.

DEPUTY SPEAKER LYONS:

Representative Tulisano.

REP. TULISANO: (29th)

Madam Speaker, during Mr. Jones, Representative Jones bringing the matter out, it was seemed to be indicated and just for clarification purposes, this bill somehow took sexual activity between thirteen and eighteen year olders out of our criminal statutes. For clarification purposes, it took out and if anybody misunderstood that, that in fact, it is out of the statutory rape issue. So consensual relations would not be criminal, but of course, activity between those ages which are non-consensual will continue to be crimes that they already are. Just for clarification. Thank you, Madam Speaker.

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REP. JONES: (141st)

Thank you, Madam Speaker.

DEPUTY SPEAKER LYONS:

Thank you, Sir.

Representative Jones.

I don't believe that was a question, but do you wish to rise to speak on the amendment?

REP. JONES: (141st)

No. I think I have covered the amendment adequately in my objectives in offering it.

DEPUTY SPEAKER LYONS:

Thank you, Sir.

Was that a question to Representative Jones or you haven't really left the floor?

REP. TULISANO: (29th)

I had made the statement and I that was where I ended. There were no more questions.

DEPUTY SPEAKER LYONS:

Thank you, Sir.

Will you remark further on the amendment?

Representative Gyle.

REP. GYLE: (108th)

Madam Speaker, I would just like to say that this amendment is very germane in the fact that we have so much teen pregnancy at this point in time, that I find

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it a little surprising that people would question why we don't want to do something. This may not be the right thing to do, but it is something. And very honestly, the teen pregnancy rate in this State is higher than another New England State and if these kids want to fool around and of course, we can say that is their business, but their business becomes our business when they have babies. And I can understand why Representative Jones is presenting this amendment, because quite frankly, if they go down to a ward in a hospital, see those little babies, they may realize that the cost of having unprotected, sexual relationship can be very high indeed and the price not only they have to pay, but society may have to pay as well.

DEPUTY SPEAKER LYONS:

Thank you, Madam. Will you remark further on the amendment that is before us? Will you remark?

Representative Tulisano.

REP. TULISANO: (29th)

Madam Speaker, frankly I am unclear whether the amendment will do or is written as well as people think it does in terms of not what it is intended. I am prepared to support the amendment. I hope it helps young people who are in need of family services, get

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they help they need.

DEPUTY SPEAKER LYONS:

Will you remark further? Representative Diamantis.

REP. DIAMANTIS: (79th)

Thank you, Madam Speaker. I also rise in support of the amendment. It would seem, under the circumstances, dealing with family with services needs petition also known as FSN petitions, certainly counseling is an important factor in allowing those children to have an avenue to be counselled under that type of situation and somewhat seemingly, if I am correct in saying, is taking outside the criminal aspect in this type of situation and brings it under neglect possibly petition which does not necessarily mean that a child has committed a crime, but is merely a child who has found itself in a reactionary position as a result of what family circumstances may be.

Am I correct in assuming that, if I may, through the Chair, to Representative Jones?

DEPUTY SPEAKER LYONS:

Representative Jones.

REP. JONES: (141st)

Yes, I think you expressed exactly what the intent is. There is deep concern among many people about establishing a criminal record and we are trying to

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avoid that. But once again, we need to make a public statement that this General Assembly does not support early teenage sexual activity.

DEPUTY SPEAKER LYONS:

Representative diamantis.

REP. DIAMANTIS: (79TH)

Through you, thank you. Through you, one thing I would bring forth as well, is there is finally, with new literature coming out in dealing with this type of activity, that is not necessarily the intent of a child to engage in sexual activity. And the new term seems to be "sexually reactive" and a child becomes sexually reactive based on the circumstances that are within the child's home and therefore, the intent to commit a crime is separate and distinct from a child becoming reactionary to a home or to possibly even external environments.

So, I wholeheartedly support the amendment.

DEPUTY SPEAKER LYONS:

Thank you, Sir.

Representative Kirkley-Bey.

REP. KIRKLEY-BEY: (5th)

Yes, Madam Speaker. Through you to Representative Jones.

DEPUTY SPEAKER LYONS:

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Please frame your question.

REP. KIRKLEY-BEY: (5th)

If a child, according to lines 47 through 52, engages in sexual relations and is considered neglected, what does that mean with regard to the parents?

DEPUTY SPEAKER LYONS:

Representative Jones.

REP. JONES: (141st)

I believe they could come under consultation with the youth service bureau and be treated as a family in need, but I have no specific answers as to what might occur.

DEPUTY SPEAKER LYONS:

Representative Kirkley-Bey.

REP. KIRKLEY-BEY: (5th)

Then, through you, Madam Chair, there is no type of criminal felony or taking away of the child to that parent if this should occur?

DEPUTY SPEAKER LYONS:

Representative Jones.

REP. JONES: (141st)

That is correct.

REP. KIRKLEY-BEY: (5th)

Thank you, Madam Chair.

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DEPUTY SPEAKER LYONS: ~~Very brief~~

Thank you, Madam.

Will you remark further on the amendment that is before us? Will you remark? If not, let me try your minds. All those in favor, please signify by saying Aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER LYONS:

Those opposed, Nay.

The ayes have it. The amendment is adopted and ruled technical.

Will you remark further on the bill, as amended? Representative Mikutel.

REP. MIKUTEL: (45th)

Yes, Madam Speaker. The Clerk has LCO8403. I ask that he call the amendment and I be allowed to summarize.

DEPUTY SPEAKER LYONS:

The Clerk has in his possession, LCO8403, which will be designated House "C". Would the Clerk please call and the Representative has asked leave to summarize.

THE CLERK:

LCO8403, House Amendment Schedule, designated "C",

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offered by Representative Mikutel, et al.

DEPUTY SPEAKER LYONS:

Representative Mikutel.

REP. MIKUTEL: (45th)

Yes, Madam Speaker. What this amendment does is it allows for the civil commitment of a known dangerous sex offender, upon the completion of his prison sentence, until such time as he is deemed safe to return to society. Specifically, so many days before the offender is released from prison, the State would review the case history of this offender. If the State believes that this person was a sexual predator, i.e. suffered from a mental abnormality of personality disorder which predisposes this person to commit acts of sexual aggression, if released into community, then the State would petition the Court and if the Court deemed there was probable cause that this person, this offender, was a sexual predator, then there would be a hearing.

And at this hearing, the State would have an opportunity to prove that this person is a sexual predator and should not be released back into the community. The State would have to prove its case in this hearing beyond a reasonable doubt. If the State cannot prove its case without a reasonable doubt, the

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offender would be released, upon the completion of his sentence. If, however, the State proved its case, the offender would be committed to the Department of Corrections for care, custody and treatment until such time as he or she was not longer considered a threat to society.

I move its adoption, Madam Speaker.

DEPUTY SPEAKER LYONS:

The question before the Chamber is on adoption.
Will you remark?

Representative Mikutel.

REP. MIKUTEL: (45th)

Yes, Madam Speaker. The issue that I am bringing before the General Assembly today is a very important issue.

It is an equally important as child abuse was twenty years ago. Now twenty years ago, society did not recognize the importance of child abuse. The medical community did not report, doctors did not report child abuse. Teachers did not report child abuse. And many children suffered and some died because of that.

Today, we have effective laws on the books to protect children from child abuse. But today, we have an equally important social problem. The problem of sexual predators.

And we need laws, today to protect our children against these people just like we needed child abuse laws to protect children against child abuse in the past.

I think for people who don't understand the problem, I will give some examples that will better illustrate what it is.

In the State of Washington, in 1988, Earl Schriener was in prison. He had a history of violent sexual offenses against children. A twenty year history. In and out of prison for violent sexual assault over twenty years. Schriener was about to be released. It was known in the prison community that when it got released he was going to continue to prey upon children. He told his inmates that. He told prison officials that.

But upon the release, when his date of release came, they let him go. In two months, Earl Schriener abducted and raped and sexually mutilated an eight year old boy. Now, naturally, people were outraged. Why did this happen? How could this happen? It happened because the law allowed it to happen. The criminal justice system failed that young boy.

There are certain people who should not be released back into the community. Sexual predators are

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such people. Until such time that they have been treated respond to treatment.

Another case. Wesley Dodd. A serial child killer. In the State of Washington. Raped and mutilated three boys. Again, Wesley Dodd, had a history of violent, sexual assault. In and out of prisons. He received probation numerous times instead of prison sentences and when he got prison sentences, it was plea bargained down to a lesser charge so he was in and out of the system.

Wesley Dodd learned to disrespect the criminal justice system because he found he could do what he wanted to do and no one was going to stop him.

It is unfortunate that those three boys had to pay with their lives. Because they did not have, in their state, an effective law that would prevent these people from coming back out into society.

Wesley Dodd said before he was hung, he said, "if you release me, I will kill and rape again and I will enjoy every minute of it". That is a mind of a sexual predator.

They have no mercy on their victims. I would bring the case closer to home. Michael Ross, Connecticut's own sexual predator and serial killer. Michael Ross killed at least six young girls in Eastern Connecticut.

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Among those six, were two young girls that lived in my neighborhood. They walked the streets where I live. I saw them walk by my home on numerous occasions. Young girls. One day, they were abducted by Michael Ross, driven into the woods, and raped, tortured and murdered. In Michael Ross' diary, sexual predators keep diaries because they like to relive their experiences. Those girls pleaded for their lives, to no avail. Michael Ross still killed them, after he raped them. Again, sexual predators do not have mercy on their victims.

My amendment is based upon the Washington State Law on sexual predators. It has been in existence for three years. It works. I want to repeat that. It works. And where we have a piece of legislation that works to control violent crime, I think we ought to pay serious attention to it.

It works in the State of Washington and it has helped to control the sexual violence in that state. I want to bring that law to the State of Connecticut. Connecticut deserves a sexual predator law.

Sexual predators are not your every day sex offender. They are the hard core, chronic sex offenders, the ones who respond least to treatment. You know it's unfortunate that today we have to say,

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ask the question as to who will save the children. In the almost the 21st century, we have to still ask the question. Well, let me tell you, I have talked the talk, and I have walked the walk on this bill. I know who will save the children, and I know who won't save the children.

I know it will not be the police. The police are hamstrung by an inadequate criminal justice system that lets these people in and out of the criminal justice system only to prey upon young children and women who are the typical victims. I have here before me a letter which I briefly will show you from the Connecticut Police Chiefs Association. They wrote in support of my bill, and they endorse it. Again, who will save the children? It won't be the prosecutors. Because they too suffer from inadequate criminal justice system that allows these people to return out into society.

I'd like to bring to your attention, I have a letter here from the Chief State's Attorneys Office supporting my amendment. It's a good bill. Parents cannot protect their children from sexual predators. Parents cannot be everywhere. When their child wants to walk down to their friend's house, or go play in the playground, the parents cannot always be there, and

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sexual predators like to visit playgrounds and school grounds because that's where they find their victims.

They stalk them, and when the real bottom line is, who can save the children and it is us here in this Chamber. It is we who hold the power and bear the responsibility for passing laws that protect children and women and innocent people from violent criminals. We hold that power and responsibility, and I ask that we do not shrink from it here today.

Now, I have heard all the arguments from the opposite side. They say that this amendment "might be unconstitutional". Let me tell you this law exists in the State of Washington for three years, and it has survived all the court challenges, and it works. It is being challenged by the American Civil Liberties Union. Some say well wait until the court challenges take its place and then we can look to see if we'll do it in Connecticut.

We cannot wait five years for this to work its way through the court. The children and women are at risk today, and we need to do something today. We need to do something to stop the violence today, and not cop out with a typical argument that this might be unconstitutional. The opposition says that this denies

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due process. Well this amendment is carefully crafted. I want you to know that the law in Washington took over a year in the making. They studied it with their best legal minds. The whole criminal justice system. They came up with this legislation. This is not a knee jerk reaction to some violent crime.

It's a very well thought out piece of legislation. It protects due process rights of these criminals. They have a right to an attorney. They have a right to be evaluated by a psychiatrist of their choice. The state has to prove beyond a reasonable doubt that they are sexual predator. The burden of proof is on the state, and if they are determined to be sexual predators, they will have treatment for their problem.

I do not consider that a violation of their due process rights. I think they got a better deal than their victims. They got a damn better deal than their victims. Now I know that this may sound controversial to some, but all important changes in history have been marked by controversy, and when there's controversy, there's also great opportunity to improve things, and I submit to you that today is one of those opportunities, and I ask you to embrace controversy here because it will improve the condition of children and women in our state.

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Don't cop out. Do the right thing. Support this amendment. Thank you, Madam Speaker.

DEPUTY SPEAKER LYONS:

Thank you, sir. Will you remark on the amendment?
Representative Tulisano.

REP. TULISANO: (29th)

Madam Speaker, I rise to oppose the amendment. I think there's no question that as an individual I'm a firm believer in due process and what I believe to be constitutional and appropriate. From time to time folks on this Floor disagree and that's why we have this elective body. We each have that obligation to make those individual determinations, but I certainly don't think we ought to be vilified for the fact that we certainly have these beliefs and enact them.

I think the constitution is a very important thing, and that was one of our highest duties, to interpret that ourselves and implement the law as we see it fits our understanding of constitutional rights and obligations and duties, and I think we have an obligation, in fact, if we believe in our hearts that it is unconstitutional not to enact it, and possibly impose upon individuals a bad law which ultimately would not survive the test.

Before I get into anything further, Madam Speaker,

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I'd like to ask a question of the proponent of the amendment.

DEPUTY SPEAKER LYONS:

Please frame your question, sir.

REP. TULISANO: (29th)

Representative Mikutel, is there a fiscal note on this amendment?

REP. MIKUTEL: (45th)

Yes, there is.

REP. TULISANO: (29th)

Could you tell what it is?

REP. MIKUTEL: (45th)

Yes.

DEPUTY SPEAKER LYONS:

Please direct your questions through the Chair.

REP. MIKUTEL: (45th)

Through you, Madam Speaker, based upon the fiscal note, they said that it could represent a potential significant cost to the Department of Correction. Seeing that we do not know how many sexual predators would be confined, they could not give a specific dollar amount. They did base their estimate on what was happening in the State of Washington. It would, my best estimation in all honesty is that this legislation if passed, would result in a cost of about a little

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over a million dollars to the state.

DEPUTY SPEAKER LYONS:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Madam Speaker, isn't it true that the cost, through you, Madam Speaker, to Washington is almost \$4 million?

REP. MIKUTEL: (45th)

That's for a biennial budget.

REP. TULISANO: (29th)

Through you, Madam Speaker, then it's, I understand, can you tell us what the predominant costs are for implementing this in Washington?

REP. MIKUTEL: (45th)

Yes, through you, Madam Speaker, yes, I can, Representative Tulisano. Of that biennial budget, 3.3 million was for evaluation, treatment, custody and security and 1.4 million was for costs for civil commitment trials. That is in the State of Washington.

DEPUTY SPEAKER LYONS:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Madam Speaker, do we know how many individuals who are brought in for civil trials in

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Washington state? Through you, Madam Speaker, can you

REP. MIKUTEL: (45th) I would like to ask you a question.

Through you, Madam Speaker, nineteen petitions have been filed by the state since the enactment of this legislation.

REP. TULISANO: (29th)

And through you, Madam Speaker, do you know how many people were kept under the law?

DEPUTY SPEAKER LYONS:

Representative Mikutel.

REP. MIKUTEL: (45th)

Would you repeat the question?

REP. TULISANO: (29th)

Through you, Madam Speaker, do we know how many people after 19 petitions were filed, since the enactment of the legislation, you have the cost of a million dollars. How many people were actually found to be civilly committed?

REP. MIKUTEL: (45th)

Through you, Madam Speaker, 10 people were committed.

DEPUTY SPEAKER LYONS:

Representative Tulisano.

REP. TULISANO: (29th)

Thank you, Madam Speaker. Through you, Madam

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Speaker, do you, through you, Madam Speaker, can the proponent of indicate the standard which will be used in determining whether or not one is a sexually violent predator?

REP. MIKUTEL: (45th)

Well, that would be.

DEPUTY SPEAKER LYONS:

Through the Chair, please.

REP. MIKUTEL: (45th)

Through you, Madam Speaker, that would be determined through the process, the hearing process.

DEPUTY SPEAKER LYONS:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Madam Speaker, is there a scientific definition so one may make a legal determination of what a sexual violent predator is, through you, Madam Speaker?

DEPUTY SPEAKER LYONS:

Representative Mikutel.

REP. MIKUTEL: (45th)

Through you, Madam Speaker, we have defined sexual violent predator in the amendment, line 29.

REP. TULISANO: (29th)

Through you, Madam Speaker, reading line 29, who

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has been convicted of a crime and who suffers from a mental abnormality or personal personality disorder? Through you, Madam Speaker, is that where?

REP. MIKUTEL: (45th)

Through you, Madam Speaker, that's the definition.

REP. TULISANO: (29th)

Through you, Madam Speaker, is that rooted in any scientific evidence or normal term of psychology?

REP. MIKUTEL: (45th)

Through you, Madam Speaker, the terms mental abnormality or personality disorder are mental illness terms that are recognized in the diagnostic and statistical manual of mental disorders of the American Psychiatric Association. We are not doing anything that is not professional recognized.

REP. TULISANO: (29th)

Through you, Madam Speaker, would this proposal require that the person be of danger to themselves or others?

REP. MIKUTEL: (45th)

Through you, Madam Speaker, to commit somebody you have to meet the criteria of being mentally disordered and a danger to the self or others, and through this amendment, that's what we are saying here.

REP. TULISANO: (29th)

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Through you, Madam Speaker, would the proponent tell me where it says you have to be a danger to yourself or others?

Through you, Madam Speaker, I don't understand. Where in the amendment it says that in order to be a sexually violent predator in order to commit them, you have to be a danger to yourself or others as just indicated, where that's is indicated, where that is said in this amendment?

REP. MIKUTEL: (45th)

Okay. Through you, Madam Speaker, line 36 of the bill, page 2.

DEPUTY SPEAKER LYONS:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Madam Speaker, I'm reading lines 36, Madam Speaker. It says a menace to the health and safety of others. Madam Speaker, I don't think that's the standard that he first reported. Madam Speaker, would you please - danger to oneself and others. Where is that in the bill as stated?

REP. MIKUTEL: (45th)

Again I repeat, through you, Madam Speaker, we're saying here a menace to the health and safety of others. That seems self explanatory to me.

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REP. TULISANO: (29th)

Through you, Madam Speaker, may I ask the proponent of the amendment, Madam Speaker, whether or not in fact there was a misstatement to the bill that the bill does not require that one be a danger to oneself or others?

REP. MIKUTEL: (45th)

Through you, Madam Speaker, maybe that's my way of expressing it. I wasn't looking at the particular bill.

DEPUTY SPEAKER LYONS:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Madam Speaker, I'm going to ask the opponent how would this bill have stopped Michael Ross, Madam Speaker?

DEPUTY SPEAKER LYONS:

Representative Mikutel.

REP. MIKUTEL: (45th)

Through you, Madam Speaker, Michael Ross is an illustration that I used as to the nature of a sexual predator. In this particular case, it would not have stopped him, but it would have stopped the other children murdered by Wesley Dodd and Earl Shriner.

DEPUTY SPEAKER LYONS:

Representative Tulisano.

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REP. TULISANO: (29th)

Thank you, Madam Speaker. Just so I understand clearly, although we heard about Michael Rosee, it would not apply to him. Can we understand what, the proponent of the amendment, Madam Speaker, indicated health and safety of others was his understanding, I'm not sure exactly what the proponent indicated, but the standard for commitment would be that he is a menace to the health and safety of others. Can we get some explanation to what that is intended to mean for purposes of legislative intent?

DEPUTY SPEAKER LYONS:

Representative Mikutel.

REP. MIKUTEL: (45th)

Through you, Madam Speaker, I'm not sure what you're meaning is, Representative Tulisano.

REP. TULISANO: (29th)

The purpose of explanation, Madam Speaker, the standard which must be applied by the civil committing authority here indicates that the mental abnormality is one which predisposes a person to the commission of a criminal sexual act, and that predisposition constitutes a menace to the health and safety of the others and I'm trying to find out, through you, Madam Speaker, what the standard. Danger to oneself and

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others is terms of art, and they're sort of worked down a bit, interpreted, and we know what they mean, and courts know how to apply that and what standards to apply, and I'm trying to find out what standards people are going to apply when menace to health and safety. What kind of actions are, what is included in menace to health and safety when an action hasn't already occurred? How do we judge your menace?

DEPUTY SPEAKER LYONS:

Representative Mikutel.

REP. MIKUTEL: (45th)

Through you, Madam Speaker, the person would be judged a menace based upon his previous conduct and what his conduct was in prison, and all of the evidence would be taken into consideration and the persons would review that and make a determination.

REP. TULISANO: (29th)

Through you, Madam Speaker, does that am I to understand what we're trying to do is predict future human behavior?

REP. MIKUTEL: (45th)

Through you, Madam Speaker, when it comes to sexual predators, yes, that's what we are trying to do based upon the previous conduct of the individual, and when it comes to sexual predators, behavior is truth.

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REP. TULISANO: (29th)

Through you, Madam Speaker.

DEPUTY SPEAKER LYONS:

Representative Tulisano.

REP. TULISANO: (29th)

I gather the only place that's tried this is Washington state. I know of another jurisdiction that uses a future possibility based on a past act for what I consider incarceration, through you, Madam Speaker. Does the proponent of the amendment know of anybody else who has used past actions for judging future activity and being punished for it?

REP. MIKUTEL: (45th)

Well, through you, Madam Speaker, let's be clear about this. The people in our mental institutions who we have housed for the last fifty years are there because they pose a danger to themselves and others and are mentally ill.

REP. TULISANO: (29th)

Through you, Madam Speaker, I think that's quite true, but again, Madam Speaker, if I can get an answer to my last question? Who has decided that this new form of mental illness is one that predicts future activity based on past actions? You're not being responsive, through you, Madam Speaker.

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DEPUTY SPEAKER LYONS:

Representative Mikutel.

REP. MIKUTEL: (45th)

Through you, Madam Speaker, trying to follow a few conversations here at once. Excuse me, if I didn't actually hear it correctly, but if you're asking who else does it besides Washington state in terms of outside the normal commitment process, I would say no one but Washington state, but there's been a long practice of civil commitment in this country.

REP. TULISANO: (29th)

Through you, Madam Speaker, I'm going to get it clear. Is this an attempt to parallel current long term mental commitment statutes, or is it an attempt to do something different?

DEPUTY SPEAKER LYONS:

Representative Mikutel.

REP. MIKUTEL: (45th)

Through you, Madam Speaker, what this amendment does, it sets up a civil commitment process directed at sexual predators because the general civil commitment laws do not work, were not designed to accommodate sexual predators. The law is a civil commitment law aimed at sexual predators because it is the one way which we, the criminal justice system has used to close

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the gap in the existing law.

DEPUTY SPEAKER LYONS:

Representative Tulisano.

REP. TULISANO: (29th) All people are equal.

Madam Speaker, I'm not going to ask any more questions. I'm somewhat confused. You can't have your cake and eat it, although we all try from time to time, and I can understand trying to do it. Madam Speaker, this is not a civil commitment law. We are told it talks about danger to oneself or others, which is the general standard which we apply, with a substantial due process given, where current acts and activities are used to determine whether or not one is committed.

The proposal before us tries to prejudge you for future activities. Madam Speaker, it is a violation of what I believe essential due process to try to predict future behavior in any individual no matter what they did in the past. Madam Speaker, a bill like this denies rehabilitation, denies contrition, denies reformation, and each one of us generally in our western heritage believe in reformation, believe in contrition and but for our desire that people's behaviors can change, we'd be all here wasting our time trying to change it.

Whether it be yesterday's bicycle helmet law or any

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other law we fit in, this bill predisposes us to say because of your past activities, you are to be punished for all your day. Now, Madam Speaker, in the State of Washington about 50% of the people for whom they try, by Representative Mikutel's statement, to get civilly committed, or committed under this law, are not in fact committed. That's at a cost of about six or \$700,000 a year, so about 50% of that amount of money is spent not, Madam Speaker because I think people believe that one would come under the terms of it, or even because they believe it is right just that one should be committed under this kind of a law, but because of political constraints, and I use that word, small p.

That people feel compelled to try it because it's on the books, and then you must put somebody in or else why have such a law? Madam Speaker, the language in this bill is quite similar to one which we had a public hearing on, and Madam Speaker, psychiatrists testified that this was not a standard by which he could make a valid determination.

Madam Speaker, the cost of this alone, the underlying bill, it is essential that the underlying bill which deals with all of the issues that this attempts to address pass and become law, because of its inherent dangerous constitutionality, we would lose the

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underlying bill. The bill would have to go to Appropriations. We could lose it there. We could lose it from a Governor's veto. We could lose it in the Senate, because I think most people out here believe this is inherently unconstitutional, but should it pass, we run a number of risks for things that are very good in the underlying bill.

Now I must give Representative Mikutel credit. Despite some belief that I or others here don't care about children or women or rape or sexual assault, one, let me just stand here and deny that now, but let me say as a result of the public hearing, that is why our bill includes that extended probation period. An individual from one of the women's groups who testifies often before our committee gave us an example of how control for people engaged in sexual assault is done by the use of the probation system. I think it was in Vermont, and I've got to give them credit.

It brought it to our attention, and we immediately jumped on the idea, and today we extended that to 35 years. We have the control mechanisms. We have the ability to watch people without, Madam Speaker, violating somebody's constitutional rights and the right to due process. Madam Speaker, let's be fair about this. We punish people for crimes they commit,

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not for crimes we think they might commit, and Madam Speaker, I can tell you after this kind of a theory, if this holds up, there are lots of people we can predict might do things in the future, and probably statistically show some will, and in order to be safe, we might as well pass a law for all of them.

The emotion of today maybe for this one as far as Representative Mikutel is concerned, but the politics of this place if you've been here any few years, there's always a new cause, a new victim, and a new response sought, and in all justice, we feel this is appropriate and right, then we probably should do it in all cases. That's not the country I want to live in. That's not the kind of society I want to engage in. That's not something I want to be part of, so Madam Speaker, I hope when the vote is taken, it will be voted down. Thank you, Madam Speaker.

REP. KIRKLEY-BEY: (5th)

Madam Speaker.

DEPUTY SPEAKER LYONS:

Will you remark further on the amendment that is before us? Representative Kirkley-Bey.

REP. KIRKLEY-BEY: (5th)

Madam Speaker, I'm not the lawyer that Representative Tulisano, but I rise in support of this

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amendment. He raises a question of punishing people, and I may be off the mark, for future behavior. I believe Jeffrey Dahmer and Charles Manson are being held where they are based on the fact that people believe were they be to set free, their future behavior would be a detriment to society.

I don't believe there is any way to take the pain and sorrow out of the hearts of the parents who've lost these children to sexual predators, but what's worse is to know the agony that your child suffered prior to the moment that they were silenced forever. I'm not sure what all the ramifications of the law might be, but there is justice and injustice. I had the opportunity two weeks ago when I was home to catch a show that was Maury Povich, and what he had on was the sexual predator who had served seven years in prison and now had been committed to a psychiatric ward hospital because he was felt that he was a menace to society.

While he was in prison they had the opportunity to have classes for rehabilitation which he never took. He had chances to go out and get psychiatric help he never took. He did nothing. He believed that he could teach himself even though he admitted that when he was out on parole, he committed a crime. He was out on home release. He committed another crime, and when he

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was out again, he killed an eight year old boy, so I think there's a lot of merit to what Representative Mikutel is talking about.

These people cannot be let out into society until there is enough people with the knowledge of psychiatric behavior who feel that they have in fact overcome those things within the personality and character that make them predators, and I'd like to have this done by roll call, Madam Speaker.

DEPUTY SPEAKER LYONS:

The question before the Chamber is on a roll call vote. All those in favor, please signify by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER LYONS:

In the opinion of the Chair, the necessary 20% has been reached. Will you remark further on the amendment that is before us? Representative Mazzoccoli.

REP. MAZZOCOLI: (27th)

Thank you, Madam Speaker. I rise in support of this legislation. I want to commend Representative Mikutel for proposing this amendment because I think it's one of the most important pieces of legislation this body will have an opportunity to act upon. I am a

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firm believer in individual rights and the constitution as Representative Tulisano is, but I have three children. I've got two older daughters and a young son, and my older daughters both carry mace, and in this society when every day I have to fear for my kids because of some sexually violent predator, well, we reached that point in my opinion, ladies and gentlemen, where we need legislation.

Every day we pick up the newspaper and see another case of a sexually violent act. Just turn on your tv. Representative Mikutel talked about one just recently. It was a case in Florida of a young boy who was stalked by a sexually violent predator who was recently released from prison by a review board after he served a portion of his sentence, let out on good behavior.

He stalked the young man for three weeks, took him to a room, sexually abused him, and mutilated him, and finally killed him. This particular bill offers plenty of protection for anyone who could be so deemed a sexually violent predator. There will be a review panel set up of qualified experts that will review the case. The person who is so deemed will be given examinations at least once every year, will have the situation reviewed periodically, to see if he's responded to treatment.

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The fact of the matter is, ladies and gentlemen, psychiatrists know full well, these kinds of people don't suffer from the kinds of bodily dysfunctions, for instance, if you cut your hand, you can be sure that it will probably heal. This is definitely different, and when we talk about holding people accountable for future activity based upon past actions as was stated earlier, we do it all the time. We let people out on early release based upon good behavior in prison, and yet when it comes to the knowledge of knowing that a person is likely to commit the same kind of crime, we are unwilling to take action.

Well, I say it's time to take action.

Representative Bysiewicz in an article that appeared in the Hartford Courant, stop the epidemic of violence against women. One in five women will be raped in their lifetime. Articles that are being passed out by the pro gun folks, ladies and gentlemen, just read them. Very interesting. If free again, I may rape again, he warned. Repeat rape victim sues. What more do we need to see? All of you who have children in this room know exactly what I'm talking about.

God forbid, we don't take action, and I'll tell you. I'm one of those people who supported putting in the extra money, the \$20 million or more, to get our

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prisons up and running at full capacity because as far as I'm concerned, let's lock them up and throw the key away, because it is time for those of us who obey the law to have the the decent protections that we want to see under this constitution, but it is up to us, this Legislature to take action, because enough is enough, and let's reflect on the case in Windsor recently where the young lady who worked in a card shop was found raped, dead, her body mutilated, her eyes gouged out and her throat was slit.

How much more do we need? Representative Mikutel, you're to be congratulated for bringing this forward. I urge this assembly to vote this unanimously.

DEPUTY SPEAKER LYONS:

Will you remark further on the amendment that is before us? Representative Garcia.

REP. GARCIA: (4th)

Thank you, Madam Speaker. I'd like to congratulate Representative Mikutel for demonstrating the courage and the will and determination to bring this amendment to the Floor. In 14 years of police work, I have investigated hundreds of sexual assaults, women, children from both genders and even elderly. It turns my stomach sick to see that there are people that are incarcerated that come out and do it again and again

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and again.

When I was a correctional officer at Somers, the Department of Corrections paid for a study, a study that would give electric shock to inmates convicted of sexual assault of children. You know, it was one of the most successful programs they ever had because they tracked every one of those inmates when they were released and guess that they did? They graduated to the level of sexually assaulting adult females, and that was a success program? Dumping them back to the streets, so they can repeat again and prey on helpless victims of the State of Connecticut?

Where are the victims rights? We have a duty as a Legislature to protect those innocent victims out there and those honest citizens of the State of Connecticut, and I believe that Representative Mikutel's piece of legislation heads in that direction because I'm a father, a proud parent, and one thing that would hurt and destroy me would be if one of my children, whether it's my boy or my girl to be sexually assaulted by a predator who was released from a correctional institute and people had knowledge that this individual didn't receive any proper treatment and is a danger to society.

I support Representative Mikutel, and I hope this

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body in its ultimate wisdom would see it through to protect the potential victims out there from these predators. Thank you, Madam Speaker.

DEPUTY SPEAKER LYONS:

Thank you, sir. Will you remark further?

Representative Simmons.

REP. SIMMONS: (43rd)

Thank you, Madam Speaker. I also rise in support of this amendment. I also commend Representative Mikutel for bringing it forward into this forum. There's a tendency to think of this issue in somewhat abstract terms, to think of it in terms of perhaps what went on in Washington state a few years ago, but for me this issue is very real, and it relates to a very real case, at least one of them that occurred in my part of the state just last fall.

The 22 year old woman was walking with her two year old daughter and two year old niece in the arboretum at Connecticut College at 10:30 in the morning, broad daylight, broad daylight. A man ran up behind them, grabbed the girl, two year old girl and threatened to kill her if the woman and the other child did not come with them down a path.

He forced the woman into sexual contact, threatened to do the same to the children, and after the sexual

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contact was complete, he tried to strangle the woman to death. She struggled. Somebody in another part of the arboretum heard them, and he ran away, and a couple of days later, the police due to excellent police work, arrested a suspect, a certain Wayne F. Treet, 43 years old and charged him with attempted murder, first degree sexual assault, first degree kidnapping, second degree reckless endangerment and risk of injury to a child.

Now this event, which took place in broad daylight which involved a 22 year old mother and her child, a 2 year old child and a 2 year old niece, was shocking enough at the time. But what came out a few days later I think make it even worse.

According to the New London Police, Mr. Treet was identified as a chronic sex offender, a man who had raped three women in Waterford and Montville in 1973 and who had been sentenced to 12 years in prison for those rapes.

In 1982, he was arrested again. This time for kidnapping and sexual assault in Stonington, Connecticut. At the time he was a taxicab driver and was taking the woman from L & M Hospital in New London back home in Stonington after she had been visiting a friend who was sick.

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He terrorized her and sexually abused her for approximately 3 hours before letting her go. And I will note that this event took place before the intended sentence was over. He was sentenced in 1973 to 12 years, but he was let out early. He was let out after 9 years because, according to the accounts that I can find, of his good behavior. He was on good behavior in prison. He didn't rape anybody. He didn't assault anybody. He didn't attempt to murder anybody. He was a model prisoner so they let him out, and he raped and kidnapped again in 1982.

In 1991, he was arrested again and sentenced for 2 years for attempting to establish a prostitution ring in New London, but once again he received a reduced sentence for good behavior. I gather he didn't rape a soul, attempt to murder or form a prostitution ring while he was in prison, so he was let out.

According to press reports, he also is wanted for rape and attempted murder in Rhode Island. Now here's a man who's got a 20 year history, a 20 year history, of chronic sex offenses, and in my judgment the current system of law enforcement does not properly deal with an individual like this. It punishes him for the crime he commits, but it does not treat the illness.

And when he has served his time and in particular

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if he is on good behavior, they let him go. The current system does not protect society from those who prey on the public, and in particular, on women and young children.

I think this bill proposes a solution which is very beneficial, because first of all it recognizes the problem. It recognizes the problem. That you can serve your term for a crime committed but not be cured, not be rehabilitated, and still be very, very dangerous.

Secondly, it treats the illness. It provides for alternative incarceration after the service for the crime is over or near an end with additional observation and opportunity for treatment of the illness which I think is quite a fair approach.

And thirdly, it protects society because it simply does not release these people out into the public. If this bill had been passed 15 years ago, we could have avoided one kidnapping and one rape in Stonington in 1982, an additional rape, kidnapping and attempted murder in 1992 and the effort to form a prostitution ring in New London in 1991. As well, we might have been able to avoid the alleged rape and murder in Rhode Island.

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The current system does not work. Now we're told, we're told to bring about a change of this sort might create a constitutional challenge and I have to remember a few years back when I was working in Washington, D. C. on a bill which eventually took 3 years to bring to fruition, and I was told by the ACLU at the time that it would chill first amendment rights and if it did pass, they would challenge it in the courts.

Well, we struggled on the bill for 3 years and it eventually did pass the House and Senate. It did become the law, and it was never challenged in the courts. The ACLU never challenged it. It accomplished its intended purpose, which was a narrow purpose. It did not violate fundamental rights and it succeeded in doing what the law was intended to do.

I contend that this law will do the same. It's narrowly drawn. We don't want to broaden it. It's narrowly drawn, it has a specific purpose. There's a specific target community that we're dealing with here and it might be helpful if the ACLU did get involved in this process because maybe they could help us narrow it a bit further and make it a bit better.

But I don't think we ought to put the public safety at risk simply because we're concerned that a law that

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we pass with a specific purpose might be tested. I don't see the harm in it.

We're told that the bill is going to create a cost. Maybe \$2 million, maybe \$4 million over 2 years. What is the cost of a human life? What is the cost of a traumatized child? It's interesting to note in the news articles that came out when Mr. Treet was arrested last year that a woman who was kidnapped and sexually assaulted by him in 1973, what did she do when she read the news? According to her account, she went around her house when she read the paper and locked the doors. She went around the house and locked her doors.

Twenty years after her traumatic experience at the hands of this man, she was still frightened. The imprint of his face and of the events of that time back in 1973 were still very much in the forefront of her consciousness. What is the cost of \$2 million or \$3 million or \$4 million, if you can protect a woman from this life.

And what about the 22 year old mother? And the two 2 year old children who simply were walking in the arboretum in the middle of the day. It wasn't at night. It wasn't under unusual circumstances. What about them? What's their life like right now?

I say if the cost is only \$2 million, it's cheap.

It's cheap.

Finally, we talk about scientific definition. Scientific definition. How do we define a chronic sex offender scientifically. Well, I new knew that this Body was a body of scientists. The Royal Society of Scientists here in the State of Connecticut. I did not know that this Body was a body of scientists, or that we have to put every line of every law that we frame in this Body to some sort of scientific test. That would be nice, but I don't think it's necessarily the purpose of this Body and I think the law describes a situation where people with the proper background, with the proper education, and yes, the proper scientific training will be involved in the process.

I think it's an excellent law. It's an excellent attempt to deal with a vicious situation that yes, faced people in the State of Washington and they had the courage to do something about it, and yes, faces us now and I hope we, too, have the courage to do something about it. Thank you, Madam Speaker.

DEPUTY SPEAKER LYONS:

Thank you, Sir. Representative Tulisano.

REP. TULISANO: (29th)

Madam Speaker, first let me say to Representative Garcia, as a grandfather, and a father, nobody would be

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more outraged if anybody knows me than me, if someone dared, never mind did, violate one of my grandchildren or my children or my friends.

So please do not try to put us in some line that somehow or other we come from a higher plane because we would feel more concerned than you, who oppose this amendment.

Believe me, Madam Speaker, I would be violent. Without shame. Without shame, if someone attacked my child as much, I'd be outraged as anybody in this room or anywhere else. So do not use that against us who oppose this amendment, that somehow we're different, because anybody who knows me knows what would happen.

But, Madam Speaker, this is a deliberative Body. We are not to be controlled by emotion. We are not to be controlled by our inner gut feelings. I can understand that as individuals we do that, but here we must rise to a higher plane.

Madam Speaker, we have heard an example for which we should make our decision on, where the man was released. Right or wrong, he was released. How would this law have helped him? How would that have done anything, because the decision makers are the same decision makers.

Are we a scientific body? No. But when you ask

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scientists who have to implement this law can they, and they say no, not with any good scientific background, then I raise the issue rightly so. And frankly, Madam Speaker, I continue to resent the idea that continues to be promulgated by some of the proponents that somehow we care less.

Why do you think we made the changes? Why do you think, recognizing there are some people who are incorrigible, that we have some leash on them the rest of their lives, just about. Thirty-five years now with the amendment, to accomplish all the same goals, to keep the Damacles Sword over their heads, but not, but not to run the risk of creating a society which punishes you because we think you might.

Who will be on this board? Who will make these decisions? Who will correct us when we make a mistake. Whose lives also will we injure as a government. Remember, we do not lower ourselves to the denominator of those who we seek to punish.

Why did we make the changes in the file copy? So that you could get continued treatment. We want to spend \$2 million for this but we won't put a sexual offender treatment program in our jails today, so those who are there can get the right treatment and we're worried about what we're going to do later?

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We have the opportunity now to do things and we don't do minimal, and you want us to spend \$2 more million. We have a bill that works. We have a bill that will do well. Pass this amendment, send it to Appropriations and kill it and you'll be back with what you've got today. Thank you, Madam Speaker.

DEPUTY SPEAKER LYONS:

Will you remark further on the amendment?

Representative DeMarinis.

REP. DEMARINIS: (40th)

In my other life I treated sexual offenders, not violent as defined by Representative Mikutel, but people who had been turned into the community, over to the courts, were remanded for counseling and then came to me.

These were people who were petifiles, or the other definition is of a rather weak personality, who had to be constantly monitored in the community. Usually they were sponsored by a church or by a family and by the court. But there was an element in working with them that was very strange. Their behavior is compulsive. They often present as well mannered, quiet, even passive people. And their behavior was predictable. I worked with those people long enough to know that if not monitored, they would repeat.

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I worked with one person who was released because he had a very large family and a very good job. He was kept separate from the person who had been his victim, and yet managed to place himself in Sunday schools, scout troops, whatever, whatever gave him access, and needed to be continually watched and counseled against placing himself in such a position where there was easy access.

The behavior, I have to repeat, is predictable. And these people that I worked with were not the Jeffrey Dahmers. They didn't have that added element, though as far as I'm concerned, all sex offenses are in reality violent.

You add the element of obsessive violence and you're releasing into our communities, dangerous, dangerous personalities who are usually capable, again, of deceptively acceptable behavior and therefore can get by a parole board because of their often passive exteriors.

So I'm urging you to support Representative Mikutel's bill. It is expensive, true, and what Representative Tulisano said is true. There are no treatment programs in the prisons which a sexual offender must attend, that's why they're monitored so closely out in the community.

But we've seen enough of the Jeffrey Dahmer behavior to know that the behavior is predictable, and I would urge you to support passage of this bill.

DEPUTY SPEAKER LYONS:

Will you remark further?

REP. CUTLER: (51st)

Madam Speaker.

DEPUTY SPEAKER LYONS:

Representative Cutler.

REP. CUTLER: (51st)

Thank you, Madam Speaker. I like the idea of this amendment for a few different reasons. First of all, I think it's been a long time since somebody, whether the courts, the Legislature, or any other governing body thought about the victim for once.

I'm sure there's a lot of people in here who have been touched in one way or another through an experience where someone was assaulted. I'm sure many of our families have been excuse me, touched in one way or another concerning that. So I think that's one reason to vote for this amendment.

Another reason. You know, in the prisons these sexual predators are reviled by their other inmates in the prisons. The standard type prisoner hates the petifile, the rapist. It's as if the rapist is marking

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around with a big X on his chest or his back.

Now, if a prisoner thinks of a petifile or a rapist in such a manner, don't you think that there's something wrong with that person? I think this is a great idea. We ought to think of the victim for once, please, and send a message. Send a message, one of punishment for a crime and protection for the victim. Thank you, Madam Speaker.

DEPUTY SPEAKER LYONS:

Representative Radcliffe.

REP. RADCLIFFE: (123rd)

Madam Speaker, I rise to do what I don't think I've done in this session and that is to agree with Representative Tulisano on an amendment that could arguable be considered a "law and order" amendment. But I do so on the basis of testimony that we heard at our public hearing, on the basis of the underlying bill which is important and frankly does take account of much of this.

We had testimony from a psychiatrist at the public hearing who said something that I think was extremely instructive on this whole issue, and pointed out at least to me, where a loophole in this particular amendment, although it's well intentioned might in fact allow those who are labeled sexual predators to escape

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confinement and to escape responsibility for their acts.

And Dr. Schwartz said at that time, we have to be careful of passing legislation, and I'm not a psychiatrist, but this is a gentleman who's head of psychiatry in Hartford Hospital. We have to be careful about passing legislation that equates badness with madness. That equates badness with madness. We have to be careful about putting into our statutes something which relieves the individual for the responsibility for these heinous acts and allows a psychiatrist, a public defender, or someone to try to explain away this heinous and reprehensible behavior on the basis of some sort of psychiatric or psychological defect.

Now I'm very concerned that if we put something like this in the law, if we have a standard where we say that individuals can be released based upon a mental disease or defect, and what I think is described here essentially is a mental condition, something compulsive, that if someone is accused of a crime and that crime requires a specific intent, you are going to have instances of defense counsel attempting to avoid the responsibility, avoid the very severe sentences at times, of individuals who commit these acts by saying, this was the product of a mental disease or defect.

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The individual couldn't conform his conduct to the requirement of law. He didn't know what he was doing, because after all, he isn't like you and me. He isn't like the rest of us. This individual no matter how bad or how heinous or reprehensible the act is, really couldn't help himself.

Now that may be true in some situations. But the so-called insanity defense has been abused, has been misused and has made a mockery of victim's rights in many instances. And I think this particular amendment could open that up again. If we put this law into the statutes, if we say to somebody that this can be a defense to a crime because after all, it's compulsive.

Let's say an individual is arrested, or is released on the basis of parole and commits one of these acts. Public defender's office is then going to, as soon as the individual is charged, is going to file a defense saying he didn't really commit sexual assault in the first degree, didn't really commit sexual assault in the first degree in manslaughter or murder. He couldn't help himself. And look, the General Assembly passed a law that acknowledges that there are such people. And this individual is a predator and because of that, you can't hold him responsible for his actions because he really didn't have the ability to conform

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his conduct to the requirements of law.

I suggest to you that in most instances what we're dealing with is what Dr. Schwartz referred to as badness. We're dealing with it and it's too easy to pass off this sort of badness as a mental defect. It's too easy to pass off this sort of badness as a product of society in many instances. We're dealing with badness that ought to be treated as such, for which the punishment ought to be swift, sure and certain.

This issue, this bill also raises, or this amendment, some serious constitutional issues. We can do all that and we can do it within the parameters of the Constitution. But what this amendment effectively says is, after an individual has completed a sentence, and frankly, I don't think they should be let out on early release. I don't think they should be let out on home release. I don't think somebody should go in the front door and somebody else should go out the back door because our prisons are overcrowded and the federal courts have decided they're going to run the prisons.

But if that happens, I don't want us to be able to say, to someone who has completed a sentence and maybe has been rehabilitated, that we're going to keep you incarcerated. We're going to restrain your ability to

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go among the population because we think that there's something that you might do in the future. Yes, in many circumstances that might be appropriate. I'm not going to stand here and tell you that there aren't certain circumstances and certain individuals in which that might be appropriate.

But once you put that type of prospective conduct in the law, once you do that, you get on an inevitable slippery slope which can be used at a future time to achieve a future result, which might be wholly consistent with this precedent, but might not be so appealing, either to its proponents or its opponents.

Madam Speaker, because we've heard the testimony at that hearing, because we've attempted to deal with those individuals in the file copy, in the underlying bill, who commit these crimes and who deserve to be incarcerated swiftly, surely and certainly, and because I would hate to see those efforts ambushed by an amendment of dubious, at best, constitutional validity, and an amendment which could conceivably have the exact reverse effect of what its proponents want and that is to create a loophole through which these individuals will be able to slip, I respectfully request that this Chamber turn down this amendment, vote for the underlying file copy and get on with our business.

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Thank you.

DEPUTY SPEAKER LYONS:

Representative Nystrom.

REP. NYSTROM: (46th)

Thank you, Madam Speaker. First of all, I think that we should recognize that Representative Tulisano, has to the extent that he feels is possible, under the law and under the Constitution, attempted to make efforts to address this issue. He really has done that, and I commend him for that.

I'd also like to talk a little bit about, since it was raised by the previous speaker, the issue of the insanity defense. Nine years ago when I first came to this Chamber, I tried to abolish the insanity defense. Well, it didn't get far. We made some adjustments over the years, but I had an opportunity to sit with the chief psychiatrist, with Whiting in Forensic Institute that year, and we were discussing the issue of abolishing the insanity defense.

I recall asking him a very simple question. I asked, how many people in our Connecticut prisons does he feel suffer from some type of mental illness. And he estimated back then that he felt somewhere around 60% had some type of mental disorder. And as we know, there has been no attempt to provide treatment for

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those individuals.

The bill as amended at this current time does provide to address that issue. And I think because it does that, the file as amended currently builds a bridge for this amendment. If the individual is convicted of those violations which were offered, I believe in House Amendment "A", they're now required to undergo psychological counseling.

So now you have a track record of why they're incarcerated and I think that's very important. That track record will provide information, evidence, as to the mental health of that person. But in that in itself, I don't think that's enough. There are people who do not respond to treatment. They may go through the process, but they do not change.

And as previous speakers have noted, some of these individuals are extremely violent. They prey upon little children, women, those who can't defend themselves. And if this proposal that Representative Mikutel brings forward tramples on that individual's constitutional rights, well, I'd rather side on the side of caution. I'd rather offend their constitutional rights based on the crimes they committed and protect the lives and the rights of people who want to live in a free, safe society.

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I got two little girls at home. I worry about this all the time, particularly when I'm not home and I'm sitting here at 2:00 in the morning. And I hope we don't repeat that again until next Wednesday.

But I rise in support of this amendment. I think the amendment has been crafted to address a number of the concerns that were raised during the committee process. Is it perfect? No. Are all the laws that we pass perfect? Certainly not. That's why we have the courts. They're there to watch over us, and if we make a mistake, you can darned be sure they'll be there to tell us. That's the system.

I urge adoption of the amendment. Thank you.

DEPUTY SPEAKER LYONS:

Will you remark? Representative San Angelo.

REP. SAN ANGELO: (131st)

Thank you, Madam Speaker. I'd also rise in support of this amendment, and I'm sorry to see that we actually have to go through this process. I think it's a sad state to the society that we live in here today.

I think this amendment does offer plenty of safeguards to protect both victims and the person who is incarcerated. I listened to Representative Tulisano and Representative Radcliffe and the one thing that I've come to learn in this Chamber is that very often,

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two lawyers do disagree on the issue of constitutionality of any particular bill.

And I think each of us as legislators weren't elected as lawyers, but were elected as Representatives of the people, and I think that's what we have to look at today. Each of us here today has to make a decision based on the information that we heard today and sometimes that comes down to just a gut decision.

I don't question that Representative Tulisano cares about his family and doesn't want to see this happen to anyone. I know that he doesn't, and none of us here do, and I don't think it's a question of one of us being better than another. But it's a question of, what do you think is right for the community in which you live?

It seems to long that victims have no rights, that the criminals have all the rights. And it seems that time and time again we are so concerned with protecting their rights. This is an opportunity to protect victims and to protect future victims.

We should all try to do what we think is right within ourselves. Let the courts decide the issue of the constitutionality. I encourage the members to support this amendment and I think it will be good for our communities. Thank you, Madam Speaker.

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DEPUTY SPEAKER LYONS:

Thank you, Sir. Representative Dillon.

REP. DILLON: (92nd)

Thank you, Madam Speaker. Through you a few questions to the proponent of the amendment.

DEPUTY SPEAKER LYONS:

Please frame your question, Madam.

REP. DILLON: (92nd)

Yes. a Representative Mikutel, just a few questions about the impact of the very important amendment before us.

Looking at the definition of sexually violent offense, I wonder if you could explain to the Chamber the logic of the sections of the criminal statutes which have singled out for inclusion in this amendment? Through you, Madam Speaker.

DEPUTY SPEAKER LYONS:

Representative Mikutel.

REP. MIKUTEL: (45th)

I'm not sure of the question, Madam Speaker. Could you repeat the question?

DEPUTY SPEAKER LYONS:

Representative Dillon, if you could just rephrase the question.

REP. DILLON: (92nd)

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Thank you, Madam Speaker. Through you, the question was whether you would explain to the Chamber the logic of the sections of the statutes which you have singled out. For example, sexual assault in the first degree, which is a Class B felony, penalty for which is one year not suspendable is included here.

Aggravated sexual assault which carries a five year penalty is not included. Any kind of violation of our marital rape statutes, that is, an act of sexual violence against an individual to whom you are either legally married or with whom you are cohabiting, appear to be exempted from this legislation. And I was wondering if you could share with the Chamber the logic of the way the amendment has been crafted. Through you, Madam Speaker.

REP. MIKUTEL: (45th)

Through you, Madam Speaker to Representative Dillon. We have worked with the Legislative Commissioner's Office to devise legislation that would address the defined sexual assault. And in the LOR version summary of the amendment, you will see that the amendment applies to anyone convicted of the following offense, sexual assault in the first degree, sexual assault in the second degree, rape in the first degree, sexual assault in the third degree, sexual assault in

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the third degree through the use of threat, use or threat to use a weapon. It's spelled out in a summary as to what we mean by sexual assault.

DEPUTY SPEAKER LYONS:

Representative Dillon.

REP. DILLON: (92nd)

Madam Speaker, I'm sorry, I couldn't hear his responses. A lot of chatter over here in the Chamber. I wonder if you could repeat your response? Thank you.

DEPUTY SPEAKER LYONS:

Representative Mikutel, perhaps you could repeat the response.

REP. MIKUTEL: (45th)

If you look in the OLR summary on Page 2 at the top, it defines what sexual offenses are covered under this amendment. And they include sexual assault in the first degree, second degree, third degree and it's all spelled out right there.

DEPUTY SPEAKER LYONS:

Representative Dillon.

REP. DILLON: (92nd)

Thank you, Madam Speaker. Again, through you, I repeat. I understand, I have looked at the analysis. What I'm asking you is, in the amendment itself, why

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were certain offenses included in your definition of a sexual predator and why were other sexual offenses excluded, or exempted from your definition? That is, specifically aggravated sexual assault in the first degree, which is also a Class B felony or any sort of sexual offense against one whom you are cohabiting with, or to whom you are legally married.

Is there a reason why those individuals were exempted? Through you, Madam Speaker.

REP. MIKUTEL: (45th)

Through you, Madam Speaker, we believe that we've covered through the legal lawyers at the Legislative Commissioner's Office, that we covered the necessary categories regarding sexual assault that went from child molestation right through rape in the first degree and all in between. So we don't feel that we excluded any of these violent sexual offenses.

DEPUTY SPEAKER LYONS:

Representative Dillon.

REP. DILLON: (92nd)

Thank you, Madam Speaker. But I am asking you about sexual offenses that are excluded, and if there is a logic to their exclusion from the amendment which is before the Chamber. Through you, Madam Speaker.

REP. MIKUTEL: (45th)

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Through you, Madam Speaker to Representative Dillon. We didn't exclude any sexual predators. All this does is define what sexual assault, sexual violent offense is. And that was taken from the Connecticut Statutes. We have not eliminated any sexual predators. Sexual predators have to be given a trial and determined and adjudged to be sexual predators so they can't be excluded on their face.

DEPUTY SPEAKER LYONS:

Representative Dillon.

REP. DILLON: (92nd)

Through you, Madam Speaker, I'm trying to understand because it's a very important amendment in terms of public policy, exactly what the intent is. Looking at the sections of the statute that have been lifted out and notice that aggravated sexual assault is not part of your definition of a sexually violent offense.

I notice also that an offense against one who you are cohabiting with or one to whom you are legally married, if you were to be persistently violent to an individual who you happen to be living with or to whom you had been legally married or were still legally married, that is not encompassed by this amendment and I would like to know if you could share with us if

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there is a reason why. Through you, Madam Speaker.

DEPUTY SPEAKER LYONS:

Representative Mikutel.

REP. MIKUTEL: (45th)

Yes. Through you, Madam Speaker. Predator means, in the amendment, acts directed toward strangers or individuals with whom a relationship has been established or promoted for the primary purpose of victimization. So, by then, by definition, it is directed toward strangers, not by people living together.

DEPUTY SPEAKER LYONS:

Representative Dillon, you have the floor.

REP. DILLON: (92nd)

Thank you, Madam Speaker. Would it be fair to conclude that if let's say, I were a college student and I had dated a young man in college and he became persistently violent and committed a number of sexual acts of violence against me that that would not be encompassed under this amendment because I knew that individual? Through you, Madam Speaker.

DEPUTY SPEAKER LYONS:

Representative Mikutel.

REP. MIKUTEL: (45th)

If we had repeated, first of all, the

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determination of a sexual predator would have to be made through the commitment trial process. And if there was a number of cases of sexual assault by one person against another person, you would think that, and he was convicted of that, and he was sentenced to prison for that, that that would come out in the commitment trial following his completion of his prison sentence. And it's up to the jury to make that determination if that person is a sexual predator.

DEPUTY SPEAKER LYONS:

Representative Dillon.

REP. DILLON: (92nd)

Thank you, Madam Speaker. But what I'm trying to determine is, when you are making the judgment, when you're creating a new category which you're calling sexual predator, and setting up a new appeals process and a new evaluation process through the court system, and through some sort of mental health facility, is there a judgment made. Or should we conclude that you've made a judgment that in some way a sexual offense by an individual who has never before encountered someone, somehow has more weight than a sexual offense against someone who you know socially or to whom you are legally married? Through you, Madam Speaker.

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REP. MIKUTEL: (45th)

Well, if you're referring, through you, Madam Speaker, if you're referring like date rape and acquaintance rape, I would assume that there's sort of a different grey area here, but if the person is consistently committing date rape against people, that at some point he's going to be sentenced and the determination of whether he is a sexual predator will be made after his prison sentence.

DEPUTY SPEAKER LYONS:

Representative Dillon.

REP. DILLON: (92nd)

Through you, Madam Speaker, I understand the response. But by your own definition it would appear that if you had had a relationship with the person that they would not fall into your definition. Is that true? Through you, Madam Speaker.

REP. MIKUTEL: (45th)

Through you, Madam Speaker, that may be true. I can't prejudge whether anyone's a sexual predator. That would have to be made during the commitment trial process.

REP. DILLON: (92nd)

I'm sorry. Could you repeat your statement? Through you, Madam Speaker.

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REP. MIKUTEL: (45th)

I said the determination of whether or not someone is a sexual predator is made after they complete or approaching the completion of their prison sentence. And that time it will be made through the commitment trial process. We cannot prejudge whether someone is a sexual predator.

REP. DILLON: (92nd)

Through you, Madam Speaker, another question. I assume then that we're assuming for the purposes of this amendment, that the category of crimes which we are giving weight to in creating this sexual predator classification, will only be those which are stranger to stranger crimes, that any acquaintanceship between the victim and the perpetrator will eliminate them in some way or give them less weight, and I'd just as soon not --

REP. MIKUTEL: (45th)

I believe that's correct. Through you, Madam Speaker.

REP. DILLON: (92nd)

Thank you. In terms of the decisions or the proposals that you have made for a determination that an individual be taken into custody and that this person shall be transferred to an appropriate facility,

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could you identify for the Chamber what facility that would be? Through you, Madam Speaker.

REP. MIKUTEL: (45th)

Through you, Madam Speaker, yes. I have discussed this with the Department of Corrections officials and based upon my conversations with them and the number of prospective sexual predators that might be coming through on a yearly basis, that they would be able to accommodate them in one of their existing facilities.

I do not know the specific facility. Apparently it would be the wing, of maybe a wing, or separate wing of an existing facility.

REP. DILLON: (92nd)

Through you, Madam Speaker, we, through the past few years have had a number of controversies over individuals who were convicted of sex offenses, some of whom ended up in Whiting Forensic Institute, others who are scattered throughout our criminal justice system.

Would it be fair to conclude from the way that your amendment is written, that all of the individuals who were convicted of only those sections of the statute which are included in your amendment would be at Whiting Forensic? Through you, Madam Speaker.

REP. MIKUTEL: (45th)

Through you, Madam Speaker, the problem is that

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they do not get sent to Whiting Forensic Institute. For the most part, these people are incarcerated in prison and from prison they go back out into society. For the most part, these people are not put in Whiting Forensic Institute.

REP. DILLON: (92nd)

Through you, Madam Speaker, I'm asking you, I would differ with you on who is in Whiting Forensic and who is not, but there are individuals there who have been convicted of a number of offenses.

But my question in terms of how this would work is, because you appear to be creating a new category of a mental disorder which would, to a certain extent eliminate almost the idea of sin, it would create a mental state which would be an individual who is a perpetrator of certain types of sexual crimes, would be considered, would have a certain sort of mental disorder.

Therefore, would it be appropriate to conclude that given the review process and the appeals process, that you have set up, that that person would not be in a traditional correction setting but would rather be in a facility such as Whiting Forensic Institute where there are individuals who have mental disorders. Through you, Madam Speaker.

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REP. MIKUTEL: (45th)

Well, if I understand the question, Madam Speaker. The problem is that mentally disordered violent sex offenders are not sent to Whiting Forensic for the most part. They escape that system. That's why we are setting up a separate civil commitment statute directed toward sexual predators.

REP. DILLON: (92nd)

Through you, Madam Speaker, so then anyone, all the people who are scattered throughout the system right now, if they were convicted of the offenses which are listed in your amendment, would then be at Whiting Forensic Institute. Through you, Madam Speaker.

REP. MIKUTEL: (45th)

Through you, Madam Speaker, no. No. They would not be going into Whiting Forensic Institute. That's under the jurisdiction of the Department of Mental Health. They will be referred to, as in the amendment, it says they would be committed to the Department of Correction for care, custody and treatment.

REP. DILLON: (92nd)

Through you, Madam Speaker. But given that you are creating almost a new category of mental disability, would you, or mental illness, would these individuals fall under the cognizance of the Psychiatric Review

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Board in any way? Or would that somehow be a new bureaucracy that would compete with that jurisdiction? Through you, Madam Speaker.

REP. MIKUTEL: (45th)

Through you, Madam Speaker. No, they would not go, be under the jurisdiction of the Psychiatric Review Board.

REP. DILLON: (92nd)

Through you, Madam Speaker, whose jurisdiction would they fall under?

REP. MIKUTEL: (45th)

Again, they would fall under the jurisdiction of the, through you, through the Department of Correction.

REP. DILLON: (92nd)

Through you, Madam Speaker, then the Department of Corrections would now be responsible for treating mental illness? Through you, Madam Speaker.

REP. MIKUTEL: (45th)

Through you, Madam Speaker, they are already treating some sex offenders in the Department of Corrections, so they already are doing that.

REP. DILLON: (92nd)

Through you, Madam Speaker, there is a voluntary program and there has been in the past which had mixed success to put it mildly. And there were a number of

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pilot programs, but there has not been, in the same sense, a total transference of cognizance to the Department of Corrections for the treatment of mental illness. Is that what you're proposing to the Chamber? Through you, Madam Speaker.

REP. MIKUTEL: (45th)

No, I'm not quite sure of the question. The Department of Corrections would be responsible for the care, custody and treatment of these people and they would have the personnel to do such.

REP. DILLON: (92nd)

Through you, Madam Speaker. Are you aware of what treatment they would be using at this time? Through you, Madam Speaker.

REP. MIKUTEL: (45th)

Through you, Madam Speaker, based on my conversations they do group and individual counseling, some behavior modification therapy, and other types of counseling.

REP. DILLON: (92nd)

Thank you very much. I'm very sympathetic to the intent of this amendment. A lot of the language in statute now which gives victims the rights to appear in court, was crafted by a number of legislators, including a Representative from Norwich, one from

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Stamford and myself.

I would like to see a long-term effort to focus on this issue, but I'm very concerned about the details of how this would be implemented. And frankly, I'm very troubled by the aspect of saying that anyone who is convicted of a sexual offense is somehow, by definition, mentally ill. It may very well be that there are some people who commit those offenses who are not mentally ill and we should not treat them that way.

It's a very difficult area, and it's a rapidly moving area, but the implications of this, I think, are troubling. There may be some people who are simply bad and for that reason I oppose this amendment.

DEPUTY SPEAKER LYONS:

Thank you. Representative Lawlor.

REP. LAWLOR: (99th)

Thank you, Madam Speaker. I rise to oppose the amendment. I think Representatives Radcliffe and Tulisano expounded at some length, and quite, I guess, gracefully, eloquently, too, but I think gracefully because of the difficulty of this topic.

This was a heart wrenching topic in our Committee, in the Judiciary Committee. A great deal of discussion surrounding what is obviously a real problem in our society, that there are people who probably fit this

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general description of sexually violent predators who will, if on the streets, probably continue to offend. This guy Michael Dodds out in Washington, I think that was his name, Wesley Dodds in Washington state, I mean the Washington state law was fashioned for him and obviously that's the kind of person we'd like to protect all the members of our society against.

But the more we read the Washington proposal and the more we talked to experts, both in Connecticut and around the country about what they thought about the Washington proposal, the clearer it was that it not only is wrong but it doesn't work. And I think this is another example of a solution that is simple and straightforward and logical but simply wrong, and it will not work.

And there's a variety of reasons for that. First of all, it's probably unconstitutional. That decision hasn't been made on any final way in Washington state. Most people who have studied the case as it's been appealed through the courts in Washington state believe that it's going to be found unconstitutional.

Secondly, I think anyone who's familiar with the criminal courts can understand that, since these four violations have been spelled out in this proposed legislation where if you're convicted you may become

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eligible for this potential life imprisonment without possibility of parole, who's going to plead guilty to any of these offenses? I mean, these kinds of cases will take on the significance of a death penalty case in the nature of appeals, in the nature of effort which will go into preventing one from being convicted of one of these four offenses because being convicted of this opens you up to a possible life sentence. And that will, I think, certainly be the worse possible thing for a system that wants to bring these types of people to justice as quickly as possible.

And finally, and perhaps most important, I think we have focused in this session on some real solutions to this kind of problem. Solutions that we know will work. We know we have funded adequately. We know we've designed a constitutional scheme which will allow people to receive very, very lengthy sentences if not life sentences for this kind of behavior.

I mean, all of the offenses that were discussed this evening were multiple instances of what by any definition is sexual assault first degree. Each incident is a maximum 20 year penalty. Someone in this category who gets convicted after a trial or after a guilty plea is going to be identified at that time as well as after the fact as a sexually violent predator

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according to these guidelines and they're going to get a lengthy sentence.

And if it's two or three times, it's two or three times 20 years which is 40, 60 year sentence. And under our sentencing scheme now, they won't even be eligible to be released until they've done at least 50 percent. At that point they can't be released by some bureaucratic decision. It has to be before the parole board. The parole board can already take into consideration all of the factors spelled out in this legislation in deciding whether or not to let somebody out of prison.

And on top of that, if the file copy were allowed to pass without the interference from this amendment, you'd have the possibility of an additional 35 years of probation following that. And throughout this entire period of time, you'd be able to return someone to prison for the kind of supervision that's envisioned in this amendment.

You know, keep in mind in the parole bill that we did last week, we have continued the period of parole of someone does get out of prison throughout the full term of their sentence, and then that would be followed by 35 years of probation. So I think the people who understand what the sexually violent predator problem

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is really all about, who testified by our Committee and who were consulted by the members of our Committee, all say that people in this category can be prevented from offending again through a variety of mechanisms, one of which is lifetime incarceration, but others include very intensive supervision while they're in the community.

So for my money, for my emphasis, I would like to point out that giving them a sentence up front, making them serve the full time of their incarceration and if and when they ever get out of jail, intensive supervision once they're out. That fits in with the American way which is, you get punished for conduct you have committed. You don't get punished for crimes you might commit or probably commit. And all of this, I think I mentioned I'm something a student of Soviet history. This is much like the Soviet criminal code. Throwing people in jail because they're considered to be mentally ill and throwing away the key. That's the way they did it in the Soviet Union. I don't think we should do it here.

REP. JARMOC: (59th)

Madam Speaker.

DEPUTY SPEAKER LYONS:

Representative Jarmoc.

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REP. JARMOC: (59th)

Madam Speaker. I rise in support of this amendment. It's about time we stand here and help the people before they become the victims. With this amendment, that may happen.

As we look around, I think everyone in this Chamber says the system we have now in place may not work to its fullest. So why go with something we know isn't working properly? A few changes may help it.

So I rise in support of this amendment and urge passage. Thank you.

DEPUTY SPEAKER LYONS:

Representative Mikutel.

REP. MIKUTEL: (45th)

Thank you, Madam Speaker. Madam Speaker, I want to get back to the bottom line. The bottom line here is that we have a criminal justice system that does not work. It does not protect our children and women from sexual predators who are in the Connecticut prison system today.

I was talking to a sexual treatment specialist. I asked him and he has a reputation in the State. I said to him, how many Wesley Dodds do you think live in the Connecticut prison system? Wesley Dodds, a child serial killer. He said to me, he thought there were

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between 5 and 10 Wesley Dodds living in Connecticut's criminal system, prison system.

I ask you, when their time comes up and their release date comes up, they will come back out into the community. They will go out to one of your towns. Who will save the children then? These are chronic, hard core sex offenders coming back out into the community. No one is notified that they're there. These are potential serial child killers. This is what a reputable sex treatment therapist told me.

When we have that kind of danger facing us, we should do all that we can to protect our children and women from those people.

Now, sometimes extraordinary problems require and extraordinary solution. I personally consider this a very reasonable solution to a very difficult social problem. And contrary to what you have heard, I have talked with the people in Washington state. The law works. It's keeping those sexual predators who just don't belong on the streets, out of harm's way. It works. It's saving lives and it's saving many, many others from being sexually assaulted.

Not all predators are killers. Many of them just molest and rape. This law is constitutional. Here again, they throw up the argument that it's

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unconstitutional. It is not unconstitutional. We who support this legislation hope it goes to the U. S. Supreme Court, because we believe there it will be ruled in favor, the Supreme Court will rule in favor of it because the courts historically have held that those people who are dangerous and mentally disordered, can be civilly committed until such time as they are safe to return to society. The courts have ruled that historically. We feel they will rule that way again.

I'd like to say one thing about constitutional rights. I think it's time we protected the constitutional rights of our children to life, liberty and the pursuit of happiness. And sexual predators are dedicated to not letting our children have that constitutional right.

And if I've got to choose between the constitutional rights of children and chronic sex offenders who are in prison for violent sexual assault, not once but numerous times, I know where I'm going to come down on. I'm going to come down on the side of the child. That's the innocent person, not the chronic sex offender who is already in prison for violent sexual assault.

Let's come down on the side of the children. Let's stand up for them and send a message. Thank you.

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DEPUTY SPEAKER LYONS:

Representative Graziani.

REP. GRAZIANI: (57th)

Thank you, Madam Speaker. I rise in opposition of this amendment and let me tell you why. In our system of justice, people are innocent until proven guilty, and it would be very easy if sexual predators would carry labels on them, people who would injure people in the future, if we knew who they were, but it is an inexact science to try to find out what's going on in people's minds.

Keep in mind what we're concerned about here is the power of the State of Connecticut to take away somebody's liberties and in a trial for a crime today we are innocent until proven guilty. The state has to prove beyond a reasonable doubt that you committed the crime, and how do they do it? They do it with facts. They do it with witnesses. They do it with exhibits. They do it with hard evidence. It gets to be very dangerous when you're doing it on prediction, and you're relying on experts, psychologists, psychiatrists and the like.

A lot of times with a fact pattern, you may get conflicting evidence. You typically get psychiatrists who disagree and they both are being sincere and they

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both are probably competent, but the human mind is probably the most difficult item to be able to predict to be able to understand what makes people tick. Trying to predict with any degree of reliability whether or not somebody will in fact commit a crime is at minimal a most difficult task, and you have to ask yourself the question, what if we're wrong on the prediction, and I've heard people here today say that people are released for good time because they were deemed to be people who were good risks, would not offend again, and they offended, and why was that?

Because the system made a mistake, because you couldn't really tell whether or not the guy would in fact commit a crime. You believe that he wouldn't but he did. You were wrong, and if you would have known as a prison official or as a judge or as a parole officer that the gentleman would have committed a crime again, you wouldn't have let him out. You made a mistake. Well, I submit to you, Madam Speaker, that mistakes can be made in the other direction, too.

That sometimes people, reasonable people, intelligent people, well thinking people can believe that somebody will commit a crime and they may not. They may be wrong on that score, and that has a cost, too, and in a free society we have to be cognizant of

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that, that it is wrong if an innocent person is committed to jail without his freedom. That has a value to it. I understand and any sane person would not disagree with the fact that there are violent crimes, and there are sick people out there who do atrocious acts of violence to people, and we as a Legislature have to do all in our power to prevent that, to stop that as best we can.

What I submit to you is that this amendment is not the answer. I think the underlying bill goes a great way towards trying to put greater strings and greater controls on keeping tabs on people who clearly have had problems in this area prior to that. If we do it with this particular bill, do we do it with plain old violent crimes? Why not? If somebody is capable of being predicted to commit a violent crime, do we also lock them up? Do we do it with drunk drivers, if somebody's been convicted of drunk driving five times, and has driven even with no license, do we say, well, let's lock you up for 20 years because you'll probably do it again.

I submit to you that in a free society it is very dangerous to take away people's liberty on a guess, because the danger is innocent people will be convicted. Innocent people will lose their freedom,

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and I do not believe that the safeguards that are in the proposed amendment are adequate when you're dealing with people's freedoms to protect that. Another aspect to think about if you are a proponent of the amendment, will juries convict people knowing that they may be convicting them to a life sentence?

There's a good potential that they won't when they realize what it means, that the defendant may not get just a five year sentence, but a sentence for his entire life. They may not convict people because they may be afraid in a sense to convict them because they don't believe somebody should be given a life sentence. Will prosecutors reduce the charges knowing full well that if a defendant pleads to one of these particular offenses, he may get a life sentence, and therefore, the juries may not convict the people, so a prosecutor may very well reduce the crime that is being charged for fear that the defendant won't plead guilty and be found innocent after a trial.

We have to think these things out for unintended consequences, but the one point that I would like to make is whether you're for this amendment or against this amendment, it is not to be decided on whether you're for crime or against crime, or whether you're for protecting children or against protecting children.

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Everybody in here, I'm sure, believes very strongly in the protection of children and the protection of people's rights, but that is not what this bill is about, and if it would with certainty protect people without any downside, I would vote for it in a minute, but it doesn't, and there is a downside, and the downside is we're getting into speculation. We're getting into situations where innocent people or people who have been rehabilitated can be sentenced to life in prison, so Madam Speaker, I respectfully request that the amendment fail. I recognize and do appreciate the hard work that has gone into it and the sincerity of the proponents of the bill, but I honestly believe that it does not serve the best interest of the State of Connecticut. Thank you.

DEPUTY SPEAKER LYONS:

Representative Backer.

REP. BACKER: (121st)

I'm a father of two young children. I have one four year old and one seven year old, and just being up here a couple of days a week, I want to go home and see them every night. I can't even begin to imagine how I would react if they were harmed or raped or murdered. I just can't even begin to imagine how I would react, and I have talked to Representative Mikutel on this

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bill repeatedly as many of us have over the past few months, and after listening to the majority of the debate, Representative Radcliffe, Representative Tulisano, my sense is that I come down and oppose the amendment.

It is incarceration without trial, and we don't do that in the United States. We don't lock people up without trial. It's after the fact they serve their sentence. We can achieve Representative Mikutel's goals of getting these predators off the street, away from our children, away from our friends without transgressing against the Constitution, without trial, without incarceration without trial.

We can do it by loading it up on the front end, by giving the sexual violent offender a 35 and 40 year sentence right up front, and instituting Representative Mikutel's safeguards of review boards any time they come up for parole, if it's in 15 years or 20 years. We don't need to trash our justice system and our penal system to achieve these goals. That's why I oppose this amendment. It's not going to work in the way it is. It's unconstitutional. I would like to see some protection go through, so I'd like us to look at our system as it is, and make it work within the confines of the rights we assure our citizens because I know

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Representative Mikutel's goals are right. I know he's right about these people, but I think we can incarcerate them and protect the society without trashing the rights of the people, and I oppose the amendment, and urge everybody to do so. Thank you.

DEPUTY SPEAKER LYONS:

Representative Wollenberg.

REP. WOLLENBERG: (21st)

Thank you, Madam Speaker. Madam Speaker, a couple things, and I think one of the most telling things was when we had psychiatrists before us and Representative Radcliffe has said that one of them said we shouldn't mix madness with badness, and that's exactly what we're doing here. We asked one of the psychiatrists who did not come to testify on this bill, but who was testifying on another bill whether or not there were any standards or criteria for determining whether or not someone was a sexual predator, and he said there was not.

So I don't know what the board is going to do, the commission when they sit in judgment on this individual, what kind of evidence is going to be given to them, but my concern is, and many people in this Chamber over the years, and Representative Nystrom referred to it, have talked about the insanity defense,

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and how they feel that it's an escape mechanism for some people, but ladies and gentlemen, if I'm defending someone who is accused of a sexual offense, and he hasn't been judged a sexually violent predator because we don't have any judgment of sexually violent predator, the underlying law would be the sexual offense, and I see where this person may have a mental abnormality or a personality disorder.

Ladies and gentlemen, I'm going to get an insanity plea, and I'm going to have the insanity plea upheld. We built it right into this law. That means that he goes before the review board, psychiatry review board, he's put in. He has some therapy, and comes up for periodic review before the psychiatric review board, who as we know have no standards within which to determine whether or not he has recovered.

Without those standards, the psychiatric review board is going to have no alternative, but to put him back on the street. That's what we're doing here. I understand the emotion. I do very well. I've used it myself from time to time as you're well aware. When we're talking about these issues, and they are emotional issues, and God knows every one of us want to get these predators and these stalkers and the people that are intervening in our privacy, let alone in this

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way, in the way to victimize our people, but this is not the way to do it.

This does not create a new crime. This creates a new defense of insanity, a defense of insanity that is not going to be able to be justified by psychiatrists by their own admission, and therefore, they're not going to be able to judge when they've recovered. It's very dangerous to go this way. I don't think we should approve this amendment. I think we should vote it down. We have taken some steps with keeping a string attached to an individual with the 35 years of probation. Now some of you may not realize what a great step that is. We have people who have been accused of sexual abusing children who certain judges have given probation from day one if they would take depo provera. Depo provera is a drug which sates the sexual urge.

Now the problem with that is, I have a lot of problems with that, but the one was that we only could put them on probation for five years, so after five years, this individual didn't have to abide by that condition any longer. Now they have to provide by conditions set down. We do have a string attached to them. In the area of criminal justice, and again that's what we're dealing with here. We're not dealing

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with someone with a problem of mental abnormality or personality disorder. We're dealing with someone who is a criminal, and we should deal with them that way.

This does not do that. This gives us a defense of insanity for what we're now terming the sexually violent predator. This is a new crime. It's a new criminal, and we're building in the insanity defense. That's wrong. We shouldn't do that. We should treat them like criminals with the 35 years, we can keep a hold of these people for a long long while, and we can pull that string at any time. Thank you.

DEPUTY SPEAKER LYONS:

Representative Kirkley-Bey for the second time.

REP. KIRKLEY-BEY: (5th)

Yes, Madam Speaker, for the second time. I had some difficulty keeping up with the train of thought that was trying to be delivered by the last speaker. I mean, we can know when a person is cocaine addicted or drug addicted. We can know when a person is addicted to cigarettes or something else, but we can't tell if a person is a sexual predator. Well, I've watched a few police movies on tv, and in the movies, and they have something called a rap sheet, and a rap sheet is a record of a given individual and the crimes he has been accused for, those that he has been able to get off

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with, those that he has been convicted for, and the length of time that he serves, so if in the course of looking at a person's rap sheet, you notice that he has repeatedly committed the same type of a crime, I would think that a psychiatrist would think that he has some type of behavior pattern that leads him to be a predator, especially if those crimes are related to pedophiles and/or raping or women, so I think that's a very good indication.

We stood here and voted the death penalty without the slightest bit of hesitation. We became more kind in the way we wanted to do it. We did it by lethal injection as opposed to the electric chair. We're concerned that people who are innocent may falsely be accused. There's a gentleman sitting in the prison in Texas right now, a black man, accused of a crime he never committed. They have five witnesses who will substantiate the fact that he's never committed, and they won't give him another trial, so I'm listening to these arguments and as Reverend Hyslop brought up when we were doing the crimes on the death penalty about somebody that he knew that was on death row that was not, who was innocent of the crime and was trying to get himself acquitted of the death, at least get himself the opportunity to be retried.

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So let's not play around with semantics here, and let's not play around with what ifs and could haves. Anything can be done if you want to do it. You can prove anything if you want to do it. I'm listening to the arguments that people make on one side or the other side of an argument, and it's amazing how you turn wards to manipulate your own thoughts. We know any statute if it is bad can be undone.

The fault would here is not to even try it, to see if it will work properly, and I think that's what I find is a flaw with the conversation that's been going on. If in fact, this law is not good, we will know that in time. I believe it is an excellent one, and then if we have to, we'll amend it, as we have amended so many things that I have learned in my four months here as a Representative. Thank you, Madam Speaker.

DEPUTY SPEAKER LYONS:

Representative DiMeo.

REP. DIMEO: (103rd)

Thank you, Madam Speaker. I've learned to enjoy this place, and one of the reasons I have is because of the quality of the debate. I enjoy Representative Tulisano, as I do enjoy other attorneys on our side of the Aisle. They have a great love of the law. They take it seriously. They're dedicated to protecting

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society and our rights, and that's noble, and it would be a sad place if this General Assembly did not have attorneys here, but this House is something else, particularly this House.

This House is a place of the people. Those of us that may not be attorneys, but can read, those of us that may not be students of the law, but we think we know what our conscience and our soul tells us what's right, and quite simply what's right is that we cannot allow this condition to exist if there is a means to avert the problem.

Now I've listened to the concerns about taking away people's rights and putting them in jail. Who said that? We read this. I read it. I can read English. In fact, in one section, which starts on line 109 down to somewhere around line 14, a person shall be committed, committed. A commitment is not the same as incarceration in jail. He shall be committed to the custody of the Department of Corrections in a secure facility and I hope it would be secure with the care and treatment until such time as the person's mental abnormality or personality disorder has so changed that the person is safe to be at large.

To have hearings, they have the right of hearing. They have the right to contest their commitment. We do

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that every day. We do that every day with other people that have abnormalities. What is it? A person that is abnormal and who may injure themselves, we're saying that we do not commit them? A person who is adjudged criminally insane, we do not commit them? Well, I'm going to tell you. I'm not concerned that the psychiatrist may not know right now how they're going to do this, because they're going to start learning how they're going to do it, because they have to do it, and the best way to do it is to push them to do it.

I have great faith in science as I have a great faith in the law, and quite simply then can and they will develop they said standards, and they will develop a system by which we can have reasonable assurance, reasonable assurance that they're right, because we're never absolutely sure that we are, but this is America. This is a country of law, and this law in my opinion, this amendment does allow redress. It does allow for hearing. You are not just clamped in irons without there being due process. Thank you, madam.

DEPUTY SPEAKER LYONS:

Will you remark further on the amendment that is before us? Representative Mazzoccoli.

REP. MAZZOCOLI: (27th)

Thank you, Madam Speaker. I have enjoyed debate

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on this very important issue, and I do appreciate the attorneys we have in this House also. A couple of things that we've discussed that we talked about a higher plain, the fact that we have a legal system that works. Well, I beg to differ with you folks because if we had a system that works, here in 1993, we wouldn't have people getting brutalized out there, raped and murdered.

The fact of the matter is, we do. More than ever before. You know I did hear an interesting argument here this evening. Let our criminal justice system work. Well, you know one of the major criticisms we had of this so-called great system is it's just a recycling center. They go in the front door, out the back door. In the front door, out the back door. We don't treat them. We don't help them, and they continue this vicious process.

You know, I can feel more for the person who steals to feed his family or steals to even get a drug fix, but the person who commits the kinds of crimes we're talking about, I have a tough time feeling for, but let's put all that aside for a minute if we want to. The fact of the matter is a determination has to be made by not one person, but by a group of qualified people that there is some need for civil commitment,

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and for those of you who think that this is going to enhance the insanity plea, I say you're wrong because this process doesn't occur until after a person has served time for potentially one of these crimes, so he's got to be guilty.

He's got to serve the time, and then a determination will be made whether or not this person is sexually violent, but again in Washington state, 50% of those who have gone through the process have been determined to be sexually violent predators, and do I care for the rights of the few? Yes, I do, but the fact of the matter is under the constitution and the concept of majority rule, the rights of the few at the time have to give to the rights of the majority, but we build in protections for the minority, and we saw here last night. I think it was last night as I recall the debate about parliamentary procedure and the rights of the minority, and the rights of the majority overruled.

Now we had a hearing. The minority had a hearing, and we didn't agree we had a process. We're still in the minority, and the majority ruled, but there was a protection, and this bill builds in that protection. There's no permanent incarceration. You serve the time, you go through a civil commitment process afterwards, and for those of you who think that's

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additional time, well, then you missed the whole point of what our society has in front of it, has to deal with, and it gets to the very core of what the criminal justice system has to be about.

It's not a recycling center, and it's time that we start to deal with what crime is about, and how we're going to solve it because building prisons, continuing to build prisons, isn't the simple answer. We can't fill them now, and if our legal system really worked, and the higher plain that we aspire to really did what it was supposed to, we wouldn't be dealing with this today, June 3, 1993.

We know it, and even this good intention may not work completely, but we can come back next year and fix it if there's a problem or the year after. Let's give it a try. Let's support it. Let's help those victims. Let's help those victims. I support this amendment, Madam Speaker.

DEPUTY SPEAKER LYONS:

Will you remark? Will you remark further on the amendment before us? Representative Wollenberg, for the second time.

REP. WOLLENBERG: (21st)

For the second time. Thank you, Madam Speaker. Madam Speaker, I just feel as though I have to rise

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because of some of the things that have been said. I don't have any axe to grind one way or the other here, and some people seem to think as an attorney, I'm gaining something by the position I've taken. That's not so. I believe, I've practiced law for a good number of years, and I believe sincerely that we're setting up another insanity defense.

Now you can say that's hogwash, and I know one when I see one, and this is the whole problem with the whole system. That's not so. I don't disagree with Representative Mazzoccoli. The criminal justice system can do a lot better, and if we can get some of these bills brought out about search and seizure and some of those things, maybe we can help make it better, and help the police and the judges.

This is a very, very small part of it. We have many bigger issues that can help it. I also agree that building prisons doesn't stop crime. You can't build out of this problem, but if you're going to insist that we put them in and keep them in, you're going to have to raise the money to open those prisons, and we haven't done that. You can't build out of it, but we can put them in, and we can warehouse them. That's fine, and I'm not totally against that. I think we ought to get them off the street, but here where you're

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creating a new insanity defense, and someone said, no, they'll be civilly, it's a civil crime. We're going to treat them civilly. Ladies and gentlemen, you don't put mad people in jails civilly.

You don't do that, and here it says they have a mental disorder. Here sets up the insanity plea, and you may feel as though they ought to be in jail, but this is not the point. These people are bad people. They're not mad people. They're looking to overpower people. We heard that in the testimony. It's not just a sexual urge. They're looking for the power over people, but you're not going to handle that if we're going to say they're mad. They're bad people. They ought to be treated as bad people, and not mad people.

Don't set up the insanity defense for these bad people. We've got enough of them who hide behind it now, and I just say again, yes, I am a lawyer. I'm not unproud of that, and I hear four or five people say that lawyers tell us, the lawyers tell us. I'm telling you what I believe and what I've learned over the years, not what I'm saying to get reelected. That doesn't make any difference to me. When we're dealing with things like this, I'm speaking from the heart on these things, and this is what you're doing.

You're setting up an insanity defense for bad

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people. You're not going to put the mad people in jail. They're going to walk the street a lot sooner with this bill than without it.

DEPUTY SPEAKER LYONS:

Will you remark further? Representative Winkler.

REP. WINKLER: (41st)

Yes, thank you, Madam Speaker. I'll be brief. I wasn't planning on speaking on this particular bill, but after listening to a lot of the debate, I felt I should stand and say something. I'm not a lawyer. I'm a mother, and I've worked on a number of pieces of legislation this session dealing with the sexual abuse of children. It's been one of my major goals this session, and sitting on the Judiciary Committee, I sat and heard the hearing on this particular piece of legislation.

We had a psychiatrist that was not there to testify on this bill, but on another piece of legislation that was before us, and when the psychiatrist was before us, he was asked if there was any criteria in place that would be able to determine whether or not an individual could be diagnosed as a sexual predator, and the answer was no.

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As well intentioned as this legislation is, and I do compliment Representative Mikutel for bringing it forward, I still believe that it is flawed. In looking at this legislation in Section 22 it lists that the Commissioner of Corrections will determine the person's mental abnormality or personality disorder. The Department of Corrections Commissioner isn't qualified to make that decision. He doesn't have any medical training, any medical background.

How can we put somebody's life, future life in the hands of the Department of Corrections Commissioner when he doesn't have these qualifications? I listened to others mention the constitutional aspect. We in Connecticut support rehabilitation. We rehabilitate the alcoholic. We rehabilitate the individual that's on drugs. This particular legislation would not permit that to occur. The details of implementation I think are a factor. I feel that it's impossible for me to support this legislation although well intentioned, I don't think it is in the best interest of Connecticut to pass this particular bill at this time. Thank you, Madam Speaker.

DEPUTY SPEAKER LYONS:

Thank you, madam. Will you remark? Will you remark further on the amendment that is before us?

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Representative Mushinsky.

REP. MUSHINSKY: (85th)

Thank you, Madam Speaker. I am going to vote for this probably flawed amendment out of sheer frustration at the short incarceration of those accused of violent sexual assault on women and children, and let's face it, women and children are the ones that are generally the victims of violent sexual assault. It's very rarely an adult male. The last straw for me was probably the incident in New Jersey recently during which a released sexual offender who had served but a couple of years, if I remember right, it was something like two or three years, was released and then assaulted and killed a nine year old neighbor girl as the police were trying to break down the door and rescue her.

As they came in, she was already dead. And that really hit at home for me. Imperfect though this amendment is, it's better than the status quo. The status quo is crying out for change, and I will support the amendment.

DEPUTY SPEAKER LYONS:

Will you remark further? Representative Farr.

REP. FARR: (19th)

Yes. Thank you, Madam Speaker. Very briefly, the

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point here is that we're not talking about this amendment or no change. The underlying bill is substantial change. I would agree with those members of the Chamber who say that these individuals ought to be off the street or they ought to be on a short leash, and that's what the underlying bill does, but this amendment is seriously flawed.

When people come up and suggest on serious criminal statutes, that you ought to vote for something because you like it in principle even though it's flawed, you never ought to do that. We're talking about serious felonies. You don't vote for flawed criminal statutes. You just don't do that. You've got to have some standards. If people say, well all the lawyers are going to stand up and oppose this. Well, I guess we are. I don't know if there's any lawyer in the Chamber that's going to, maybe there has been somebody that's going to support it, and I think we are because we fundamentally believe in our system of justice, and this amendment doesn't represent that.

If you want substantial change, reject the amendment, vote for the bill. 35 years of probation, after serving time for 20 years. I think that will just address the problem. Thank you.

DEPUTY SPEAKER LYONS:

Will you remark further? Representative Tulisano, for the third time. Representative Tulisano asks permission of the Chamber to speak for the third time. Is there objection? Hearing none, please. Is there objection? I believe that wasn't a registered objection, Representative Tulisano. It wasn't made through the Chair. Why don't you just proceed?

REP. TULISANO: (29th)

Madam Speaker, what I've heard during this debate is frustration, more than a system of law. Representative Mushinsky said what we have now doesn't work, and what they've exhibited is people who have been released and committed other crimes. They haven't even served their time. Now the amendment before us presupposes people will serve their time, and then some other hearing will occur, and then they may very well spend some time in prison again. Representative Mazzoccoli sort of mentioned that we won't even build prisons. How are we going to do it now? We haven't had the will to do all the things necessary to deal either psychologically or with treatment all of the kinds of problems we have in this society.

Be that as it may, I mean make it clear, the underlying bill as Representative Farr said, does keep the sword over people's heads. It does not

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violate the Constitution. It provides for all the needs that are necessary if we have the will. Let me tell you, Madam Speaker, if you don't have the will, all of our best intentions are to no avail. The will to do what is necessary is what counts.

Every example we have heard it seems to me with this on the books would occur again. Why? Somebody made a decision to let somebody out of jail. It means they would never have made a decision to keep them in with this bill on the books, so although we use these as an example, all these horrendous stories, nothing changes. We have for the kinds of offenses described 20 years in jail. Representative Mushinsky talks about lesser offenses.

Ultimately something occurs, but even under the terms of this bill, it would not have been civilly committed, and since the expert evidence is that no professional would in this state at least from the head of the psychiatric society, be able to keep somebody in beneath that piece of legislation. Does it make some folks feel good? I understand that. But, Madam Speaker, it is important to understand that as a result of public hearings, as a result of knowing how we can best address these problems, the Judiciary Committee with input from many people has proposed changes in our

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legislation to address these very problems.

Will they be perfect and solve all problems?

Without a doubt, the answer is no, because I can tell you, Madam Speaker, no matter how much I try, no matter how much all of us try and work together, there are failures in our system. We do not have a risk free society. Freedom has with it its risks. One of our Representatives came over and said does this mean that after I serve my time, somebody without a jury can look at my past criminal history and decide I stay in jail?

I said, yeah, that's what it means. Well, that's what they do over there. That's right. That's what they do over there, and as Representative Farr said, maybe all of us have this one essential element. We believe in our system of justice. We still believe that you're innocent until proven guilty. We still believe you're convicted for things you have done, but things that you may do.

Representative Kirkley-Bey I can give you statistics. There are things that some people may do, but you don't think they should be in jail for, but a majority of this House might put people in jail for. Once, as Representative Radcliffe said, you get on the slippery slope, you're there. Madam Speaker, this is an awful precedent. We can deal with the problems

addressed if we have the will. Band-aids don't work. Feel good legislation doesn't work. Commitment and hard work makes things happen. We should never raise our expectations and think we will solve all the world's problems.

I've long come to understand that we make incremental improvement in our lives. We make no great major changes, but the world gets better because of our efforts, but to throw out the baby with the bath water is not the way I would go, Madam Speaker, and I urge rejection of this amendment. Thank you.

REP. MIKUTEL: (45th)

Madam Speaker.

DEPUTY SPEAKER LYONS:

Will you remark? Representative Mikutel for the third time. Representative Mikutel asks permission of the Chamber to speak for the third time. Is there objection? Hearing none, please proceed, sir.

REP. MIKUTEL: (45th)

I'll be brief, Madam Speaker. This is the last time. I've heard a lot of things here today, and I don't doubt anybody who opposes this, I don't doubt their intentions, and I never doubted their intentions. I believe that they have concern like I have. I know I have heard the story, and I have heard all the

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arguments against this. I have done my research on this. I do understand the problem, and I can honestly tell you from my heart that this legislation is needed and it does work in the State of Washington. It helps stop the violence that is polluting our society.

The medical community, the psychiatric community, differs on this issue, but the medical community before refused to report child abuse. Psychiatrists to me are shirking their responsibility, some of them, by not wanting to be part of this process. Well, the medical community is divided on that, but we cannot wait until the medical community gets its act together. The children need protection today. They are at risk today.

I keep asking you to keep this in mind. The law as it is now working does not work. Someone who is dangerous, known to be violent, when his time is up, there is no mechanism, I repeat, there is no mechanism to keep that person confined. He or she will come back out into society when their time is up. They're not ready to come back out. This amendment provides a safety net so that it protects those children. It is a thought out piece of legislation. I remind you. The State of Washington spent a year in a task force studying the whole issue. Better minds than I have,

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legal minds, designed this legislation, but when I see something I think that works, I'm not ashamed to take it from another state and bring it into this state.

I'm asking you to support this because it's the right thing to do. There's a lot of people that can quibble around the edges on this legislation. It's easy to talk against this. There are many talking points that lawyers can make, but I do know that it does work. It was designed by people who were lawyers, good people, laypeople, and I'm asking you to remember the children, because when they are out there on the streets, they are all alone. Their parents will not protect them. The police cannot protect them. The only thing that can protect them is us passing legislation that keeps the people like the sexual predator behind bars.

The main problem of the main bill, and the main bill is flawed in this sense, sexual predators do not necessarily respond to treatment. You can let the sexual predator out on probation, and you can say you're going to have treatment, but treatment alone does not work in many cases, do the time to keep sexual predators, the time to deal with that issue is when he is already confined. don't let him back out until he's ready.

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Once you let him out, it's too late. It is too late. The time to deal with it is while they're still confined. Once they're out and they're on probation, it means nothing to them. It's a joke. Treatment, many of them had treatment for many years. It's a joke to some of them, so don't mislead yourself into believing that the underlying bill solves the problem. It does not. What does solve the problem is my amendment. Thank you.

DEPUTY SPEAKER LYONS:

Thank you. Will you remark further on the bill?
Representative Jarjura.

REP. JARJURA: (74th)

Yes, thank you, Madam Speaker. I was going to refrain from speaking, but I think of a matter of this magnitude before one casts his vote something should be said. First of all, let me commend Representative Mikutel for his tenacity in bringing this issue forward. I sat through the Judiciary Committee public hearings in which he brought up the people from his district on this issue.

You know it's often said, there used to be a point in time when people used to be jealous and wished they were a lawyer. For the people who are not lawyers in this Chamber, this is probably one case where you're

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probably better off because many of you will be voting on the emotions of the issue, and the emotions tell you that you want to take these people who engage in the activities that have been described here today and rip their necks off and maybe even commit them to the death penalty, but the lawyer in me tells me that to vote for this amendment would be the wrong thing because it goes against every provision of juris prudence that I know, and I'd like to consider myself a law and order type of legislator, but at the same token, I cannot compromise the provisions of juris prudence which I dedicated three years of my life studying and the rest of my life in practice, and on a pure emotional sense, I agree with everything that has been said.

The scum of society, these people who are not fit to live in society, should be removed and kept away from the innocent children, but I don't think we're quite prepared in American juris prudence to go and say that a person who has served his sentence and has not committed a crime or another crime should be predetained or detained just because there's a possibility that that person may commit a crime.

So that's my feelings on it, Madam Speaker, and thank you for the opportunity.

DEPUTY SPEAKER LYONS:

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Thank you, sir. Will you remark further on the amendment that is before us? Representative Dillon, for the second time.

REP. DILLON: (92nd)

Thank you, Madam Speaker. Very briefly, we've heard a lot of conflicting statements about the interpretation of what the amendment is before us, and there are those who would have us believe that if we vote for it, we are going to be tougher on crime and on certain types of criminals than we are now. What we're actually doing in this amendment is creating a new category of mental illness which is dependent on your conviction only under certain sections of our criminal statutes.

That I would suggest is bad medicine. Either you are mentally ill, or you are not. It should not be dependent on your conviction for certain types of crimes, and it is not entirely clear why certain types of crimes are singled out and why others are exempted. It is bad medicine and with all the good intentions that went into it, it is also bad law. I oppose it.

DEPUTY SPEAKER LYONS:

Thank you, madam. Will you remark further on the amendment that is before us? If not, will staff and guests please come to the Well? Will members take

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their seats? The machine will be opened.

CLERK:

The House of Representatives is voting by roll.

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

DEPUTY SPEAKER LYONS:

Have all the members voted, and will the members please check the board to make sure that your vote is properly recorded? If all the members have voted, the machine will be locked, and the Clerk will take a tally.

The Clerk will announce the tally.

CLERK:

House Amendment "C" to House Bill 6437.

Total Number Voting 143

Necessary for Adoption 72

Those Voting Yea 64

Those Voting Nay 79

Those absent and not Voting 8

DEPUTY SPEAKER LYONS:

The amendment fails. Will you remark further on the bill as amended? Will you remark further?

REP. TULISANO: (29th)

Madam Speaker.

DEPUTY SPEAKER LYONS:

Representative Tulisano.

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REP. TULISANO: (29th)

It's a great bill now. We ought to vote in the affirmative. Thank you, Madam Speaker.

DEPUTY SPEAKER LYONS:

Will you remark further on the bill? If not, will staff and guests please come to the Well. Will members take their seats. The machine will be opened.

CLERK:

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

DEPUTY SPEAKER LYONS:

Have all the members voted, and would the members please check the board to make sure that your vote is properly recorded? If all the members have voted, the machine will be locked, and the Clerk will take a tally.

REP. CLEARY: (80th)

Madam Speaker.

DEPUTY SPEAKER LYONS:

Representative Cleary.

REP. CLEARY: (80th)

In the affirmative.

DEPUTY SPEAKER LYONS:

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Representative Cleary, in the affirmative.

The Clerk will announce the tally.

CLERK:

House Bill 6437, as amended by House "A" and "B".

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|-----------------------------|-----|
| Total Number Voting | 145 |
| Necessary for Passage | 73 |
| Those Voting Yea | 145 |
| Those Voting Nay | 0 |
| Those absent and not Voting | 6 |

DEPUTY SPEAKER LYONS:

The bill, as amended, passes.

REP. BELDEN: (113th)

Madam Speaker.

DEPUTY SPEAKER LYONS:

Representative Belden.

REP. BELDEN: (113th)

Thank you, Madam Speaker. Last night, Representative Buonocore initiated a parliamentary procedure to bring an item before the Chamber. This item was a resolution to memorialize Congress to propose a constitutional amendment to prohibit physical desecration of the American flag.

As we all are aware, this particular procedure was unsuccessful, based on a ruling of the Chair. A

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Wednesday, June 8, 1993

Calendar 547, Page 23, excuse me, Page 22,
Substitute for House Bill 6437, AN ACT CONCERNING
SEXUAL ASSAULT, as amended by House "A" and "B" and
Senate "A". Favorable Report of the Committee on GAE.

DEPUTY SPEAKER PUDLIN:

Representative Diamantis of the great City of
Bristol.

REP. DIAMANTIS: (79th)

Thank you, Mr. Speaker. I would ask for acceptance
of the Joint Committee's Favorable Report and passage
of the bill in concurrence with the Senate, please.

DEPUTY SPEAKER PUDLIN:

Question is on acceptance and passage in
concurrence with the Senate. Will you remark, Sir?

REP. DIAMANTIS: (79th)

Yes, thank you, Mr. Speaker. As we are aware, this
is a wonderful bill that we debated. It brought forth
some good law. It was amended by House "A" and "B".
However, it needed a technical revision. The Senate
did that. I would ask the Clerk to please call Senate
Amendment "A" and I be allowed to summarize. LCO9320.

DEPUTY SPEAKER PUDLIN:

The Clerk please call LCO9320, Senate "A".

CLERK:

LCO9320, Senate "A".

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DEPUTY SPEAKER PUDLIN:

The gentleman has asked leave of the Chamber to summarize. Hearing no objection, please summarize, Sir.

REP. DIAMANTIS: (79th)

What this amendment does is clean up what the bill brought forth which included ages 16 and 17 which currently we are not able to include and families and services needs petition. It is my understanding since 1979 when we attempted to deal with this, we had a very large fiscal note and that was never the intent of the bill.

And in fact, what this amendment does is clean up that language, exclude the 16 and 17 year olds to make it within our existing laws and our fiscal means and therefore I ask adoption, Mr. Speaker.

DEPUTY SPEAKER PUDLIN:

The question is on adoption. Will you remark, Sir?

REP. DIAMANTIS: (79th)

I merely move for adoption, Mr. Speaker.

DEPUTY SPEAKER PUDLIN:

The question is on adoption. Will you remark? If not, let me try your minds. All those in favor of Senate "A" signify by saying aye.

REPRESENTATIVES:

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Aye.

DEPUTY SPEAKER PUDLIN:

Opposed, nay. The ayes have it. The amendment is adopted. Will you remark further on the bill as amended? Will you remark? If not, staff and guests to the well of the House. Members please be seated. The machine will be opened.

CLERK:

The House of Representatives is voting by roll. Members to the Chamber. Members to the Chamber please. The House is voting by roll call. Members kindly report to the Chamber.

DEPUTY SPEAKER PUDLIN:

If all the members have voted and all the votes are properly recorded, the machine will be locked. The Clerk will take the tally. The Clerk will announce the tally.

CLERK:

House Bill 6437 as amended by House "A" and "B".

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|-----------------------------|-----|
| Total number voting | 147 |
| Necessary for passage | 74 |
| Those voting yea | 147 |
| Those voting nay | 0 |
| Those absent and not voting | 4 |

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DEPUTY SPEAKER PUDLIN:

The bill as amended passes. The Clerk will continue with the Call of the Calendar, Number 437.

CLERK:

Page 17, Calendar 437, Substitute for House Bill 7069, AN ACT CONCERNING ENERGY EFFICIENCY STANDARDS FOR STATE EQUIPMENT AND APPLIANCES AND DESIGN PROPOSALS FOR MAJOR CAPITAL PROJECTS. Favorable Report of the Committee on Appropriations.

DEPUTY SPEAKER PUDLIN:

Representative Fonfara.

REP. FONFARA: (6th)

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

DEPUTY SPEAKER PUDLIN:

Question is on acceptance and passage. Will you remark, Sir?

REP. FONFARA: (6th)

Yes, Mr. Speaker. Mr. Speaker, over the last several years the State has enacted legislation aimed at increasing energy efficiency in State owned and operated buildings. One way this has been done is through the establishment of energy efficiency standards and life cycle costs analysis standards for such buildings.

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concern I have, but generally I certainly am in favor of the spirit of the bill, which is to insure that people have the means to support their kids.

REP. TRUGLIA: Well it has come to my attention over a period of a couple of years that family magistrates have a very difficult time, day in and day out. Having people appear before them. I think wanting to support their family but just not having a job. I think that the magistrate knows these individuals well enough at a certain point but they know they really want a job and I think it would be important if we could be helpful in obtaining a job so they could do their family obligation.

So I would like to, you know, really look at this legislation again to see how best we could serve the children. Because that's really the most important thing. If a child knows that a child cares about him I think that's extremely important that the father cares enough to try to support the child, I think is very important. I think it would bring some family harmony also. If a child constantly hears the mother talking about the father not supporting him, it's very difficult for the child. I would like to pursue this.

COMM. JON ALANDER: I certainly share that goal, I'd be happy to talk to you about it further.

REP. TRUGLIA: Thank you very much.

SEN. JEPSEN: Further questions? Thanks very much.

COMM. JON ALANDER: Thank you.

SEN. JEPSEN: Okay, Gail Burns-Smith is the first from the public. While she is walking up here is Gary O'Connor here? He did not sign up for a specific bill. Then Gail will be followed by Patricia Shea.

GAIL BURNS-SMITH: Senator Jepsen, Representative Tulisano and members of the Committee my name is Gail Burns-Smith. I'm the executive director of the Connecticut Sexual Assault Crisis Services which is the association of all 13 rape crisis centers located throughout the state. I've already submitted to the committee our written testimony on two bills. Committee Bill HB6437, AN ACT

CONCERNING SEXUAL ASSAULT. And Raised Bill HB6284, HB7284
AN ACT CONCERNING SEXUALLY VIOLENT PREDATORS. I'm
here just to highlight some of that testimony. In
terms of Committee Bill HB6437.

Sexual misconduct by licensed and unlicensed health
and mental health care providers and clergy is an
extremely serious problem.

REP. TULISANO: What number was that? What number the
last one?

GAIL BURNS-SMITH: HB6437, AN ACT CONCERNING SEXUAL
ASSAULT.

REP. TULISANO: Okay.

GAIL BURNS-SMITH: And we strongly urge this Committee
to support this bill. We believe that, although
currently most professional societies explicitly
prohibit sexual conduct with clients, we believe
this act builds on those codes of ethics and send a
clear message to those providers who abuse the
power of their relationship, that society will not
tolerate such abuse. We would ask that some
language be included however, that states that
consent of the client or former client is not a
defense.

And additionally we would ask that those sections
in 4, 5, 7, 8 and 9 be supported by the Committee.
We want to highlight section 6, parts F and G which
we feel are critical elements to support
appropriate collection of sex evidence by health
care facility staff. When the collection of
evidence was first standardized all 35 hospitals in
the state were provided with training and
materials. However, we have subsequently learned
that many of the staff people have not had adequate
training and compliance of the protocol is
currently at risk.

We believe that if forensic sex evidence is
mishandled or not properly maintained, the state's
attorneys ability to prosecute a case will be
significantly hampered. And the legal liability of
the health care facility also would be increased
significantly. We think that it's essential for
health care personnel to have adequate training in

this area. Also, we have submitted to the Committee some substitute language for inclusion in this bill and the co-chairs do have that.

REP. TULISANO: Gail, can you tell me why do you think you have to add language, to dealing with consent?

GAIL BURNS-SMITH: I believe that unless you explicitly put that language in that, that will be the defense's statement. That the victim, or the client of this person, or the patient actually consented to the sexual activity. Many of us believe that those in those kinds of relationships cannot freely consent.

REP. TULISANO: I think this spells that out almost like statutory rape. So that you wouldn't. I mean, a statutory rape scene situation, consent is not about, right Mr. prosecutor, former prosecutor?

: Yes, consent is consent is not..

REP. TULISANO: Do you specifically say that in, do you recall? In the statutory rape statute?

GAIL BURNS-SMITH: No, it doesn't specifically say that.

REP. TULISANO: You understand, I think this attempts to spell out the same way as that. For those who think I don't I care about sexual assault, or otherwise, this is my legislation and that's why I drafted it based on that.

GAIL BURNS-SMITH: Right. I know some of us know better.

REP. TULISANO: Be falsely accused from time to time publicly and otherwise.

GAIL BURNS-SMITH: No, we actually appreciate the support you've given us.

REP. TULISANO: Not you madam. We'll have our differences from time to time but at least they'll be nice.

PATRICIA SHEA: I think there would still be a hole in terms of property casually auto.

REP. TULISANO: Okay. Gotcha. Thank you.

PATRICIA SHEA: Thank you.

REP. TULISANO: Anybody else have questions? Thanks.
Laurie Ann Pearlman.

DR. LAURIE ANN PEARLMAN: Senator Jepsen, Representative Tulisano and members of the Committee, I'm Dr. Laurie Ann Pearlman, a clinical psychologist and the research director of the Traumatic Stress Institute, which is a private mental health organization in South Windsor, Connecticut. I'm also the co-author of a book on psychological impact of trauma on adult survivors. I'm here today to express my support for Committee HB6437, AN ACT CONCERNING SEXUAL ASSAULT with some minor revisions which are included in the written testimony I have submitted.

My organization specializes in providing psychotherapy for victims of a wide range of traumatic life events. At any one time, we have approximately 250 active therapy clients. Approximately 3/4 of these individuals are trauma survivors. Most of those adult and adolescent survivors of childhood sexual abuse. Many of our clients have experienced sexual abuse in previous therapies. From this experience base today I will speak to issues related to the sexual abuse of psychotherapy clients by their therapists.

I support the criminalization of sexual assault by health care providers in the current proposed legislation. I will briefly present five reasons for my support of this bill. These reasons can be summarized in three terms: fiduciary responsibility, revictimization and personal and social costs. First surveys show that up to 13% of psychotherapists report having had sexual contact with a current or former client, and 90% of these victims find this contact harmful.

The harm they experience takes the forms of depression, anxiety, substance abuse, suicide attempts, relationship difficulties and other personal and interpersonal problems which often lead to marital and parenting difficulties. Second, the major mental health professional organizations all explicitly cite sexual abuse of clients by therapists as a breach in ethics and as grounds for dismissal from the professional society.

Third, sexual abuse of psychotherapy clients by their therapists cost individuals their self respect and costs society real dollars in terms of increased hospitalizations, substance abuse, work absences, child care needs and additional psychotherapy for problems related to the abusive therapies.

Fourth, research shows that those most vulnerable to sexual abuse by therapists are adult survivors of childhood sexual abuse. This means that the one in three women and one in seven men who are adult survivors are at special risk. This revictimization carries significant emotional interpersonal and social costs. Revictimization is one of the major problems faced by the adult sexual abuse survivor, and fifth, sexual exploitation of clients by therapists constitutes an abuse of power and trust.

Within a therapeutic relationship voluntary consent is a very difficult matter. Issues of consent between peers the people in an inherently equal relationship are different from consent issues in a healthy relationship. As a society, we have an obligation to protect the rights of those who enter into fiduciary relationships and those who are least able to protect themselves from exploitation.

In summary, I support this legislation because I believe it represents an important step toward protecting Connecticut citizens from breaches of significant fiduciary relationships, from revictimization and from the enormous personal and social costs associated with sexual exploitation by health care professionals. Thank you for your time and attention.

REP. TULISANO: You would like us in you (applause). Excuse me, not the zoning board. Maybe the inland wetland board tonight, but it's not the zoning board. You want to take, the definition of sexual contact which you may reference to in your written statement which you suggest be changed is one of long standing which was developed after many years of study in terms of it applies to all of our what is generally termed rape statutes. It really deals with sexual assault in various degrees, and we define sexual contact, I suppose, the reason the statute is written this way is to insure that we're not talking about consensual relationships, because we take off, sexual contact, you would have it mean any contact with the intimate parts of a person, not married to the doctor.

We would then have to change a lot more things than you suggest here, I believe, and why would I want to change something where everybody knows what we're talking about to something that might bring problems in prosecution?

DR. LAURIE ANN PEARLMAN: That makes sense. The experience of the laws obviously makes sense. I'm not sure how one determines the purpose. That's really my thinking.

REP. TULISANO: When you get into the issues of what sexual assault is whether it's sexual or aggression's another problem.

DR. LAURIE ANN PEARLMAN: Right, I understand.

REP. TULISANO: We have a sort of hybrid statutes, both sexual and violent at the same time. The other thing in line 60 through 69 and presumably in other places in the statute, you want to change the definition of emotionally dependent. Tell me more about that. That is a key to this bill.

DR. LAURIE ANN PEARLMAN: Yes, it seems.

REP. TULISANO: Unlike the other piece, it's new language.

DR. LAURIE ANN PEARLMAN: Yes, it seems to me that the nature of a therapeutic relationship is that it's a relationship based in trust. It's a unique relationship in the sense that the therapist is entrusted with developing the rules and the roles and the boundaries and for maintaining and holding those roles and boundaries. In any kind of a helping relationship, the person seeking help is by definition in a vulnerable position, and I don't think we can expect that entirely voluntary consent is actually a possibility.

REP. TULISANO: So what you're suggesting is that in all cases there is no such thing as voluntary consent? Or you may assume that in 99.9, therefore throw in the other point?

DR. LAURIE ANN PEARLMAN: Yes.

REP. TULISANO: Your language talks about former clients.

DR. LAURIE ANN PEARLMAN: Yes. Certainly this ethical principles of the American Psychological Association which I have included in the packet there say that therapists may not have engaged in sexual contact with a former client because certainly therapists have been known to terminate therapy relationships in order to.

REP. TULISANO: Okay. Five years later I will go to a cocktail party. I'm the therapist, run into an old patient, start up a new relationship, can't have a relationship?

DR. LAURIE ANN PEARLMAN: I don't think so.

REP. TULISANO: Ten years later?

DR. LAURIE ANN PEARLMAN: Sorry.

REP. TULISANO: Twenty years later?

DR. LAURIE ANN PEARLMAN: No.

REP. TULISANO: We're in the old people's home in Florida. (laughter) Can I start a relationship? No?

DR. LAURIE ANN PEARLMAN: No, because....

REP. TULISANO: Who cares? I'm serious. Is there a time, is there some point in your opinion at least where..

DR. LAURIE ANN PEARLMAN: No.

REP. TULISANO: This relationship no longer exists.

DR. LAURIE ANN PEARLMAN: No, because part of what happens in psychotherapy is the internalization of the relationship and that means that that the client comes to perceive and experience the therapist in a special way and we hope that through the therapy process, the person takes on some of the more mature characteristics of the therapist, and that means that the therapist like a parent has a special lifelong relationship with that client which may exist only in the client's experience, but that doesn't invalidate it.

REP. TULISANO: One draft of this bill that I did at one point in my life talked about other relationships between psychotherapists makes it kind of easy. How about for a lawyer? Can I get together when I'm in the old person home then?

DR. LAURIE ANN PEARLMAN: You know, I don't know a lot about...

REP. TULISANO: I think there are some problems in lots of relationships other than psychotherapy.

DR. LAURIE ANN PEARLMAN: Yes, I agree. I agree. I don't know a lot about lawyer - client relationships. I'm not an expert in those relationships.

REP. TULISANO: The one draft we were talking about anybody who was involved in an emotionally dependent situation with another professional, but then if we ever made it that broad, in fact redrafted it to be that broad, then would you think there's a problem with time and space?

DR. LAURIE ANN PEARLMAN: Again, I don't know, but the essence of, you see the thing is the essence of what is curative in a therapeutic relationship is the relationship. It is in the relationship. It is not the advice I give my client. It's not the skills my client learns. It's something about how that client takes away aspects of myself.

REP. TULISANO: How about my sexual assault crisis?

DR. LAURIE ANN PEARLMAN: I'm sorry?

REP. TULISANO: How about my sexual assault crisis counselor?

DR. LAURIE ANN PEARLMAN: I don't think it's a good idea.

REP. TULISANO: That's for my friends over there. Okay, thank you. Any other questions? Representative Winkler.

REP. WINKLER: Yes, thank you. Have any of your clients been victims of ritual (inaudible) abuse?

DR. LAURIE ANN PEARLMAN: Yes, yes, some have.

REP. WINKLER: Some have? Do you find this to be increasing at all?

DR. LAURIE ANN PEARLMAN: It's coming to our attention increasingly.

REP. WINKLER: Thank you.

SEN. JEPSEN: Thank you.

DR. LAURIE ANN PEARLMAN: Thank you.

REP. TULISANO: Bruce Sturman. Bruce, you are here. Okay, and then we'll go to Edward Madison.

ATTY. BRUCE STURMAN: Mr. Chairman, members of this Committee, my name is Bruce Sturman. I'm the public defender for New London County, and I'm here tonight to speak about Representative Mikutel's proposed legislation. I had the opportunity last

HB 7284

If this practice continues, many treating physicians will not be motivated to pursue and develop less intrusive treatments and to forge true therapeutic alliances with their patients without force or coercion.

Thank you.

REP. TULISANO: Bill Foreman. I thank you. Pass. David Kniffin. Pass. Catherine Costa. Pass. Lisa Mazzella. Pass. I gather, pass. Is there anybody else in the audience who has yet -- wishes to testify and present evidence to this body who has not signed up. Seeing none, you don't count. That was only in the first hour. You are a legislator, you are not a people. Person. You don't count.

This is the last one. Let the record also show for those who think otherwise, we stayed here and everybody was willing to stay with us. Mad'am. Which bill?

: Two of them.

REP. TULISANO: Two?

: I was only going to talk about one, but I am going to mention two.

REP. TULISANO: Okay.

DEBRA MANDRA: Good evening Representatives Tulisano and members of the Judiciary Committee. My name is Debra Mandra and I am a resident of New Haven and I came here tonight as a private citizen, mental health professional, advocate, and a person with a disability.

First, I would like to express my support of HB6437, AN ACT CONCERNING SEXUAL ASSAULT BY HEALTH CARE PROVIDERS, which I think Gail Burns-Smith addressed earlier this evening.

REP. TULISANO: What do you think about that problem about time? (inaudible - not using microphone)

DEBRA MANDRA: Well, I personally don't think that -- I guess it is a special kind of relationship that I think because of the imbalance of power and sometimes -- I don't think there should ever be a time when a person ---

REP. TULISANO: (Inaudible - not using microphone) Age?

DEBRA MANDRA: No.

REP. TULISANO: No! (laughter)

DEBRA MANDRA: Second, I would like to express my strong opposition to HB7288, CONCERNING PATIENTS' RIGHTS, regarding forced medication.

In response to the question that you asked earlier, Mr. Tulisano -- is everyone on board?

REP. TULISANO: I got the answer already (laughter)

DEBRA MANDRA: Okay. I was going to say the answer is a resounding NO.

REP. TULISANO: I thought you were playing around there. (laughter)

DEBRA MANDRA: A resounding NO. I think the most significant passengers on this ship were never invited on board or perhaps were thrown overboard and asked to walk the gangplank. But, they weren't part of it. (Laughter)

REP. TULISANO: I make people walk the gangplank? Only once did I kick out...

DEBRA MANDRA: No. No, I am not saying that. People that were part of the planning process, they were the ones that did it.

REP. TULISANO: Okay.

DEBRA MANDRA: The important thing is that people were never included in the process that had direct significant effects and consequences on their lives. They had the patients and the ex-patients themselves. This was a gross miscarriage of

significant risk of harm is in the denial of the individual's choice and dignity of people who have already been abused. Until we start using crystal balls for scientific analysis and prediction, we will begin medicating all people who are in correctional facilities based on their patterns of thought or past behavior. Then we have to accord psychiatric patients the same rights and protections.

The significant risk of harm is by confusing people who had experienced abuse and have been diagnosed with psychiatric labels and require treatment and confusing those people with people who perpetrate violent crimes and go undiagnosed and untreated.

A therapist I know often compares the whole situation to the Holocaust in that if a group of psychiatrists were sent in to evaluate the situation, it would be like they would be saying, Oh, all the victims require treatment, but all the perpetrators are allowed to go free without any kind of consequences and that is what is happening now.

That is why I urge your opposition to HB7288. I am also going to be urging patients, ex-patients, consumers to be calling all of you.

REP. TULISANO: Oh, God, don't tell them that.
(LAUGHTER) Don't call my office.

REP. WOLLENBERG: Call Brad Davis.

REP. TULISANO: Call Brad. Call Brad. Call him at 12 in the morning. Call him up.

DEBRA MANDRA: I will give him your number. Thank you.
Good night.

The one on sexual assault of health care providers. That is HB6437. I am in favor of that one.

REP. TULISANO: Thank you very much. No one else is here. I call this hearing to a close at whatever hour it is.



STATE OF CONNECTICUT

002930

OFFICE OF POLICY AND MANAGEMENT
POLICY DEVELOPMENT AND PLANNING DIVISION

**WRITTEN TESTIMONY
THOMAS A. SICONOLFI, DIRECTOR
JUSTICE PLANNING UNIT**

THURSDAY, APRIL 8, 1993

JUDICIARY COMMITTEE

H.B. 6437, AN ACT CONCERNING SEXUAL ASSAULT

My name is Thomas A. Siconolfi. I am the Director of Criminal Justice Planning at the Office of Policy and Management (OPM). On behalf of Governor Weicker and Secretary Cibes, I am submitting written testimony in support of House Bill No. 6437, AN ACT CONCERNING SEXUAL ASSAULT. This bill incorporates several of the recommendations of the recently concluded Governor's Task Force on Sexual Violence. If passed, H.B. 6437 would improve Connecticut's response to a class of crimes which are particularly demeaning and devastating to their victims.

According to the F.B.I., sexual assault is one of the fastest growing crimes in the United States. In 1991, fully 106,593 rapes were reported to law enforcement authorities nationwide, with Connecticut reporting close to 1,000. The actual number of rapes which occurred in the U.S. generally, and Connecticut specifically, may be 5 to 6 times greater because of substantial underreporting by victims who are primarily women and children.

In May 1992 Governor Weicker appointed a special Task Force to review Connecticut's response to sexual violence. Nineteen individuals representing the state justice system, social and victims' services, higher education, law enforcement, health care services, business and private citizens were asked to serve on the Task Force. Former Chief State's Attorney Richard N. Palmer was designated chairman of the group. The Governor's Task Force on Sexual Violence was given a mandate to:

- explore and develop recommendations regarding Connecticut's current response to sexual violence and the adequacy of the criminal justice system's reaction to sexual violence;

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- examine the consistency, clarity, and content of statutes pertaining to sexual assault;
- analyze the availability of services for sexual assault victims and their families; and
- investigate the extent of current public awareness and prevention efforts.

The Task Force began meeting in June 1992, and issued its report, which has been distributed to all members of the Judiciary Committee, in March 1993. The report and its recommendations are the product of many meetings and the efforts of a great many individuals who were invited by the Task Force to assist in its work. In July, the Task Force held a public hearing at which thirty individuals representing victims and family members, service providers, police, health care providers, rape crisis center staff, sex offender treatment providers and others, presented chilling testimony concerning the devastation and long term effects of sexual assaults on victims and their families. While data available to the Task Force offered a great deal of information, nothing influenced or prepared Task Force members for what they heard and saw at the public hearing.

The Task Force concluded that crimes of sexual violence ultimately reflect deep-rooted elements of modern culture which continue to be reinforced through movies, music, and television. This is particularly disturbing because our young are the primary audience for these media. The ultimate solution to sexual violence therefore lies well beyond improvements we can implement in Connecticut's laws and services. Basic cultural change is necessary to eliminate tolerance of destructive stereotypes which can lead to sexual violence.

Nevertheless, the Governor's Task Force recognized that we have a responsibility to address those aspects of the problem over which we do have some control. The Task Force report therefore presents 21 administrative, programmatic and statutory recommendations which encompass a wide range of initiatives relating to prevention, public awareness, investigation and evidence collection, statutory protection for victims and stiffer penalties for offenders. The specific recommendations are described in detail in the Task Force report.

The Task Force encourages the adoption of its recommendations. The Governor's recommended budget provides funding for two important initiatives; a pilot unit within the Division of Criminal Justice to specifically and vigorously prosecute sexual assaults, and a nurse examiner program which will standardize emergency room examinations and evidence collection.

House Bill No.6437 addresses four Task Force recommendations by:

- moving the Commission on Hospital Evidence Collection from the Department of Health Services to the Division of Criminal Justice, were it can more effectively aid in criminal investigations;
- abolishing the Sex Crimes Analysis Unit in the Department of Public Safety, and transferring sex crime data collecting to the Uniform Crime Report unit of that agency;
- adding sexual assault/battered women's counselors as mandated reporters of child abuse, elderly abuse, and abuse of persons with mental retardation; and,
- establishing new criminal penalties for sexual exploitation by psychotherapists.

These initiatives represent a good first step toward improving Connecticut's response to sexual violence. We urge favorable action by the Judiciary Committee on House Bill No. 6437 and stand ready to provide any additional information or clarification which the committee may require.



STATE OF CONNECTICUT

002933

DEPARTMENT OF HEALTH SERVICES

DIVISION OF MEDICAL QUALITY ASSURANCE

HOUSE BILL 6437

AN ACT CONCERNING SEXUAL ASSAULT

TESTIMONY PRESENTED BEFORE THE JUDICIARY COMMITTEE

April 8, 1993

The Department of Health Services strongly supports House Bill 6437. This bill would establish criminal penalties for the sexual exploitation of clients by psychotherapists.

The Department of Health Services is the state agency charged with regulating Connecticut's health care professionals. The Department licenses or certifies health providers who have satisfied educational and training requirements for entry to practice. The Department also investigates and prosecutes complaints against license or certificate holders who have fallen below the accepted standards of professional practice.

Through the Department's enforcement authority, disciplinary action can be imposed on health care providers who engage in misconduct, including sexual misconduct. However, the disciplinary purview of the Department is essentially confined to actions that can be imposed on the license, such as placing a license on suspension or probation. Even our most severe penalty, revocation of licensure or certification, does not preclude the perpetrator from practicing in an unregulated capacity as a psychotherapist. Nor does our process provide any jurisdiction over unlicensed or uncertified individuals who, in Connecticut, can lawfully provide psychotherapy services to the public.

In that the Department presently has 45 cases of sexual misconduct pending, these cases clearly have a prominent place in our enforcement program. These are cases where the health care provider violates the client's trust, abdicates any professional duty to the client, and exploits the inherent power imbalance in the provider-client relationship. The perpetrator misuses the client's trust and emotional dependence as a means to gain sexual access and to exact sexual compliance. The vulnerabilities of the client - the client's neediness, confusion, distress, or illness - become tools in the service of sexual exploitation. Not only is the client deprived of the professional help for which treatment is sought; serious harm is inflicted as well. Victims of sexual exploitation by health providers suffer well-documented effects, including intense anxiety, self-blame and depression,

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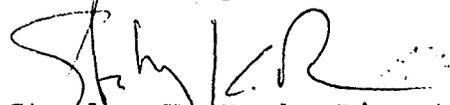
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suicidal feelings, loss of trust in others, difficulty in sustaining intimate or sexual relationships, and a host of physical problems. Currently, these victims simply do not have adequate recourse to address the grievous harm that has been inflicted on them.

House Bill 6437 would provide a much needed avenue for such recourse, and the Department applauds the Committee for bringing this initiative forward. Although we believe this bill is an excellent start to addressing the problem, the Department would like to propose substitute language that would further strengthen the bill. We have attached substitute language that would broaden the types of health providers who would be subject to criminal penalties. Our experience is that the problem of sexual misconduct permeates many health professions; the Department's cases have involved such diverse providers as dentists, chiropractors, optometrists, and dermatologists. Our substitute language would also establish an additional deterrent via civil liability for sexual exploitation by a health provider. Additionally, we propose to extend the time period during which a person who was sexually exploited as a minor can bring action. Our proposal also deals with the issue of consent, which is readily exploited in a provider-client relationship founded on trust. We believe that these elements are critical to any effort to effectively deter providers from this type of misconduct.

In summary, the Department supports House Bills 6437 and encourages the Committee's consideration of our proposed substitute language. Thank you for your consideration of the Department's views on this matter.

Respectfully submitted,



Stanley K. Peck, Director
Division of Medical Quality Assurance

SKP:bjh
7799Q/23-24

DEPARTMENT OF HEALTH SERVICES
PROPOSED SUBSTITUTE LANGUAGE
COMMITTEE BILL 6437

AN ACT CONCERNING SEXUAL ASSAULT

On line 52 to line 69, inclusive, substitute the following language:

(9) "PSYCHOTHERAPY" MEANS THE PREVENTION, ASSESSMENT, OR TREATMENT OF EMOTIONAL OR MENTAL SYMPTOMS, PROBLEMS, OR CONDITIONS OF INDIVIDUALS OR GROUPS, INCLUDING BUT NOT LIMITED TO COUNSELING, GUIDANCE, OR BEHAVIOR MODIFICATION, WITH PERSONS OR GROUPS IN THE AREAS OF WORK, FAMILY, SCHOOL, MARRIAGE, OR PERSONAL RELATIONSHIPS.

(10) "PROVIDER" MEANS AN INDIVIDUAL WHO PROVIDES OR PURPORTS TO PROVIDE PSYCHOTHERAPY OR OTHER PROFESSIONAL SERVICES AND WHO:

(a) IS LICENSED OR CERTIFIED PURSUANT TO CHAPTERS 370 TO 373, INCLUSIVE; CHAPTERS 375 TO 381a, INCLUSIVE; CHAPTERS 383 TO 383b, INCLUSIVE; CHAPTER 384a; CHAPTER 388; OR CHAPTER 399;

(b) IS A NURSE'S AIDE, AS DEFINED IN 42 U.S.C. SECTION 1395i-3 AND 1396r, AS AMENDED, WHO IS EMPLOYED AND FUNCTIONING IN A CHRONIC AND CONVALESCENT NURSING HOME OR REST HOME WITH NURSING SUPERVISION LICENSED PURSUANT TO SECTION 19a-491;

(c) HOLDS NO LICENSE OR CERTIFICATE ISSUED BY THE DEPARTMENT OF HEALTH SERVICES BUT HOLDS HIMSELF OUT AS PROVIDING PSYCHOTHERAPY; OR

(d) IS A MEMBER OF THE CLERGY.

(11) "CLIENT" MEANS A PERSON WHO SEEKS OR OBTAINS PSYCHOTHERAPY OR OTHER PROFESSIONAL SERVICES FROM A PROVIDER.

(12) "FORMER CLIENT" MEANS A PERSON WHO HAS RECEIVED PSYCHOTHERAPY OR OTHER PROFESSIONAL SERVICES BY THE PROVIDER WITHIN TWO YEARS PRIOR TO ANY CONDUCT DESCRIBED IN SUBSECTION (b) OF SECTION 2 OR SUBSECTION (b) OF SECTION 3.

(13) "EMOTIONALLY DEPENDENT" MEANS THAT THE NATURE OF THE CLIENT'S OR FORMER CLIENT'S EMOTIONAL CONDITION OR THE NATURE OF THE TREATMENT PROVIDED BY THE PROVIDER ARE SUCH THAT THE CLIENT OR FORMER CLIENT IS UNABLE TO WITHHOLD CONSENT TO ANY CONDUCT DESCRIBED IN SUBSECTION (b) OF SECTION 2 OR SUBSECTION (b) OF SECTION 3.

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(14) "THERAPEUTIC DECEPTION" MEANS A REPRESENTATION BY A PROVIDER THAT ANY CONDUCT DESCRIBED IN SUBSECTION (b) OF SECTION 2 OR SUBSECTION (b) OF SECTION 3 IS CONSISTENT WITH OR PART OF THE CLIENT'S OR FORMER CLIENT'S TREATMENT.

On line 83, insert a period in lieu of the comma after "person" and delete the word "OR".

Delete line 84 to line 92, inclusive, in their entirety and substitute the following language in lieu thereof:

(b) (1) FOR THE PURPOSES OF THIS SUBSECTION, "SEXUAL PENETRATION" MEANS VAGINAL INTERCOURSE, CUNILINGUS, FELLATIO, ANAL INTERCOURSE, OR ANY INTRUSION, HOWEVER SLIGHT, INTO THE GENITAL OR ANAL OPENING OF THE CLIENT'S OR FORMER CLIENT'S BODY BY ANY PART OF THE PROVIDER'S BODY OR BY ANY OBJECT USED BY THE PROVIDER FOR THIS PURPOSE, WHETHER OR NOT THERE IS EMISSION OF SEMEN. "SEXUAL PENETRATION" DOES NOT INCLUDE CONDUCT THAT IS A PART OF STANDARD MEDICAL TREATMENT OF A CLIENT OR FORMER CLIENT.

(2) A PROVIDER WHO ENGAGES IN SEXUAL PENETRATION IS GUILTY OF SEXUAL ASSAULT IN THE SECOND DEGREE, AND CONSENT OF THE CLIENT OR FORMER CLIENT IS NOT A DEFENSE, IF ANY OF THE FOLLOWING CIRCUMSTANCES EXISTS:

(A) THE ACTOR IS A PROVIDER AND THE COMPLAINANT IS A CLIENT OR FORMER CLIENT OF THE PROVIDER AND THE SEXUAL PENETRATION OCCURRED DURING THE TIME PERIOD OF THE PSYCHOTHERAPY OR OTHER PROFESSIONAL SERVICES;

(B) THE ACTOR IS A PROVIDER AND THE COMPLAINANT IS A CLIENT OR FORMER CLIENT OF THE PROVIDER AND THE CLIENT OR FORMER CLIENT IS EMOTIONALLY DEPENDENT UPON THE PROVIDER;

(C) THE ACTOR IS A PROVIDER AND THE COMPLAINANT IS A CLIENT OR FORMER CLIENT OF THE PROVIDER AND THE SEXUAL PENETRATION OCCURRED BY MEANS OF THERAPEUTIC DECEPTION; OR

(D) THE ACTOR IS A PROVIDER AND THE PROVIDER ACCOMPLISHES THE SEXUAL PENETRATION BY MEANS OF FALSE REPRESENTATION THAT THE PENETRATION IS FOR A BONA FIDE HEALTH CARE PURPOSE BY THE PROVIDER.

On line 93, replace "(b)" with "(c)".

On line 110, insert a period in lieu of the semicolon after "body" and delete the remainder of line 110.

Delete line 111 to line 120, inclusive, in their entirety and substitute the following language in lieu thereof:

(b) (1) FOR THE PURPOSES OF THIS SUBSECTION, "SEXUAL CONTACT" MEANS ANY OF THE FOLLOWING:

(A) KISSING OR THE INTENTIONAL TOUCHING BY THE PROVIDER OF THE CLIENT'S OR FORMER CLIENT'S INTIMATE PARTS, OR OF THE CLOTHING COVERING ANY OF THOSE PARTS OF THE BODY;

(B) THE INTENTIONAL TOUCHING BY THE PROVIDER OF THE PROVIDER'S INTIMATE PARTS, OR OF THE CLOTHING COVERING ANY OF THOSE PARTS OF THE BODY, TO ANY BODY PART OF THE CLIENT OR FORMER CLIENT, OR TO THE CLOTHING COVERING ANY OF THE CLIENT'S OR FORMER CLIENT'S BODY PARTS;

(C) THE INTENTIONAL TOUCHING BY THE PROVIDER OF THE PROVIDER'S INTIMATE PARTS, OR OF THE CLOTHING COVERING ANY OF THOSE PARTS OF THE BODY, OR THE INTENTIONAL EXPOSING OF THOSE BODY PARTS BY THE PROVIDER TO THE CLIENT'S OR FORMER CLIENT'S VIEW; OR

(D) KISSING OR THE INTENTIONAL TOUCHING BY THE CLIENT OR FORMER CLIENT OF THE PROVIDER'S INTIMATE PARTS, OR OF THE CLOTHING COVERING ANY OF THOSE PARTS OF THE BODY, IF THE PROVIDER AGREES TO THE KISSING OR INTENTIONAL TOUCHING.

"SEXUAL CONTACT" INCLUDES REQUESTS BY THE PROVIDER FOR CONDUCT DESCRIBED ABOVE IN SUBPARAGRAPHS (A) TO (D), INCLUSIVE, OF THIS SUBDIVISION, OR OFFERS TO EXCHANGE PROFESSIONAL GOODS OR SERVICES FOR SUCH CONDUCT. "SEXUAL CONTACT" DOES NOT INCLUDE CONDUCT DESCRIBED IN SUBPARAGRAPH (A) OF THIS SUBDIVISION THAT IS A PART OF STANDARD MEDICAL TREATMENT OF A CLIENT OR FORMER CLIENT.

(2) A PROVIDER WHO ENGAGES IN SEXUAL CONTACT IS GUILTY OF SEXUAL ASSAULT IN THE FOURTH DEGREE, AND CONSENT OF THE CLIENT OR FORMER CLIENT IS NOT A DEFENSE, IF ANY OF THE FOLLOWING CIRCUMSTANCES EXISTS:

(A) THE ACTOR IS A PROVIDER AND THE COMPLAINANT IS A CLIENT OR FORMER CLIENT OF THE PROVIDER AND THE SEXUAL CONTACT OCCURRED DURING THE TIME PERIOD OF THE PSYCHOTHERAPY OR OTHER PROFESSIONAL SERVICES;

(B) THE ACTOR IS A PROVIDER AND THE COMPLAINANT IS A CLIENT OR FORMER CLIENT OF THE PROVIDER AND THE CLIENT OR FORMER CLIENT IS EMOTIONALLY DEPENDENT UPON THE PROVIDER;

(C) THE ACTOR IS A PROVIDER AND THE COMPLAINANT IS A CLIENT OR FORMER CLIENT OF THE PROVIDER AND THE SEXUAL CONTACT OCCURRED BY MEANS OF THERAPEUTIC DECEPTION; OR

(D) THE ACTOR IS A PROVIDER AND THE PROVIDER ACCOMPLISHES THE SEXUAL CONTACT BY MEANS OF FALSE REPRESENTATION THAT THE CONTACT IS FOR A BONA FIDE HEALTH CARE PURPOSE BY THE PROVIDER.

On line 121, replace "(b)" with "(c)".

After line 122, insert the following and renumber the remaining sections accordingly:

Section 4. (NEW) For the purposes of this section and sections 5 to 8, inclusive:

(a) "Psychotherapy" means the prevention, assessment, or treatment of emotional or mental symptoms, problems, or conditions of individuals or groups, including but not limited to counseling, guidance, or behavior modification, with persons or groups in the areas of work, family, school, marriage, or personal relationships.

(b) "Provider" means an individual who provides or purports to provide psychotherapy or other professional services and who:

(1) is licensed or certified pursuant to chapters 370 to 373, inclusive; chapters 375 to 381a, inclusive; chapters 383 to 383b, inclusive; chapter 384a; chapter 388; or chapter 399;

(2) is a nurse's aide, as defined in 42 U.S.C. section 1395i-3 and 1396r, as amended, who is employed and functioning in a chronic and convalescent nursing home or rest home with nursing supervision licensed pursuant to section 19a-491;

(3) holds no license or certificate issued by the department of health services but holds himself out as providing psychotherapy; or

(4) is a member of the clergy.

(c) "Client" means a person who seeks or obtains psychotherapy or other professional services from a provider.

(d) "Former client" means a person who has received psychotherapy or other professional services by the provider within two years prior to conduct described in subsection (h) of this section.

(e) "Emotionally dependent" means that the nature of the client's or former client's emotional condition or the nature of the treatment provided by the provider are such that the client or former client is unable to withhold consent to any conduct described in subsection (h) of this section.

(f) "Injury" means any wrong or damage done to another, either in his person, rights, reputation, or property.

(g) "Intimate parts" means the genital area, groin, anus, inner thighs, buttocks or breast.

(h) "Sexual exploitation" means any of the following, whether or not occurring with the consent of a client or former client:

(1) vaginal intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, into the genital or anal opening of the client's or former client's body by any part of the provider's body or by any object used by the provider for this purpose, or, if agreed to by the provider, any intrusion, however slight, into the genital or anal opening of the provider's body by any part of the client's or former client's body or by any object used by the client or former client for this purpose, whether or not there is emission of semen;

(2) kissing or the intentional touching by the provider of the client's or former client's intimate parts, or of the clothing covering any of those parts of the body;

(3) the intentional touching by the provider of the provider's intimate parts, or of the clothing covering any of those parts of the body, to any body part of the client or former client, or to the clothing covering any of the client's or former client's body parts;

(4) the intentional touching by the provider of the provider's intimate parts, or of the clothing covering any of those parts of the body, or the intentional exposing of those body parts by the provider to the client's or former client's view;

(5) kissing or the intentional touching by the client or former client of the provider's intimate parts, or of the clothing covering any of those parts of the body, if the provider agrees to the kissing or intentional touching.

"Sexual exploitation" includes requests by the provider for conduct described in subdivisions (1) to (5), inclusive, of this subsection, or offers to exchange professional goods or services for such conduct. "Sexual exploitation" does not include conduct described in subdivisions (1) or (2) of this subsection that is a part of standard medical treatment of a client or former client.

(i) "Therapeutic deception" means a representation by a provider that any conduct described in subsection (h) of this section is consistent with or part of the client's or former client's treatment.

Sec 5. (NEW) A cause of action against a provider exists for a client or former client for injury caused by sexual exploitation by the provider, if the sexual exploitation occurs: (a) during the period the client is receiving psychotherapy or other professional services from the provider; or (b) after the period the client receives psychotherapy or other professional services from the provider, if (1) the former client is emotionally dependent on the provider, or (2) the sexual exploitation occurs by means of therapeutic deception.

The client or former client may recover damages from a provider who is found liable for sexual exploitation. It is not a defense to the action that sexual exploitation of a client occurred outside a therapy or treatment session or other professional consultation, or that it occurred off the premises regularly used by the provider for therapy, treatment, or other professional services.

Sec. 6. (NEW) In an action for sexual exploitation pursuant to section 5 of this act, evidence of the plaintiff's sexual history is not subject to discovery except when: (a) the plaintiff claims damage to sexual functioning; or (b) the defendant requests a hearing prior to conducting discovery and makes an offer of proof of the relevancy of the history, and the court finds that the history is relevant and that the probative value of the history outweighs its prejudicial effect.

The court shall allow the discovery only of specific information or examples of the plaintiff's conduct that are determined by the court to be relevant. The court's order shall detail the information or conduct that is subject to discovery.

Sec. 7. (NEW) In an action for sexual exploitation pursuant to section 5 of this act, evidence of the plaintiff's sexual history is not admissible except when the defendant requests a hearing prior to trial and makes an offer of proof of the relevancy of the history, and the court finds that the history is relevant and that the probative value of the history outweighs its prejudicial effect.

The court shall allow the admission only of specific information or examples of the plaintiff's conduct that are determined by the court to be relevant. The court's order shall detail the information or conduct that is admissible and no other such evidence may be introduced.

Sec. 8. (NEW) An action for sexual exploitation shall be commenced within three years after the cause of action arises, except in the case of sexual exploitation of a minor in which case an action shall be commenced within seventeen years from the date such person attains the age of majority.

TESTIMONY AT THE PUBLIC HEARING ON JUDICIARY COMMITTEE BILL
NO. 6437: AN ACT CONCERNING SEXUAL ASSAULT

by Laurie Anne Pearlman, Ph.D.

Licensed Clinical Psychologist & Research Director

The Traumatic Stress Institute

South Windsor, CT

Senator Jepsen, Representative Tulisano, and Members of the Committee. I am a clinical psychologist and the Research Director of The Traumatic Stress Institute, a private mental health organization in South Windsor, CT. I am the co-author of a book on the psychological impact of trauma on adult survivors (McCann & Pearlman, 1990). I am here today to express my support for Committee Bill No. 6437, An Act Concerning Sexual Assault.

My organization specializes in providing psychotherapy for victims of a wide range of traumatic life events. At any one time, we have approximately 250 active therapy clients. Approximately three-quarters of these individuals are trauma survivors, most of those adult and adolescent survivors of childhood sexual abuse. Many of our clients have experienced sexual abuse in previous therapies.

In addition to this work, for the past seven years we have been actively involved in addressing in clinical, scholarly, and professional forums the effects of sexual

violence and the issue of sexual abuse by professionals. On a daily basis we see the immediate and long-term effects of sexual violence on women, children, and men in our society. We see the enormous personal and social cost of such violence; the loss to community and society of the vitality, personal achievement, and productive community participation of these traumatized individuals; and the painstaking, costly process of healing. It is vital that we address these issues as a society because none of us can afford to keep paying this price.

I support the criminalization of sexual assault by health care providers and the current proposed legislation. This is a very serious problem in our society. I will speak today specifically to the sexual assault of psychotherapy clients by mental health care providers.

Extent of the Problem

Current data indicate that between 7 and 13 percent of psychotherapists have had sexual contact with their clients. What is the impact of this sexual behavior upon the clients? A full 90 percent of these individuals have experienced harm as a result of sexual contact with their therapists. These exploited clients experience an increase in serious symptoms, such as suicidal feelings; suicide attempts, substance abuse, and other self-destructive behaviors; depression; self-loathing; anxiety; failed relationships;

increased hospitalizations; and a need for social service interventions. Many of these problems result directly in increased costs to society, through the increased substance abuse, hospitalizations, absences from work, disability claims, additional child care needs, and so forth. All of these problems cost individuals dearly, in terms of their self-esteem and resulting loss in life satisfaction and productivity.

Breach of Power and Trust

The major mental health professional organizations, including the American Psychological Association, American Psychiatric Association, and the National Association of Social Workers, all explicitly prohibit sexual contact with clients, identifying such contact as a clear ethical violation, breach of professionalism, and grounds for dismissal from membership in the professional society.

The process of psychotherapy must be built upon trust, with clear rules about the roles and behaviors of both therapist and client, rules for which the therapist is held responsible. The therapeutic relationship is unique in the clear attention to these rules and roles, and the requirement that the therapist maintain the utmost respect for the client's rights and personal boundaries.

When an individual seeks psychotherapy, he or she is expressing a need for help. This implies a position of

vulnerability, something familiar to all of us whenever we ask for help. This places the professional, whether doctor, lawyer, therapist, or clergy, in a position of power. These relationships all represent fiduciary relationships, that is, relationships in which the professional is in a position of special trust involving "a duty to act primarily for another's benefit and requiring scrupulous good faith and candor" (from Black's Law Dictionary).

Sexual abuse by health care professionals is an abuse of power. When a therapist becomes sexually involved with his or her client or former client, the therapist is violating a trust, and committing a fiduciary breach. By seeking to meet his or her emotional or sexual needs at the client's expense, a therapist violates the implicit contract to act in the client's best interests and to do no harm.

Revictimization

Research has shown that the individuals most vulnerable to sexual abuse by therapists are those who have experienced previous sexual assault. Current statistics indicate that 1 in 3 women (Russell, 1984) and 1 in 7 men (Finkelhor, Hotaling, Lewis, & Smith, 1990) have experienced sexual abuse in childhood. These numbers mean that 8 of every 40 people in this room are survivors of childhood sexual abuse. This is not an us-them phenomenon. We are talking about a very large number of Connecticut citizens who are at risk

for sexual abuse by psychotherapists, for revictimization at the hands of those who are charged with helping them to recover.

When therapists violate boundaries, the clients' sense of safety, trust, and self-esteem are violated, as is their respect for the mental health field. In addition, their belief that they can get help and their hope for the future are severely undermined. Consequently, people often cannot get help for the harm caused by abusive therapies. How can they once again trust a stranger to help them, to resolve this new problem which may have compounded the issues for which they originally sought treatment? They often expect, far too often correctly, that other mental health professionals will "close ranks," disbelieve them, and move to protect their colleagues. We believe that, as a society, we must address and clearly denounce such abuses of power and trust that are manifest in the revictimization of those seeking to heal from earlier injuries and abuse.

Committee Bill No. 6437: Recommendations

I would like to make the following specific recommendations with respect to the present proposed legislation:

Lines 29 through 31: Remove "for the purpose of sexual gratification of the actor or for the purpose of degrading or humiliating such person"

Lines 32 through 34: Remove "for the purpose of sexual gratification of the actor or for the purpose of degrading or humiliating such person"

Rationale: Whatever the purpose, sexual contact between health care provider and patient or client is an abuse of power and trust. Do we ask for what purpose someone rapes or murders someone, or do we consider the act in itself criminal?

Lines 60 through 69: I would like to ask the committee to reconsider the definition of "emotionally dependent." Voluntary consent is very difficult under any circumstances in a relationship of unequal power, as is always present in any helping relationship. All psychotherapy clients are to a greater or lesser extent emotionally dependent upon their therapists. I would like to recommend that all sexual contact of any sort between therapist and current or former client be criminalized. This then bears upon lines 86-88; "emotional dependence" might prove difficult, and in section 11 (lines 60-65), it seems that the definition is at the discretion of the therapist, which considerably weakens the victim's ability to prove criminal behavior.

Line 92: Insert (caps) "for a bona fide medical OR PSYCHOLOGICAL purpose by a health care professional".

Line 120: Insert "medical OR PSYCHOLOGICAL purpose" (see previous recommendation)

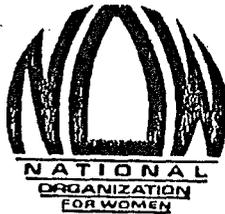
Line 138: Add to the list "masters level psychotherapist, or any person paid for counseling or psychotherapy"

I would be glad to work with the committee as they continue to craft this legislation. I want to thank you for this important step forward for the citizens of Connecticut.

REFERENCES

- Finkelhor, D., Hotaling, G., Lewis, I.A., & Smith, C. (1990). Sexual abuse in a national survey of adult men and women: Prevalence, characteristics, and risk factors. Child Abuse & Neglect, 14, 19-28.
- McCann, I.L., & Pearlman, L.A. (1990). Psychological trauma and the adult survivor: Theory, therapy, and transformation. New York: Brunner/Mazel Psychosocial Stress Series.
- Russell, D.E.H. (1984). Sexual exploitation: Rape, child sexual abuse, and workplace harassment. Beverly Hills, CA: Sage.

April 8, 1993



CONNECTICUT NOW
NATIONAL ORGANIZATION FOR WOMEN

32 Grand Street • Hartford, CT • 06106

TO: Senator Jepsen, Representative Tulisano,
Members of the Judiciary Committee.

FROM: Sarah G. Wilson, Lobbyist CT NOW

DATE: April 8, 1993

RE: HB 6437, HB 7284, HB 7285

Good evening, my name is Sarah G. Wilson. As the Lobbyist for the nearly 7,000 active members of the Connecticut National Organization for women I am here to testify on three bills. In the interest of time I will summarize each bill. Please see separate testimony for each bill.

CT NOW opposes HB 7285: AAC deviation from child support guidelines on the basis of the noncustodial parent's actual living expenses. HB 7258 is not fair. Taking into account the living expenses of the noncustodial parent without taking into account the custodial parents living expenses is not fair. I understand that supporting two households is difficult if not impossible, but why should the custodial parent and the child or children have to suffer the costs of child support payments because the noncustodial parent is unable to make ends meet living at the level they do. The Child Support Guidelines were determined and are being revised in order to have some ruler to base child support payments upon. Deviating from the guidelines in some cases and not in others is setting to system up to be unfair. If this bill would become law there would exist the possibility of the noncustodial parent living high on the hog and the custodial parent and children living in sqallar. CT NOW believes that the custodial parent and children should be able to live at the same level that the noncustodial parent lives. HB 7285 is unfair, and we urge you to oppose this bill.

Thank you for your time and consideration.

EQUALITY FOR WOMEN



TO: Members of the Judiciary Committee

Senator George Jepsen
Representative Richard Tulisano
CoChairs

CONNECTICUT
COALITION
AGAINST
DOMESTIC
VIOLENCE

FROM: Anne Menard
Executive Director

DATE: April 8, 1993

RE: COMMITTEE BILL 6437: AAC SEXUAL ASSAULT

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

**POSITION: SUPPORT FOR CURRENT LANGUAGE AND
PROPOSED EXPANSION LANGUAGE**

The Connecticut Coalition Against Domestic Violence (CCADV) is the state-wide network of the state's 18 community-based domestic violence programs. We are testifying today in support of Committee Bill 6437: AAC SEXUAL ASSAULT. I will focus on those sections of the proposed bill that particularly impact on domestic violence victims or the advocates who work with them.

Sections 4, 5, and 8 of the proposed bill make the reporting of child abuse, elder abuse, and abuse of mentally retarded persons mandatory for sexual assault and battered women's counselors. We fully support these provisions. They statutorily codify our current practice of reporting such abuse while extending to our staff and trained volunteers the protection against liability afforded other mandatory reporters when these reports of abuse are made in good faith.

We also join ConnSACS and other groups in supporting the extension of our current sexual assault statutes to include sexual misconduct and abuse by psychotherapists (Sections 1, 2, and 3) and the streamlining and improvement in the state's collection of sex evidence and training of health professionals in this area.

In addition, CCADV strongly urges the Committee to give full consideration to proposed language that is not in the current draft but that we believe will address a critical limitation in our current penal code. The purpose of the proposed language is to clarify and simplify our current statutes as they relate to sexual assaults in marital and cohabiting relationships.

In 1981, Connecticut was in that first group of states to declare rape in a spousal or cohabiting relationship a crime, and further clarified its public policy position in this area with the passage of our 1990 statute eliminating cohabitation as an affirmative defense to sexual assault in the first, second or third degree. Since then, recommendations to clarify the interrelationship of these statutes with our other sexual assault statutes have been made by prosecutors, advocates and were recently included in the 1991 Report of the Judicial Branch's Task Force on Gender, Justice and the Courts as well as the 1993 Report of the Governor's Task Force on Sexual Violence.

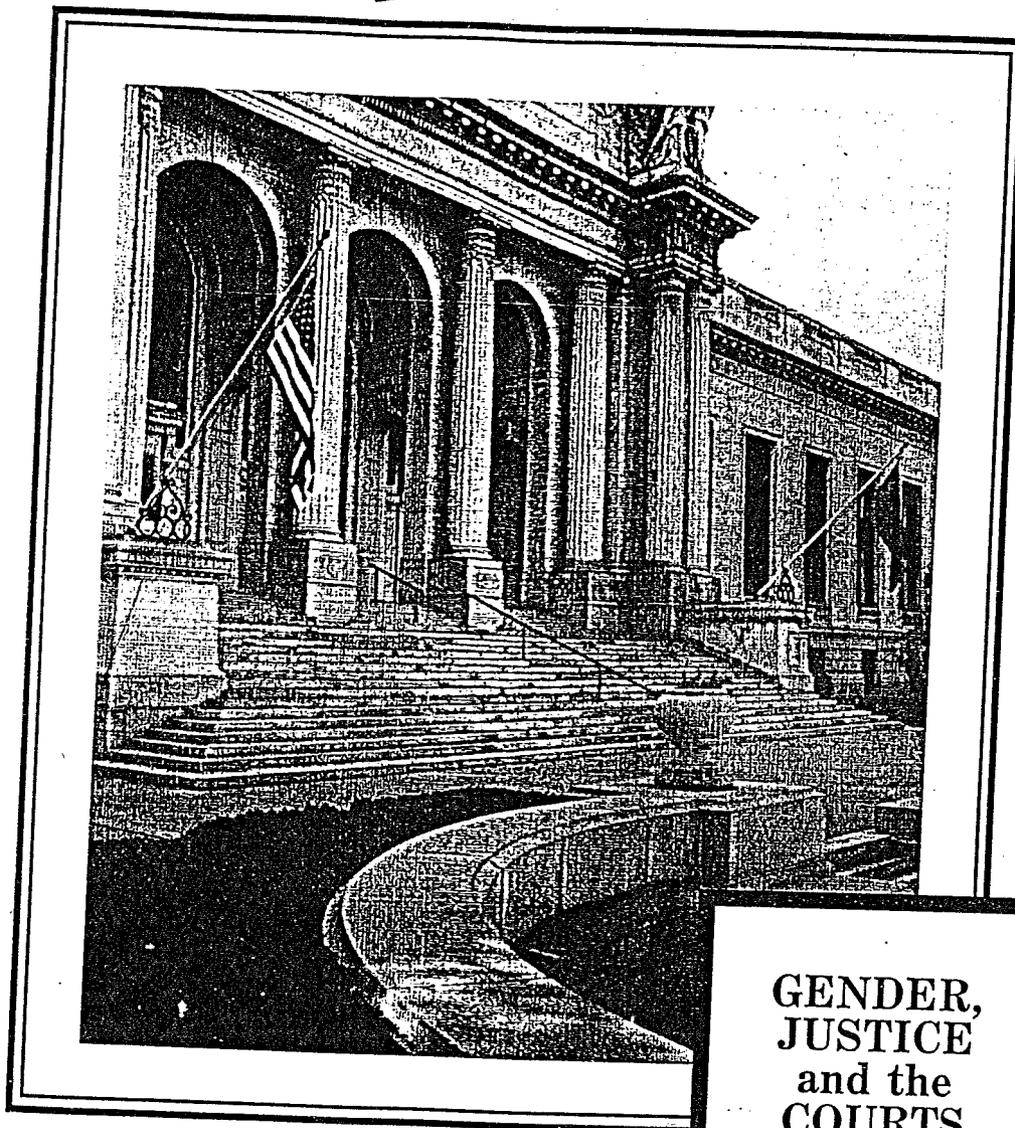
What we can add to this discussion is this: Sexual assault and abuse within marital and cohabiting relationships is a serious problem. A 1985 study estimated that 80% of the 1.8 million women battered by their husbands annually are also raped by their husbands. (Finkelhor and Yllo) Nationally, one-third to one-half of all women seeking safety in domestic violence shelters and support groups report sexual abuse as part of the pattern of their abuse (Walker, 1982); these research findings mirror reports we receive from Connecticut women in our programs.

About six months ago a woman whose husband tried to murder her described to me some of the most brutal physical violence I had ever heard. Without question, however, the continual sexual abuse that was part of this violent relationship was the most devastating for her, and the most frightening. Her husband used this sexual violence and the threat of escalated sexual violence to entrap her in a relationship that eventually proved life-threatening. Another woman recently described to me her submission to her abusive live-in partner's sexually violent demands as an act of protection for her young child - he repeatedly threatened to attack their seven-year old daughter if this woman did not comply with his sexual demands, threats she knew full well he was capable of carrying out. The extreme pain and humiliation that these women felt from these sexual attacks was palpable in their voices as they told their stories, and their pain and the pain of other women who have spoken out about sexual abuse by a husband or partner is what motivated the legislative to pass the marital rape statute over 10 years ago.

Reporting this form of abuse is extremely difficult for victims. In fact, in 1991, there were only 108 charges of sexual assault filed in over 21,520 family violence incidents resulting in arrest. It is very important that when victims of sexual assault by a spouse or live-in partner do find the courage to report such assaults, the criminal justice system has the tools it needs to prosecute fully. That is the singular purpose of the additional language presented today and we urge your full consideration.

For your information, I have attached an excerpt from the Gender, Justice and the Courts Task Force Report which describes in more detail the current limitations of our statutes in this area.

EXCERPT



**GENDER,
JUSTICE
and the
COURTS**



1991

**REPORT OF THE
CONNECTICUT TASK FORCE**

itself is drafted in a manner which may contribute to an unjust approach to crimes of a sexual nature.

Until recently, our statutory scheme was structured in a way that made it difficult to obtain a conviction against an assailant who lived with his victim. A prosecutor had the option of charging the defendant with both sexual assault in the first degree,³⁵ and sexual assault in a spousal or cohabiting relationship,³⁶ because these are statutorily distinct crimes.³⁷ It was difficult, if not impossible, to obtain a conviction on both charges, however, because cohabitation was an affirmative defense to the crime of sexual assault in the first degree.³⁸ This affirmative defense could also have been asserted against any charges of sexual assault in lesser degrees.

The only practical solution for a prosecutor was to charge the defendant only with the crime of sexual assault in a spousal or cohabiting relationship. This solution was inequitable for two reasons. First, this is the only sexual assault Class B felony that does not carry a mandatory minimum sentence. Second, the prosecutor was prohibited from charging down to a lesser degree of sexual assault because proof of cohabitation, an element of the offense which would be set forth in the information, provides the defendant with an affirmative defense to the lesser charges.

Our Supreme Court had twice suggested that it would be logical for the legislature to disallow cohabitation as an affirmative defense to sexual assault in the first degree.³⁹ Many of those who responded to our questionnaire and appeared at our hearings agree. They felt that the availability of this affirmative defense suggests that sexual violence against a person is less offensive if the assailant and the victim are cohabiting.

Public Act 90-162 eliminated cohabitation as an affirmative defense to sexual assault in

over

the first, second or third degree; the affirmative defense is retained for fourth degree sexual assault. This enactment addresses some of the incongruities in the law that are mentioned above, but does not fully reconcile the scheme of the sexual assault statutes. Specifically, the exclusion of married persons from the statutory definition of sexual intercourse gives married defendants a means to circumvent sexual assault charges. Further, with the elimination of the cohabitation affirmative defense for sexual assault in particular, the viability or usefulness of the statute proscribing sexual assault in a cohabiting relationship is questionable, especially where Conn. Gen. Stat. §§53a-70a and 53a-71a (first and second degree sexual assault) carry non-suspendable minimum sentences of one-year and five-years, respectively, while sexual assault in a spousal or cohabiting relationship does not. All are class B felonies. Second degree sexual assault carries a nine-month non-suspendable sentence as a class C felony.⁴⁰ Finally, many of the elements of the crime of sexual assault in the fourth degree, a class A misdemeanor, do not lend themselves to assertion of cohabitation as an affirmative defense.

The statutory scheme which has resulted from the piecemeal enactments in this chapter of our laws is itself indicative of the system-wide lack of a coherent approach to crimes of a sexual nature.

35. Conn. Gen. Stat. §53a-70.
36. Conn. Gen. Stat. §53a-70b(b).
37. State v. Preyer, 198 Conn. 190 (1985).
38. Id.; see also Conn. Gen. Stat. §53a-67(b).
39. State v. Preyer, supra at 195; and State v. Suggs, 209 Connecticut 733, 741 (1989).
40. Conn. Gen. Stat. §§53a-70, 53a-70a and 53a-71.



Connecticut Sexual
Assault Crisis Services

002954

CONNSACS
763 Burnside Ave.
East Hartford, CT 06108
(203) 291-9335 Fax
(203) 282-9881 Office

To: Senator Jepsen, Representative Tulisano and Members of
the Judiciary Committee

Centers:

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

From: Gail Burns-Smith, Executive Director

Women's Center of
Greater Danbury-RCS
(203) 731-5200 Office
(203) 731-5204 Hotline

Re: C.B. 6437 AAC Sexual Assault

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

Position: Strongly Support With Additions

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

My name is Gail Burns-Smith. I am the executive director of the Connecticut Sexual Assault Crisis Services which is the association of all thirteen rape crisis centers in the state. Through our members last year, we provided a wide range of support and advocacy services to over 6300 victims and their families, conducted community education, professional trainings and prevention workshops to over 65,000 individuals, and successfully advocated for several major public policy changes affecting victims of sexual violence. We are here today to urge this committee to support C.B. 6437, AAC Sexual Assault.

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

Sexual misconduct by certain licensed and unlicensed health and mental health care providers and clergy is an extremely serious problem which causes deep trauma to its victims, and violates the very foundations of trust which are essential for working with these professionals. Currently most professional societies explicitly prohibit sexual conduct with clients, and we believe that this act builds on those codes of ethics and sends a clear message to those providers who abuse the power of their relationship: society will not tolerate such abuse.

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

We understand that the Department of Health Services' Division of Medical Quality Assurance has offered substitute language for sections 1, 2 and 3. We have had the opportunity to review that language and we urge the committee to include their suggestions in this bill. Specifically, we strongly support inclusion of language which states that consent of the client or former client is not a defense.

Stamford Rape and Sexual
Abuse Crisis Center
(203) 348-9346 Office
(203) 329-2929 Hotline

Susan B. Anthony
Project for Women
(203) 489-3798 Office
(203) 482-7133 Hotline

Additionally, we encourage the committee's support of Sections 4, 5 and 8 of this act. These sections would add sexual assault and battered women's counselors to the list of mandated reporters of child abuse, elderly abuse and abuse of persons with mental retardation. These sections will simply put into statute the current practice of both groups and will mandate continued reporting.

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

Northeastern Conn. SACS
(203) 456-3595 Office
(203) 456-2789 Hotline

Section 6 of this act expands the membership of the Commission on the Standardization of the Collection of Sex Evidence from 11 to 13 members and ensures that the Commissioner of DCYS or her designee, and a nurse appointed by the Ct. Nurse's Association will be represented. This section also shifts the Commission from the department of health services to the Division of criminal justice, calls for the annual review of the current Connecticut protocol on the collection of sex evidence and provides additional time for regulations to be adopted.

In part C of that same section, the commission is given extended time to redesign the sex evidence collection kit, and provides for annual updating of that kit. We support all of these changes since they will allow for better coordination of state services for adult and child victims of sexual assault. Currently, these components are split between the Department of Health Services and the Division of Criminal Justice. Since the Division of criminal justice is responsible for investigation and prosecution, it is logical to assign these duties under the administrative authority of that division.

Section 6, parts f and g are critical elements in the collection of evidence collection by health care facility staff. When the collection of evidence was first standardized, all 35 hospitals in the state were provided with training and materials. Since funding for this training was extremely limited, there was no followup for that training, and there was a built in assumption that those who received the training would provide inservices for other hospital staff. We have subsequently learned that many hospital staff have received no training, and that compliance with the required protocol is inadequate. If forensic sex evidence is mishandled or not properly maintained, the state attorney's ability to prosecute a case may be significantly hampered, and the legal liability of the health care facility may also increase significantly. We believe that it is essential for the commission to advise the chief state's attorney on the training needs of health care providers in this area, and to work on the development of a pilot sexual assault nurse examiner program.

Finally, in Section 7 and 9 of this bill, we support the elimination of the Sex Crimes Analysis Unit Report, and the replacement of that report with a specific analysis of sex crimes as reported through the UCR data. Inconsistent reporting and limited staffing have rendered the SCAU report virtually unusable. The Uniform crime reporting program which is now converting to the National Incident Base Reporting System in the near future will provide police and policy makers with more complete data for analysis.

At this time, we would also like to offer substitute language for inclusion in this bill. There are four specific areas not contained in this proposal which we would ask that you consider:

- 1) Inclusion of language which would clarify that the current address of a victim of sexual assault will be made available to the defense only in the same manner and time as such information is made available to the defense for other criminal offenses. The language we are proposing would close a current loophole in the Ct. General Statutes.

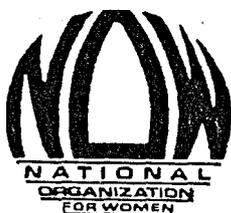
2) Increasing the statute of limitations for criminal child sexual abuse so that young victims would have additional time to report the crime;

3) Clarification and simplification of the marital and cohabiting sexual assault statutes which would continue to allow for an affirmative defense except for an offense under section 53a-70, 53a-70a, 53a-70b, 53a-71, 53a-72a or 53a-72b. and

4) Creation of a new crime of sexual exploitation for persons with mental retardation or for persons who are mentally incapacitated.

All of these proposals have been recommended by the Task Force On sexual Violence which just recently issued its report. The 19 members made up of key state justice and human service officials, victim and offender service providers and private citizens worked for 7 months reviewing the current laws and practices in Connecticut dealing with sexual violence. The current bill before you contains some of their recommendations and expands and creates some new areas. We would ask that you consider these other additions which the Task Force also supported.

Thank you.



CONNECTICUT NOW

NATIONAL ORGANIZATION FOR WOMEN

32 Grand Street • Hartford, CT • 06106

TO: Senator Jepsen, Representative Tulisano,
Members of the Judiciary Committee.

FROM: Sarah G. Wilson, Lobbyist CT NOW

DATE: April 8, 1993

RE: HB 6437, HB 7284, HB 7285

Good evening, my name is Sarah G. Wilson. As the Lobbyist for the nearly 7,000 active members of the Connecticut National Organization for women I am here to testify on three bills. In the interest of time I will summarize each bill. Please see separate testimony for each bill.

CT NOW supports HB 6437: AAC sexual assault. Sexual assault is a major concern for women in this country. The fear of sexual assault controls a woman's behavior, language, dress and other basic freedoms. As you know one in three women will be sexually assaulted in this country by the time they are 18. HB 6437 is a bill that actively addresses sexual assault in this state by encouraging prevention, enforcing stricter penalties while more clearly defining sexual assault. CT^{NOW} supports the changes that the Connecticut Sexual Assault Crisis Services has proposed. Specifically we support the confidentiality of survivors of sexual assault home addresses; including specific language addressing marital rape; and would ask you to consider adding HB 6073 "AAC extending the criminal sexual assault statute of limitations" which was favorably referred to this committee from the Select Committee on Children to this bill. CT NOW appreciates and applauds the Judiciary committee's hard work to end sexual violence in Connecticut.

Thank you for your time and consideration.

EQUALITY FOR WOMEN

State of Connecticut



COMMISSION OFFICERS:

Patricia Hendel
Chairperson
Patricia Russo
Vice Chairperson
Ruth L. Pulda
Secretary
Maureen Satti
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Fredrica Gray
Executive Director

PERMANENT COMMISSION ON
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Senator Thomas Upson
Representative Richard Tulliano
Representative William Wollenberg

TESTIMONY REGARDING COMMITTEE BILL NUMBER 6437, AN ACT CONCERNING
SEXUAL ASSAULT.

BEFORE THE JUDICIARY COMMITTEE
APRIL 8, 1993
ROOM 2E LEGISLATIVE OFFICE BUILDING

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Good Evening. My name is Fredrica Gray and I am the Director of the Permanent Commission on the Status of Women. I am here to discuss Committee Bill 6437, An Act Concerning Sexual Assault.

Since its inception, the Permanent Commission on the Status of Women has been committed to working against sexual violence. This violence intrudes on the lives of all members of society, although, without a doubt, the most frequently identified victims are women and children. During the past year, our chairperson, Patricia Hendel, was a member of the Task Force on Sexual Violence, which considered many of the issues associated with sexual assault in Connecticut.

Committee Bill 6437 makes several important improvements in

addressing the problem of sexual assault in Connecticut. First, the bill takes an important and appropriate step forward by recognizing for the first time the unique liability which should be placed on psychotherapists in cases of sexual misconduct. We are also glad to see that Section 4 of your bill adds reporting responsibilities for sexual assault counselors and for battered women's counselors. Section 6 adds more members to the Commission on the Standardization of Collection of Evidence, and gives them a new goal in developing a sexual assault examiner program. It is also important to note that Section 7 will require that the annual crime report prepared by the Commissioner of Public Safety include a specific analysis of the nature, extent and pattern of sex crimes.

However, there are several other recommendations which were developed by the Governor's Task Force on Sexual Violence which we feel very strongly should be included in any legislation passed this year.

First, certain changes should be made in the penal code, both to increase and to decrease penalties in certain instances. Penalties for sexual assault should be increased when a firearm is used or when the assault is on persons less able to defend themselves, such as the mentally retarded, the physically helpless or those who are less than 18 and attacked by a guardian. The penalty for sexual intercourse with a person under a certain age should be reduced when the actor is two years or less older than the victim. Additionally, the statute of limitations should be extended, both in cases of child sexual abuse and for offenses involving sexual abuse of mentally retarded or mentally ill persons.

Next, the Connecticut General Statutes should be clarified so that the current address of the victim of a sexual assault will be made available to the defense only in the same manner and time as such information is made available to the defense for other

criminal offenses.

Third, remedies should be available which would protect mentally defective or mentally incapacitated persons from sexual exploitation.

Last, we have to recognize that rape and sexual assaults can and do occur within spousal and cohabiting relationships. The law should treat married and cohabiting persons the same as others for sexual assault, except for sexual contact without permission.

Connecticut, like the rest of the nation, is faced with a growing crime epidemic. Changes in the state's response to sexual violence are not only appropriate, but essential. Please consider the additional suggestions I have made to make this bill a more effective weapon in our ongoing effort to respond to the problem of violence against women.

Connecticut
Psychiatric
Society

District Branch
American Psychiatric
Association, Inc.

Testimony
H. B. 6437
Judiciary Committee
Submitted 4/8/93

It is important to state at the outset that the Connecticut Psychiatric Society does not condone sexual contact by psychotherapists with patients or former patients. The ethical code of the American Psychiatric Association states clearly that such behavior is unethical.

Nevertheless, we believe that criminalizing this behavior as in Bill 6437, An Act Concerning Sexual Assault, does not represent the best solution to the problem.

Some of the instances of sexual contact with patients are clearly the result of the physician's impairment or illness. In such instances, treatment is called for and often physicians who are transiently mentally ill or impaired can be restored to productive careers. A jail sentence would not be productive. It is also not clear that the threat of incarceration would have a deterrent effect in such a situation.

While the bill relates the instances of sexual contact to the psychotherapeutic context, there is evidence that a greater number of sexual contacts between patients and physicians occurs outside of that context. It is important to note that the patient, male or female, may feel vulnerable and powerless in any physician-patient relationship. It stands to reason then, that a patient will feel, and be, equally as assaulted in a contact that does not claim to have a psychotherapeutic basis.

The concept of "emotional dependence" is vague and difficult to define. Some would argue that any therapy patient is forever dependent on the former therapist. This definition would create a class of de jure incompetent individuals. What about the former patient who meets his or her therapist five or ten years after terminating therapy and feels perfectly competent to choose to initiate a relationship?

Criminalizing the behavior also removes the incident further out of the victim's control. By saying that this behavior is criminal, with or without patient consent, you are overriding the patient's ability to make a choice about the action. Even in the physician-patient context, some patients are able to make choices. Some patients choose to have a sexual experience with their physician and do not feel damaged by it. Numerous patients have married their physicians. Even a patient who feels damaged by an

inappropriate sexual contact by a physician may not want to become involved in a criminal process. Such patients may hesitate to come forward fearing that they will initiate a criminal process that they do not choose and cannot control.

Finally, we would point out that it is possible to initiate criminal proceedings against physicians and others for sexual assault without this bill.

We believe that passage of this bill will not solve the problem that we acknowledge exists.