

Legislative History for Connecticut Act

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2002

Bill Number: 5680

Senate Pages: 2554-2617

64

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213

Committee: Judiciary: 1568-1578, 1655, 1656-1657, 1664-1672, 1724, 1726, 1767-1772, 1933, 1944-1946, 2085-2096, 2136, 2140, 2146, 2372-2379, 2655-2660

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Transcripts from the Joint Standing Committee Public Hearing(s) and/or Senate
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this item be removed from the Foot of the Calendar.

THE CHAIR:

Without objection, so ordered.

SEN. JEPSEN:

Please mark this item Go.

Madam President, I've been informed by the Senate Clerk that one item previously acted upon that needs to go to the House of Representatives. Page 3, Calendar 244 has not been transmitted to the House. Accordingly, I move for suspension of the rules for immediate transmittal of Calendar 244, SB428 to the House of Representatives.

THE CHAIR:

Motion is for suspension. Without objection, so ordered.

THE CLERK:

Turning to the Call of the Calendar.

Calendar page 9, Calendar 452, File No. 455 and 624, Substitute for HB5680, AN ACT CONCERNING PENALTIES FOR SEXUAL ASSAULT OF A MINOR, CIVIL AND CRIMINAL STATUTES OF LIMITATIONS IN SEXUAL ASSAULT CASES, REPORTING AND INVESTIGATION OF CHILD ABUSE AND NEGLECT, DISCLOSURE OF COMMUNICATIONS MADE TO A MEMBER OF THE CLERGY, DISCLOSURE OF RECORDS OF TEACHER MISCONDUCT AND ESTABLISHMENT OF SEXUAL OFFENDER RISK ASSESSMENT BOARDS.

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As amended by House Amendment Schedules A, B, D and E.
Favorable report of the Committee on Judiciary. Clerk is
in possession of amendments.

THE CHAIR:

Senator Coleman.

SEN. COLEMAN:

Thank you very much, Madam President. Madam
President, I move acceptance of the Joint Committee's
favorable report and passage of the bill in concurrence
with the House.

THE CHAIR:

Question is on passage in concurrence. Will you
remark?

SEN. COLEMAN:

Thank you, Madam President. This is a bill that
does a number of things. The first thing that it does is
to permit the prosecution of a Class A felony involving
sexual abuse, sexual exploitation or a sexual assault of
a minor to occur within thirty years from the date that
the victim of such an assault attains the age of
majority, or five years after the victim of such an
assault notifies a police officer, or a state's attorney
regarding the incident of sexual assault.

It also permits an action for damages to be brought
at any time after the incident occurs. After an incident

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of sexual assault occurs, if the person who is legally responsible for the incident is convicted of sexual assault in the first degree.

The bill also provides that in the case of injury, or risk of injury, to a minor involving contact with the intimate parts of a minor, provides that such an act would constitute a Class B felony.

The bill also provides that sexual intercourse with a person who is less than thirteen years of age while the actor is more than two years older than that person shall be a Class A felony for which if the victim is under ten years of age, ten years of any sentence imposed may not be suspended or reduced.

Additionally, the bill provides that any person found guilty of sexual assault in the first degree shall be sentenced to a term of imprisonment and a period of special parole, which together would constitute a sentence of at least ten years.

The bill further provides that aggravated sexual assault will be a Class A felony if the victim of such a sexual assault is under sixteen years of age and any resulting sentence, twenty years of that sentence may not be suspended or reduced.

The bill further provides that sexual assault in the second degree will be a Class B felony. And when the

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victim of such a sexual assault is under sixteen years of age, nine months of any resulting sentence shall not be suspended or reduced.

The bill also provides that sexual assault in the third degree shall be a Class C felony if the victim is under sixteen years of age. And sexual assault in the third degree shall be a Class B felony when the victim is under sixteen years of age. And two years of any resulting sentence may not be suspended or reduced.

Sexual assault in the fourth degree under the bill would be a Class D felony if the victim is under sixteen years of age. The bill goes on to define the term, person entrusted with care of a child or youth as a person who's given access to a child or youth, by a person responsible for the health, welfare or care of a child or youth, for the purpose of providing education, childcare, counseling, spiritual guidance, coaching, training, instruction, tutoring, or mentoring of such child or youth.

The bill adds to the list of mandated reporters by including a school coach, probation officers, parole officers, members of the clergy, emergency medical service providers, alcohol and drug counselors, licensed professional counselors, child day care centers, group day care homes, Department of Children and Families'

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employees, and some employees of the Department of Public Health as mandated reporters.

The bill also provides that mandated reporters who fail to report incidents of child abuse to the Commissioner of the Department of Children and Families shall be required to go to training.

The bill also requires that mandated reporters are required to report orally as soon as practicable, but not less than twelve hours, not later than twelve hours after an incident occurs, when the reporter has reasonable cause to believe that a child is in imminent risk of serious harm.

When the report of a mandated reporter, when the report of neglect by a person, is by a person responsible or concerns a person responsible for the child in question, the Commissioner shall evaluate such report immediately.

Otherwise, the Commissioner shall refer the report to the local law enforcement agency. The bill further provides that a child abuse hotline shall accept all reports of neglect and abuse.

Additionally, the bill provides that members of the clergy shall not disclose privileged communications unless the person making the communication consents to such disclosure.

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And the bill provides that consent of the person shall not be required for the disclosure of such person's communications if the member of the clergy believes in good faith that there is a risk of imminent personal injury to the person, or other individuals, or if child abuse, or abuse of an elderly person, or abuse of an individual who's disabled or incompetent, is in good faith suspected.

Members of the clergy, under the bill, would be required to disclose all non-privileged communications. The bill goes on to prohibit in the case of actions to recover damages for personal injury. The bill would prohibit confidential settlements.

And the bill with respect to records maintained by the board of education regarding misconduct by teachers shall be considered public records. And the disclosure of such records shall not be dependent upon the consent of the teacher.

The bill establishes an advisory committee to make recommendations regarding sex offender risk assessment boards, and the manner in which reporters may report the risk of a child being subject to illegal sexual behavior.

Finally, Madam President, there shall be time bar under the bill on the issuance of an execution to

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enforce a money judgment for personal injury caused by sexual assault when the party legally at fault has been convicted of a violation of sexual assault in the first degree, or aggravated sexual assault in the first degree.

The bill represents a considerable amount of work on behalf of, on the part of members of the Judiciary Committee. It's an issue that has been developed at least over the course of two years. So the bill addresses issues that have been considered over the course of two years.

I think it is an important piece of legislation and it deserves the support of the members of this Circle. And at this time, Madam President, if I may, I would like to yield to Senator Sullivan for purposes of an amendment.

THE CHAIR:

Senator Sullivan, do you accept the yield?

SEN. SULLIVAN:

I do, Madam President, and I thank Senator Coleman for the yield. Before offering the amendment, let me express my appreciation to Senator Coleman and the members of the Judiciary Committee for a bill which but for one issue of debate is a monumental step forward in protecting children in the state of Connecticut.

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The Circle will recall that we have in years past not hesitated to take action on one very important piece of this legislation. And that is extending the statute of limitations in civil matters to allow people who become aware, as is often the case, of the horrible trauma of attack and molestation in youth, to realize in adulthood what has happened to them.

And now because of this proposal, finally be able to reach back in time to seek at least some form of compensation. We, in the Senate Circle, can be proud that we have taken action on that bill before.

It saddened me that for three years, I believe, running organized opposition to that proposition stopped it in the House of Representatives. We are finally at a point on that key issue of agreement to allow those people whose lives were so horribly traumatized the right and the opportunity to reach back in time and seek some recourse for the harm done them.

So that is an important, among many other important parts of this bill. There is, however, one issue that vexes, and I truly mean vexes in many ways. And for purposes of discussing that, let me ask that the Clerk call LCO-5407, and that I be permitted to summarize.

THE CLERK:

LCO-5407, which will be designated Senate Amendment

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Schedule A. It is offered by Senator Sullivan of the 5th district et al.

THE CHAIR:

Senator Sullivan.

SEN. SULLIVAN:

Thank you, Madam President. I move adoption of the amendment and request permission to summarize.

THE CHAIR:

Question is on adoption, please proceed.

SEN. SULLIVAN:

Thank you, Madam President. On Sunday morning I had the good fortune to be at St. Mark's in West Hartford to officially receive, from a group of eighth grade CCD class students there, \$500 check that they had raised on behalf of the children of Afghanistan.

And it was a wonderful ceremony. It was truly in the great spirit of the Catholic church and its historic dedication to giving children and giving generations a sense of obligation, a sense of justice, a sense of community.

I was proud of that moment. Toward the end of the ceremony the parish priest approached me to raise with me an issue I had not heard of. And that was, one of the consequences of legislation that had been taken up in the House of Representatives. The bill we are now about

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to consider.

And he asked, did I understand and did I appreciate that at least on the words, if not on the words of debate in the House, that the position had been taken that under current law, under current law, and under the bill as amended and now before us, that the sanctity of the central practice of confession was diametrically and irreconcilably in conflict with current practice, current law, and the bill that's before us.

And I have to confess and admit that I did not know what had happened in the House at that point. I had focused so much on the other good work that's in this bill. Having an opportunity over a number of days since to speak with others in that faith and other faiths, for whom the sacrament of confession is central, it came to me as a very clear request from those, as it did from the priest that day in the parish at St. Marks, would we please before passing on this legislation clearly, definitively, and specifically protect the sanctity of confession.

Not just for Catholics, by the way, but for orthodox and for Episcopalians. As I understand it, the problem with current law as explained by our colleague in the House, Representative Lawler, the Chairman of the Judiciary Committee, who said that under the current law

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of the state of Connecticut, clergy are mandated reporters, and that the privilege statute under current law does not exempt them from the obligation to report even that which is learned in confession.

And that under the bill in front of us there was a further erosion of that protection of the sanctity of that practice. And that seems to be the dilemma. Now we remember under the first amendment that there are two parts.

A little late in the evening for a lecture on the first amendment, so I'll make it quick. Establishment, and essentially non-interference. Establishment issue is not before us. But clearly to the extent that we might have a law that poses for Catholic clergy, and Catholic parishioners, Greek Orthodox clergy and Greek Orthodox parishioners, Episcopal clergy and Episcopal parishioners, an irreconcilable intrusion on a core principal of that faith.

There is an issue, a constitutional issue in my mind, as well as a practical and moral issue if you will. I will speak of it in terms of the Catholic faith. But I want to be clear that is not the only religion that we are talking about this evening.

Indeed, we're not talking about religion as such. The challenge that the bill presents, and that the

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current law of the state of Connecticut presents is that for a priest to take confession, the formal act of confession, not casual conversation, not mentioning, not counseling, but the formal and structured act of confession, to disclose that which is told in that confession by the confessor to anyone else places that clergy person not only in the position of potentially losing their right to practice as clergy, but frankly excommunication.

Because it is that core and central a right in principal and practice. Yet the statute of the state of Connecticut on mandated reporting, as it now stands today, and as it stands in bill, says to that priest, if you fail to violate the sanctity of confession, you are civilly at risk of being cited, fined, and all of the other penalties that attach to the violation of our mandated reporting statute.

So as the priest said to me on Sunday morning, please, please understand how important this is. Please protect the fundamental sanctity, the fundamental importance and the centrality of the act of personal confession.

So that is what this amendment does, LCO-5407. It does no more. And it does no less. It is narrowly and specifically tailored to address exactly what I was

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asked to do. Because I was so moved by that request.

It does not, as the current law does, or as the bill in front of us does, say that any communication with clergy is privileged. It does not say that if you should happen to mention to somebody in the course of their profession as a clergyman that, and you fill in the blank in terms of whatever heinous offense you want me to fill in the blank with, that that person is under no obligation to disclose.

It is much narrower than that. And I clearly and readily make that known. It does exactly what was objectionable in the conversations that were made to me. It protects the sanctity and the centrality, and eliminates the irreconcilable conflict between confession and mandated reporting.

Some will say that it doesn't go far enough. That either like the current law or perhaps like the bill in front of us even in some respects, any communication involving clergy ought to be privileged.

There should be no opportunity, no opportunity to learn of crime, misdeed, you name it. As long as the person involved is a clergy person. That's the current law of the state of Connecticut. In one respect, that's the law of the bill in front of us.

In a lesser respect, although I will say to you

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that Representative Lawler, in his remarks, clearly suggests, and I think there's an equal logic to his argument, and that's what so vexing about this.

It's an equal logic to his argument that the succession of amendment of the statutes of the state of Connecticut, privilege preceding mandated reporting, and we've all gone through the rules of construction, that it is perfectly arguable case that right now current law of the state of Connecticut places the mandation of reporting outside the privilege of nondisclosure.

And it's that argument which I then had with Representative Lawler in hopes that he would say to me that he had not said on the floor of the House exactly that, that he would say to me, no even as you read my bill or you read the current law of the state of Connecticut, confession is protected.

But that is not the position taken. Nor I think arguably on the words of the statute as we now have it in Connecticut or as it is now in front of us in this amendment. It leaves open the very real possibility, and a I would suggest probability, however remote that anyone would enforce.

Nonetheless, it leaves open a situation where a clergy person obligated to observe and honor a core practice of that faith, and a core practice that

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requires no disclosure of the communication from the communicant to the clergy.

That that person would be placed at civil risk on the one hand for honoring their ecclesiastical obligation. And at ecclesiastical risk on the other hand for honoring their civil obligation.

Now, I'll suggest to you that that's exactly true under current law as well. But we only learn of these problems, I think, as the law evolves and problems arise. So without belaboring the point more, what I was asked to do, I have done in this amendment.

Because I believe it's the right thing to do. And I believe it's an appropriate response that we cannot place the law of the state of Connecticut, however much we wish and will protect children, in every other case, we cannot place the clergy of this church or another church in the position of having to choose between excommunication and honoring the civil code of the state of Connecticut.

Now some will disagree with that position and say that in any event the civil law of this state always prevails. It is of no consequence that a faith may disagree with that civil law.

I don't take that position. I think there is a line where what we do can so infringe that it risks

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unconstitutionality. But I will equally say to you in closing on this amendment, let us not leave here, leaving wide open the door that all communication will be privileged no matter what the content of that may be, and no matter how informal that communication may be.

People will differ. People will differ with this amendment. People will differ perhaps in this amendment if this amendment does not succeed with the next one, people will probably differ with the bill as it's finally before us.

And we will never really know either what the current law says, or what the bill says, until somebody invokes one or the other. But I would say to you that if your goal is to protect the sanctity of the confessional, and to protect the ability of those clergy who practice within it, to not find themselves truly in an impossible position between a rock and a hard place, that this amendment does it. It does it narrowly. It does it effectively. And it does it precisely. Thank you.

THE CHAIR:

Thank you, Senator. Senator Aniskovich.

SEN. ANISKOVICH:

Thank you, Madam President. Madam President, on the amendment, I would first like to thank Senator Sullivan

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for his thoughtful comments in offering the amendment to this bill. I must rise, however, in opposition to the bill.

And I want to spend a moment briefly to articulate why I think this amendment does not solve the problem that's before us. Senator Sullivan started his remarks with an observation about what happened to him this past Sunday morning.

And as I sat here listening to his Sunday morning experience, I thought about mine. This past Sunday morning I got a telephone call from my Mom, who didn't attend our parish church on Sunday because she was at another parish in Branford at one of our cousin's first communion masses.

She said, I'm calling you before you go to mass because you're in for it. And I asked her why I was in for it. And she said, because the priest at this mass stood at homily and said that the legislature had just passed a bill that destroyed the sanctity of confession, and that we all needed to call our State Senator and urge him to vote this bill down, and proceeded to give them my name and my phone number and my e-mail address.

Thankfully our parish priest didn't do that. Probably because he knew I was sitting there and he didn't need to. Our experiences differ, and our

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articulation of the problem differs. And that brings me squarely to why I think this amendment doesn't do the trick.

For many people who viewed what happened over the weekend, the problem is not a problem with the current law. The problem is what the bill before us at Section 19, does to the current law.

While there is, and will continue to be after this debate, as Senator Sullivan points out, differences of opinion with respect to what the current law means. And while I have the utmost respect for Senator Sullivan's interpretation of the current law, I think, on the contrary, the current law is perfectly clear.

At Section 52-146b of the General Statutes the law of Connecticut states very clearly that a clergyman shall not disclose confidential communications made to him in his professional capacity.

That law creates a privilege of confidentiality in the confessor. A priest or clergyman may not disclose information that a penitent delivers to him in the context of a confession without the penitents consent. The penitent must waive the privilege.

It is a law that exists to protect the penitent, not the priest. We have a civil right to engage in a religious practice pursuant to which the things we say

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in confession are held confidential by the priest or clergy that receives them.

In another area of the law, Section 17a-101a, the Connecticut General Statutes makes it clear that a mandated reporter, which is defined earlier in the statutes to include a clergy, has an obligation to report when he or she has reasonable cause to suspect or believe that any child under the age of eighteen years has been abused, or is placed in imminent risk of serious harm by an act or failure to act on the part of such responsible person.

Some people want to read that statute as being in conflict with the Section 52-146b provision, the privilege provision. But, as most courts who engage in statutory construction would hold, when you are construing two statutes which are purportedly in conflict, the court must make every effort to attempt to read them in a way in which they are harmonious and not in conflict.

And if the court can find a manner in which the two statutes, when laid side by side, can be read harmoniously, then there is no conflict. And, Madam President, in this case it is fairly clear to many of us that there is such a reading.

A priest that receives information that creates

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reasonable cause in his mind to believe that a child has been abused, or is at imminent risk of injury, outside of the confession has an obligation under 17-a-101a, to report.

To the extent that the priest receives that information in the confession, he needs the penitent's consent to disclose and report. Those two statutes, under that reading, do not conflict. They can be read to be harmonious. And I would suggest to you tonight, this morning, that that is a better reading of the statute.

Therefore, what we're left with is an amendment before us, 5407, which attempts to correct the problem in Section 19 of the underlying bill. It attempts to correct the problem by clarifying that information that is received by a religious person in a private religious ceremony, can't be disclosed without consent.

However, what it leaves in place is the underlying Section 19 statutory framework that replaces the 52-146 privilege with a statutory scheme that says, all information received by the priest is confidential and privileged, except where a waiver is issued by the penitent.

However, a priest doesn't need consent to disclose where he in good faith believes that a child is in imminent risk. It actually picks up language that is a

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current law exception to the doctor/patient privilege.

So it leaves in place this amendment before us, a very problematic alternative to the current law, which I would argue is very clear and very clearly protects the sanctity of confession among other confidential communications that are delivered to religious. Now, I believe that for those reasons, the fact that the current law is clear, the fact that the current laws can be read harmoniously and not in conflict, and the fact that this amendment would actually leave in place a more problematic privilege statute than we currently have.

The merits are rejecting this amendment and acting favorably on an amendment that is about to be offered, if in fact this amendment fails. Which, I think, will return us to the better statutory framework.

There are other issues involved here. And I will reserve my comments on those other issues until we reach the underlying bill or the next amendment, to the extent that we get there.

In the meantime, I would encourage members to reflect clearly on the alternative interpretations and hopefully see that the interpretation that I've offered respectfully in opposition to the one offered by Senator Sullivan is the better way to go this evening, and puts us on the road, hopefully, to a good result here

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tonight. Thank you, Madam President.

THE CHAIR:

Thank you, sir. Will you remark further? Senator Sullivan.

SEN. SULLIVAN:

Thank you, for the second time. And let me observe before remarking further that much like the discussion that we had in our caucus not long ago which I left thinking no disrespect to all the other wonderful bills we do here, was probably one of the most high-minded, thoughtful, considerate conversations, much I think as this one is.

Because this is not by any means, and I haven't suggested it, and I know my colleague, Senator Aniskovich, is not suggesting it. This is not right-line stuff. It is an issue which after today will be interpreted whichever way we act.

There is one thing that I think Senator Aniskovich said that bears repeating. He is perfectly correct that the current privilege of 52-146b as cited, and as stated, does protect the sanctity of the confessional. No dispute.

But as he also said, and I think this is where the issue lies. He went on to read, and I appreciate that he read it and nearly in its entire. And he read the

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relevant, relevant words.

It does not say, as the amendment does, that we will hold absolute and privileged, the communication received within the bounds of the sanctity of confession. It says, the clergy shall not disclose confidential communications made to him in his professional capacity in any civil or criminal law.

Communications made in his professional capacity, that are confidential. That is not simply the act of confession. It is any communication that the communicant deems confidential, and it occurs in any way at any time so long as the person hearing that communication of a non-confession nature is a clergyman.

My concern is that it sweeps too far. Perhaps even as the current law sweeps too far. I heard a plea to protect the confessional. Senator Aniskovich and I agree on that point. I did not hear a plea to protect every informal and deemed confidential communication that may occur about a serious and dangerous act simply because the recipient of that communication was a clergyman.

And this is a legitimate difference of point of view. I believe we do have to honor the faith that honors the core principal of confession. I do not believe that compels us to grant blanket immunity, and blanket privilege to even the most informal and deemed

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confidential of communications about terrible acts, just because one recipient happens to be a clergy person, albeit not in the act of taking confession.

THE CHAIR:

Senator Aniskovich.

SEN. SULLIVAN:

I was just going to ask for a roll call. Thank you.

THE CHAIR:

A roll call vote will be ordered. Senator Aniskovich.

SEN. ANISKOVICH:

Thank you, Madam President. Just to finally join this issue and to respond briefly to those points, and to what I think is the nub of Senator Sullivan's remarks, which again, I appreciate the thoughtfulness of.

Section 52-146b has language that clearly is drafted more broadly than simply a protection of confessional communications, in a Roman Catholic sense. Or in a Greek Orthodox sense, or in an Episcopalian sense.

However, the Connecticut supreme court has interpreted 52-146b as the priest/penitent privilege statute in Connecticut. It has taken that language and interpreted it in at least one case as the operative

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statute with respect to protecting the priest/penitent communication. And while it may go, it may be capable of being interpreted, because of its language, more broadly, I would argue that the amendment before you suffers the same potential interpretational problem.

Because the language of 5407 reads that nothing in this section shall require of the member of the clergy to make a report based on communications made by a person to such member of the clergy in a private religious ceremony or practice recognized by the religious denomination to which such member of the clergy belongs, if such communications concern such person and the disclosure of such communications by such member, would conflict with the tenants and practice of such religious denominations.

So I would argue that the amendment that's being offered here is subject to even more interpretational problems than the language of the statute as interpreted by the Connecticut courts. And I would encourage members, on that basis again, reject this amendment and move forward. Thank you.

THE CHAIR:

Thank you, sir. Will you remark further? Senator Williams.

SEN. WILLIAMS:

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Thank you, Madam President. I rise to support the amendment. But I must confess at the outset that there's no easy solution that I can see that addresses all of our particular needs here.

I think that all of us in the Circle are struggling to strike the appropriate balance between protecting our rights and privileges within organized religion on the one hand, and protecting our own infrastructure in terms of our legal proceedings and our agency proceedings to protect children, and to protect our citizens.

We must attempt to strike that balance. It is not easy to do. When I came out here to the Circle at the beginning of this debate, I believed that there was a conflict between the current law which provides a waiver from disclosure for clergy, and their mandatory requirements as a mandated reporter.

I would like to thank Senator Aniskovich. You changed my mind as to that particular conflict. I think that some of us might admit, and I will admit right now, that changing our minds on any issue after we come to the Circle is a rare thing.

Most of us have had a chance to think about issues before we come and participate in debate. But Senator Aniskovich, your explanation was enlightening and I appreciated it. However, I believe that the current

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language, the current exemption which does not merely say that clergy are not required to come forward, but actually commands them not to disclose.

It goes beyond what we as a state should have in our own state statutes as to particular cases. Because right now, this language says that clergy shall not disclose confidential communications made to him in his professional capacity.

And that seems to be an explicit command on the part of the state. However, under the proposed bill that we have before us, there is a provision in Section 19, Subsection C, which says that a member of the clergy could disclose. Would not be required to disclose, but could disclose communications that would otherwise be privileged if there is a risk of imminent personal injury to a person, or of child abuse, elderly abuse, or abuse of a disabled or incompetent person, is known or suspected.

Even in our system of criminal justice where defense attorneys stand as guardians of our adversarial system of justice, and have perhaps the highest duty of confidentiality in the attorney/client privilege.

Even in that circumstance, we recognize that if the defense attorney knows of a future act that can cause serious injury or even death to another person, that

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attorney is not bound by the attorney/client privilege, and can disclose.

I think in striking the appropriate balance between our respect for the rights and privileges of organized religion on the one hand, and our protection of the life and limbs of people in our communities, and our children, that it is appropriate to permit this exception that would not require, but would permit clergy to disclose when they knew that there was an imminent risk of future harm, in terms of injury or abuse.

Senator Sullivan's amendment clarifies the bill before us. Because the bill does exempt certain communications from the mandated reporter requirements. And those communications are regarded as counseling between a clergy and a parishioner.

There had been some question as to whether formal confessions or other similar formal and confidential communications would be considered counseling. Senator Sullivan's amendment makes clear that such communications would be covered.

And at the same time this exemption that I referred to in paragraph C, where folks are in imminent risk of harm, would be permitted. Not required, but would be permitted. And I think that that strikes the appropriate

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balance and therefore I will support the amendment.

THE CHAIR:

Thank you, sir. Will you remark further? If not, would the Clerk please announce a roll call vote, the machine will be opened.

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 chamber.

THE CHAIR:

Have all members voted? If all members have voted, if all members have voted the machine will be locked. Clerk, please announce the tally.

THE CLERK:

Motion is on adoption of Senate Amendment Schedule

A.

Total Number Voting	36
Those voting Yea	11
Those voting Nay	25
Those absent and not voting	0

THE CHAIR:

The amendment fails. Will you remark further on the bill? Senator Coleman.

SEN. COLEMAN:

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Thank you, Madam President. Madam President, let me just comment that I appreciated the extremely thoughtful analysis that was contributed to this debate by Senators Sullivan, Aniskovich, and Senator Williams.

There is another amendment. And I would like at this point to yield to Senator Daily for purposes of that amendment.

THE CHAIR:

Senator Daily, do you accept the yield?

SEN. DAILY:

Yes, thank you, Madam President, I do. I rise for two purposes. One is to address the underlying bill and to commend Senator Coleman for all the work that he has done, work that has covered a period of years, and will enable us to provide far greater protection, and far greater redress to people who might be abused.

My second purpose is to introduce an amendment. And for that, I would like to ask the Clerk to call LCO-5390.

THE CLERK:

LCO-5390, which will be designated Senate Amendment
Schedule B. It is offered by Senator Daily of the 33rd
district et al.

THE CHAIR:

Senator Daily.

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SEN. DAILY:

Thank you, Madam President. I'd like to move passage of the amendment and seek leave to summarize.

THE CHAIR:

Question is on adoption, please proceed.

SEN. DAILY:

Thank you very much. I would first have to comment on how it seems to me that it's so often that that women seem to know these things first. I heard about the amendment that passed last Friday when I was here.

And I almost immediately called my childhood friend, Father Jim Hickey, to be sure that what I thought was the sanctity and protection of the seal of confession, is in fact what it is.

And he faxed to me the copies of the canon law that applied in this case. So when my pastor called me on Saturday, I was already well familiar with the bill and with the underlying opposition.

This threatens not the Catholic church as such. Not just confession as such. But an attack on any religion, is an attack on every religion. And what it violates is our constitutional right to practice any religion.

We have a responsibility to be sure that that simply doesn't happen. This legislature has proven over and over and over again its seriousness of purpose in

defending our children against any kind of abuse, and any kind of danger.

Something that would threaten the seal of confession would not protect children. We, in fact, have no data that shows anybody was ever harmed by the seal of confession. We have no anecdotal data, nor statistical data.

In the current climate there's a reaction and perhaps an over-reaction to many of the things that have happened in the Catholic church. And it's my belief that the Catholic church has offended almost everyone in this country.

And in many ways has shamed and humiliated its members. And it's made it particularly difficult to defend any part of the faith right now, and any part of canon law. But we have a responsibility to not just pander to the hysteria of the moment no matter how well-founded the anger is at some of the principles.

What we have a responsibility here to do is to protect our first amendment rights to the free practice of religion. It's very encouraging that there are so many people in this Chamber who want to do just that. Their faith isn't what's at issue here, or their choice of religion, or anybody's choice of religion.

It's that we live in the United States of America

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under a wonderful constitution. And we're going to protect that. I would encourage everyone to support the amendment that's been filed.

What that amendment does is withdraw the offensive Section 19, and it restores us to the language that existed, for that portion of the bill, before this bill was introduced in the House on Friday. I would now like to yield to Senator Aniskovich.

THE CHAIR:

Senator Aniskovich, do you accept the yield?

SEN. ANISKOVICH:

Thank you, Madam President, I do. Madam President, let me first before I start, thank Senator Daily and the other members of the Democratic caucus who have joined members of the Republican caucus in offering this very clearly bipartisan effort to correct the problem in the underlying bill in Section 19.

I have been more proud to be a legislator in Connecticut over the last twenty-four hours than I have ever been in the twelve years that I've been here. I watched members of two different parties from several different faiths come together in a good-faith effort, and not only resolve the initial differences of opinion that separated them about how to resolve this problem, but also come together and embrace a solution that while

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we understand is not perfect, we agree is the right measure to adopt here this evening.

Having said that, I want to associate myself with the remarks of Senator Daily. And I want to focus again, just briefly, on the reasons why we believe this amendment is the correct solution to the problem.

I think the problem was articulated in the debate on the previous amendment and so I won't rehash that. I want to actually take off from the point at which, I think, Senator Williams left us when he said that Subsection C, of Section 19, is the important part of the underlying bill.

And I completely agree with Senator Williams, that Subsection C, is the heart of the underlying bill at Section 19, and the heart of this issue. It is that very section that reaches to the fundamental liberty that is enshrined in the free exercise clause of the first amendment.

And I would like to hopefully illustrate that point by suggesting to you, first of all, that when it is suggested that Subsection C, doesn't require, but it merely permits a priest to disclose information that he received, or that he received in the case of the Roman Catholic church, in the context of a confession.

That this characterization of this language is not

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exactly accurately. The language of Subsection C says, consent of the person, the penitent, shall not be required for the disclosure of such person's communications, if the member of the clergy believes in good faith that there is a risk of imminent personal injury to the person.

Consent shall not be required. That doesn't say that a priest may disclose for purposes of making a mandated report under Section 17a-101 of the Connecticut General Statutes. It just says, consent is not required.

That language is offered to you today as statute with the full knowledge of the canon law. The canon law prohibits a priest from disclosing information received in the confessional upon pain of death.

Not merely excommunication. Now, regardless of whether we have a difference of opinion upon what the penalty is under the canon law, knowing that the canon law prohibits a priest from disclosing information that he received in the confessional from the penitent, you are setting the priest up in a box where he can't practice his faith. And the penitent can't practice their faith.

Because the law would potentially permit the disclosure of something which the religion disallows. Subsection C is the most important part of this Section

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19. And it reaches to the heart of the free exercise clause of the first amendment.

It is that irreconcilable tension between this purported law and the clear language of the first amendment of the United States constitution that creates a problem which many of us feel needs move us back to the current law, which as I described earlier I think is very clear.

I would also point out that in effect what the underlying bill at Section 19 does is open up a priest to a potential civil action for failing to disclose information that he received in a confession if the penitent subsequent to such disclosure commits a bad act.

One might argue under this language that the priest, or clergy, was negligent in not disclosing pursuant to the consent provision of Subsection C. And the potential of that kind of action, Madam President, I have a problem with solely because it doesn't serve the purpose of the underlying bill, which is to prevent child abuse.

This is the United States supreme court cases respecting how a statute is tested under the free exercise clause is clear. One, a state must demonstrate that it has a compelling governmental interest.

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No one would argue that preventing child abuse is a compelling governmental interest. But, two, the second prong of the test is that the statute must be narrowly drawn or implemented to achieve the goal.

Madam President, I would argue that in this case Section 19 is ineffectively in actually achieving the goal of preventing child abuse. At most what this language will do is chill confessional disclosures. It will make a penitent less likely to disclose in confession information that if disclosed by the priest might lead to the prevention of child abuse.

Because the penitent will understand that he's no longer privileged when he's engaging in this communication. And so I don't think that the underlying Section 19 language even achieves the goal that its sponsors were intending to achieve in terms of the prevention of child abuse.

The combination of this underlying bill Section 19's ineffectiveness, its deletion of a very clear Section 52-145b privilege, and its constitutional implications for the free exercise of religion, combine, in my opinion, to suggest that we need to go back to the underlying law as it's currently structured.

Perhaps we need to continue this debate and rectify some of the other issues that have been presented. But

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as for tonight, this amendment will restore us to where we were before Friday night, or Saturday morning, wherever it was, and I think will leave us in a steady place from which we can reach a solution to some of the differences of opinion that we have respectfully articulated tonight.

Madam President, I urge support of Senate Amendment B. And I would ask that when the vote be taken, it be taken by roll call.

THE CHAIR:

A roll call vote will be ordered.

THE CHAIR:

Actually, Madam President, I'm sorry. I forgot that I was supposed to, and would now yield to Senator Gaffey.

THE CHAIR:

Senator Gaffey, do you accept the yield?

SEN. GAFFEY:

Thank you, Madam President, yes I do. I thank Senator Aniskovich for the yield and urge my colleagues to vote in favor of this amendment to return to current law, which continues to make priests mandated reporters, yet upholds the seal of confession as privileged and confidential communication.

I would like to comment Senator Sullivan and

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Senator Daily and all those, Senator Aniskovich, Senator Williams, who have taken part in the debate so far. I'd like to commend both caucuses for the tenor of debate. And how much everyone who has engaged in this issue has put very thoughtful consideration forward as we have considered the matter.

The language contained in the bill as proposed and passed by the House, by the House Chairman's own words on the floor of the House, broke the seal of confession. Language that was never heard in a public hearing. Language that was never debated by the Committee of Cognizance, the Judiciary Committee.

Language that the Senate Chairman, and my respected colleague, Senator Coleman, wasn't even aware of until not too long ago. My friends, I don't think we should ever rush forward in the dark of night and pass legislation that does something so serious as trespass on the constitutional right of free exercise of religion.

That is a very serious matter that warrants a great deal of deliberation and thought, and argument. Yes, argument. But not something that we do in a knee-jerk reaction without public hearing, without committee debate, without thoughtful consideration, because of stories swirling around the media.

Senator Daily used the word when she talked a little while ago. And that word was pander. And let us not pander to issues because they are reported in the media without due consideration of the full ramifications, legal and constitutional ramifications to the right that those constitutional protections are intended to protect.

In this case, the free exercise clause of the first amendment. Nor do I believe that we should ever, and this is just my opinion, put the priest in an untenable position of having to decide whether or not he is going to break civil law, or face the ramifications of breaking canon law, which means that he will not be practicing as a priest anymore, and also not be a practicing Catholic anymore.

We have a wonderful bill, the underlying bill. It's a bill, as Senator Sullivan said, took three years in the making to get to where it is today. A bill that is long over due. A bill that interest in within was perpetuated by the fact that a number of people came forward to that Judiciary Committee hearing and put on the record, as painful as it was, put on the record their experiences of being abused a long time ago.

Let us go back to current law. Let us revisit this issue as Senator Aniskovich has suggested, in a much

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more thoughtful and deliberative manner. But let's do so in passing tonight, and taking great pride in passing tonight, the underlying bill, which I do believe is landmark legislation as Senator Sullivan referred to it. I urge adoption of the amendment. Thank you, Madam President.

THE CHAIR:

Thank you, sir. Senator Williams.

SEN. WILLIAMS:

Thank you, Madam President. I rise to oppose the amendment but to thank Senator Daily and Senator Aniskovich and Senator Gaffey. It's clear that we are all working to, on the one hand as I mentioned before on the previous amendment, protect the rights and privileges of organized religion.

And they are doing their utmost toward that end. And that is one of the things that we are all working toward here tonight. At the same time again I will raise the issue that we also have to balance that with our struggle and our challenge to protect the rights and the safety of our citizens and our children.

And I would agree with Senator Aniskovich that Section C of Section 19, paragraph C of 19, is I believe the heart and perhaps the most important part of that section. And that is the section that would permit, but

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not require, clergy to be able to pass along information concerning risk of imminent injury or imminent child abuse or abuse of an elderly individual, or a disabled individual.

Senator Aniskovich said that one of the problems procedurally with this is that it would conflict with existing canon law. And I think that's something that we should consider seriously and to take into, or take stock of as we go forward.

However, at the same time, we also have to recognize that we are a state and a country, not of one religion but of many religions. Of many faiths. And current law prohibits a clergyman, priest, minister, rabbi, or practitioner, of any religious denomination from disclosing any confidential communications.

Now, paragraph C of the underlying bill would permit such important information in the discretion of a clergyman to be passed on that could help prevent injury, help to save a life, in a way that we permit similar information to be passed on by those who also are the caretakers of confidential and privileged information.

I think that strikes the appropriate balance. I do recognize and respect the makers of this amendment. And as I mentioned earlier, understand their deep resolve

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and commitment to protecting the rights and privileges of religion.

That is my goal as well. But I just believe that the Section C of Section 19 would also help us strike the balance that I referred to earlier. So I will oppose the amendment. Thank you.

THE CHAIR:

Thank you, sir. Will you remark further? Senator Looney.

SEN. LOONEY:

Thank you, Madam President. Madam President, rising in support of the amendment, certainly again would like to commend Senator Daily, Senator Aniskovich, Senator Gaffey, and the other co-sponsors. I believe that this amendment certainly is, as its sponsors have said, preferable to the File Copy of the bill.

I voted for the prior amendment because I actually believe that the prior amendment, introduced by Senator Sullivan, was actually more precise and more effective in getting at the precise issue that we wanted to address here.

And that is the protection of the privileged communication in a religious context. Because that amendment addressed both Section 13 of the File Copy dealing with the requirements on mandated reporters, and

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also addressed the crucial language in Section 19, Subsection C, by also adding that language at line 458 and thereafter.

So that, for that reason I believe that the prior amendment actually was more effective than this amendment at addressing that goal. But I believe that this amendment does meet the goal of preventing the kind of terrible conflict that can emerge when you have a civil mandate imposed in a religious context.

We have seen this issue, Madam President, has been treated both in reality, and also in dramatic context going back to antiquity. We have the classical Greek tragedy of Antigone, by the great playwright Sophocles, in which you have the context of the King Creon in that play, in a time of civil strife to impose order, imposes a civil requirement that the bodies of rebels killed in that conflict must remain unburied.

That they must be left as carrion in the sun to be picked at, to have their carcasses picked over. And he does that because of the certainly defensible civil goal of making an example of the rebels of those who would cause civil strife.

But the princess, Antigone, believes that there is a higher religious obligation that would require her to bury the body of her brother who was one of the rebels.

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Hence, the tragedy develops from that point, the suffering of all concerned.

And I think that this amendment by returning us to the current law, by striking Section 19 of the bill in its entirety, will prevent the modern equivalent of that kind of terrible conflict of people of good will, people of principle, trying to uphold compelling principles of honor.

As Senator Aniskovich and others said, there are under the first amendment freedom of religion context, two separate elements. There is the establishment clause, and there is the free exercise clause.

And it is important for us, I think, to focus on the free exercise clause in this context, that this amendment will certainly not in any way harm children, injure the prosecution of sexual predators. But it will uphold what has been one of the prime values of our constitution.

And that is, the free exercise clause. Even in very difficult context such as this, it is important to recognize that. If we recall the famous play, A Man For All Seasons, by Robert Bolt, talking about the life of Sir Thomas Moore.

At one point in that play, in a very difficult context, when Sir Thomas Moore is trying to fend off the

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maneuvers of King Henry VIII and to try not to be placed in the difficult context of rejecting the mandates of his faith, and also coming into direct conflict with the King, he is using legal stratagems to avoid a direct confrontation.

And a young firebrand in the play says to him, why are you relying on this legal quibbling? Why are you, why do you not just deal with the issue forthrightly and not rely upon the stratagems of the law? And Sir Thomas says at that point, if you cut down all of the trees in the forest to get at the devil, and even acknowledging that it is the devil, what will protect you when the devil turns on you?

That is something that we have to keep in mind. That is why we have protections in the law at all levels to make sure that rights are protected. It is inconvenient sometimes to have rights protected. But it is important nevertheless in our democracy.

This is one of the things that we must do. We must not be so overzealous in the pursuit of something that is a laudable goal, that is, certainly to make sure that we will every resource of the law to go after sexual predators.

But we must not in that context do harm at the same time to an important principle that has stood our

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democracy well for all of these years. And for that reason, I urge adoption of the amendment.

THE CHAIR:

Thank you, sir. Will you remark further? Will you remark further? Senator Bozek.

SEN. BOZEK:

Thank you, Madam President. A lot of this dialogue that we've heard tonight, and it's been mentioned a number of times, and since Sunday has, unfortunately, in my opinion, an opinion of a number of people who have called me, who are my constituents, unfortunately centers around the Catholic church.

And while the makers of the amendments probably can't, cannot address that particular issue, just by the mere fact of the Section 19 issue, elevates this particular issue. This attack, in my opinion, in today's world is kind of orchestrated.

The sad thing is that this particular issue could go further with other religions. It could embrace problems with other facets of other religions. And I don't want to go too far with this but the problem here is on many issues today it's fashionable to use the Catholic church as an attack.

Unfortunately, we have some priests, by a small number, who are bad individuals. These particular type

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of individuals exist throughout our society. And we are trying to protect our children in this particular important bill.

And what's important here is that if we started to discuss all the ills of all the sexual abuses of the children, we would find out that they would come down to our teachers, our neighbors, our relatives, and even parents.

We read every day of these horrible problems that beset our children and our society. To choose this issue in a Connecticut legislature, while other people are very proud of what's going down in the last couple of days, I am myself too, as to how we are trying to resolve this issue.

But I'm actually embarrassed by the fact that we are beset by this particular issue. I'm not going to mention any other religion. But if it was some other religion, and some notable title of a person in that religion, how would we address that?

I wanted to elevate that position that today going forward on other issues of legislation that we discuss here, just because it's popular that we see the issue of the day with regard to priests and archbishops, and problems with children, and molestation, what's important today is that we try to prevent looking at,

and identifying some aspect as was trying to be identified in the Catholic church by attacking one of its tenants, which is the sanctity of penance of the confessional.

And I think that the concepts that were brought forward in a lot of conversations, to a large degree misunderstand, confession is something somebody tries to repent after. Confession isn't something they tell the priest they're going to do.

And confession on something serious isn't automatically given. And these things should be taken into consideration. There's a lot of good people here. We have a wonderful, a lot of good religions in our nation. And I think that we should be a little bit more tolerant with regard to the exposure of what's occurring in the Catholic church.

And as Senator Daily has stated earlier, it is an embarrassment for any group, in any religion, that this would be elevated as it has been in recent months. And I hope that in some way the Catholic church, with this particular problem, gets its act together so that we can feel proud about and know that we're handling the situation at least inside our house.

But I am disturbed by the fact that going forward, just coming forward recently, the issue seems to center

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around the confessional of the Catholic church. And I think it's the wrong type of attack. For this particular purpose I intend to support this amendment. Thank you, Madam President.

THE CHAIR:

Thank you, sir. Senator Peters.

SEN. PETERS:

Thank you, Madam President. I rise to support the amendment. And quite frankly, had not prepared to say anything. What doesn't escape me, as I look at the faces of my colleagues around the Circle, and think, reflect back on the debate that we had in our caucus room, and listen to the debate that we're having this morning, that in some cases this is a very, very agonizing issue.

And difficult to come down in support of one amendment over the other. These decisions are difficult because they're very personal. And I'd like to share a personal story that I just shared with my friend, Senator Prague.

I had the very good fortune to make a decision in my adult life, as recent as this past summer, to become baptized, immersed in a religion that I chose as an adult. And I feel blessed with that decision.

I also feel blessed that I belong to a church and have a relationship with my maker that is undisturbed by

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any exterior forces. I strongly believe that that's where decisions should be made, and where relationships with our maker should be created and honored.

I believe strongly that government should not be in the business of dictating to me, as a Protestant, or to my friends as Catholics, or my friends as Jews, or any religion that they choose to support, should not be in the business of dictating how we do that. I am strongly in support of this amendment and I thank the proponents for bringing it forward.

THE CHAIR:

Thank you, Senator. Will you remark further? If not would the Clerk please announce a roll call vote, the machine will be opened.

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 chamber.

THE CHAIR:

Have all members voted? If all members have voted the machine will be locked. Clerk, please announce the tally.

THE CLERK:

Motion is on adoption of Senate Amendment Schedule

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B.

Total Number Voting	36
Those voting Yea	26
Those voting Nay	10
Those absent and not voting	0

THE CHAIR:

The amendment is adopted. Will you remark further on the bill as amended? Will you remark further? Senator Harp.

SEN. HARP:

Thank you, Madam President. I rise just to ask a question of the maker of the underlying bill. In Section 5 of, I guess, Sub 2, where it says, sexual assault in the first degree is a Class A felony. Can you explain to me exactly what is intended here, sir?

THE CHAIR:

Senator Coleman.

SEN. COLEMAN:

Through you, Madam President. I want to make certain that I have the precise section that Senator Harp is concerned with. I'm looking at line 79 through 88. Is that the section you're addressing?

SEN. HARP:

Thank you. I believe it is, sir.

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Senator Harp. Senator Coleman.

SEN. COLEMAN:

Through you, Madam Speaker. That particular section makes sexual assault in the first degree a Class A felony under a number of situations. The first is if the victim of the sexual assault is under the age of sixteen years of age.

And then refers back to Subsection 2. If the sexual assault involves engaging in sexual intercourse with another person, and such other person is under thirteen years of age while the actor is more than two years older than such person.

THE CHAIR:

Senator Harp.

SEN. HARP:

Thank you. So that if the person is under thirteen years of age?

THE CHAIR:

Senator Coleman.

SEN. COLEMAN:

Through you, Madam President. That's correct.

THE CHAIR:

Senator Harp.

SEN. HARP:

Thank you. So, if the person were twelve and the

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other person were fourteen, then this would apply?

THE CHAIR:

Senator Coleman.

SEN. COLEMAN:

Yes, assuming that the fourteen year old is more than two years older than the twelve year old.

THE CHAIR:

Senator Harp.

SEN. HARP:

So if the person were just exactly twelve, through you Madam President, and the person were fourteen-and-a-half this would apply?

THE CHAIR:

Senator Coleman.

SEN. COLEMAN:

Then this section would apply in that event. Through you, Madam President.

THE CHAIR:

Senator Harp,

SEN. HARP:

Thank you. So is the assumption then that the twelve year old would not have had a consensual relationship with the fourteen-and-a-half year old?

THE CHAIR:

Senator Coleman.

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SEN. COLEMAN:

The criminal statutes on this particular subject are such that a person under a certain age is incapable of consent. So sex with a person, I believe it's a person less than sixteen years of age, would be sex with a person who's incapable of consenting. So the sexual act between the two such people in your example would be legally non-consensual sex. Through you, Madam President.

THE CHAIR:

Senator Harp.

SEN. HARP:

And thank you. So for the fourteen-and-a-half year old who would be made, would be found guilty under this area would have a mandatory sentence of what mandatory minimum of what?

THE CHAIR:

Senator Coleman.

SEN. COLEMAN:

If the so-called victim of the sexual assault in Senator Harp's scenario was twelve years old, the sentence would be, whatever sentence would be imposed it would be a mandatory minimum, five years connected with that sentence. Through you, Madam President.

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Senator Harp.

SEN. HARP:

And, in that case, would the sentence under any circumstances be able to be suspended?

SEN. COLEMAN:

Through you, Madam President.

THE CHAIR:

Senator Coleman.

SEN. COLEMAN:

Through you, Madam President, the five years, the five-year portion of the sentence would not be able to be suspended or reduced. Through you, Madam President.

THE CHAIR:

Senator Harp.

SEN. HARP:

Thank you, Madam President. I guess that's probably enough. My concern with this, with this in that particular situation is that given the closeness of age. Given the fact that while the twelve year old may not necessarily, well is not considered one to give consent, that the proximity of the, and the change I guess in our society in terms of when kids become sexually active.

And in their own minds, whether we consider it that way or not, our consenting would, to my mind for the person who is within two years, two-and-a-half years of

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that particular age create something that I think frankly even the fourteen-and-a-half year old would not really be able to weigh and balance in terms of his or her behavior.

I would almost argue that the twelve year old and the fourteen year old, particularly if the twelve year old were a girl, no offense. And the fourteen year old probably operate on the same intellectual and emotional level.

And so to have one have the benefit of not being able to make a consensual decision and saying that the other one can, I believe is grossly unfair. I believe that for the male, in particular, assuming that largely those are the, that's the way that it largely goes in our society.

That you will have marked this young man, frankly, who probably wasn't capable of making a good decision, perhaps, in a way that will change the outcome of his life forever. He will be on a sexual assault list for many, many years to come.

And while I understand that there are probably many good things in this underlying bill, I believe this does so much damage to young men, in particular, that I absolutely can't vote for it.

I have a case now of a constituent that is really

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eighteen and fifteen. And I have seen the lives of both people absolutely destroyed. And the heartache that it has caused both families.

I believe that when we pass these laws, and we deal with adolescents that we ought to do it in a way that is far more subtle and considers the growth nodes and the hormones that are going on in that particular age does not give, that gives some sense of what is consensual and what isn't. And doesn't always label young men who think that they're engaging in something consensual in a way that actually can ruin their lives forever, when in fact it was not a hostile or an aggressive action.

And was something that frankly they probably just didn't understand. So I probably will be the only one voting, no, on this, but will be voting, no.

THE CHAIR:

Thank you, Senator Harp. Will you remark further?
Senator Cappiello.

SEN. CAPPIELLO:

Thank you, Madam President. I rise in support of this bill. However, I am disappointed in one aspect. The original form of this bill had a retroactivity on the criminal side which would have allowed the state, and state prosecutors to look back the past thirty years for an abuser of children.

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I don't think anyone in this Chamber can argue that the lowest form of life is someone who abuses or molests and rapes a child. And whether it be your neighbor, whether it be a teacher, or whether it be a member of the clergy, I believe that state prosecutors should be able to look back.

And should be able to at least attempt to prosecute this lowest form of life. The only thing lower than someone who does this is someone who does this that is in a position of authority and power and trust. Like some people we have been reading about and hearing about in the media.

Doesn't matter what the profession. But it disgusts me. And I'm sure it disgusts all of you. And I hope next year we can look at making this retroactive. I was going to bring out an amendment to try and do so, but I don't want to kill this bill, because I think it's a good bill.

So, Madam President, with that I rise in support of the underlying bill.

THE CHAIR:

Thank you, sir. Will you remark further? Senator Peters.

SEN. PETERS:

Thank you, Madam President. I rise to support the

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bill. But would like to pose some questions to Senator Coleman for clarification.

THE CHAIR:

Please proceed.

SEN. PETERS:

Thank you, Madam President. Senator Coleman, in Section 21, it relates to teachers' records. Changes the statutes related to the release of records of teacher misconduct by boards of education. According to the current statute then a teacher's record of misconduct are not public unless a teacher consents to release them. Would you agree with that?

THE CHAIR:

Senator Coleman.

SEN. COLEMAN:

Madam President, I would agree with that, through you.

THE CHAIR:

Senator Peters.

SEN. PETERS:

Thank you, Senator Coleman. Thank you, Madam President. According to the bill in line 476, the act is effective as of October 1st of this year 2002. Would it be your opinion that this would be prospective, applying to records and actions that occur on October 1st, or

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later?

THE CHAIR:

Senator Coleman.

SEN. COLEMAN:

Madam President, my opinion would be that this provision would apply to matters that occurred after the effective date of this act. That would be my opinion. Through you, Madam President.

THE CHAIR:

Senator Peters.

SEN. PETERS:

Thank you, Madam President. The language in Section 21, Senator Coleman, mentions reports. Do these reports refer to notes and data gathered during the investigatory process, or to the final report that is made by the school district?

THE CHAIR:

Senator Coleman.

SEN. COLEMAN:

Madam President, through you to Senator Peters. I believe there's an exemption from disclosure regarding drafts and preliminary reports. So that I believe that this, the provisions of this particular bill would apply only to the final report done by the district.

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Senator Peters.

SEN. PETERS:

Thank you, Madam President. The — I have some concern about the meaning of misconduct in this section, Senator Coleman. And for clarification, would misconduct include actions that are normally included under the normal education process?

THE CHAIR:

Senator Coleman.

SEN. COLEMAN:

I'm sorry, Madam President, I'm going to have to ask the good Senator to repeat her question.

THE CHAIR:

Senator Peters.

SEN. PETERS:

In this section, excuse me. Thank you, Madam President. In this section speaking to misconduct, Senator Coleman, for clarification would misconduct include actions that are normally included under the normal education process?

THE CHAIR:

Senator Coleman.

SEN. COLEMAN:

I don't believe so, Madam President. I believe misconduct in this sense would refer to extraordinary

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actions outside the normal education process, if I understand the question correctly. Through you, Madam President.

THE CHAIR:

Senator Peters.

SEN. PETERS:

Thank you, Madam President. And I thank the gentleman for his responses.

THE CHAIR:

Thank you, Senators. Will you remark further? If not, would the Clerk please announce a roll call vote, the machine will be opened.

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 chamber.

THE CHAIR:

Have all members voted? If all members have voted the machine will be locked. Clerk, please announce the tally.

THE CLERK:

Motion is on passage of Substitute for HB5680, as amended.

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Those voting Yea	34
Those voting Nay	2
Those absent and not voting	0

THE CHAIR:

The bill is passed. Senator Genuario.

SEN. GENUARIO:

Thank you, Madam President. Madam President, I rise for a point of personal privilege.

THE CHAIR:

Please proceed.

SEN. GENUARIO:

Madam President, I notice in the gallery that I have a very good friend and constituent. John Altieri has been the president of the Norwalk Federation of Teachers for many, many years. He's retired.

He's also been a long-time Norwalk teacher. John's term as president of the Norwalk Federation of Teachers happened to coincide in part with my term as a member of the Norwalk Board of Education, and I saw him quite a bit during those days.

As a matter of fact, there were numerous occasions when I saw him in the wee hours of the morning considerably later than it is right now. And when I left the board of ed, I often knew that I would see on many, many occasions.

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CONNECTICUT
GEN. ASSEMBLY
HOUSE

PROCEEDINGS
2002

VOL. 45
PART 13
3903-4233

CLERK:

On page 10, Calendar 301, Substitute for H.B. 5680,
AN ACT CONCERNING SEXUAL ASSAULT OF A MINOR. Favorable
Report of the Committee on Judiciary.

DEPUTY SPEAKER CURREY:

Representative Lawlor of the 99th.

REP. LAWLOR: (99TH)

Thank you, Madam Speaker. Good afternoon - good evening. I'm sorry..

Madam Speaker, I move acceptance of the joint committee's favorable report and passage of the bill.

DEPUTY SPEAKER CURREY:

The question before us is on acceptance and passage. Please proceed, sir.

REP. LAWLOR: (99TH)

Thank you, Madam Speaker. There is a comprehensive amendment, which I intend to call in just a moment, but before I do, I wanted to briefly trace the steps which led us to this point.

In essence, Madam Speaker, this bill is a very comprehensive work product of the Judiciary Committee. I think we're rather proud of it, not just of the outcome, but the process and I'd like to explain, very briefly, what gave rise to the amendment we're about to call tonight.

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In think most of the members of the Chamber remember last year we had a very interesting and, at times, heated but certainly fundamental argument about or debate about a bill with regard to what should be the statute of limitations for sexual abuse of children.

During that discussion, people raised a whole assortment of valid points, both for and against the proposal to change it and with that in mind, this year the Judiciary Committee attempted to try and work its way through that process and as we did it, we were informed by a variety of tragic incidents reported in the press and elsewhere which kind of helped us to understand the dimensions of this problem.

In the end, Madam Speaker, the Judiciary Committee voted for a compromise and the compromise, I think, addresses all of the most important aspects of this problem and without getting into the very, very controversial topic we had last year which was retroactive applications, changes in criminal statutes of limitation.

Now, I think we can do it. I think it's perfectly legal, but there's a difference in whether we can do something and whether we should do something and I think on the issue of whether we should do it, this Chamber was very divided and to avoid that particular debate

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tonight, Representative Cafero and other members of the committee recommended a different approach, which is embodied in the file copy before us.

Well, Madam Speaker, I think rather than explain the file copy, I would like to offer the amendment, which, in essence, rewrites the file copy. It doesn't undo the fundamental elements of the compromise, but simply tweaks it, so to speak, to ensure that we can actually deliver on the promise implicit in this change of public policy.

So, Madam Speaker, the Clerk has LCO number 4607. I would ask the Clerk call and I be permitted to summarize.

DEPUTY SPEAKER CURREY:

Will the Clerk please call LCO 4607, designated House "A".

CLERK:

LCO number 4607, House "A" offered by
Representatives Cafero, Lawlor, et al.

DEPUTY SPEAKER CURREY:

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you, Madam Speaker. Again, before I begin on this one, I just want to point out that there's a variety of names on the amendment. Then there are names

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not on the amendment, people who contributed considerably to this outcome and I think rather than go through the list, I just think everyone should understand that a lot of power thought, I guess, went into this one to make sure we were doing exactly what we intended to do.

Madam Speaker, this amendment consists of a number of sections. The key elements are the following:

First of all, a change in the criminal statute of limitations for sexual abuse of children. That change is extending, depending upon the specific crime, extending out, in some cases, eliminating the statute of limitations and in other cases, extending it out thirty years from the age of majority. In other words, to age 48.

But that is not retroactive.

In the case of the civil statute of limitations, in other words, people filing in civil court, in effect, lawsuits to seek damages and other redress based on sexual abuse of children. We've extended the statute of limitations from the existing limit of 17 years beyond the age of majority, in other words, age 35 to 30 years beyond the age of majority, in other words, age 48.

So when the victim reaches age 48, then the statute of limitations expires.

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Madam Speaker, this also includes a substantial rewrite of the mandated reporter statute, which I'll explain in a moment and it contains a prohibition on a civil court from approving an agreement to settle a civil case which prohibits the parties from conveying information regarding the sexual or other physical abuse of children to the proper authorities. In other words, cases are settled all the time. From time to time, the parties enter into an agreement not to say anything publicly about the allegations. In other words, settle for the money and that will be the end of the discussion. That has happened in certain civil cases with regard to sexual abuse of children. If this bill is passed, the law will preclude or prevent or prohibit a judge from accepting an agreement which would prevent the victims or anyone else from conveying that information to the proper authorities. They could be prohibited from holding a press conference, but they wouldn't be prohibited from reporting it to the Department of Children and Families or other appropriate state and local authorities.

Since, Madam Speaker, this is such a significant change, I would just like to highlight the different sections so people understand what we're doing.

First of all, Section 1 is a change in the criminal

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statute of limitations. With regard to crimes involving the sexual abuse, sexual exploitation of sexual assault of minors, we are changing the statute of limitations to end 30 years beyond the age of majority, in other words, age 48, when the victim reaches age 48.

Or if the victim has actually notified the proper authorities, regardless of what age they are when that notification takes place, then there is a five year statute of limitations, which is the existing statute for most felonies, which would begin to run.

So to try and explain that in the simplest of terms, if a child is 13 or 14 and they are sexually abused and they immediately report it to the police, then that report begins the five year clock. If they are 35 and they report it to the police, that begins the five year clock. But they have up until age 48 to actually report it to the police. But once the report is made, then there is a five year limit, but in no case beyond the age of 48.

In Section 2 we make some changes in the civil statute of limitations. With regard to causes of action based on emotional distress caused by sexual abuse, sexual exploitation, sexual assault of a minor the limit, the time limit would be 30 years from the age of 48, which is 18, so in other words, 48 years of age on

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the part of the victim.

So, in other words, a claim can be filed up until the victim reaches age 48 and if you'll notice in the effective date section in Section 2, it makes it clear that this change in the civil statute of limitation is, in fact, retroactive. It applies to claims or causes of action arising from such an incident committed prior to, on or after that date. So this is the civil statute of limitations only. We are retroactively eliminating that. We have done that previously in other matters, especially with regard to persons convicted of crime.

In Section 3 there is another, in effect, technical change in the civil statute of limitations rule. This was suggested by Representative Farr, the ranking member on the Judiciary Committee. I think it's perfectly appropriate. We've done this before with other crimes. For persons who are actually convicted in a criminal court of certain sexual assault crimes, there would be no statute of limitations for civil suits following that. So, in other words, if you actually got convicted, in other words, there was proof beyond a reasonable doubt that you actually committed these crimes, there would be no limit on the time in which a victim could bring a civil suit and this is most important when it turns out that a person convicted of such a crime might

win the lottery or win some type of civil suit, a judgment, for example. We've seen these recently where inmates win civil suits based on their rights under the federal Constitution or might receive an inheritance or might publish a book and receive a good deal of proceeds. In those cases, the victims of their crimes for which the guys are actually convicted or women, for that matter, I suppose, could actually bring a civil suit to try and collect some of those funds that might not had been available previously.

In Section 4 there is a technical -- well, there is a substantive change in the existing risk of injury statute. Risk of injury, as you may know, is a very old crime. It predates the model penal code. It has been recently changed to conform with our sex offender registry rules and it was recently divided into, in effect, two parts. One, where you are sexually abusing a child. The other, where you are abusing a child in some other way.

The proposal in this section is that if you are convicted under the first section, in other words, some type of sexual abuse of a child, that crime, instead of being a Class C felony, would become a Class B felony and the practical difference is the maximum penalty would change from ten to twenty years.

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In Section 5, this is the first of several sections where the penalties for sexual abuse of children are being increased significantly in some cases.

In Section 5, the penalty for sexual assault in the first degree involving a child under the age of 16, would become a Class A felony. That is significant in several ways. First of all, that is the most severe penalty we have short of capital penalties. And also Class A felonies are not subject to any statute of limitations. I think people are familiar with the two prosecutions going on at the moment for murders that were committed in the early 1970's. Recent arrests. That's because in the late 1970's we actually eliminated the statute of limitations for murder. Class A felonies are in that same category and now joining the Class A felony would be forcible sexual assault against a child and that's the part of the statute that's being rewritten there.

Section 6 covers the crime of aggravated sexual assault in the first degree. That is the most outrageous forms of rape where the victim is a child and where there is some type of firearm or serious physical injury caused.

Section 7 increases the penalty for sexual assault in the second degree where the victim of the offense was

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under 16 years. The existing penalty is a Class C felony. It's being changed to a Class B felony. Again, the effective difference there is a maximum sentence of ten years being raised to a maximum sentence of twenty years.

For that crime, there's an existing minimum mandatory sentence of nine months. That's not being changed. I would point out, Madam Speaker, should this amendment be adopted, there's a subsequent amendment, which I intend to offer, which will make a change in the statutory - the so-called statutory rape statute which is contained in this statute to change the current two year age difference to a four year age difference. I think many member of the Chamber are aware of this, and I just wanted to assure you that will be a separate amendment offered later.

Section 8 changes the penalty for sexual assault in the 3rd degree involving a child under the age of 16. The existing penalty of a Class D felony is being increased to a Class C felony. The practical difference there is a five year maximum is being changed to a ten year maximum.

In Section 9, making a similar change in sexual assault in the 3rd degree with a firearm which has a mandatory minimum two year sentence. That's not being

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changed, but we've raised the maximum sentence to a Class B felony in that respect.

In Section 10, which is the misdemeanor form of sexual assault, sexual assault in the 4th degree, persons convicted of that crime when the victim is under the age of 16, and the assault involved is an intentional and willful type sexual contact, which is different from sexual intercourse, which is required in the first, second and third degree sexual assault. The penalty there is being raised from a Class A misdemeanor to a Class D felony.

Again, that's for sexual assault involving a child. Sexual assault in the 4th degree involving a child. Sexual assault in the 4th degree involving an adult would remain a Class A misdemeanor. And again, to emphasize, that's for contact as opposed to intercourse.

In Section 11 we begin several sections, which in a very significant and important way, change the wording of our existing mandated reporter law. Many of us are aware that Connecticut has a mandated reporter law in effect. It lists a variety of professions and occupations and licensed professionals for the most part. Connecticut, I think, has one of the longest lists in the country. Connecticut includes clergy, for example, where other states do not include clergy. We

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are changing the rules considerably based on discussions we've had with the Department of Children and Families about their longstanding interpretation of what our current law requires.

I think there's a difference of opinion between what many people assume the law said and the way DCF has interpreted it over time. Based on these discussions, we are recommending that DCF, for the most part, that DCF's recommendations on how to rework this statute to make sure that what we thought was the law is, in fact, the law and DCF has promised that they can carry out the obligations under this law.

So, for example, Madam Speaker, well, the simplest explanation is the mandated reporter statute makes a list of professions, doctors, police officers, teachers, counsellors, clergy, etcetera. You can see them in Section - the second part of Section 12. Anyone whose on that list is required to report immediately when they receive any information that a child has been abused, but the difference of opinion was that their interpretation was the abuse had to take place - had to be allowed or perpetrated by the actual caregiver of the child. For example, the parents, the foster parents or a person entrusted by the caregiver or parents with the child. And their interpretation, in effect, was Mommy's

boyfriend, that type of thing.

When we asked them well what about a little league coach or a Boy Scout leader or a clergy person or a teacher or some other type of community leader, a baby sitter, a day care center, they said that would not necessarily fit the definition as they had interpreted it. But they didn't disagree with the fact that many of us interpret it differently. We felt that if a parent had sort of trusted the local scout leader or the local clergy person or the local whatever to take care of the kid for a while, that if someone found out about that type of abuse, that would have to be reported, as well. They agreed that should be the law. They felt that wasn't the proper interpretation. Many of us disagreed. To solve the problem is this rewritten statute.

So in Section 11 you see a new definition of a person entrusted with the care of a child or youth. It's a much more expansive definition.

In Section 12 there are a number of additions to the mandated reporter list, including a school coach, which I believe will be subject to a subsequent bill here tonight, juvenile or adult probation officer. I think everyone would have assumed they would have been on this list, but they're now being specifically added to this list, together with parole officers. A member

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of the clergy is simply a - it's not a new addition, it's just a more gender neutral rendering of what you see bracketed out above, a clergyman, which is somewhat out of date, at least in most faiths.

Next is any person who is a licensed or an emergency medical services provider, a certified alcohol or drug counsellor, any person who is a licensed professional counsellor. Again, this is a more specific addition to what has been on the list in the past.

Also, you would have thought this would have been part of the law, but it wasn't. So we've added it. An employee of the Department of Children and Families, an employee of the Department of Public Health whose responsible for licensing of child day centers, group day care homes, family day care homes or youth camps.

And then, following comes the obligations. In effect, the obligation, the new obligation - you'll see this in Section 13, you can kind of see what the old law was and what the new additions are. This is the who is required to report what. It's a rewording of the law to make it clear that if anybody is who is a mandated reporter finds out that a child has been physically or sexually abused or neglected by any person who basically is in a position of trust, that's the kind of thing that must be reported to the Department of Children and

Families and at their discretion, perhaps onto law enforcement, depending on their investigation and the circumstances.

I should point out that the existing penalty is \$500 for violating the mandated reporter law. In a subsequent bill tonight, there is a proposal to increase the monetary penalty and that can be considered when that bill is called.

But the Department of Children and Families has recommended that we add an addition, in effect, penalty that anyone who violates this shall also be required to participate in an educational and training program pursuant to a different subsection.

So, in other words, pay a fine and be required to participate in training on what are the responsibilities of a mandated reporter. I think this is common sense and very important and it tracks similar requirements we have in other areas of the law.

In Section 14, it's more detail on how quickly you have to actually make this report. The oral report will be required within 12 hours, which I think under the circumstances we would all feel is reasonable. DCF does have a hot line to entertain these oral reports, these phoned in reports and, in fact, the statutory authority for that is being modified somewhat in this bill, as

well.

Section 15, it details the responsibilities of DCF once they receive these reports. Again, this is the current law. We've added some specificity to it, including at the end of that section, the circumstances under which they're required to pass that information onto the law enforcement, the appropriate law enforcement agencies based on the nature of the report.

In Section 16, additional detail with that same goal in mind.

Section 17 is more elaboration on the existing statutory authority for the hot line that DCF maintains to receive these reports.

Section 18, a requirement for multi-disciplinary teams to become involved after these reports are received and I think if you don't understand the significance of this particular proposal, if you've read yesterday's report by the State Child Advocate in the aftermath of a very tragic death of a youngster, you'll find out that one of the main problems is the breakdown in these cross-agency communications that probably would have saved that child's life.

So here, a requirement for such a multi-disciplinary team is written into the law. I should point out that these teams do exist throughout the State

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in most, but not in all areas and it's certainly an important addition.

Section 19 is a rewrite of what has been a very significant part of our law for many years. It is a change - it's not really a substantive change or I should say, a major change, but it's a change in the confidentiality rules which protect certain communications between members of the clergy and their parishioners or members of their church or however it's appropriate to refer to them.

In effect, this basically says that communications that remain as a part of a counselling session between the clergy person and a member of his faith or congregation or whatever, would be confidential for most purposes in the same way that attorney/client conversations are confidential, doctor/patient conversations are confidential.

The exception to that would be standing exception which applies to conversations between attorney and client or psychiatrist and patient where there's a report which reflects an imminent danger to somebody, not only is that an exception to the confidentiality rule, but there's really an obligation to act to protect potential victims and that exception is clarified here in this ruling and it's clarified what is the duty of a

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clergy person or member of the clergy with regard to information which would otherwise be the subject of a mandated report. Since a member of the clergy is a mandated reporter, what exactly are they mandated to report and basically the rule is if someone is in danger, they are mandated reporters. And just like everybody else. And if they receive a report that someone is sexually or physically abusing a child, that's an exception to the confidentiality rule and there must be a report under the law.

And the actual term of art is a risk of imminent personal injury to anyone else and especially a child, in this case.

In Section 20 is the language I referred to earlier which, in effect, says that a civil court may not approve a judgment or a settlement agreement that prohibits or restricts any person from disclosing information concerning sexual or physical abuse of a child to the Commissioner of Children and Families or a law enforcement agency. In other words, you can settle a case involving these types of allegations and you can require that the people who are parties to the case not hold a press conference or not go on an interview show or not broadcast to the community what happened, but you can't prohibit this information from being communicated

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to the proper authorities of the State who, under our existing state statutes, are directed to take appropriate steps.

So, this, I think, as we're all aware, this came to light in recent civil settlements. We just want to make sure that the proper authorities find out so that other children can be protected appropriately. Not to broadcast this stuff publicly, but to investigate it to ensure that other children are not at risk.

And finally, in Section 21, is a provision which is not directly related to this, but apparently has been the subject of considerable hearings in various committees dealing with the confidentiality of teachers' records with regard to personal misconduct on the part of the teacher.

Madam Speaker, I think this is a very - I believe this is a very carefully written amendment. I believe it solves the problems that all of us are concerned about. I'm sure it does it in a way that respects everyone's concerns about fairness to persons who might be falsely accused of these crimes, but more importantly this is intended to protect children.

I think we've not done a good job, not the government, not the community at large in cases we've read about recently. I think this helps us do a good

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job. And I would urge adoption of this amendment.

DEPUTY SPEAKER CURREY:

Thank you, sir.

Representative Cafero of the 142nd.

REP. CAFERO: (142ND)

Thank you, Madam Speaker. And I would like to thank Representative Lawlor for not only bringing out the bill, but also his leadership as Chairman of the committee in putting together what has been termed a compromise, a very comprehensive piece of legislation, and as Representative Lawlor said, certainly this was an effort on the part of many people, himself, Representative Farr, Representative Fox, and several others that are listed on the amendment.

If I were to take issue, I guess, with anything that Chairman Lawlor has said, it's putting the word "compromise" in its proper context.

Chairman Lawlor indicated that last year this Chamber went back and forth and debated the issue of retroactivity of the statute of limitations regarding criminal matters. But I think other than that, there was no compromise when it came to the heart of the issue and that is that the State of Connecticut, by way of this amendment, makes a very clear statement that we have no tolerance, no mercy, no patience, for anybody involved

in sexual activity with a minor.

This bill, as Representative Lawlor has pointed out, touches upon virtually every single statute in our books regarding sexual assault of a minor. In almost every case, it ratchets up the penalties involved in those crimes, in the most serious thereof, eliminating the statute of limitations prospectively, calling for very serious mandatory minimum prison sentences. Also, in the other part of the bill, it sort of redefines, clarifies and is more specific with regard to our reporting statutes concerning sexual activity with a minor.

You know, I assume all of you here are, of course, well rounded and well aware adults. We have all been aware that since time and memorial, unfortunately, there has been sexual assaults against a minor. And this Legislature, in years past, has decided to recognize that, obviously, and penalize it. But I can't help but think that if you pick up the paper, turn on the radio or watch television, especially in the last several months, the horror and the tragedy of sexual assaults against minors has really been burned in our heads and in our memories. And we realize not only its destructive effect on those individual who are the victims of that assault, those very young individuals, but we realize

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the effect it has on our society.

And I think that with this passage of the amendment that's before us, once again, we will make the statement that Connecticut has no tolerance for sexual assault with a minor.

And with regard to the most serious of those crimes, for ever and a day, any perpetrator of a sexual assault against a minor will have to look over their shoulder and know they are never safe from prosecution.

This is a very comprehensive bill. It is a very important bill. And unfortunately, a very timely one.

Again, I want to thank everyone who cooperated in crafting this legislation. And I would urge passage.

Thank you.

DEPUTY SPEAKER CURREY:

Thank you, sir.

Would you care to comment further on the amendment before us? Would you care to comment further on the amendment before us?

If not, I'll try your minds.

All those in favor, please signify by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER CURREY:

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All those opposed, nay. The amendment's adopted.

Representative Farr of the 19th.

REP. FARR: (19TH)

Thank you, Madam Speaker. Madam Speaker, the Clerk has an amendment. Will the Clerk please call LCO number 4674 and I be allowed to summarize.

DEPUTY SPEAKER CURREY:

Will the Clerk please call LCO 4674, designated House "B".

CLERK:

LCO number 4674, House "B" offered by Representative Farr.

DEPUTY SPEAKER CURREY:

Representative Farr.

REP. FARR: (19TH)

Yes, Madam Speaker, members of the Chamber. This is a very - it's truly a simply a technical amendment. When the original bill was drafted, two sections of the bill were drafted by amending existing language in such a fashion that they kept making exceptions and there's one paragraph in particular that ended up 17 lines long with - it's one sentence. It's got 10 "or's" and five "not's" and I defy anybody to, on the first reading, understand what that paragraph says.

So, while we were reviewing the rest of it, we

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determined that paragraph needed reworking. This amendment rewords that paragraph, but it's my understanding it makes no change whatsoever. It takes one 17 line paragraph, which is one sentence, makes it into two paragraphs, four sentences and it gets rid of six or's and I hope makes it clear what the intent of the bill is.

It also rewords one other paragraph and also makes that simpler to read.

So I would urge passage of the amendment.

DEPUTY SPEAKER CURREY:

Thank you, sir.

Would you care to remark on the amendment before us?

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you, Madam Speaker. I would also urge passage. I just want to emphasize that this is restructuring a paragraph which attempted to say something that this amendment says much better. And I know many of our friends among the journalists and members of the Chamber were anxiously awaiting the debate on this bill and this required many, many rewrites and I know Representative Farr and I and others have been involved in sort of changing this over and

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over again, not to change the policy, but the actual words and arranging them so that it made sense.

And it doesn't get said often enough, but if you're on the Judiciary Committee, you know what a wonderful LCO attorney we have in Rick Taff and I know Bob - Representative Farr and I have gone over this many, many times and I know Attorney Taff is listening, but this reflects our attempt to try and help him deal with all the different conflicting stuff he gets from us and, in effect, I think this is our mistake to confuse the people who work with us to do this thing, but I just thought it be an appropriate moment to say thank you to those people who have to, with very tight time deadlines, get the job done in a very effective way and Attorney Taff has done it once again and this rewrite helps it happen one more time.

DEPUTY SPEAKER CURREY:

Thank you, sir.

Would you care to comment on the amendment before us? Would you care to comment on the amendment before us?

If not, I'll try your minds.

All those in favor, please signify by saying aye.

REPRESENTATIVES:

Aye.

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DEPUTY SPEAKER CURREY:

All those opposed, nay. The amendment's adopted.
Representative Mushinsky of the 85th.

REP. MUSHINSKY: (85TH)

Thank you, Madam Speaker. I want to compliment the members of the Judiciary Committee and especially the Chairman for including two recommendations of the - at least two that I can find, of the Child Advocate.

Section 12 is familiar. That's been a long time recommendation of the Advocate. That bill somehow dies every year at the last session day. The mandated reporters list is now strengthened.

And in Section 18, this was a recent recommendation allowing the Commissioner of DCF to request the State Police multi-disciplinary team investigate a report of child abuse or neglect. That just came out in the recommendations of the Child Advocate and Child Fatality Review Panel after the death of Ezra Mika H.

So that only has been out for two days and you've already managed to get in your amendment. Compliment the Judiciary Committee for your fast action in including that recommendation.

DEPUTY SPEAKER CURREY:

Would you care to comment further on the bill?
Representative Newton of the 124th.

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REP. NEWTON: (124TH)

Thank you, Madam Speaker. Just a couple of questions to the proponent of the amendment.

DEPUTY SPEAKER CURREY:

Please frame your question.

REP. NEWTON: (124TH)

I've noticed - the bill, I'm sorry. I've noticed in the bill it usually talks about children under the age of 16. But in line 193, the ages seem to change to 15 and under or is that just a typographical error?

Through you, Madam Speaker.

DEPUTY SPEAKER CURREY:

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you, Madam Speaker. Actually, that is the existing law which is not being changed in any way by this bill of sexual assault in the 4th degree. There's a bunch of age thresholds in the law, including in this bill. Thirteen years of age is the first one. Generally speaking, sexual assaults on children under 13 are treated differently and more severely than sexual assaults on 13, 14, and 15 year olds.

This is a different threshold and this is the misdemeanor sexual assault statute which basically applies to sexual contact, which is a - there's a

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definition in the statute about sexual contact, but it's touching as opposed to penetrating, basically is the distinction. And I think the 15 years threshold there, in part, accounts for kinds of stuff that goes on in high schools, etcetera.

This, by the way, is not unwanted touching in this particular case. This is any touching, wanted or not by a person two years of age - two years older or more of a child under 15. So, that's the reason for this threshold.

There's another threshold you'll see in the mandated reporter statute that abuse and neglect of children under the age of 18 is subject to the mandated report. So there are three thresholds -- four thresholds. There's 13, 15, 16, and 18, depending on the statute. There's a distinction between persons below and above that age.

Through you, Madam Speaker.

DEPUTY SPEAKER CURREY:

Representative Newton.

REP. NEWTON: (124TH)

Thank you, Madam Speaker. Just a couple of more questions to the proponent of the bill.

With everything that's going on, if we change these laws today, what effect would it have on certain

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situations that are going on right now in the State of Connecticut and I guess I'm talking about Bridgeport. What effect would the new laws have on some of the kinds of things -- and we talked about that you can no longer - the statute of limitations and those kinds of things that we're changing in the law from the previous law, what effect would that have?

Through you, Madam Speaker.

DEPUTY SPEAKER CURREY:

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you, Madam Speaker. The change in the criminal statute of limitations wouldn't effect it one way or the other the allegations of conduct - misconduct that's already taken place. However, the change in the civil statute of limitations might, depending on the age of the individuals involved. That change is being made retroactively. So, in effect, if there's anyone under the age of 48 that was sexually abused as a child, and they're prepared to bring a claim of that type and prove it in court, then this change in the law would allow them to do so.

Also, the mandated reporter statute is being clarified. It's really not changing what everyone thought was the requirements under the law, but it's

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making it crystal clear what everyone now believes should be the requirements of the law and any reports received by mandated reporters of sexual misconduct which would fit this definition, must be relayed to the Department of Children and Families, regardless of how old those report are.

DCF would then take the appropriate actions. Obviously, if there's an individual child in danger, that child would be protected. If there are other potential victims in harm's way, DCF and the law enforcement community has certain options available to it to respond appropriately.

So, with regard to the civil statute of limitations, which is being changed retroactively, and the mandated reporter statute, which basically says, if you find out about sexual abuse of a child, no matter when it happened, you have an obligation within 12 hours if you're a mandated reporter to tell DCF, not to hold a press conference, necessarily. No one necessarily will be arrested, depending on how long ago it was, but that requirement that you report that information is there and that would apply to all recent and new reports of sexual abuse of children.

Through you, Madam Speaker.

DEPUTY SPEAKER CURREY:

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Representative Newton.

REP. NEWTON: (124TH)

Thank you, Madam Speaker. Let me just say I rise in support. And every time I pick up the newspaper and read where children and minors have been sexually assaulted, I often ask myself what would I do if that was my child.

And I often think about that. But I'm glad this Legislature has seen how important this issue is. And what we see happening in America and around the country and right here even in the State of Connecticut where people and minors have been victims of predators who took advantage of them.

And so I'm glad to see that we have stepped up to the plate to let people know that if you do this in our state, we take this very seriously. And I think this is the right direction to go and I think we do have to send a message that children are off limits.

I really do and I would like to commend the Judiciary Committee and those who worked on this language for bringing this before us because this is some serious times. And right there in Bridgeport, you all have read it. An eleven year old little girl, it's a shame that we do have people who use their power to influence young kids, be it coaches, be it whoever, and I think we need to send a clear message to these

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individuals that here in the State of Connecticut you will be prosecuted to the fullest of the law.

And so I'd like to once again, Madam Speaker, thank those who put this language together.

Thank you.

DEPUTY SPEAKER CURREY:

Thank you, sir.

Representative Kerensky of the 14th.

REP. KERENSKY: (14TH)

Thank you, Madam Speaker. And I would also like to compliment those who have really accomplished a major work in a very timely fashion.

I have a couple of small questions for the proponent of the bill and that is why I rise.

First of all, in Section 21, on line 487, regarding teachers. The language talks about records maintained or kept on file by any local or regional board of education which are records of the personal misconduct of a teacher.

Can you clarify for me what's meant by personal misconduct and how that would be differentiated from other records?

Through you, Madam Speaker.

DEPUTY SPEAKER CURREY:

Representative Lawlor.

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REP. LAWLOR: (99TH)

Thank you, Madam Speaker. This is a little bit outside of my expertise. It's my understanding that this particular provision has been debated extensively by a number of people and if there's no objection, Madam Speaker, I would believe Representative Cafero is better equipped than I to answer that question.

DEPUTY SPEAKER CURREY:

Representative Cafero, do you accept the yield to answer the question?

REP. CAFERO: (142ND)

After I catch my breath, Madam Speaker.

DEPUTY SPEAKER CURREY:

And Representative Kerensky, that is okay with you if Representative Cafero answers your question?

REP. KERENSKY: (14TH)

Yes, Madam Speaker, we'll give him a moment to catch his breath.

DEPUTY SPEAKER CURREY:

Okay.

REP. CAFERO: (142ND)

Thank you, Madam Speaker. I think it's easier to explain what it is not. Those steps will kill you.

One of the concerns was that we would not undo the law that was put in there for legitimate reasons that

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would allow people to go in and check out personnel records of teachers to do teacher shopping, if you will, to find out whether a teacher was late with a lesson plan or that kind of thing or competent or criticized or critiqued in one area of curriculum over another.

What this deals with, personal misconduct would be things such as inappropriate behavior as a teacher, as it relates to students. As examples, if a teacher were to come to school with liquor on their breath or inebriated, they might not be in violation of a specific criminal law. They might have been reprimanded by their supervisors. That reprimand might have been noted in their personnel records. That is personnel misconduct.

If, for the sake of argument, a teacher had an incident of inappropriate touching of a student or perhaps inappropriate language used in front of a student, or suggestive language, etcetera, though it might not be in particular violation of any criminal act, they might have been reprimanded by their supervisor, it might have been placed in their record.

Those are the kinds of incidents of personal misconduct that are no related to professional capabilities, but personal misconduct that would be exempted from the FOI exemption, if you will, that currently pertains to teachers' records.

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Through you, Madam Speaker.

DEPUTY SPEAKER CURREY:

Representative Kerensky.

REP. KERENSKY: (14TH)

Thank you, Madam Speaker. And I thank Representative Cafero for his explanation. I guess in my mind that raises some questions about any kind of regulation, any kind of standard or operating procedure that would govern these records being kept separately from a teacher's record which is not currently subject to FOI and which provision you chose to retain in this law.

So what would govern the placement, designation, and judgment of personal misconduct? Do we have - you said what it's not. But do we have any kind of a definition or a standard or a reference for this anywhere?

Through you, Madam Speaker.

DEPUTY SPEAKER CURREY:

Representative Cafero.

REP. CAFERO: (142ND)

Through you, Madam Speaker. I'm not aware whether we do or not and I don't know of any specific provision in the law that requires that personal records be segregated from classification of, say, competence in

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the subject matter versus personal misconduct versus tardiness, etcetera. I think that typically it's been my experience, having served on a board of ed, that individual instances, if they should occur or individual evaluations done at a certain time, are written up separately and placed in a teacher's personnel file.

This particular provision only would allow for a public inspection those instances which involve personal misconduct.

Through you, Madam Speaker.

DEPUTY SPEAKER CURREY:

Representative Kerensky.

REP. KERENSKY: (14TH)

Thank you, Madam Speaker. Well then, through you, Madam Speaker, would there have to be a specific reason to make inquiry about a particular employee? Could I walk into the superintendent's office and say I'd like to see your records for the last six months on personal misconduct in your building?

How would this work?

Through you, Madam Speaker.

DEPUTY SPEAKER CURREY:

Representative Cafero.

REP. CAFERO: (142ND)

Thank you, Madam Speaker. I think it's clearer to

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explain it, Representative Kerensky, I guess in the reverse. And what I mean by that is, keep in mind that teachers are the only public employees, the only public employees, municipal and state, whose personnel records are exempted from FOI. So that means that other than a teacher, any member of the public could make the proper inquiry and request through the Freedom of Information Act for the personnel records of an individual public employee.

There is a narrow exception for teachers. This particular provision in the bill that's before us, takes out of that exemption a very small piece known as "personnel misconduct". So to answer your question, if a member of the public chose to go into a building and request the personal misconduct record of a particular teacher, they would, should this bill pass, have the right to receive that under FOI, where currently they would not and if I may, Madam Speaker, this came about as a result of the Southington coaches' cases. As you all might be aware, coaches in Southington, coaching at least several sports, I think possibly soccer and there are others in this Chamber that are more aware of the actual case, but were accused of inappropriate sexual conduct with some of the people they coached.

An investigation was made by the Southington Police

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force and one of their first stops was to the Board of Education to see whether or not these teacher/coaches, if you will, had anything in their personnel record that would indicate that they had been suspected of, accused of, involved with any sort of inappropriate sexual contact with their students or the children that they coached.

The reason it was said that the police stopped there is because in normal investigation they were used to going and checking out personnel records of various employees, certainly public employees and had absolutely no problem receiving that information.

When they went to the Board of Education in the Town of Southington, they could not receive that information because unless voluntarily given by the employee, it fell under the narrow exception that exists in our law today which exempts teachers and only teachers from having their personnel records FOI'able.

In one particular case, a teacher voluntarily allowed his personnel records to be shared with the police and it showed that there was at least one instance in that particular teacher's record where he was written up by his supervisors for inappropriate behavior with the students he taught.

So it is for that reason, that there would be a

necessity, a pretty legitimate one, certainly in the area of law enforcement, to allow law enforcement officials in the investigation of a crime, if, in fact, the accused happens to be a public school teacher, to go into their records, at least to the extent to see if there was any previous behavior with regard to personal misconduct.

Through you, Madam Speaker.

DEPUTY SPEAKER CURREY:

Representative Kerensky.

REP. KERENSKY: (14TH)

Thank you, Madam Speaker. I have a level of discomfort with two aspects of this. One is that personal misconduct, that term, left undefined, to me does not specify inappropriate behavior or relationships with students. And I think that's what we're after here, not violation of school rules, not other adult behaviors that would be handled elsewhere, that is my perception of the meaning of the bill.

And so I'm very uncomfortable with this very undefined and potentially amorphous term in a bill that's otherwise very specific and spells out, very well, parameters, limitations of what is to be expected.

And in particular, you raised the Southington issue and I know that is the root of this section of the law.

I know that many school systems, including mine, employee in coaching positions non-teachers, people who are paid a stipend to coach a specific team. And in that case, those people are not teachers and although I haven't researched it, it is my guess that they would not be subject to the specific provisions that do protect teachers in our law. And yet, that issue does not appear to be addressed in this section which is aimed directly at and inclusive of those people who coach and advise our students in non-academic and unstructured situations and in many cases, have supervisory responsibilities away from the facility.

And I know this is an attempt to clarify our response to the Southington coaches issue and I have to say that I think it falls a little short.

REP. CAFERO: (142ND)

Madam Speaker.

DEPUTY SPEAKER CURREY:

Representative Kerensky, are you finished, Ma'am?

REP. KERENSKY: (14TH)

Uhm --

DEPUTY SPEAKER CURREY:

Did you ask a question? I apologize.

REP. KERENSKY: (14TH)

I didn't ask a question and okay, I was going to

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make another comment, but I see that Representative Cafero has a response.

DEPUTY SPEAKER CURREY:

Representative Cafero.

REP. CAFERO: (142ND)

Thank you, Madam Speaker. With all due respect, Representative Kerensky, I think we're looking at this inside out.

In the case of a coach that happens not to be a teacher, his or her personnel records, certainly if they were a public employee in any other capacity, but a teacher, are fully open and have been forever to the public. Not only those instances of personal misconduct, but whether or not that coach was tardy to work, what kind of evaluation they had on their professional performance, etcetera, etcetera, etcetera.

So, it is only - remember, the whole world - the world of public employees and their personnel records are FOI'able to the world. Small exception, teachers. That is the exception not the rule.

And what we're doing here is respecting some of the very legitimate reasons why that is the exception. So that parents can't just walk in, check on a teacher, how did the teacher's last evaluation by the principal go because I want to do some form shopping, if you will,

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and I want my son or daughter to have Ms. Jones as opposed to Ms. Brown because look, the principal said that she was deficient in her lesson plan, etcetera, etcetera. We want to avoid that kind of thing. That's why the exception to the rule was put in to begin with.

But I've got to tell you, folks, unfortunately and though it might be rare, there are times and in my experience as Chairman of the Board of Education in Norwalk, where I, as chairman was faced with instances when a teacher would come in inebriated to school. It's not against the law. They were reprimanded. They were sent home. In some cases, they were given assistance or guidance and led to some employee assistance programs because maybe they had a problem. It was written up. They were not prosecuted. There, frankly, was no need for prosecution.

But if, in fact, down the road they were involved in a crime which required a criminal investigation, I think the public has a right to know whether or not that individual has any personal misconduct in their record. And possibly coming to school inebriated is one of them.

I had an instance when I was Chairman of the Board of Education where a young teacher, who wasn't much younger than the high school seniors that he taught, found it very cool, if you will, to regale his class on

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Monday morning with his exploits over the weekend, whether that included getting trashed with the guys, or intimate moments with his girlfriend. Did he break any law? Maybe not. When word got back to the superiors, he was written up about it. Should there subsequently be an instance where that fellow was involved in some wrongdoing, possibly criminally and an investigation takes place, I believe the public has a right to know about what I call very clear personal misconduct.

I think I can take issue with Representative Kerensky's characterization that the words "personal misconduct" is too vague. I think we all very much know what that's all about. It's very different and I will say, for legislative intent, it is very different from professional misconduct dealing with competency in a subject matter, preparation of lesson plans, etcetera.

We're talking about personal misconduct. Inappropriate behavior. That has nothing to do with professionalism.

So, again when you think of this, let's not think that what we are doing in this passage is an exception to a rule because the very area of the statute we are affecting is the exception to the rule. That anyone who is a public employee has their personnel records, all of them, subject to FOI except for the teaching profession.

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And all we're doing is restoring, if you will, a very small bit of that back to the rule, rather than the exception.

Through you, Madam Speaker.

DEPUTY SPEAKER CURREY:

Thank you, sir.

Representative Kerensky, you still have the floor, Madam.

REP. KERENSKY: (14TH)

Thank you, Madam Speaker. I don't want to belabor this all night, but I just want to clarify that I did not raise the word "professionalism" in this discussion because I think it has no place in this discussion.

I think that those issues that should be administratively handled and that are administratively handled now, should continue to be handled by administrations.

And although there can be an exception to every rule and an aberration for every set of conduct codes that we have, I would be more comfortable, if not in statute, if somewhere, there were a better definition of this term.

I just want to raise one other small question to the maker of the bill. I can't find it now, but I see that we've changed the - on the mandated reporter

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provisions that we've reduced the number of hours from 24 to 12. And I just hope that doesn't create a potentially problematic situation for those situations where a child may be in the care of several caregivers. So someone may have the child, get the child ready for bed and something may occur. The child goes to sleep and in the morning, a parent notices something. If the child sleeps for eight hours, that doesn't allow much of a window for the parent or a caregiver then to make notice and determination. And I do understand the urgency of reporting these events as quickly as possible and that time is very often of the essence in terms of seeking treatment.

I just caution that maybe a very small amount of time and I hope it doesn't create a problem.

Thank you, Madam Speaker. And I thank the Chamber of its indulgence.

DEPUTY SPEAKER CURREY:

Thank you, Madam.

Representative Lawlor of the 99th.

REP. LAWLOR: (99TH)

Thank you, Madam Speaker. Madam Speaker, the Clerk has LCO number 4599. I ask the Clerk call and I be allowed to summarize.

DEPUTY SPEAKER CURREY:

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Will the Clerk please call LCO 4599, designated House "C".

CLERK:

LCO number 4599, House "C" offered by Representative Lawlor.

DEPUTY SPEAKER CURREY:

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you, Madam Speaker. This particular amendment makes a significant change in the criminal statute with regard to what is otherwise known as statutory rape.

By way of explanation, Madam Speaker, statutory rape, as it's commonly referred to, involves sexual intercourse where one of the parties is underage, in our State, under 16, which does not involve any type of force or duress or any kind of intimidation or extraordinary means. If there was an adult involved, we would refer to it as consensual. However, children under the age of 16, under our sexual assault statutes are not deemed to be old enough to give consent, as we understand it, but if they were, what we're talking about when we talk about statutory rape would be otherwise consensual sexual intercourse.

The proposal in this amendment is to change the rule which says that it's not statutory rape, even if

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one of the parties was under 16, if the other party is within two years of the first party's age. The proposal here is to change the two years to four years.

So, by way of illustration, Madam Speaker, if a 14 year old girl had sexual intercourse with a 16 year old boy, under our current law, that would be considered statutory rape and carries a rather serious penalty.

However, because they're within two years of each other, the law would not apply in that case. But if the boy was 17 with a 14 year old girl, then it would be statutory rape.

This proposal would change it to a four year difference. So, in other words, a 14 year old girl who had, what would otherwise be considered consensual sex with a 17 year old boy, would not fall under this particular statute, would not be this serious crime of statutory rape or sexual assault, second degree.

Madam Speaker, I think it's very important to point out that, number one, this particular proposal did have a hearing before the Judiciary Committee. It had virtually universal support among people who deal in the system all the time, including and most importantly, the advocates on behalf of victims of sexual assault, including ConnSACS, Connecticut Sexual Assault Crisis Services.

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It is the argument made by advocates on behalf of victims of sexual assault that it's important to be precise with the sexual assault statutes. And that to confuse what we would generally consider to be consensual sex between young people with the very serious type of predatory pedophilia, molestation of children and young adolescents, is a big mistake and for policy reasons, it's important to make clear that we want to exclude from the coverage of these very serious crimes, the kinds of things that may not be a good idea, sex between children of this age is not a good idea, but it shouldn't carry the rather severe penalties. And the severe penalty we're talking about here is a 9 month minimum mandatory sentence.

So, Madam Speaker, under the current law, if it's not changed in this fashion, a 16 year old boy who has sexual intercourse with a 14 year old girl, if there's more than two exact years of age difference, then the older person involved would be subject to a 9 month minimum mandatory, even if they had been longstanding boyfriend/girlfriend, even if everything was in a so-called loving relationship or whatever, even that would carry the rather severe penalty.

So this change would change the two year age difference to a four year age difference. It would not,

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in any way, legalize non -- or forcible rape, for example, between two people who are within four years of each other. That could continue to be a very, very serious crime, sexual assault in the first degree, in most cases, actually. This is only talking about what would otherwise be considered to be consensual sex if it weren't for the fact that one of the persons involved was not 16 years old. In other words, not of the age to actually give lawful consent.

So I think it's a balanced amendment. It did receive virtually universal support before our committee and I would urge its adoption.

DEPUTY SPEAKER CURREY:

The question before us is on adoption. Would you care to comment?

Representative Cafero of the 142nd.

REP. CAFERO: (142ND)

Thank you, Madam Speaker. Madam Speaker, unfortunately this is where Chairman Lawlor and I sort of break paths.

With all due respect to Chairman Lawlor, I have a very serious problem with this amendment and I think it revolves around the whole concept of consent.

What we say with regard to statutory rape is, as it exists currently, is that the two people involved have

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consented to sexual relations, sexual intercourse, if you will. But they are no more than two years apart. And we define it under our current law as between ages 13 and 16.

Now, I must admit, having a 16 year old daughter, I'm probably not totally dispassionate about this issue and I don't know if any of you have had the opportunity, either as having children or nieces or nephews or friends, but have talked to a 13 year old these days.

I think they're very bright, probably far brighter than we were when we were 13. However, when you look into their eyes, and when you speak to them and talk to them, you kind of wonder if they have the capacity to actually give consent to sexual intercourse.

Now, our current law recognizes that in some sense they do, and makes sort of this special category if, in fact, this consensual sex was with someone no more than two years older than them.

And though I'm guessing, I have to believe that is because they presume that the mentality of the two involved are pretty much the same, maybe the intelligence level, the maturity, the sophistication, etcetera. So that if these two young people were to have sexual relations and they were no more than two years apart, maybe if older, they would have thought

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better, but at that time, there wasn't one person trying to take advantage over another. It probably truly was, in the mind of a 13 and 15 year old, love or consensual sex.

But now what we're doing by way of this amendment is stretching that out another two years. So it would allow a 13 year old to have sexual intercourse with a 17 year old and still fall within the parameters, I should say, or exception of our current law.

Now the issue of whether one party has dominance, mental dominance over another gets a little cloudy. This point was brought home to me when a constituent called me and shared to me a story with regard to this whole subject matter about his experience at summer camp, approximately age 13, had a camp counsellor, age 17. And this camp counsellor, by way of his position in the camp, the way he could reward and punish, as camp counsellors could do in that situation, had almost a svengali-like affect on this 13 year old. And as this person told me, they thought that this counsellor truly, truly loved him. Truly loved him when he willingly went back to the cabin of that counsellor and performed sexual acts on that counsellor at the request of that counsellor.

It was consensual. It wasn't forced. The child was

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13 years old. The counsellor was 17 years old.

Was that truly consensual? Was that 17 year old using his experience in the world, his brains, his position to manipulate that young person? I kind of think so.

So this whole business about consensual sex amongst young people, when we start spreading the age differential, you then have to call into question the concept of consent.

We had situations reported in the press recently with regard to the clergy. Sixteen year old had consensual sex with a priest. Frankly, I forgot the age of the priest, but under this law, if the priest were 20, if you could be a priest at that age, it would have fallen, if this amendment was passed, under the exception allowed in this amendment. And I don't think that's what we want to do.

So I kind of think stretching the two year age differential to four years distorts and perverts, no pun intended, the whole concept of consent between two young adults and that's why, with due respect to Chairman Lawlor and due respect to those who testified in favor of this amendment, I would hope you would oppose it.

Thank you.

DEPUTY SPEAKER HYSLOP:

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Representative O'Neill.

REP. O'NEILL: (69TH)

Thank you, Mr. Speaker. If I could ask a couple of questions of Representative Lawlor, through you.

DEPUTY SPEAKER HYSLOP:

Proceed.

REP. O'NEILL: (69TH)

During the discussion of the amendment, I believe you indicated that the age differential that would be, in effect, allowed by the amendment would enable a -- I believe you said a 17 year old boy or a 17 year old person and a -- and I think you said a 14 year old person to be authorized. But it left me with the impression that if it were 18 year olds, it would not be authorized. That with a 17 year old it would be the oldest that you could be and still be authorized.

Am I understanding the explanation you gave correctly?

Through you, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you, Mr. Speaker. I'm not sure I used the word "authorized". What we're talking about here is whether or not this particular sexual intercourse would

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carry the rather severe penalty that sexual assault in the 2nd degree carries, which would be a Class B felony, twenty years in jail, nine months of which would be suspended.

So what I was saying is that if there was sexual intercourse between two people, one of whom was under the age of 16 and the other was not more than four years older than the first person, then that would not be a violation of the law, sexual assault 2nd degree, but -- and there's an important caveat and I think this responds, in part, to some of the concerns that Representative Cafero has. In elsewhere in the sexual assault 2nd degree statute falls a series of additional exclusions. For example, in the case that someone was a school teacher who was at a rather young age, let's say 17 if that was theoretically possible, I suppose it is, I guess and the other person was 13 years old, sexual relations between school teachers and students is against the law regardless of age. And that goes for other persons generally responsible for supervision and in a subsequent bill now, will be added coaches or other persons in that type of relationship.

So what we are talking about is consensual -- what would otherwise be considered to be - if it weren't for the age, it would be consensual and it was non-forcible

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sexual intercourse between two persons, one of whom was under 16, other than intercourse accomplished by a person who was in one of these prohibited categories and you can see the list there, a person generally responsible for supervision, a person who has custody of the other person. In a subsequent bill, a coach, psychotherapist or I guess that wouldn't apply to a 17 year old. Or if the actor is a school employee or other person - any other student - the other person is a student enrolled in a school. Those things would not carry the four year exemption. This would just be what is commonly understood as between generally speaking non-forcible sexual intercourse between two people of approximately the same age and we're just changing the approximate rule from two years to four years.

So I hope that answers your question.

Through you, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Representative O'Neill.

REP. O'NEILL: (69TH)

Let me follow-up a little bit. Supposing you had a 19 year old and I know that you were talking about precisely a four year difference. So let's say we had a 19 year old who was born on May 2 of whatever year - I won't do the arithmetic. And a 15 year old who was born

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on May 7th, a few days younger.

That person would be - that would be a criminal act under the statute, but that would not be a criminal act, but if their birth dates were reversed and the younger person was born at the earlier date and the older person was born at the later date, then it would be not a criminal act, the way this would work. And that would be about the maximum age range that you could have. Is that correct?

Through you, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you, Mr. Speaker. Yes, that's correct. Under the current law, the two age year difference, it's a birth date to birth date measurement. And if were four years, that's how it would be taken. It's an arbitrary rule. Apparently it turns out there's been quite a few people arrested and successfully prosecuted, obviously, where the - who were outside of that two year age difference, but who would have been within the four year age difference who have been subject to this mandatory nine month penalty and I think it's those cases where people felt that maybe this was not an appropriate case for a felony conviction with all the consequences that

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are carried with that, plus the nine month term of incarceration and I think that gave rise to the request for this bill.

Through you, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Representative O'Neill.

REP. O'NEILL: (69TH)

And you indicated that the relationship of some kind of general supervisory authority over a child would not be - that no one who held that status, regardless of the age differential, even if was only a couple of years difference, would be affected and considering what Representative Cafero was talking about, the camp counsellor situation, would a camp counsellor fall into that non-exempted category?

Through you, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you, Mr. Speaker. I'm not sure a camp counsellor would fall in, although in a subsequent bill, which may or may not be debated tonight and may or may not become law, but the proposal in the bill is to categorize coaches and there's a definition of coaches in that bill which might actually encompass camp

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counsellor, depending on what actual type of responsibilities they have, I'm not sure.

If the nature of the relationship is such that the other person is - if the victim, so to speak, is less than 18 and the actor is such person's guardian or otherwise responsible for general supervision of such person's welfare, I think that's more like a parent or foster parent, so it probably would not be a camp counsellor.

If they're in some type of custody like a corrections officer-type situation, that type of sexual - there's no ability to give consent there either regardless of age.

If the actor accomplishes the sexual intercourse by means of false representation that there's a bonafied medical purpose for it, that's prohibited regardless of age or if the actor is a school employee and such other person is a student enrolled in the school in which the actor works or a school under the jurisdiction of a local or regional board of education which employs the actor.

So, I guess it would depend on the situation, depend on the nature of the camp. Some counsellors might be covered, others not, but that's the existing law.

Through you, Mr. Speaker.

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DEPUTY SPEAKER HYSLOP:

Representative O'Neill.

REP. O'NEILL: (69TH)

Thank you. Since we do have the example of the existing law, perhaps I could ask, of those numerous cases where there have been successful prosecutions, have any of the prosecuted individuals been camp counsellors, to your knowledge?

Through you, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Representative Lawlor.

REP. LAWLOR: (99TH)

Through you, Mr. Speaker. I'm not personally aware of that. No.

DEPUTY SPEAKER HYSLOP:

Representative O'Neill.

REP. O'NEILL: (69TH)

Thank you, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Representative Boucher.

REP. BOUCHER: (143RD)

Thank you, Mr. Speaker. I rise to oppose this amendment. I find myself very dismayed that we are bringing this up at the same that we're bringing out bills to advocate on behalf of children and young people

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to protect them, to protect them from abuse and yet here in the same breath, we're putting forward amendments that actually more liberalize the penalties for such actions.

I have to tell you, I am so extraordinarily dismayed. I can't believe we're doing this. We've been reading, unfortunately, in the paper for the last several months about so many incidents of adults coming forward when they were abused as youngsters, many of them as young as five, six, seven, eight years old up to the age of -- and it seems very interesting to follow those reports at the ages when they finally said halt, I'm not going to participate anymore. And it seemed to all revolve around the age of 16, 17, 18, at a time when they finally had the self confidence, the ability to finally say no, something's wrong here.

But prior to that, it seemed like this area was very difficult for them to deal with. And, of course, it's produced scars that last an entire lifetime until these individuals become adults and parents themselves and continue to be troubled.

I just - I have to tell you, I'm almost speechless in my disappointment. You know, I'm sitting here reading a news report that only a few weeks ago a 75 year old man was charged with impregnating a 10 year old girl.

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There are reports that individuals didn't come forward to report this sort of incident. But yet, as also a parent of three children myself, that are now grown, I've watched them grow up and I've watched their abilities to take charge of their lives and to be able to counter authority and it's obvious it increases as they leave their teenage years and become more adults, that they truly can be victimized at this age that we're talking about, 13 and a 17 old individual, a 14 and an 18 year old individual, even a 15 and a 19 year old individual. We shouldn't be relaxing our standards at this time. We should be increasing our standards for their benefit and I do believe that this amendment goes completely in the wrong direction and I would really urge rejection of the amendment.

Thank you, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Representative Powers.

REP. POWERS: (151ST)

Thank you, Mr. Speaker. I rise in opposition of this amendment and quite respectfully, I believe the contents of this amendment were a bill that was before Judiciary and then did not exit the Judiciary Committee. And I certainly, talking to folks on the Judiciary Committee, I did not sense the universal support for it.

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In referencing the Sections 3 to 5, we're talking children under 13. We're not even talking about 13 year olds. We're talking about 12, 11, 10. Mr. Speaker, I would please ask that we reject this amendment.

Thank you.

DEPUTY SPEAKER HYSLOP:

Representative Lawlor. Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you, Mr. Speaker. In light of the hope that this bill would be able to solve a focus problem, without diverting too much attention to the main goal of this bill, I'd like to withdraw the amendment. I think there may be an interest in doing this on another bill at a different time or perhaps next year, but I actually do think this has merit. I think, obviously, more advocacy has to take place. I think, although I certainly respect the different views that people have, I think this is a complex issue and I think we ought not to do it under the circumstances and for that reason, Mr. Speaker, I'd like to withdraw the amendment, if that's okay with the Chamber.

DEPUTY SPEAKER HYSLOP:

Seeing no objection, House "C" is withdrawn.

Will you remark further on the bill, as amended?

Representative Lawlor.

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REP. LAWLOR: (99TH)

Thank you, Mr. Speaker. The Clerk has LCO number 4597. I would ask the Clerk call and I be permitted to summarize.

DEPUTY SPEAKER HYSLOP:

Clerk, please call LCO 4597, to be designated House "D" and the Representative has asked leave to summarize.

CLERK:

LCO number 4597; House "D" offered by Representative Lawlor.

DEPUTY SPEAKER HYSLOP:

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you, Mr. Speaker. This is a first step in a response to a situation that we heard a lot about over the past year. It's not precisely designed to deal with one specific case, however, I think that case best illustrates the problem.

In this particular case, I think we're well aware of it, there was an employee of the Department of Mental Retardation who became aware, at least in his opinion, that there was a client who posed a risk to children and was, in that employee's opinion, a sex offender and there was apparently a decision made to transfer that person to a group home in a particular neighborhood.

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The employee involved made what I would certainly consider a poor decision to actually photocopy this person's record and distribute it in the neighborhood and was subsequently prosecuted and found not guilty in a criminal court.

It seems to me, Mr. Speaker, that there's probably a better way to handle these kinds of cases and I think it's really our obligation to figure out what that better way is. And this amendment is, I believe, a first step in establishing a process where those kinds of concerns can be dealt with in a more confidential and productive and appropriate way.

Mr. Speaker, a couple of years ago we called for the establishment of a Sexual Offender Policy Advisory Committee, SOPAC and it consists of all of the agencies which you see outlined in this amendment.

This amendment would require this advisory committee to reconvene and make recommendations concerning the establishment of one or more sexual offender risk assessment boards to assess and evaluate adjudicated and non-adjudicated sexual offenders who are in the custody of any state agency or the judicial branch or who are receiving services to determine whether those persons pose a risk of engaging in illegal sexual behavior and make recommendations to such state

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agency and the judicial branch concerning appropriate placement.

And the manner in which a person having reason to believe that a person posing a risk, should communicate that to an appropriate board.

This is, in effect, a study, Mr. Speaker. The entity which will conduct this study did a marvelous job of making recommendations closely related to the concern I've described here already, but I think if we ask them one more time to try and devise a process which would allow for, in effect, a whistleblower type procedure for state employees and others to bring these concerns to someone without going to the press or without distributing confidential information in a neighborhood, that's probably a better idea.

We don't have time to figure that out ourselves this session. This allows this board to meet, make recommendations to us at the beginning of the General Assembly's next session in January and hopefully, they will devise a process which can handle these cases much more appropriately.

This particular proposal has the support of the various state agencies involved. I think it's a very thoughtful and appropriate way of dealing with this. I'm quite confident they'll come out with good

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recommendations and I would urge adoption of this amendment.

DEPUTY SPEAKER HYSLOP:

The question is on adoption of House "D". Will you remark on House "D"?

Representative Sawyer.

REP. SAWYER: (55TH)

Thank you, Mr. Speaker. A question to Representative Lawlor, please.

DEPUTY SPEAKER HYSLOP:

Proceed.

REP. SAWYER: (55TH)

Sir, is this similar to a bill that we have seen in a public hearing this year, sir?

DEPUTY SPEAKER HYSLOP:

Representative Lawlor.

REP. LAWLOR: (99TH)

Yes, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Representative Sawyer.

REP. SAWYER: (55TH)

And if he could explain, sir, how this differs from the one the actual bill that was presented.

DEPUTY SPEAKER HYSLOP:

Representative Lawlor.

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REP. LAWLOR: (99TH)

Thank you, Mr. Speaker. The bill that was presented required this to happen immediately. It was during the public hearing. There was a rather compelling case made that the resources required to actually do this, together with the expertise to figure out exactly how to do it, really aren't available already. So that the best idea would be to, in effect, study it.

This language encompasses that agreement.

Through you, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Representative Sawyer.

REP. SAWYER: (55TH)

Thank you, Mr. Speaker. And if I may ask, starting on line 19, the committee - there's a great list of who should be composed on this committee and can I ask where this collection of - the idea of where this collection of folks came from?

Through you, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you, Mr. Speaker. This is the existing membership of the Sexual Offender Policy Advisory Committee, which completed its work earlier this year

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with a lengthy report, which was made available to every member of the General Assembly. This is the membership list of that group. This would call for them to reconvene to answer the question that I explained in bringing out the amendment.

Through you, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Representative Sawyer.

REP. SAWYER: (55TH)

And through you, Mr. Speaker, if you would just add for us, sir, what the fiscal note says on this, sir.

DEPUTY SPEAKER HYSLOP:

Representative Lawlor.

REP. LAWLOR: (99TH)

If I could just have a moment, Mr. Speaker, they're retrieving the fiscal note.

Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Representative Lawlor.

REP. LAWLOR: (99TH)

No fiscal impact.

DEPUTY SPEAKER HYSLOP:

Representative Sawyer.

REP. SAWYER: (55TH)

Thank you, Mr. Chairman. I appreciate the

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gentleman's answers and just, if I may, one more. Was this a piece of any of the bill that came out of committee, sir, or was it something that was actually not voted on out of committee?

Through you, sir.

DEPUTY SPEAKER HYSLOP:

Representative Lawlor.

REP. LAWLOR: (99TH)

Through you, Mr. Speaker. I think this was on the agenda of the Judiciary Committee on the final day and was not reached on the agenda.

Through you, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Representative Sawyer.

REP. SAWYER: (55TH)

I thank the gentleman for his clarification.

DEPUTY SPEAKER HYSLOP:

Representative Brian Flaherty of the 68th.

REP. FLAHERTY: (68TH)

Thank you, Mr. Speaker. Mr. Speaker, I rise in support of the amendment. And I guess we've been talking a little bit on this bill about headlines in the newspapers of late.

Imagine yourself in a position that you have a strong reason to believe that someone in the custody of

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a state agency or the judicial branch may pose a risk of engaging in illegal sexual behavior by being placed somewhere in the community. What do you do?

What this amendment is trying to get to is to address or perhaps, I'd like to think, prevent the situation from occurring as what happened to a constituent of mine who worked at Southbury Training School, who became aware of a client who, at least he felt, posed a risk or would pose a risk of placement in a group home.

What do you do? There are privacy issues here. You've got -- and I'm not sure if this was an adjudicated or non-adjudicated sexual offender, but this was this the classic choice, the dilemma, what do you do? Do you notify the community? Do you try and get the word out? But then again, how do you balance that with the rights of the privacy that this person in custody of the state agency or care of the state agency or judicial branch has?

What this amendment is trying to do is to prevent what happened to Ed Smith from Watertown who took a course of action and ended up going to court for it.

In some circles, I think he was viewed as a hero, as someone who tried to get a warning out to a community of something that he believed or someone he believed

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would be a threat.

Well, what this amendment would do is take a look at that, to set up an advisory committee to make recommendations of what to do in a case like this. It doesn't say what those recommendations have to be, but it puts together a group of people to try and come up with an answer and maybe to try and come up with a policy so if anyone else is in a position like that again, that there's a method that there's somewhere they can turn, some place they can go other than trying to decided on their own, on the moment, my God, what should I do? Should I do something? Where do I go with this?

This doesn't even say what the procedure will be because I don't think really we can do that right now. But it puts some people together to try and get a process there to protect all the people involved, certainly to protect the community, to protect the people that we represent.

So, I would urge passage of this amendment, along with the bill.

Thank you, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Representative Giannaros.

REP. GIANNAROS: (21ST)

Thank you, Mr. Speaker. I urge passage of the

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amendment, but let me briefly say why this is before us in a bit more detail.

A client of DMR was to be moved in one of my neighborhoods that is one of the neighborhoods in the district I represent, Farmington.

This client had a record of abusing children based on the evidence that I've read and seen. And the client was to be moved to a group home next to a house with children, a swimming pool right between them, and a middle school with 900 children within walking distance, an elementary school within walking distance with about 350 children, a day care center not far from there, and, of course, many other residential residences with children in it.

The staff of the training school showed great resistance to the decision that was to be made, both in writing and verbally that they thought this would be an inappropriate placement.

They were completely ignored by the administration.

One of the staff members involved is the fellow who eventually came to my community and warned them that this was about to happen, not for any other reason rather than the fact that he wanted to protect the children and guess what they did instead to him? They prosecuted him. They took him to court for wanting to

protect children.

They fired him. They fired him and his fiance from their jobs that they both loved and from the clients that they actually loved, including the person in question.

Not only did they fire them, but they made them pay tens of thousands -- I believe the estimate is \$50,000 in legal fees to defend themselves or to defend himself, in this particular case.

Totally irresponsible state behavior, in my opinion. He was found not guilty because he did not violate any law, as the law reads at this point, but we still have the problem of staff people in all agencies that see things that are wrong and can be prevented from becoming worse and they have no outlet at this point for them to go to other than their administrators who may refuse their recommendation.

By the way, in the case in question, there were staff members, including psychiatrists and psychologists who were saying that. But a deaf ear.

And what we have really, unfortunately, because of the situation we are in, complicated budget, short session, we cannot really put specific language in this. We're only asking for the Advisory Committee to be established and for the Advisory Committee to come back

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with recommendations.

But let me tell you that I am one of those that believes very strongly that predatory behavior against children, especially, innocent kids, that cannot defend themselves, calls much worse than just simply reconsideration of actions, but rather, in my opinion, whether they are individuals who happen to be in DMR, individuals who happen to be in jail or individuals who happen to be priests for that matter. Predators should be kept away from children, period, in my opinion, permanently! And I hope that the Advisory Committee will come back and give us a recommendation that will apply across the board to all of those that do damage, permanent damage to those innocent kids.

And I think it's about time that we take it much more seriously and act accordingly.

Thank you, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Representative Powers.

REP. POWERS: (151ST)

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

DEPUTY SPEAKER HYSLOP:

Proceed.

REP. POWERS: (151ST)

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In line 5, we refer to "non-adjudicated sexual offenders". Who are those people?

Through you, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you, Mr. Speaker. Well, the person Representative Giannaros described would be in that category, never actually convicted of a sex offense, but -- and by the way, I'm not sure what the full story is in that situation, but from what I've read in the newspapers, there were incidents involving sexual misconduct involving children and that person, which were documented, but not reported to the police. In any event, he was never arrested. So, whether or not he may not have been competent to be prosecuted, I'm just not sure, but he would fall into the category of someone about whom there was reliable information that they did pose a risk to children. This is based on newspaper reports. And the worker involved was concerned enough to distribute what would otherwise be confidential information throughout a neighborhood because he was concerned that people might be at risk.

So, this amendment envisions a process where people who find themselves in that position could go to a panel

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of experts, basically, relay their concerns in confidence and allow the panel of experts to make sort of an independent decision whether or not an individual actually does pose a risk as a sex offender, especially with regard to children.

There actually are people who are, in effect, known sex offenders who have never been actually convicted of a crime. No one is suggesting that they should or can be incarcerated, but there maybe appropriate steps that can be taken if a state agency or a local agency is actually making a decision about the placement of such an individual.

For example, there are children who are, in effect, sex offenders, but may or may not have ever been actually charged in a criminal court and convicted in a criminal court. So, placement decisions are often made in these kinds of cases based on a variety of information about that diagnosis. Mental health professionals deal with a diagnosis which includes sexual misconduct which may not have ever resulted in a conviction and they make recommendations for placement based on their diagnosis of some type of sexual mental illness, mental illness with a symptom which involves sexual misconduct.

So, those are the kinds of persons that may not

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ever have been convicted, and about whom a state or local official must make some type of placement decision and would ordinarily take into consideration documented sexual misconduct, whether or not it resulted in a criminal prosecution and needs to make a decision.

Not everyone is an expert on placement decisions. Not every state agency is charged with the responsibility of public safety. For example, that's not part of the mission of the Department of Mental Retardation, as far as I know. And given the fact that that's not part of their mission, it may, however, be a legitimate consideration which should be made, and we have tried to begin a process to develop a system where that concern can be taken into consideration, respecting everyone's legitimate rights, respecting everyone's entitlement to confidentiality, but nonetheless, ensuring that the public is protected. And that's the idea. Whether or not that can be accomplished, is another issue, but this panel is the collection of experts who can figure out the answer to that question and this asks them to do so and tell us by next January.

I hope that answers the question, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Representative Powers.

REP. POWERS: (151ST)

Thank you, Mr. Speaker. When we're talking on line 5 about we're asking them to assess and evaluate. Is that in - is this like a semi-judicial kind of a group or a court or a semi-court? Or is this some kind of almost like a detective or fact finding kind of a thing? And if it's secret, which is what it sounds like, confidential, secret, and we're talking about non-adjudicated sexual offenders, who someone thinks is doing something or feels that they have enough evidence or information that they're doing something, but they've never ever been convicted of anything, through you.

I'm just a little bit concerned about how this works.

DEPUTY SPEAKER HYSLOP:

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you, Mr. Speaker. Well, so am I. This doesn't set up anything other than a process to figure out how it could work and one of the policy considerations that we need to make, but based on advice from experts. This is the panel of experts. This is the collection of people that know the answers to these questions. Maybe it's not possible, that itself is possible.

But this is the group of people that can figure out

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the answer to the question. As we discussed earlier today, on the debate on this bill, actually, you know, there are times when our elaborate network of programs and experts let things fall through the cracks. Often times, including the case involving the child was apparently killed by its father in Bridgeport, which is the subject of the report yesterday from the Child Advocate, the real problem was different state agencies not effectively communicating information back and forth which would have allowed a judge, in the end, to make an appropriate decision. The judge didn't actually get that information, apparently, and there was a bad decision made and someone was killed in that case.

And so there's got to be a way to get agencies to talk to each other and for an agency which may not have the proper expertise, to go somewhere to get that expertise without jeopardizing people's legitimate privacy interests and constitutional rights, etcetera.

So, if I knew the answers to the questions, we'd be proposing a process to actually carry that out. However, instead we're proposing a process to get the answers to those questions. So we will have them next year and we can debate this because I think citizens who saw this situation play out, this case that Representative Giannaros described said, I mean, have to have said, the

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people who set the policy for this state ought to be able to figure out a way to make sure this kind of thing doesn't happen again in the future. And I think they're right. And this is a way that we can begin the process of doing that.

We should resist the temptation of trying to figure it out on the spot with a quick amendment, solve all the problems, because often those solutions have unintended consequences. This, I think, is the better way. This has been tested and proven effective in the past. I think this will give us the answers we need by this time next year and I think you're very right in posing these concerns because these are the concerns that we don't really have answers to yet, but we can get them and this is the way to do it.

Through you, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Representative Powers.

REP. POWERS: (151ST)

Thank you, Mr. Speaker. And just one last question. The first part of the question is, do sexual offender risk assessment boards exist anywhere else or exist anywhere? And number two, is this - do you see this being underneath the judicial branch if it were effected?

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Through you, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you, Mr. Speaker. Well, actually they do - a lot of states have a variety of forms of sex offender risk assessment boards. The states that have the so-called civil commitment statute, these civil commitment. Kansas, for example. And Washington State have a process where convicted offenders who are being released from prison, if it's determined that they are - even though they finished their sentence, they continue to pose a risk, there's a process by which they're evaluated and, in effect, locked up in a - not in a correctional institution, but in a mental health facility indefinitely, but that's based on the recommendation of a sex offender risk assessment board.

These exist in many places in connection with Megan's Law-type laws. In fact, as we all know, our Megan's Law is only partially in effect at the moment because the internet and the public notification part has been blocked by a federal court. I don't agree with their decision. However, we're blocked nonetheless.

What the Appellate Courts have said and subject to the decision by the United States Supreme Court is that

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in order to do this, we need to establish an appropriate risk assessment board to separate the dangerous predatory sex offenders from the rest. And it may turn out that the United States Supreme Court orders states to establish a board like this in order to put names on the Internet. So, ultimately we may have to do this anyway.

So, with that in mind and with the DMR case in mind, it seems clear that every state, in one form or another, is going to have to have a board along these lines to make decisions.

Beyond that, by the way, there are convicted sex offenders who are going to be under the custody of our criminal justice system, about whom we need to make these identical decisions, what is the level of risk? So whether or not they should be paroled, how they should be supervised if they're on probation, whether or not they should be released on bail. These are the kinds of decisions that need a panel of experts to make a judgment call on and those are illustrations of the way you could have such a risk assessment board. It could be under the judicial branch. There could be more than one for different purposes. It could be sort of a judicial proceeding. It could be sort of an informal proceeding.

It could be simply an advisory proceeding to school

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systems looking for advice, you know. These are the kinds -- it could be the University of Connecticut or another state university that needs to make a decision about housing for a student where there might have been an old allegation that they need - that's been brought to their attention that need - you know, these cases that are now beyond the criminal statute of limitations.

Some of the clergy involved. Can't be prosecuted. It's been documented in a civil case that they're clearly guilty of sexual abuse of children. They want to become a teacher. You need to make a decision. They don't have a criminal record, it's documented that there's a pedophile, what do you do in that situation?

So, those are examples of the way a board of this type, a panel of experts could, in a constitutional and effective way, make these decisions.

So, through you, Mr. Speaker, I hope that answers the question.

DEPUTY SPEAKER HYSLOP:

Representative Powers.

REP. POWERS: (151ST)

Thank you, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Representative O'Neill.

REP. O'NEILL: (69TH)

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Thank you, Mr. Speaker. Well, I guess I'm pleased that we are going to do a study rather than try to come up with a solution in the present situation, in the short session of the Legislature.

I would say a couple of things, though, and with reference to Kansas and I believe, Washington State. If I'm not mistaken, I read in the newspapers -- I haven't read the case itself, I'm pretty sure the Supreme Court ruled that process is unconstitutional of keeping people locked up, at least that was my understanding, that they had ruled that whole idea was highly questionable. And I know it is at least on appeal. I say Representative Lawlor shaking his head saying that they had not done that, but they're keeping people in prison after their sentences have expired was something that was subject to a great deal of challenge in the federal court and I thought that I had read where it had been deemed to be a violation of the Constitution.

But with all of the different people that we have to deal with, I guess to paraphrase Barry Commoner, everyone has to live somewhere. And when people who have the sexual predator label on them, get out of prison or are placed in some sort of mental facility or mental retardation facility or any other kind of state facility, get to a certain point, I think that the court

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system is generally going to expect us to not keep them locked up on a permanent basis.

And that may require agencies to come up with significantly more resources for community placements that involve a lot more security surrounding them than perhaps has been the case generally. But I don't know that we're necessarily going to be able to keep people, as Representative Giannaros, I think, is hoping for, permanently locked up unless we convict them and sentence them to a life term for whatever it is that they have done or convict them as some kind of multiple offender, sort of a career criminal type statute.

So I'm glad we're doing this as a study because I think it does need a lot of careful analysis as to exactly what the appropriate response is and it's not going to be a one size fits all for both the people who have been adjudicated, the people who have not been adjudicated, the people who are viewed by someone as some kind of a risk, the people who have served all of their sentences and are under the law, as I understand it, certainly in the way it stands in the State of Connecticut, allowed to, once they have served their sentences, be released.

Thank you, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

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Will you remark further on House "D"? Will you remark further on House "D"?

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you, Mr. Speaker. Just very briefly just to set the record straight. The civil commitment -- I don't actually think it's a good idea, but this civil commitment thing that they do in Kansas and Washington is, first of all, extraordinarily expensive. It was proposed a number of years back here in Connecticut and I think the proposal was withdrawn because when the fiscal note emerged, it was - it's on the order of \$200,000 - \$300,000 - \$400,000 per person, per year to do it.

It is constitutional. The cases is Hendricks vs Kansas or Hendricks vs Stovall. Kansas does have an elaborate procedure, as do a number of states. It is extraordinarily complicated and that's why it's so expensive. But you can do it. However, it doesn't really - it's not really broad enough to cover all of the situations that you'd want to cover. You may not necessarily want to lock these people up forever, which is what they, in effect, do in those states.

But you can do it and I just wanted to make that clear, but I don't think we really want to do it.

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Anybody want to discuss that topic, I'd be happy to talk later about that.

DEPUTY SPEAKER HYSLOP:

Will you remark further on House "D"? Will you remark further on House "D"?

If not, we'll try your minds.

All those in favor, signify by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER HYSLOP:

Those opposed. The ayes have it. House "D" is adopted.

Will you remark further on the bill, as amended?

Representative Bernhard.

REP. BERNHARD: (136TH)

Thank you, Mr. Speaker. I think, like everyone in this Chamber, we commend the people who have worked so hard in crafting this proposal. And I will ultimately, of course, vote for it.

But I must admit that I do so with a certain amount of trepidation and I fear that we may very well be treading down that path of unintended consequences.

Let me tell a story, which I believe will set the stage for a couple of questions that I have for Representative Lawlor with respect to some portions of

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the bill.

I had a client, a mother, a wife, nice family, two children, two beautiful children. One day the 10 year old girl stated to one of her friends in her class that her mother had hit her. That was overheard by the teacher. And the teacher felt compelled to report what she had heard to the Department of Children and Families.

The Department, by law, was required to investigate, came to the family's home, told the mother that she was under investigation for hitting her child.

And that certain precautions were going to be put in place until they had a chance to complete their investigation.

The investigation entailed talking to the school, talking to the neighbors, talking to coaches. Ultimately it was overwhelmingly decided that the mother had done nothing wrong, but you can all imagine, as we sit here, the embarrassment that the mother felt and the stigma that nevertheless that came upon her for having done nothing more than having spanked her child the night before for some misbehaving deed.

With that story in the back of my mind, through you, Mr. Speaker, I wonder if I may pose a few questions to Representative Lawlor.

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DEPUTY SPEAKER HYSLOP:

Representative Lawlor, prepare yourself for questioning.

Proceed.

REP. BERNHARD: (136TH)

Representative Lawlor, initially let me direct your attention to lines 263 through 268 of the amendment, which I believe is the existing law, which, in essence, references the Commissioner of Children and Families' obligation to create a training program for the accurate and prompt identification and reporting of child abuse and neglect.

Through you, Mr. Speaker. Do you know, Representative Lawlor, whether that's been done and could you tell me something about it, on the assumption that it has been done?

Through you, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you, Mr. Speaker. I did have a discussion in the last couple of weeks with the Commissioner of Children and Families, together with some of her staff. We talked about this very topic. We were discussing it in light of the - I guess you would say, revelations

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recently that apparently people were finding out about sexual abuse of children and not reporting it in a timely fashion and then it turned out, to my surprise, at least, that DCF, their interpretation was those particular types of conduct weren't subject to the mandated reporter law. They had taken a very narrow - and by the way, this pre-dates Commissioner Ragaglia of the Rowland administration. This was the longstanding DCF interpretation, which said that the only types of sexual abuse that would be subject to a mandated report would be that perpetrated by either the parents or the foster parents, the actual direct caregivers or someone that the parents or caregivers had entrusted the child to and their interpretation was kind of, for example, a relative. Their focus was most on abuse of sort of within the family.

Now, my reading of entrusting a child to someone would have included a teacher, a camp counsellor, a clergy, a member of the clergy, or a scout master, you know, any of that type of thing. A day care center.

And we had a discussion about that and we talked about rewriting the rules and they had an elaborate discussion well, if we rewrite it, then we're going to have to change the way we've done our education because we've educated, in these programs, we have educated the

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people who currently are mandated reporters about what they are mandated to report and if we rewrite the law or even if we change our interpretation, we'll have to go back and sort of revise that curriculum.

So, the answer to your question is yes, they do it.

Apparently not enough. I think it's fair to say that quite a few members of the clergy hadn't gotten that training because, obviously, they didn't report it. I think the members of the clergy who felt that they could create their own board and decide whether or not these reports were credible or not prior to reporting it. By the way, that is totally against the law, that nobody has the authority to evaluate whether or not they believe the claim is credible. They must report it to DCF. DCF has that responsibility. And no board created by any clergy group or anybody else has the authority to independently determine whether or not they believe it.

And that's the kind of training that hadn't taken place, but will take place based on this revised - this rewrite of the mandated reporter statute.

So, some has been going on. Not enough, apparently.

And what has been going on wasn't really accurate, from my point of view, at least, and that apparently will change, especially as we rewrite the law, if this becomes law.

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Through you, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Representative Bernhard.

REP. BERNHARD: (136TH)

I thank Representative Lawlor for his answer. I wonder if I could ask him to focus, I think, more specifically my question was, is there such a program and I gather the answer is yes, there is such a program. And then my follow-up then is, how long a program is it?

Does one have to go for an hour? Does one go away for a weekend? Does - something more about the program and I'm not asking this because I intend to be particularly picayune about what's in the present law, but I see that this training program is at the root of the whole reporting process that is now being expanded and we've got mandated reporters who are now subject to \$500 fines who are going to be subject to being required to attend training programs at their own expense, training programs that don't even exist I think now in the private world. And so I think it's important for this Chamber and perhaps for legislative intent, to know something more about what we're talking about when we're going to obligate not only the existing mandated reporters, but the new persons included in that envelope, what we're going to require them to do and

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what's entailed. Because it's that training that is so critical to ensure that we don't find ourselves a community of whistle blowers and people being subjected to unnecessary, unfair scrutiny about their personal lives when no abuse has really occurred.

So, through you, Mr. Speaker, I wonder if Representative Lawlor and I know it's getting late and people probably aren't focusing on this particular part of the bill, could give us a short summary of what the program is, how long it takes, and so forth.

Through you, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you, Mr. Speaker. There is a program. I'm not sure the exact number of hours. It is part of the licensing process. As you notice, everyone - virtually everyone on this list is some type of a licensed, professional licensed by the State. It is part of the licensing process, part of the training process to qualify for the license, as I understand it. There's also ongoing professional education where this is part of it. From my own personal dealings with many of the types of people covered here, especially the health professionals, I know this is part of their ongoing

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training. And DCF does coordinate that and ensures that it takes place.

So, that is part of the established process. The categories we're adding, I think without exception, are people who are licensed and many of them are actually state employees and that is part of their training, ongoing and licensing, as well.

Through you, Madam Speaker.

DEPUTY SPEAKER CURREY:

Representative Bernhard.

REP. BERNHARD: (136TH)

Good evening, Madam Speaker. It's good to see you at the podium.

Thank you, Representative Lawlor. I heard your answer and I just want for clarity sake, are you saying that part of securing a license for the people who are named here, that they're required to go and take a program that you've just described? Because as I read the section to which I referred initially, it only requires the Commissioner of Children and Families to develop a program and make it available, but I don't see that there's a connection between the availability of the program and the licensing. I'd be surprised to learn, but perhaps you can confirm that optometrists and chiropractors and podiatrists take, as part of the

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licensing process, a course on reporting child abuse.

Through you, Madam Speaker.

DEPUTY SPEAKER CURREY:

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you, Madam Speaker. It's my understanding that there is, at a minimum, an acknowledgement that as a condition of having one of these licenses, you are a mandated reporter. The real penalty for these people is not the \$500 fine, it's the revocation of license. That is the penalty where there's a wilful violation of this obligation and it is my understanding that everyone who is licensed has, at a minimum, acknowledged that this is their obligation and has - and as I understand it, there is ongoing training provided for all of the people who are covered by this statute. But there is some type of acknowledgement that everyone has to make who, as a condition of having one of these licenses, that yes, in fact, they are mandated reporters and there is an explanation of what that obligation is provided to them.

Through you, Madam Speaker.

DEPUTY SPEAKER CURREY:

Representative Bernhard.

REP. BERNHARD: (136TH)

I thank, again, Representative Lawlor. He's always

frank and candid, honest and well informed in his answers. And this is no exception in this instance.

I just want to state for the Chamber and then I'll sit down and be quiet. My concern is that we're now expanding the pool of reporters. I don't think that they're necessarily going to be properly trained to the extent that one can be properly trained to exercise common sense and good judgment in identifying child abuse, real child abuse, not suspicions of something that has the catch all words that would normally be associated with abuse like the example I gave you where the little girl reported to her friend that mommy hit me last night.

We're in a climate that clearly is reacting to the horrible stories we've heard in the news and I just hope we don't swing the pendulum so far in the direction of our good intentions to protect children that we subject our adults to unnecessary and perhaps harmful and unjustified scrutiny.

Thank you, Madam Speaker. I appreciate the time.

DEPUTY SPEAKER CURREY:

Thank you, sir.

Representative Rowe of the 123rd.

REP. ROWE: (123RD)

Thank you and good evening, Madam Speaker.

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Through you, if I can ask the proponent a few questions, please.

DEPUTY SPEAKER CURREY:

Please frame your questions, sir.

REP. ROWE: (123RD)

Thank you, Madam Speaker. It relates to the deleted portions found in lines 411 through 418 and that which has been substituted thereafter in 419 and beyond which has to do with the communications, privileged communications between a clergyman and a confessor or someone being counselled by the clergy.

What has been deleted in this bill is, as I understand it, the blanket privacy or seal of the confessional and it's been replaced with some language that I just want clarified.

So, through you, if I can ask, is there anything contained in the new language which would require a clergyman to disclose communications which were to be confidential?

Through you, Madam Speaker.

DEPUTY SPEAKER CURREY:

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you, Madam Speaker. The answer to that question is yes. It is contained in lines 454 through

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459. And I'll just read it. I think it's self-explanatory. "Consent of the person shall not be required for the disclosure of such person's communications if the member of the clergy believes in good faith that there's a risk of imminent personal injury to the person or other individuals or of child abuse, abuse of an elderly individual, or abuse of an individual who is disabled or incompetent is known or is in good faith suspected."

That is similar, if not identical to the exceptions for confidential communications made to psychiatrists by their patients or attorneys by their clients. In other words, if someone is imminent danger, you not only have the ability to communicate it, but you have an obligation to act to protect victims and that exception is included in the new law.

Through you, Madam Speaker.

DEPUTY SPEAKER CURREY:

Thank you, sir.

Representative Rowe.

REP. ROWE: (123RD)

I thank the gentleman for his answer. It might be a bit troubling. Am I correct then that if one were to go into the confessional, for example, and confess to a sin committed of pedophilia, or something tragic of that

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nature, is the answer that priest, to whom the sin was confessed, would be statutorily required to make a report of that confession?

Through you, Madam Speaker.

DEPUTY SPEAKER CURREY:

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you, Madam Speaker. I think the language speaks for itself. If a child is at risk, any member of the clergy has an obligation to report it immediately, regardless of the circumstances. That's the standing law for a psychiatrist and lawyers and other counsellors. If somebody's at risk, you have an obligation, the duty to protect that person regardless of what your job is.

Through you, Madam Speaker.

DEPUTY SPEAKER CURREY:

Representative Rowe.

REP. ROWE: (123RD)

Through you, Madam Speaker. There obviously could be situations where the priest or clergyman would be uncertain as to the specifics of the crime or the sin. Is there any duty imposed upon the clergymen to inquire if he is at doubt, he is in doubt?

DEPUTY SPEAKER CURREY:

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Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you, Madam Speaker. I'm wondering, does the Representative mean a moral obligation or a legal obligation?

DEPUTY SPEAKER CURREY:

Representative Rowe.

REP. ROWE: (123RD)

A legal obligation.

DEPUTY SPEAKER CURREY:

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you, Madam Speaker. The legal obligation is if the member of the clergy believes in good faith that there is a risk of imminent personal injury to the person or other individuals as it say there. So, if you believe that someone's at risk, you have an obligation to do something about it. I would think that obligation would apply to all of us as a moral obligation, but to mandated reporters, it's a legal obligation and you do have a duty to warn and a duty to protect and the consequences of not doing so, would expose you to a \$500 fine under the current law, but more importantly, to extraordinary civil liability, which is already the law and this is not changing it.

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Through you, Madam Speaker.

DEPUTY SPEAKER CURREY:

Representative Rowe.

REP. ROWE: (123RD)

Thank you, Madam Speaker. Through you again, are you aware of any provisions in our statutes now which require a clergyman to violate the seal of the confessional?

Through you.

DEPUTY SPEAKER CURREY:

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you, Madam Speaker. This is a civil government, not a religious government. I don't think we have any reference in any way to a confessional in our statutes. So I'm not sure I can answer that question.

DEPUTY SPEAKER CURREY:

Representative Rowe.

REP. ROWE: (123RD)

Thank you. To clarify. Is the gentleman aware of any statutes contained in our laws which require, right now, a clergyman to report confidential communications?

DEPUTY SPEAKER CURREY:

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you, Madam Speaker. This particular issue has been the subject of a great deal of debate and disagreement. The existing law does appear to provide a special protection to confidential communications made to members of the clergy in their professional capacity

It has been argued both ways. Members of the clergy are mandated reporters and have been for some time in the State. Whether or not the confidential communications is, in fact, an exception to the mandated reporters statute is a subject of debate. In my opinion, it is not an exception to the mandated reporter statute. I think the mandated reporter statutes speaks for itself. Members of the clergy are mandated reporters. They are required to report reports of sexual misconduct with children.

This confidentiality protection, which is in the existing law that is being rewritten in this bill relates to giving testimony in civil or criminal cases. The mandated reporter statute was passed subsequent to this statute, which is the identical situation with the similar protection for communications, confidential communications between psychiatrists and their patients. I know the psychiatrists have interpreted the subsequent mandated reporter statute as, in effect, overriding the confidentiality protection of the doctor/client

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privilege and I think many legal experts, if not most legal experts, believe that the mandated reporter statute did override this. If there was any doubt, this particular rewrite will put an end to that doubt. It more carefully defines what the type of communication that's confidential. It's only counselling that will now be covered under this rewrite. It's not necessarily two members of the clergy talking to each other and saying, hey, don't tell anybody, but I just found out that so and so is being molested. That would not be a protected communication.

You could argue it's protected under the current law. I don't think anybody in good conscience could argue that type of stuff is truly what was protected by the current law and therefore the rewrite. So, I hope that answers the question.

Through you, Madam Speaker.

DEPUTY SPEAKER CURREY:

Representative Rowe.

REP. ROWE: (123RD)

I think it does and I thank him for his answers. I also believe that this new language represents a striking departure because we are, indeed, by the gentleman's own admission, going to be requiring clergymen violate an oath of confidentiality which they

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have not previously been required to do and the oath or the seal of confidentiality has been with us for generations and centuries.

There is a difficulty because it's my understanding that requiring, for example, a Catholic priest who hears a confession and hears in that confession sins committed against a minor, will now be required, if he believes that there will be a risk of imminent personal injury of child abuse, he has to report that. That is a violation of the seal of the confessional and, in fact, far from an expert in cannon law, but a priest, if he violates the seal of the confessional, is automatically immediately excommunicated.

The potential reach of these provisions may be extraordinary. This bill, overall, was very well done and it's very difficult to draft, but I think that we have stumbled onto something that is a very real problem that may need to be addressed, Madam Speaker and for now, I will leave it at that.

Thank you, Madam Speaker.

DEPUTY SPEAKER CURREY:

Thank you, sir.

Representative Doyle of the 28th.

REP. DOYLE: (28TH)

Thank you, Madam Speaker. Madam Speaker, the Clerk

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has an amendment, LCO 4685. May the Clerk please call and I be allowed to summarize.

DEPUTY SPEAKER CURREY:

Will the Clerk please call LCO 4685, designated House "E".

CLERK:

LCO number 4685, House "E" offered by Representative Doyle.

DEPUTY SPEAKER CURREY:

Representative Doyle.

REP. DOYLE: (28TH)

Yes. Thank you, Madam Speaker. What this amendment does is it deals with the - in the underlying - House "A", it's agreed that the civil claims for any future actions will be unlimited. There will be no statutes of limitations. We've also extended the statute of limitations from 17 years to 30 years for acts prior to the effective date of this act.

What this amendment simply does is it deals with the enforcement of a judgment and any action based upon a judgment.

Under current law, any civil action, an individual has up to only 20 years to initiate any execution on a judgment or in terms of filing an action for a lien on land records, 25 years. To be clear, what this amendment

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simply does is rather than having those limitations, it allows any individual that's successful in obtaining a civil judgment against a defendant as in the case here, a person's that properly - in other words, adjudicated and was convicted of a violation of 53a-70 or 53a-70a there is on statute of limitations.

And what it really means is in lay language is that if a person commits this act and is convicted, and then the innocent victim sues, gets civil judgment, but then that person were to go to prison for 40 years or something, this person, in the normal course of action, if this amendment doesn't pass, his judgment would lapse after 20 years and there would be no hope for that victim to collect against the defendant.

Therefore, this waives any statute of limitations for the person to seek execution on the judgment or in order to file a civil action on a lien filed in the land records or a foreclosure on the land.

The bottom line is this would allow the greater possibility for a victim to claim on, to collect on an individual that committed such an act.

Thank you, Madam Speaker.

DEPUTY SPEAKER CURREY:

Would you care to comment on the amendment that is before us?

Representative Kirkley-Bey of the 5th.

REP. KIRKLEY-BEY: (5TH)

Madam Speaker, through you to the proponent of the amendment. If the person --

DEPUTY SPEAKER CURREY:

Excuse me, Representative Kirkley-Bey.

Representative Doyle, I don't believe you moved the amendment. If we could possibly go back to him.

Thank you.

REP. DOYLE: (28TH)

Thank you, Madam Speaker. Sorry for that oversight.

I move the adoption of the amendment.

Thank you, Madam Speaker.

DEPUTY SPEAKER CURREY:

Thank you.

The question before us is on adoption.

Representative Kirkley-Bey, thank you for your patience.

REP. KIRKLEY-BEY: (5TH)

Thank you, Madam Speaker. Does this - this pertains only to the underlying bill which deals with minors or it pertains to any Class A felony?

REP. DOYLE: (28TH)

Through you, Madam Speaker. This is involved with the bill before us, the sexual abuse of minors in the

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file copy here and the amendment, the bill, as amended.

Through you, Madam Speaker.

DEPUTY SPEAKER CURREY:

Representative Kirkley-Bey.

REP. KIRKLEY-BEY: (5TH)

If that person that committed the crime, because you're extending this out, passes away, do they have the right to then go after damages to the family?

DEPUTY SPEAKER CURREY:

Representative Doyle.

REP. DOYLE: (28TH)

Through you, Madam Speaker. No, they cannot go against the family. They could make a claim against the convicted person's estate, but not against any family members.

Through you, Madam Speaker. Just any assets in the name of the convicted person.

Through you, Madam Speaker.

REP. KIRKLEY-BEY: (5TH)

Thank you for correcting the terminology. I did mean the estate. So they do have that right?

REP. DOYLE: (28TH)

Through you, Madam Speaker. Yes, they could, I believe they could file a claim against the estate of the convicted person.

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Through you, Madam Speaker.

REP. KIRKLEY-BEY: (5TH)

Thank you, Madam Speaker.

DEPUTY SPEAKER CURREY:

Representative Kirkley-Bey.

REP. KIRKLEY-BEY: (5TH)

That's all I wanted to know.

DEPUTY SPEAKER CURREY:

Thank you.

Would you care to comment further on the amendment before us? Would you care to comment further on the amendment before us?

Representative Lawlor of the 99th.

REP. LAWLOR: (99TH)

Thank you, Madam Speaker. I just want to point out, I support the amendment. I think it's consistent with the other changes we made. I can't imagine there's many of these out there, but if, in fact, there were an old judgment in a civil suit, based on a case where someone aside from being sued, actually got convicted of these most serious forms of sexual assault, and the 20 years had gone by, so the judgment was no longer collectible, and subsequently the person won the lottery, this kind of extends the ability to collect that old judgment because we've, in effect, extended the statute of

limitations for those kinds of claims in any event.

So, it's totally consistent with what we've already done. I don't think it, in any way, is unfair or inappropriate and so I would urge adoption.

DEPUTY SPEAKER CURREY:

The question before us is on adoption. Representative Mushinsky on the amendment.

REP. MUSHINSKY: (85TH)

Thank you, Madam Speaker. I too wish to support the amendment and thank Representative Doyle for bringing it forward. I hope the perpetrators of these crimes against children are always looking over their shoulder. I think this amendment will help that.

And I urge its passage.

DEPUTY SPEAKER CURREY:

Thank you, Ma'am.

Would you care to comment further on the amendment before us? Would you care to comment further on the amendment before us?

If not, I'll try your minds.

All those in favor, please signify by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER CURREY:

All those opposed, nay. The amendment's adopted.

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Representative Green of the 1st.

REP. GREEN: (1ST)

Thank you, Madam Speaker. Madam Speaker, a couple of questions to the proponent of the bill, as amended.

DEPUTY SPEAKER CURREY:

Please phrase your questions, sir.

REP. GREEN: (1ST)

Thank you. The first area I'd like to just try to get some clarity on is some issues about DCF reporting and issues of abuse and neglect.

Can you tell me, in some of the language that talk about filing claims of abuse and neglect, how would we define "neglect"?

DEPUTY SPEAKER CURREY:

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you, Madam Speaker. Abuse and neglect are distinct categories of offenses that parents and other caregivers can be guilty of under certain circumstances. Abuse involves typically physical abuse, including sexual abuse. Neglect typically would be for it to rise to a level of being actionable under our child protection laws and it's more than just forgetting to provide lunch on a particular day. It is failing to provide appropriate shelter, failing to provide

appropriate nutrition and I'm not talking about a balanced meal. I'm talking about what would be a gross deviation from the normal standard.

So, leaving children unsupervised for extended periods of time, those would be examples of neglect for which parents and other caregivers can be held accountable in the child protection session of the courts, not necessarily a crime, but it could be - it could give rise to a petition for temporary custody of a child or termination of parental rights under very extraordinary circumstances.

Through you, Madam Speaker.

DEPUTY SPEAKER CURREY:

Representative Green.

REP. GREEN: (1ST)

Thank you. Another question, through you, Madam Speaker. In a petition of abuse and neglect, would DCF specify that, in fact, a person is being charged with neglect and outline what are those violations that led to the neglect petition?

DEPUTY SPEAKER CURREY:

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you, Madam Speaker. I'm not an expert in this area of the law, but I'm more than confident that the

answer to that question is yes. As with everything guaranteed under the due process protection of our federal Constitution and our state Constitution, there would have to be specific allegations to give rise to any kind of deprivation of liberty and so that would be a normal part of the process.

Through you, Madam Speaker.

DEPUTY SPEAKER CURREY:

Representative Green.

REP. GREEN: (1ST)

Thank you, Madam Speaker. A few more questions, through you.

In some of our truancy laws, where a child under 15 has to attend school otherwise - would you consider education and lack of a child attending school would be neglectful on the parent's part if the child is under 15?

DEPUTY SPEAKER CURREY:

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you, Madam Speaker. As I understand it, there is a legal obligation under our statutes to ensure your child is attending school. I believe there's a fine which can be imposed on parents for failure to honor that obligation and I do believe that if the absence for

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was an extended period of time, it could arise to an allegation of neglect.

But I think, as with all of these cases, a couple of school days missed without excuse or parental involvement would not be - would not give rise to an allegation of neglect, but I think absence for an extended period of time, combined with, let's say, indifference or approval of the parent, could give rise to that, probably in conjunction with other things, as well.

So, it's possible, Madam Speaker. I think it would depend on the circumstances, but yes, I think is the answer to the question.

DEPUTY SPEAKER CURREY:

Representative Green.

REP. GREEN: (1ST)

Thank you for that yes. I didn't understand the other parts of it, but yes. Do you know of any circumstances where DCF filed a petition of neglect to a parent and removed a child through a petition of neglect for non-attendance in school?

DEPUTY SPEAKER CURREY:

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you, Madam Speaker. Through you. I certainly

am not aware of such a petition. I would be surprised if such a thing happened. If that were the only allegation, removing a parent from the custody -- removing a child from the custody of their parent is an extraordinary remedy and although I do think it's done too frequently in this State, I can't imagine it would happen. If that were the only allegation, I suppose it's possible, but I certainly don't know of one, no.

Through you, Madam Speaker.

DEPUTY SPEAKER CURREY:

Representative Green.

REP. GREEN: (1ST)

Thank you, Madam Speaker. Madam Speaker, I think as Representative Bernhard stated in his comments, what happens particularly with petitions of abuse and neglect is that there really could be some unintended consequences. And what happens is that we're either going to take the law serious and we're going to say neglect is neglect or it's not neglect because what happens is that we sort of say a 13 whose not going to school, that's not as serious. Well, that's serious to me because the child is definitely being neglected and really is going to be headed in a direction that's going to be some serious problems later on and we probably need some intervention.

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But a parent who disciplines their child physically and maybe hits their child once, could really get their children removed because it's been a physical abuse and, of course, we don't want that to happen and I'm not suggesting that parent use physical force against their children, but a child could be out of school for 50 days, a parent could hit that child one time and that parent who hit the child one time who believed in spankings, that child could be removed, yet the other child remains in a home and I would say is being neglected more seriously and abused more seriously than the other child.

There are a number of things that I think are right with this bill. I think that as we try to be realistic around sexual assault of a minor, we really should be realistic.

We're raising the stakes on a number of these crimes. We're increasing the penalty on a number of these crimes. I support that. But again, and I referred to this a number of times in this session, as a school social worker working with high schools, I want to be real with what their behavior is like and if we really want to say that a 14 and 17 year old should not be dating and having physical contact, then we should say that and we should arrest every 17 year old that is

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having consensual sex with a 14 year old.

But in reality, we don't want to do that and I think we have to, as we increase penalties, we do have to be realistic in what is consensual sex by teenagers.

And therefore, Madam Speaker, the Clerk has amendment LCO number 4705. I ask that it be read and I be - that it may be called and I be able to summarize.

DEPUTY SPEAKER CURREY:

Will the Clerk please call LCO 4705, designated House "F".

CLERK:

LCO number 4705, House "F" offered by Representative Green.

REP. GREEN: (1ST)

Thank you, Madam Speaker. I ask that I may be able to summarize and move for its adoption.

DEPUTY SPEAKER CURREY:

I don't believe the amendment has been distributed. If we could wait a moment.

Representative Green, please proceed, sir.

REP. GREEN: (1ST)

Thank you, Madam Speaker. I did ask for summary and moved towards adoption. Am I in order?

DEPUTY SPEAKER CURREY:

The question before us is on adoption. Please

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proceed, sir.

REP. GREEN: (1ST)

Thank you. A little different than the amendment we heard earlier, which I think wisely was recalled. But I think that this is a little different. I want people to understand this because I'm very supportive of this amendment, this bill here.

But I think we have to be realistic unless we really want to be serious and we take everything serious. But we really don't want to do that. And the reality is, is that we don't do that.

Teenagers - one of the things that I'm also very concerned about is the 13 year old involved in sex. This amendment here would say that a child who is 14 years old, engages in consensual sex with someone no more than four years older than them would not be in violation of sexual assault in the second.

The reality here is that 14 years olds is, one, is more readily in high school. You really have a peer coach, a 14 year old as a high school student with 16, 17, and 18 year olds in a high school setting. And I think changing the age from 13 to 14 is very important.

It's very important because you normally think of a 13 year old in middle school and a 14 year old in high school. So what I am trying to do is say, this is

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behavior of high school students. This is not about predators. This is not about people who violate other sections of this bill that calls for serious consequences that I support.

This is about teenagers and consensual sex and this is not what we want to see as felonies. This is not what we want to see a 17 year old that's involved in a dating relationship with a 14 year old to be charged with a felony and be, I think, branded for the rest of their lives. I think this is a realistic approach to the reality of what's happening with teenagers. I think it's common sense on consensual sex and I think the ages are much more appropriate. Otherwise if we really are serious about not having young people involved in sexual relationships with older people, then let's be real serious, but unfortunately that's not the reality.

This is for high school students in an environment, in a culture, in an age range that they social with each other. This is consensual sex. This is not to violate the other sections which I think are good. If we're going to be tougher, then let's also be realistic because when is a child that's 17 and they're dating a 14 year old and they're hauled into court for a felony conviction, that's when we're going to be concerned and we're going to understand the reality of what happens in

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high school.

Thank you, Madam Speaker.

DEPUTY SPEAKER CURREY:

Thank you, sir.

Would you care to comment further on the amendment?

Representative Cafero of the 142nd.

REP. CAFERO: (142ND)

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

DEPUTY SPEAKER CURREY:

Please proceed, sir.

REP. CAFERO: (142ND)

Thank you. Through you, Madam Speaker.

Representative Green, given the language of this amendment, an 18 year old that has so-called consensual sex with a 14 year old would fall under the provisions of this amendment. Is that correct?

Through you, Madam Speaker.

DEPUTY SPEAKER CURREY:

Representative Green.

REP. GREEN: (1ST)

That is correct.

DEPUTY SPEAKER CURREY:

Representative Cafero.

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REP. CAFERO: (142ND)

Thank you, Representative Green. I guess I do agree with Representative Green that this is slightly better than the amendment, with due respect, brought out by Representative Lawlor in that we were talking about a four year difference between 13 year olds and 17 year olds. But I would submit to some of you or anyone who happened to listen to some of the points that I brought forth in the previous amendment, the same thing applies, especially when we're talking about an 18 year old, 18 year olds who are considered adults under our law having so-called consensual sexual relationships with a 14 year old. Again, the concept of consent, in my mind, and hopefully in your mind, under current law, with regard to people that are no more than two years apart, I think pre-supposes that there is no manipulation, there is no undue influence, that truly these are two young people who believe they are in love and are having a sexual relationship with their consent.

I would submit to you that might not be the case. In fact, in many cases is not the case with regard to an age difference of four years with an 18 year old and a 14 year old. Although I think that you could put that 14 year old in a lie detector and ask that person a zillion times, was it your intention to have sexual

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relations with this other person whose four years your senior, they would say absolutely, I love him, we're tight, we're close, he cares for me, he loves me. Fourteen years old.

I would submit to you that is not the way we want to go. We have done so much with the underlying bill, which many of us may have forgotten by this point, so much in making the statement that we take very serious the concept of sexual assault, sexual behavior, if you will, with minors.

This piece goes in an opposite direction. And I think it is the wrong way to go, especially as an amendment to this bill. I would hope you reject this amendment.

Thank you, Madam Speaker.

DEPUTY SPEAKER CURREY:

Representative Sawyer of the 55th.

REP. SAWYER: (55TH)

Thank you, Madam Speaker. I have to stand up and very strongly oppose this amendment also. If you are looking at someone who is - I'm going to use the word "only" only 14 years old and I will admit there is a great variety of 14 year olds. There are those 14 year olds that are extremely worldly, but there are those 14 year old girls who are babies.

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Remember in this state, Madam Speaker, that at 14 they are not even legally allowed to watch R-rated movies. I didn't X, I said R. In the cases where you have a 17 year old or a 16 year old, a very worldly 16 year old male, a very unworldly 14 year old and a year later it continues, and a year later it continues, at what point is it against the law? It won't be because of this age spread.

Because it's three years, not four. After discussion with one of the judges, whom I spoke to tonight, I can't agree with this because he has to have some teeth when the deviant comes before him to have something done.

What do you do in the case of the peer pressure that forces it?

Madam Speaker, we have to go with what is the worse case scenario, not with what is the best case scenario.

Thank you, Madam Speaker.

DEPUTY SPEAKER CURREY:

Thank you, Ma'am.

Representative Nystrom of the 46th.

REP. NYSTROM: (46TH)

Thank you, Madam Speaker. I've listened to the debate with interest and I stayed out of the debate on the earlier amendment that's similar to this structure,

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but I can't stay out of this one.

I have two daughters and they're 12 and 10. And for the life of me, the kinds of discussions we're having tonight really bother me because I want my daughters to enjoy their childhood, not rush them to grow up. I don't want them to worry about the responsibilities of being an adult. And we're being asked tonight to make a policy statement. We're being asked to sanction behavior that I think, as a parent and this my judgment and it's my right, they're my kids, is wrong.

Now, I'm speaking for myself as their father. I'm not speaking for anyone else out there. If you have kids, that's your choice. But as a father, the last thing a father wants to worry about is this, this kind of behavior when their daughters are young.

There is a huge difference between a young man whose 17 years old or 18 years old and a little girl whose 14. Huge. And it isn't just chronological. That gap represents a world of difference in experience in life, maturity, or lack of, as well as restraint or control, the ability to say no.

This is wrong. These actions - and someone said, they're not predators. I think they are. I think that if there's a person in a senior high school and they're

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hitting on a freshman in high school, I think that person's a predator. They have no business going after someone that age.

I ask this body to reject this amendment.

DEPUTY SPEAKER CURREY:

Representative Fox of the 144th.

REP. FOX: (144TH)

Thank you, Madam Speaker. With all due respect to Representative Green, I respectfully disagree with the amendment and would oppose it. I think the underlying bill, through the work of Chairman Lawlor and others, is a very good one, which has come a long way after many discussions and debates within the Judiciary Committee.

But as has been indicated by one of the prior speakers, I believe this amendment goes in the wrong way. Whatever we may feel high school students are doing today and whether or not we accept it or not, I don't believe that's what this amendment is about. This amendment is about the scenarios where you could have a 15 year old being taken advantage of by a 19 year old or a 14 year old being taken advantage by an 18 year old. I think the discrepancy is just much too great. The potential for someone being abused, someone being hurt, someone being not mature enough to deal with the situation is much too great.

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I think this goes in the wrong direction and I would urge that we reject it.

DEPUTY SPEAKER CURREY:

Representative Boucher of the 143rd.

REP. BOUCHER: (143RD)

Thank you, Madam Speaker. I rise to oppose this amendment. And I also want to say that I respect Representative Green who, over the many years, we've had some very good discussions where we've agreed on many issues and we've also disagreed on many issues.

And from both sides of the aisle where we agree is that it is really too bad that we have such young people that engage in sexual intercourse at as young 10, 11, 12, 13, 14, many becoming parents at this early age. We agree that they are merely children themselves, most of them, and should not be blamed and some should maybe not even be punished, but we do disagree on some issues.

That we maybe should just make the laws weaker, easier, that they don't know any better. Well, I disagree because although we may agree, they don't have parents, many of them themselves to set standards, maybe it is up to us here in Hartford to do set some standards, to set some guidelines.

Maybe in another bill at another time we can say well, maybe the means of punishment should be different,

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maybe there should be a program where these young men could be guided into better directions and maybe be helped to understand what their great responsibility ought to be and how they should participate now as a parent or follow a path that might be better or healthier for them in the long run so both individuals don't become victims. But certainly, this is the area where we very much disagree and that someone has to be outraged that maybe what we're lacking in our communities, in our state, is a moral outrage that used to exist, if maybe not within the parents, but certainly in the community.

We need to set some guidelines so we say that this isn't acceptable behavior; that we want them to know better.

Again, I stand here and I urge rejection of this amendment and that maybe we should work towards other legislation where we can address this situation in a different way where possibly we could assist individuals that have gone this direction into a better way, a way that would improve their lives, as well as the lives of the individuals that they're engaged in, in such an early age because you know, it is too young. We can't just say they're all doing, it's okay. They're 13 years old, they're 15 years old.

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You know, sooner or later somebody has to set some guidelines.

Thank you, Madam Speaker.

DEPUTY SPEAKER CURREY:

Thank you.

Representative Mushinsky of the 85th.

REP. MUSHINSKY: (85TH)

Thank you, Madam Speaker. I am a very good friend of Representative Ken Green. I respect him greatly. And I usually vote with him on children's issues.

But on this one, I think we're miles apart. And I hope this amendment will not be successful.

We have to, as state policy-makers, we have to impress on an older youth or an 18 year old adult the very seriousness of having sex with a very young partner. A 14 year old is still impulse driven. They don't have the full frontal lobe capacity. They cannot make a long term decision the way an adult can. They cannot give rational consent.

A 14 year old clearly does not understand the implications and long term commitment of early child bearing.

The age - we know in the Children's Committee, the age of the parent is a very clear and telling risk factor in rearing a child with the risk of abuse and

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neglect. And the very young parents almost always end up in that at risk population and need special state attention.

So because we know this, our state policy must be consistent in discouraging young parenthood. This amendment goes the wrong way. I urge you to reject it.

DEPUTY SPEAKER CURREY:

Thank you, Madam.

Representative Cocco of the 127th.

REP. COCCO: (127TH)

Thank you, Madam Speaker. Madam Speaker, about two hours ago, we had an amendment that was very similar to this one before us. Chairman Lawlor brought it out. It was discussed by many people and Chairman Lawlor knows how important the underlying bill is.

And after hearing discussion on the amendment, he felt that it was wisest to pull it and go forward with the bill. And I would suggest to the Chamber that certainly was the right decision at that time.

And now again, Madam Speaker, we have an amendment before us that's certainly is very close to the one that was pulled two hours ago.

Does it do the right thing? Absolutely not. How can we, in this Chamber, sit here and believe that a 14 year old child could be in a situation with an 18 year

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old adult, someone who can go into the service, someone who can make many decisions that a 14 year old certainly is not up to making, and a 14 year old who has no idea what the affect of that early behavior will have on the rest of her life and it's unfortunate that in most instances it is the female who is the young person who is involved with the older male.

The consequences of that behavior, totally unknown to a 14 year old or a 15 year old girl, totally unknown. They may believe having a baby is a wonderful thing, I have someone to love me, I have someone to love. They have no idea of the commitment that they are making.

When I did public health nursing in Bridgeport, I was on my third generation after 25 years of children having babies. The third generation. It was activity that was accepted in some communities, activity that just went on and on. Let's not say here because it has happened, that it's the right thing to happen. And what happened to those young women? Those children? Those girls, 13 and 14 and 15 who were having babies? Their lives continued just as their mothers' lives had. Living, many times, in a project. Never having an opportunity for a good job. Employment, if there ever was employment, was at very low paying jobs with no opportunity for them to escape the net that had trapped

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them when they were 13, 14, or 15.

Ladies and gentlemen, I urge you to please put this amendment down. Don't let us condone the kind of behavior that leads to very, very difficult lives for many of our young people.

Thank you, Madam Speaker.

DEPUTY SPEAKER CURREY:

Thank you, Madam.

Representative Googins of the 31st.

REP. GOOGINS: (31ST)

Thank you, Madam Speaker. For all of the testimony that I have been hearing in the past hour plus, those of you who sit on the end of the aisle, no matter which aisle you happen to sit on, we have two baskets. One is a recycling basket. And the other is a trash basket. I mean no personal disrespect to a colleague in this Chamber, but this amendment, for all of the reasons that have been stated by so many of you here, belongs in the trash basket.

Thank you, Madam Speaker.

DEPUTY SPEAKER CURREY:

Representative Noujaim of the 74th.

REP. NOUJAIM: (74TH)

Thank you, Madam Speaker. Everyone who has spoken about the amendment, has spoken about Representative

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Green and the great work that he has done.

I have not - unfortunately for me, I have not worked with Representative Green yet, but I hope I will in the future and I will be able to reinforce the thoughts that they have said about him.

Let me, for a second, just talk about the amendment itself. And I've been listening to everyone talking about 14 year old girls and 14 year old boys or 18 year old boys.

And my dilemma is the fact that we are zeroing in on those kids and I say to myself, well, why don't we try to find some role models for these kids and the role models should be the parents for these kids.

I am not saying that they have to be from a two income man and a wife parents. They can be also a single parent or they come from a divorced family or a separated family, but nevertheless, someone has to be a role model for these kids to look after, to look towards, to emulate, to love and to demand respect.

My problem is that we should try to always encourage parents, whoever they are, to look after those kids, look after those kids, teach them some moralities too so that they don't do what they do at the age of 14 years old or younger.

So to me, I look at the larger picture too when

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they say we must always try to preach to parents that it is not okay to let loose for the kids. It's not okay to let them to do whatever they want to do. It's not okay to say that they are 11 years old and they know what they're doing because they are not.

I can't help but recall that when the St. Peter and Paul school children came this morning, my niece, Pamela whose 11 years old was with them. I mean, I look and I hear some of the things that are being said in here and I say my niece, Pamela could be one of those kids. But I want to make sure that my brother, Amin and my sister-in-law, Charlotte look after their kids, Pamela and Melissa and make sure that thank God these types of things don't happen to them.

So we need to make sure that the role models are being taken care of, are being done for the kids so the kids don't fall into these categories and fall prey and victims to some more adult boys who don't care about their futures.

Thank you, Madam Chairman.

DEPUTY SPEAKER CURREY:

Thank you, sir.

Representative Diamantis of the 79th.

REP. DIAMANTIS: (79TH)

Thank you, Madam Speaker. I was not to engage in

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this debate this evening. We've had these discussions in the past, but I think there is another perspective to this and I'm hoping that we are not deviating from what the intent of this bill would be, which is to understand that there are scenarios in this amendment which are scenarios in which people are not predators. As a matter of fact, what gives credibility to the argument is one of the reasons that our sexual predators that we have listed on the Internet are no longer on the Internet, pending a court order is because some of the folks on there are not necessarily sexual predators of violent behavior.

The issue is whether or not there was a consensual act between two individuals. Not long ago, there was a 17 year old and a 14 year old. The 17 year old turns 18. The 14 year old hadn't turned 15 yet, even though it's a three year difference does not make a difference.

The parent of the 15 year old invited the senior in high school to dinner for Thanksgiving, Christmas, to some other social events, knew the young man, they dated. Something happened one day. Nothing between the 18 year old and the child, the 14 year old, soon to be 15 year old. But a disagreement between the parents on a particular subject, not involving -- they happened to be friends.

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Then one day, the parent of the daughter decided to go to the police and file a complaint. And the complaint, of course, was the child is a minor, and there were sexual relations between the young man and the young woman.

And needless to say, the law is very clear, a 14 year old does not have the capacity, and mind you, the 14 year old does not have the capacity to make a conscience decision with respect to consenting to sex. Number one. So consent is not a defense. Under those particular circumstances, the best you can do is either risk of injury to a minor, if you can get it reduced, which, by the way, under that fact pattern, is a ten year felony and a registry or sexual assault 2 statute with a nine month minimum mandatory with a felony conviction and a registry.

Now, am I to understand from this debate that what happened between these two folks was violent behavior in which this particular young man took advantage of this 14 year old, soon to be 15 year old? Am I to understand that what we would like to see is that 17 year old, now turned 18 year old have a felony conviction for the rest of his life and be registered on one of our computers as a violent offender? And for the next ten years, have that label? Am I to understand that individual's intent

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at that particular time was to take advantage of the 14 year old? Are the fact patterns in this particular circumstance suggesting that the parent was not around at the time, didn't know what was going on? It was going on behind their back? I don't think so. Is there a crime committed? Maybe. Maybe not between the kids, maybe for the parents to allow it to continue. Maybe the parents should consider going to jail, maybe - I heard an argument earlier about neglect. Maybe that is a neglect petition against the parents.

But when we talk about trashing a piece of legislation, we're talking about scenarios that are not carte blanche in the real world, whether we like it or not. And what we're supposed to do is pass legislation and laws to govern our state on what is appropriate behavior, not necessarily morally, but legally. We may not like what happens out there. I maybe a moral issue for us and like others who have suggested they have two daughters, I happen to have a 12 and a 10 and a 16 year old. All three daughters. And often times I hear how girls mature more than boys and they throw it in your face. And they say, how much more mature girls are than boys are.

That they advance quicker because they take on more responsibilities as a result of how they grow up and

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girls mature quicker. Boys are so immature. Not all boys and not all girls, as another individual in our Legislature has suggested. And I agree, but not all boys. The question becomes, should legislation be carte blanche, regardless of the circumstances, regardless of the intent, it just doesn't matter. Do we want every child or every high schooler who engages in behavior that we find morally repulsive for our children to be legally criminal behavior and in all circumstances, that individual should go to jail for nine months and from the time that they're 17 until the time that they're 27, they will have the label of being a sexual predator.

I don't think so. I don't think so. And there are those circumstances in which young people of that age, three years apart, and maybe we debate whether three years is better than four. Maybe we first recognize how much more mature are girls at the age of 14 than boys. How good of a job did a parent do raising their daughters? Because, while the law goes both ways, we're not talking about protecting boys here. We're talking about protecting our girls, my girls against those rotten boys.

Because I'm sure people wouldn't be jumping up and down if it was the other way around, that 14 year old boy and the 18 year old girl. I haven't heard that

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discussion in this entire debate. We assume that every time it's the girl and the boy and it's the poor girl. Don't think so, folks. I'll tell you a story that's a real one.

So while I don't think, with all the work that's gone on in the underlying bill that people want to continue to engage in this debate, there is no way that I couldn't stand here and suggest that Representative Green or Representative Lawlor aren't on the right track because in the real world, they are on the right track and if you wish to close your eyes to it and think that in every single circumstance you're talking about a pedophile and you're talking about something happening behind a parent's back, and you're talking about a sexual predator, and you're talking about consent not being really consent and the 14 year old and the 15 year old just didn't know what they were doing, you're burying your head in the sand, big time because that ain't the real world.

And I understand why this amendment does not stand a chance today. The underlying bill is important and there is further debate on what really may work and how we put it together, but he's not off base and it certainly doesn't need to be trashed. Maybe moved to another day so we can get into this discussion further

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along, but they're both on the right track.

What's the wrong track is for us to continue to legislate morality here rather than discuss criminal behavior and the two are different. And they need to be separated.

Thank you, Madam Speaker.

DEPUTY SPEAKER CURREY:

Thank you, sir.

Representative Green.

REP. GREEN: (1ST)

Thank you, Madam Speaker. Madam Speaker, I sat here tonight listening to a lot of, I think, strong emotions. Obviously, people who talked about their daughters more than their sons. I have two sons and a daughter myself who I think I am very, very protective of, very much care about..

This legislation was not to encourage sex. I spent over -- I'm a school social worker. I had a job where I dealt with the Hartford Action Plan on Infant Health to Reduce Teenage Pregnancy and the reality of it is that most of our teenagers in the City of Hartford for a number of years was getting impregnated by men who were five to six years older than them. So I had 14, 15, and 16 year olds getting impregnated. And I would be the first one to say file a criminal charge, send them to

jail, and let's be very serious about it.

But the reality is that I couldn't have the young ladies or the parents or the police officials to arrest these guys. If there was no complaint, they didn't do it and I was outraged because I thought that was predatory.

It just confuses me a little bit that a number of my colleagues talked about 14 year olds and 14 year olds and how could 14 year olds get involved with sexual relationships. But our current legislation, for years, our current legislation, our current law says a person 13 years or older, it's okay to have sex if you're 13 years old. That's what the current law says. That's current law. I don't like that. I wanted to raise that to 14 years old. I said that 13 years old cannot decide this. And people say ooh, ooh, this should be trash. Well, let's trash the current language.

The current language says 13 years old can engage in consensual sex. That's what it says. That's what you're continuing to agree upon. What you're saying is that a 13 year old having sex with a 15 year old is worse than a 14 year old having sex with a 17 year old.

It's 13 years old: I think anyone, whether they're 14, 15, or 16 should not be engaged in sex with a person 13 years old.

That is why I tried to raise the age. The current

law says 13 years old. And here we are talking about how could you? Well, what you're about to do with this legislation is to continue to condone a 13 year old having sex. That's what you have to look at. You can tell me about this legislation and this amendment and how unreal it is. I am, in no way, condoning or encouraging 14, 15, 16, 17 or 18 year olds to have sex. I'm not encouraging that.

I encourage responsible behavior by young people. I encourage making decisions based on having information. We could have a long debate up here about whether or not we should teach sex education to sixth graders. And parents would come in and say no, I don't want sixth graders being taught it. It's my job to teach my 10 and my 11 year old about sex education.

Why are we teaching them about sex education at 8, 9, and 10 years old? Because we want to give them information. We want to be real. We want to be respectful and be based in reality that young people need this information. And young people tell us all the time, don't be hypocrites. But instead of letting or encouraging appropriate behavior and I'm not encouraging, I'm just saying that don't enhance the penalty phase of it. Understand that these are teenagers and a behavior that we're not condoning and I'm not

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encouraging, but it's real and maybe we should address it in a different way.

I have three children. I have a daughter. So I have children and I deal with children every day. And I want to be real with children about making sure that I don't want a 17 year old, as the Representative who just spoke, Representative Diamantis - I get him and Giannaros mixed up. Diamantis. That's okay, all in the same family.

But as a young person, I do not want to take a 17 year old who may have made what I think is an inappropriate decision, getting involved in a sexual relation too early, getting involved in sexual relationships without having information, getting involved in unprotected sex, maybe, which I would not encourage. But I don't want to ruin that person's life forever. I don't want to do that.

I don't want to tell a 17 year old whose a junior in high school who happens to date a 14 year old, whose parents happen to support and agree with that relationship and a relationship that I would not encourage a sexual relationship to happen, but if it did, I would not want to have that 17 year old go to jail, be on the list, possibly not be able to go to college because they might not be able to get financial

aid from the government, possibly can't get a number of jobs because now they have to disclose. I just want to be real about it and make sure that I'm protecting those kinds of relationships than the predators.

That's fine and I support and really agree with most people said who do not support this amendment. But as I tried to raise this age, as I tried to make sure that we give our young children some hope and some reality, I'm constantly reminded about how real are we going to be about the behavior of our young people. And I sat on the Judiciary Committee and we talked about the drinking, the underage drinking. And I believe we need to address underage drinking very seriously and I believe it's more of an adult problem than a child's problem because we know it's happening.

But there are a number of communities that are sticking their head in the sand about that. You just don't want to face it, but it's happening. And unfortunately, a lot of times what's happening is that underage drinking is leading to some poor decisions about relationships and sexuality. But let's not deal with that and let's not deal with the reality here and let's continue to say it's okay for 13 year olds to have sex.

Madam Speaker, I'm going to withdraw this amendment

after all of this, but I felt it needed to really be said that as we increase the penalties of sexual assault by a minor, we want to be realistic because we don't want to be coming back here when it possibly may be one of our children or somebody we know saying my child is in jail. You'll get the call. You'll get the call about one of your constituents, 17 years old, girl or boy, who made a poor decision and there was no criminal intent and then you'll try to understand why.

Thank you, Madam Speaker.

DEPUTY SPEAKER CURREY:

The amendment is withdrawn without objection.

Representative Ward of the 86th.

REP. WARD: (86TH)

Just on the bill, Madam Speaker. And on the bill, but I just wanted to set the record straight because as I read it, the statement that age 13 is the age of consent, I think is an inaccurate reading of the bill before us.

Sixteen is the age of consent. We simply don't prosecute someone if they are within two years of age of the other actor. So we say that the age of consent is 16. You don't prosecute if you are within two ages provided one of the people was at least 13. So I don't want people to go away thinking we passed a law saying

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the age that this bill before us says the age of consent is 13.

There used to be no exception. And it was 16. Then an exception was built in that said that if you are within two years, but then there was a bottom age and the bottom age is 13.

But let's make it absolutely clear. Under this law, if someone is 14 years of age, and the other person engaging in sexual intercourse with them is 17, that's illegal under this law as it is today. Fourteen is not the age of consent. Fifteen is not the age of consent. Until a person reaches their 16th birthday, under the law before us, you have not reached the age of consent. The two year rule is in place under the bill before us simply for the reason that we don't determine then you're making the determination that neither person was really able to consent. And that's why there's a two year exception.

But it should be very clear that this law, which tightens penalties, in which I very much support, which tightens penalties for sexual assault on a minor, does, in no way, lower the age of consent. It remains at 16.

DEPUTY SPEAKER CURREY:

Thank you, sir.

Representative Rowe of the 123rd.

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REP. ROWE: (123RD)

Thank you, Madam Speaker. I apologize, but in light of questions answered earlier, the Clerk has an amendment, LCO 4715. I ask that he call it and I be allowed to summarize.

DEPUTY SPEAKER CURREY:

Will the Clerk please call LCO 4715, designated House "G".

CLERK:

LCO number 4715, House "G" offered by Representative Rowe.

DEPUTY SPEAKER CURREY:

Representative Rowe.

REP. ROWE: (123RD)

Thank you, Madam Speaker. Earlier on in the debate we had questions concerning Section 19 and we talked about the priests penitent and the clergy confessor privilege and we learned that it was the proponent of the bill opinion's that seal would no longer apply under certain circumstances and this amendment would seek to retain that privilege and I move adoption.

DEPUTY SPEAKER CURREY:

The question before us is on adoption. Would you care to remark further?

REP. ROWE: (123RD)

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Very briefly. Thank you. The amendment is very simple. It reads, "Nothing in this section shall be construed to require a member of the clergy to disclose privileged communications made to such member of the clergy during a religious ritual." And when a clergyman becomes aware of imminent risk to a minor, he or she ought to report it and take steps to make sure it doesn't happen.

However, when he becomes aware of that during privileged communications, whether it's a Catholic confession or any other Protestant confession or any other confidential communications with the clergy that has to do with the ministry of the clergy, where the penitent is looking for either absolution or guidance or forgiveness. For generations and centuries our statutes have recognized that those communications ought to be privileged and what I am seeking to do is to make sure that remains.

Again, we need to do everything we can to make sure on one hand that when there's a risk of ongoing abuse, we stop it and we do whatever we can, but there necessarily must be limits and those limits need to be observed in the manner in which this amendment sets forth.

And I would also ask, Madam Speaker, that when this

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vote be taken, it be done by roll.

DEPUTY SPEAKER CURREY:

All those in favor of a roll call vote, please signify by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER CURREY:

The minimum of 20% has been met. It will be taken by roll.

Representative Lawlor of the 99th.

REP. LAWLOR: (99TH)

Thank you, Madam Speaker. Madam Speaker, first of all, I just had a couple of questions. Through you to the proponent of the amendment.

If you could define what is a religious ritual.

DEPUTY SPEAKER CURREY:

Representative Rowe.

REP. ROWE: (123RD)

Thank you, Madam Speaker. Through you. A religious ritual would be, my understanding, the common understanding of that, be it a confessional, be it a sacramental ritual contained with any or found in any religion. I would say it speaks for itself in a sense.

DEPUTY SPEAKER CURREY:

Representative Lawlor.

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REP. LAWLOR: (99TH)

Thank you, Madam Speaker. I'm not sure it speaks for itself. I'm not exactly sure what a religious ritual is, according to the state law. I'm not sure we define that. We may, I'm not exactly sure. But I am sure that it would probably be different, depending on the faith involved.

But if I understand this amendment correctly, under the bill we've defined what is, in effect, a privileged communication. And I would just like to frame a question so I understand this clearly.

The bill modifies the existing privilege that members of the clergy have when they're communicating with the faithful in their congregation or parish or what have you.

And I believe that the bill, as it's been amended tonight, says that privileged communications will consist of those communications made during the course of counselling session. And there is an exception in the bill, as we've adopted it and in this amendment it doesn't appear to change that or maybe it does and I guess that's my question.

The exception in the amendment is that if the clergyperson believes in good faith that there actually is a risk of imminent personal injury to other

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individuals or if child abuse, abuse of an elderly individual or abuse of an individual who is disabled or incompetent is known or is in good faith suspected, that is not - that no longer is a privileged communication.

And so, with that in mind, Madam Speaker, does this amendment mean that this type of information cannot be disclosed by the clergyperson? Or does it mean it can be disclosed by the clergyperson?

Through you, Madam Speaker.

DEPUTY SPEAKER CURREY:

Representative Rowe.

REP. ROWE: (123RD)

Thank you, Madam Speaker. This amendment, as drawn, would allow that to be disclosed, but it would not require it to be disclosed.

DEPUTY SPEAKER CURREY:

Representative Lawlor.

REP. LAWLOR: (99TH)

So that if this amendment were to pass, a clergyperson could hear a report of imminent personal injury to somebody else and it would be the option of the clergyperson whether to disclose it or not? Is that what the effect of this amendment would be?

DEPUTY SPEAKER CURREY:

Representative Rowe.

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REP. ROWE: (123RD)

Through you. Yes, except I think the language that this does not effect - no, I'm sorry, the gentleman is correct.

DEPUTY SPEAKER CURREY:

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you, Madam Speaker. And that is with regard to the confidential nature of the communications and typically this privilege is raised during the course of depositions in civil or criminal trials, for example.

But I'd like to ask a question as it relates to the mandated reporter statute. The current law and the law, as it would stand if this bill is passed tonight, would be that members of the clergy are, in fact, mandated reporters. And that they're obligated to report when they have reason to believe that a child is being subject to abuse, sexual or physical abuse or neglect.

And so my question is, Madam Speaker, if this amendment is adopted, would this mean that a member of the clergy who becomes aware of information during a religious ritual would not be subject to the mandated reporter law? In other words, would this mean that a member of the clergy could not be held accountable under the mandated reporter law if he or she did not disclose

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the information that they received that would constitute the kind of conduct that's covered by our mandated reporter statute? Would this take them off the hook, Madam Speaker?

DEPUTY SPEAKER CURREY:

Representative Rowe.

REP. ROWE: (123RD)

Through you. The intent of the amendment - well, I should preface it. What has been stricken in the underlying bill is the traditional priest penitent privilege, I believe. What I am seeking to do is restore the current priest penitent privilege.

Through you.

DEPUTY SPEAKER CURREY:

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you, Madam Speaker. Well, I'm not sure we have a priest penitent privilege. We do have a confidential protection in the current law for members of the clergy and it's been variously interpreted.

But my question is, what is the intent of this amendment? Is the intent of this amendment to make sure that members of the clergy do not have to report child sexual abuse according to the mandated reporter statute if they find out about it during the course of a

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religious ritual? Is that the intent of this amendment to not have a member of the clergy penalized if he or she fails to report pursuant to the mandated reporter statute? Is that the intent of this amendment?

DEPUTY SPEAKER CURREY:

Representative Rowe.

REP. ROWE: (123RD)

Through you. I would say yes, essentially that is the intent of this amendment to the narrowly drawn instances when those privileged communications were made during a religious ritual, not -it's not the intention of this to include counselling sessions, for example or other instances, but I want this to be understood as being narrowly drawn to communications, confidential communications made during a religious ritual.

Through you.

DEPUTY SPEAKER CURREY:

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you, Madam Speaker. Well, that in mind, I rise to object to this amendment and oppose it. And I think some rather strong opinions were expressed a few moments ago about the preceding amendment and I'd just like to add that in light of all that we've learned in recent months about the kinds of decisions made by

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people who we, in theory, should have respected or should have known better. I think that if we were to adopt this amendment tonight, in light of all of that, I think this Chamber would be a laughing stock in this country. I just think that this is exactly the opposite of what people expect us to do under the circumstances.

The law - the existing law and the proposal here is narrowly tailored. We will continue to honor the confidentiality of communications between the clergy and the faithful. But when someone is in imminent danger and especially a child is in imminent is, in fact, in imminent danger, members of the clergy and all the other mandated reporters and I would argue every single one of us has a duty to act to protect those children. And that is the exception in the underlying file copy. This amendment would eliminate that obligation and, in effect, this would allow abuse of children to continue when people who have a responsibility to know better and are in a position to stop it. The psychiatrists who have very extraordinary protections in our law do not have a privilege to not report that. Lawyers have an obligation to report and protect people. Every other mandated reporter who has otherwise confidential communications with their patients or clients or what have you, have this exception. You've got to report it when someone is

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in imminent danger. A duty to protect. And this amendment will undermine that and I can't imagine a single public policy reason to support this amendment and I would strongly urge that when the roll call takes place, that members of the Chamber vote no on this amendment.

DEPUTY SPEAKER CURREY:

Thank you, sir.

Representative Dickman of the 132nd.

REP. DICKMAN: (132ND)

Thank you, Madam Speaker. Through you, Madam Speaker, a question to the Chairman of the Judiciary Committee.

DEPUTY SPEAKER CURREY:

Please proceed, sir.

REP. DICKMAN: (132ND)

Thank you. Through you, Madam Chairman. Representative Lawlor, I read through the list of those who are required reporters and I did not see your brothers at the Bar there.

In fact, do lawyers have to report instances where a client comes in and tells you in confidence that I'm a sexual molester and I feel I have a danger of going out to do somebody else. Are you required to report your clients having said that?

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DEPUTY SPEAKER CURREY:

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you, Madam Speaker. Attorneys have an ethical obligation to warn and to protect. Yes, they do.

DEPUTY SPEAKER CURREY:

Representative Dickman.

REP. DICKMAN: (132ND)

So he's saying that you have the same obligation that everybody else does to make the report? Am I correct?

Through you, Madam Speaker.

DEPUTY SPEAKER CURREY:

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you, Madam Speaker. Attorneys have a duty to warn just like everybody else and an attorney's license will be subject to revocation if they, let alone civil liability if they chose not to. They're not mandated reporters, but they do have a duty to report and to warn under the ethical obligations that attorneys have.

DEPUTY SPEAKER CURREY:

Representative Dickman.

REP. DICKMAN: (132ND)

Through you, Madam Speaker. I can't understand why

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you don't have a legal responsibility to report, as well as an ethical responsibility. To me, it seems like the ethics of the profession require you not to report, but you still don't have a legal obligation to report.

Through you, Madam Speaker.

REP. LAWLOR: (99TH)

Thank you, Madam Speaker. Attorneys are not mandated reporters. But they have an ethical obligation to warn, to take action when someone is in imminent danger, identical to the obligation that the members of the clergy and physicians have as is set forth in this law.

They're not mandated reporters, but they have a duty to warn when someone is in imminent danger.

REP. DICKMAN: (132ND)

The last question, if I may, Madam Speaker. Why are they not mandated reporters?

DEPUTY SPEAKER CURREY:

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you, Madam Speaker. Well, there - I can't answer the question why they're not mandated reporters, but under the code of legal ethics, you know, the code of ethics, you are subject to revocation of your law license if you fail to warn of imminent danger, which is

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basically the penalty if you're - the only penalty for a mandated reporter is a \$500 fine and a revocation of license.

The same penalty applies for attorneys. I'd be happy to vote for adding attorneys to the list of mandated reporters. I have no problem with that. The amendment, however, that we're debating is whether or not members of the clergy should get a free pass when they fail to warn of imminent sexual abuse of children. I can't imagine any public policy reason in favor of that, Madam Speaker.

REP. DICKMAN: (132ND)

Thank you, Madam Speaker.

DEPUTY SPEAKER CURREY:

Thank you, sir.

Would you care to comment further on the amendment before us?

Representative Nystrom of the 46th.

REP. NYSTROM: (46TH)

Thank you, Madam Speaker. A question for clarity for myself. Through you, Madam Speaker.

DEPUTY SPEAKER CURREY:

To Representative Rowe, sir?

REP. NYSTROM: (46TH)

Representative Lawlor, please.

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DEPUTY SPEAKER CURREY:

On the amendment?

REP. NYSTROM: (46TH)

On the amendment, please.

DEPUTY SPEAKER CURREY:

Please proceed, sir.

REP. NYSTROM: (46TH)

Again, this is to Representative Lawlor, not the author of the amendment, but through you, Madam Speaker.

Representative Lawlor, I heard the exchange and I was listening. If I walk into the confessional and I offer a confession to my priest, regardless of the content, is that information then subject under this proposal?

Through you, Madam Speaker.

DEPUTY SPEAKER CURREY:

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you, Madam Speaker. No, it's not unless you reveal information, which, as it says in the bill here, if what you say allows the clergy person to whom you're saying to it, to believe in good faith that there's a risk of imminent personal injury to the person or other individuals or of child abuse, abuse of an elderly

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individual or abuse of an individual whose disabled or is incompetent, is known or is in good faith suspected.

So, if the person to whom you're saying the information believes that based on what you've just said, someone is at risk if imminent injury, then they are mandated - and that's not confidential and then if it involves a child, then it is subject to being -- it's a mandated reporter.

So, these are two different parts of the law. One is the mandated reporter statute. The other is a confidentiality statute. Okay. What Representative Rowe's amendment says is that notwithstanding -- based on his explanation here on the floor tonight, that notwithstanding what the mandated reporter law says involving abuse of children, is someone came into, in your example, a confessional, but this would apply to any religious faith, and said I am going to, tonight, go out and sexually abuse another child, Representative Rowe's explanation was if I think I recall it correctly, that the clergyperson involved would not have a legal obligation to warn or to notify the Department of Children and Families or to warn the appropriate authorities.

That's what the stated intent of this amendment is to actually override the mandated reporter statute

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regardless of the type of injury which is, in fact, imminent, which is the only type of confidential communication which is exempt under the confidentiality law here or under the - or which is a mandated report under the mandated reporter law. So that's the specific intent of this amendment to say that if you were told that something was about to happen, you knew the name of the child, you knew the time it was going to take place, even that would not be subject to the mandated reporter law. That's the stated intent here and that's why I opposed the amendment.

DEPUTY SPEAKER CURREY:

Representative Nystrom.

REP. NYSTROM: (46TH)

Thank you. Just a comment. I agree with Representative Lawlor that in a situation like that I believe that there is clearly a moral obligation for a priest to intervene and stop if there is imminent danger or risk to a child or anyone. And I understand. I'm placing myself, I guess, in jeopardy, in saying that with my own faith and with my own - the laws of my church in saying that, but I would expect that my priest would, in fact, do something to stop that.

My only concern is I don't know that this is, in fact, enforceable because how would you know unless

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you're listening in the vestibule, unless you have some means of knowing what has been shared, I just don't think there's any way to know. And I don't know of any way that would be enforced. I would think that the moral obligation is clearly there. And I think that the safety of a child, in particular, must take precedent over any issue.

Thank you.

DEPUTY SPEAKER CURREY:

Representative DelGobbo of the 70th.

REP. DELGOBBO: (70TH)

Thank you, Madam Speaker. If I may, through you, a question to the proponent of the amendment.

Madam Speaker, if I understood the answers of Representative Lawlor when the question was posed, what was the standard for the attorney/client privilege, it was described as sort of a standard there is an ethical basis of a duty to warn, a duty to act, something along those lines.

And I didn't quite understand what the distinction was between that and the legal standard that underlies this debate of a mandated reporter.

And through you, Madam Speaker, to the proponent of the amendment, I'll suggest, perhaps, a hypothetical. What would you suggest, to the proponent of the

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amendment, what would you suggest the circumstance a priest might find himself in if even given the seal of the confessional, that priest were to find himself in the circumstance where they understood a directly named imminent threat to a child, to some individual? Understanding the confidentiality of the confessional, but what would you suggest might be the circumstance that priest might find themselves in how they might proceed to warn in other ways react to that circumstance?

Through you, Madam Speaker.

DEPUTY SPEAKER CURREY:

Representative Rowe.

REP. ROWE: (123RD)

Thank you, Madam Speaker. I am certainly not holding up to be a priest, so to take this with a grain of salt. It's my understanding that if a priest, I'm speaking of a Roman Catholic priest, that's the only thing I know of, breaks the seal of a confessional, he's automatically excommunicated and no longer ceases to be a priest. So that is not an option to him.

I am certain priests will do everything in their power and I think even with this amendment, the underlying bill requires that they do everything in their power to help avoid future harms and future bad

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acts.

So I think the amendment is narrowly drawn and I think that a priest would still be under an obligation to do everything he could save for reporting it or breaking the seal of confession to make sure that it doesn't happen again.

Through you, Madam Speaker.

DEPUTY SPEAKER CURREY:

Representative DelGobbo.

REP. DELGOBBO: (70TH)

Thank you, Madam Speaker. First of all, I appreciate that the amendment is narrowly drawn and I am trying -- this is conflicting myself in a sense in trying to understand -- we're here tonight and this is where our intention as a society to protect people and our intention to society to certainly respect the real underlying provisions of religious faith and I think that's very dangerous that our laws would perhaps unintentionally bump up against that.

And I guess what I was trying to draw from the proponent, it would have been my natural belief and I was raised a Roman Catholic myself, my natural feeling would have been a standard where although there clearly is that substantive seal of the confessional, that the practical circumstances of an imminent danger to

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someone's life, body, being, would in some way be reacted to.

And I guess that's what I was trying to elicit as a measure of comfort because, frankly, the answers that the Chair of the Judiciary Committee when asked well what standard is there for the attorney/client privilege and it was frankly merely an ethical standard, not to say that doesn't represent something, but that certainly is not the legal standard of a mandated reporter that we're talking about here.

So I guess I remain conflicted and would like to find some real breadth to the circumstances in which priests would confront and how they might react to it because I think this is a very dangerous circumstance in which we're going for.

I do not want to see us go forward in which we are, by statute, breaking a fundamental article of faith that I think we should all have a great deal of respect for.

And I don't think the circumstance that's being tried to be constructed by Representative Rowe's amendment is in any way an attempt to provide any less of a measure of protection for anyone.

Thank you, Madam Speaker.

DEPUTY SPEAKER CURREY:

Thank you, sir.

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Representative Rowe.

REP. ROWE: (123RD)

Thank you, Madam Speaker. I regret the amendment was not sufficiently narrowly drawn. I think the underlying bill does a lot of good. It has a very big difficult for me and that may even cause me to vote against the bill in the end, but owing to a number of factors, I'll withdraw the amendment.

DEPUTY SPEAKER CURREY:

Without objection, so ordered.

Would you care to comment further on the bill, as amended?

Representative Farr of the 19th.

REP. FARR: (19TH).

Yes. Thank you, Madam Speaker. Through you, a couple of questions to Representative Lawlor. And I recognize my name is on the amendment, but Representative Lawlor, you explained lines 454 through 459 as waiving the consent requirement if there was an imminent risk of personal injury.

As I understood your explanation, the intent was if there is an imminent risk of personal injury to an individual, that they can waive the requirement for consent. But as I read the actual draft it says, "or if child abuse, abuse of the elderly or abuse of an

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individual who is disabled is known."

Was the intent of this that if in a confessional a priest was told that ten years ago somebody committed child abuse, there was no longer a confidential relationship? Or was this intended to require there be some imminent risk? In other words, an ongoing type of relationship?

Through you, Madam Speaker to Representative Lawlor.

DEPUTY SPEAKER CURREY:

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you, Madam Speaker. Although I'm a Roman Catholic, I'd like to point out that although all of the references tonight have been made to priests and Roman Catholics, I'd like to point out there are quite a few religions in our state, several of which are larger than the Roman Catholic Church and this clergy confidentiality rule would apply to all of them and I think people should not be misled to believe that we are only talking about the Roman Catholic Church in Connecticut.

Second of all, the language here is not directly - is not related to the mandated reporter statute. The mandated reporter statute is the mandated reporter

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statute. This is the confidentiality statute. The confidentiality statute, which we're referring to here, describes the circumstances under which consent of the person is not required for the disclosure of information.

So what this means is, that if a member of the clergy becomes aware of any of the things listed, including risk of imminent personal injury, but also including other things, that can be disclosed without the consent of the person involved.

The mandated reporter statute is quite different. The mandated reporter statute requires disclosure under certain very limited circumstances. And I will just refer to those in the bill. If a - and this is the mandated reporter statute.

If a mandated reporter, in the ordinary course of that person's employment or profession, has reasonable cause to suspect or believe that any child under the age of 18 has been abused or neglected, has had a non-accidental physical injury or injury which is at variance with the history given of such injury inflicted upon such child or is placed at imminent risk of serious harm, the mandated reporter shall report or cause such report to be made.

So, it's only those things which are subject to the

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mandated reporter statute. This is independent and separate from the confidentiality law. It overrides the confidentiality law for everybody on the list, including doctors and others.

So, it's different and it is what it is, the mandated reporter statute.

Through you, Madam Speaker.

REP. FARR: (19TH)

The second question is, and I'm not sure whether you have an answer to this or not, because I realize it's the present law. But when we talk about a priest, the individual clergymen who are effected by this section of the statute, the present language or the new language says that the person is accredited by a religious body to which such practitioner belongs who is settled in the work of the ministry. And I understand that that's existing law. And I understand it's quite ancient in its usage, but frankly I don't know what that means and I've had people ask me. In the Catholic Church they have Eucharistic ministers. Are they covered? I'm not exactly sure what that means and I wonder if you have any idea of what that language means.

Through you, Madam Speaker to Representative Lawlor.

DEPUTY SPEAKER CURREY:

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Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you, Madam Speaker. I'm not exactly sure what it means. However, I am aware that, for example, under the State's tax laws, we do provide the tax exempt status to members of the clergy and I believe there is a distinction there between, for example, part-time practitioners and actual clergypersons.

And as I think we all know that there are certain tax exempt benefits that flow from religious property and religious endeavor and I think it's the religious endeavor by members of the clergy that, in fact, is tax exempt. So, that's as good an answer I can come up with, Madam Speaker. But I do think we do have distinctions separating members of the clergy from other practitioners in a religious faith.

Through you, Madam Speaker.

DEPUTY SPEAKER CURREY:

Representative Farr.

REP. FARR: (19TH)

Thank you very much. Thank you, Representative Lawlor.

DEPUTY SPEAKER CURREY:

Representative San Angelo of the -- thank you.

Representative Bernhard. Thank you.

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Representative Hamm of the 34th.

REP. HAMM: (34TH)

Thank you, Madam Speaker. Just a few questions. I've waited patiently trying to ask these earlier in the debate and the amendments have interceded.

I just need to try and clarify some things. If I could ask some questions, through you.

DEPUTY SPEAKER CURREY:

Please proceed, Madam.

REP. HAMM: (34TH)

I refer you to, I think it's line 223, the new person entrusted with the care of a child definition. My question is, could you tell us what this language, what connection it has to the mandated reporters, if any, for purposes of legislative intent?

DEPUTY SPEAKER CURREY:

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you, Madam Speaker. Through you. As I tried to explain at the outset, the current law - you can find it in the bill. It's the bracketed language on lines 286, 287, and 288. It refers to injuries inflicted on a child by a person responsible for such child's health, welfare or care or by a person given access to such child by such responsible person. And it was an

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interpretation of what that language meant that I think the Department of Children and Families had historically employed that created the problem, historically. And as I said, this predates the current Commissioner and the current administration.

The interpretation of that, as it turns out, was very strict and it would not, for example, have covered a coach or a teacher or a boy scout leader or a member of the clergy, that type of thing.

So, I think upon further discussion, I think everyone agreed that parents or other caregivers from time to time do entrust certain kinds of people to watch their kids and that if it turned out that the abuse was being perpetrated by those people, that would also be the kind of thing you'd want to be reported to DCF so they could take appropriate action.

So, the rewrite of that part of the law is what you see there.

Now, we're talking about a person entrusted with the care of a youth or child is a broader definition and you can read the definition. It's a person given access to a child or youth by a person responsible, for example, a parent, for the purpose of providing education, child care, counselling, spiritual guidance, coaching, training, instruction, tutoring - so in other

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words, if you trust your kid with someone like this, even though if you knew they were abusing they child, that would have triggered a mandated report under the old interpretation.

This change means that even if you weren't aware of, the parent trusted the scout leader or the clergyperson or the baseball coach with the child for a period of time, and it turns out that person was abusing the child, if a mandated reporter found out about it, even though the parent may not have known, then that would still be the kind of thing that has to be reported to DCF. So that is the significance of this new language. It's a broader definition of what we mean when we say a person to whom the parent or caregiver entrusts the child.

Through you, Madam Speaker.

DEPUTY SPEAKER CURREY:

Representative Hamm.

REP. HAMM: (34TH)

Would you envision that a baby sitter that isn't part of day care, not part of the licensing process would be required to report?

DEPUTY SPEAKER CURREY:

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you, Madam Speaker. This language does not refer to who is a mandated reporter. This language refers to what is the nature of abuse that has to be the subject of a mandated report. In other words, abuse perpetrated by someone who would fit this definition would be the kind of abuse that has to be reported by a mandated reporter. In other words, under the current - well, I guess it's evolved even without the change in law, but the traditional definition of what the current law says was that abuse by a baby sitter would not be the kind of abuse that you would have to report if you were a mandated reporter and you found out about it.

So, for example, if a child said to a teacher, I'm being abused by the baby sitter, and the teacher called DCF and just said, out of curiosity, if a student of mine said they're being abused by their baby sitter, would I have to report that? I think that unless the parents knew about it, the abuse, that is, DCF would say, well, that really doesn't fit in the mandated reporter law. I think most people, especially myself, would have said no, I think that's the kind of thing that should be reported and it's to rectify that difference of interpretation that this language is being proposed.

This doesn't add new mandated reporters, it just

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clarifies the kind of abuse that has to be reported when a mandated reporter finds out about it.

Through you, Madam Speaker. I hope that's clear. I know it's confusing, but it's the best I can do.

DEPUTY SPEAKER CURREY:

Representative Hamm.

REP. HAMM: (34TH)

Thank you, Madam Speaker. My next question relates to the standards. I notice on line 304 there's a talk of imminent risk of serious harm. And then further on, as you relate to the actual waiving of consent, I think the standard is imminent risk of physical injury.

My question, through you, Madam Speaker, do those standards have any legal difference from the immediate physical danger standard that we are currently using for removal under the order of temporary custody, for legislative intent?

Through you, Madam Speaker.

DEPUTY SPEAKER CURREY:

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you, Madam Speaker. I think there are three different legal standards, applicable in different situations.

The confidentiality law is different from the

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mandated reporter law. The order of temporary custody is a higher standard because it's a more extraordinary remember. I mean, after all, we're talking about mandated reporter reports, we're only talking about something that would trigger an investigation, not an arrest, not any kind of penalty, simply an inquiry by DCF to find out if it's credible or not, that type of thing. And if, based on the investigation, it seems like there's a crime that's been committed, for example, then the police would be notified.

So it's a lower standard than the OTC or order of temporary custody standard would be because that, obviously, involves removing a child from the home.

And it's certainly a different standard from the confidentiality rule which may or may not involve a mandated report type report. So, no, it's not the same standard. I think if I had to rank them in - I think the OTC standard is the highest, the mandated reporter standard comes next, and then the lower of them would be the confidentiality exemption, under law.

Through you, Madam Speaker.

DEPUTY SPEAKER CURREY:

Representative Hamm.

REP. HAMM: (34TH)

Through you, Madam Speaker. Could you just, in your

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own explanation, what is the difference between imminent risk of physical harm and imminent physical injury?

DEPUTY SPEAKER CURREY:

Representative Lawlor.

REP. LAWLOR: (99TH)

I think they're the same thing, Madam Speaker.

DEPUTY SPEAKER CURREY:

Representative Hamm.

REP. HAMM: (34TH)

Thank you. Through you, Madam Speaker. Page 11 relates to the change from 24 hours to 12 hours for the Commissioner to refer to law enforcement. Do you see that subsection (c)?

Through you, Madam Speaker.

DEPUTY SPEAKER CURREY:

Representative Lawlor.

REP. HAMM: (34TH)

Line 320, find it? My question, is the intent in this change to indicate that we are choosing, as public policy to make DCF refer to the police for the investigation since it's changed to 12 hours? Or that the Department is to continue with their investigation of the referral and refer or it is both?

Through you, Madam Speaker.

DEPUTY SPEAKER CURREY:

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Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you, Madam Speaker. I don't think this -- I think it is simply a notification that an investigation is underway, depending -- I mean, obviously, the five categories here are very, very serious. I mean, it's not all -- all the kinds of abuse or neglect that would be subject to the report, in other words, a mandated reporter could call in and say this is what I've just been told, everything in that category won't meet one of these five standards. These are very, very serious situations. Obviously, if a child has died, there's a sexual assault that has taken place, a sexual exploitation, very serious physical injury. When those reports are received, this simply would require DCF to notify the appropriate law enforcement agency that they've received such a report. I would imagine as happens all the time, there would be both a police investigation and a DCF investigation. Each has different recourse and remedies available and resources available and I don't think, in any way, this is meant to apply that DCF would have to stop their investigation and have it be exclusively law enforcement nor do I believe that law enforcement has any particular obligation other than whatever they would normally do

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once they receive their report. It's just to make sure that there couldn't be a DCF investigation going on on what would otherwise, under almost all circumstances, be a crime without the appropriate law enforcement agencies being involved, as well.

So I hope that answers the question, Madam Speaker.

DEPUTY SPEAKER CURREY:

Representative Hamm.

REP. HAMM: (34TH)

Through you, Madam Speaker. My final question is, as it relates to the training for the mandated reporters, you spoke earlier to Representative Bernhard about how the mandated reporters were intended to be licensed professionals.

Through you, Madam Speaker. Is there anything for legislative intent that would expect that should they not take the training, that would start the license revocation process procedure? Or how would the process be enforced if they failed to undertake the mandated reporter training?

Through you, Madam Speaker.

DEPUTY SPEAKER CURREY:

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you, Madam Speaker. I think it's more

accurate to say that the DCF is required by law to provide the training. I believe the standard training is two hours. I'm sure there are people that don't actually receive the training. What I said earlier was that I believe that all the licensed professionals on this list have, in some way or another, been required to acknowledge their obligation as a mandated reporter. Hopefully, they've also gotten the training, but I'm not sure the actual training is mandated as a condition of getting the license, but I do believe the acknowledgement of the obligation is standard procedure for all the listed licensed people.

I hope that's clear, Madam Speaker. I'm not sure it is, but I hope it is.

DEPUTY SPEAKER CURREY:

Thank you, sir.

Representative Hamm.

REP. HAMM: (34TH)

Thank you, Madam Speaker. I thank the worthy Judiciary Chair for his questions and comments.

DEPUTY SPEAKER CURREY:

Thank you, Madam.

Representative Bernhard of the 136th. Thank you, sir.

Would you care to comment further on the bill, as

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amended? Would you care to comment further on the bill,
as amended?

If not, staff and guests to the Well of the House.
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 to the Chamber, please.

DEPUTY SPEAKER CURREY:

Have all members voted? Have all members voted?
If all members have voted, please check the board to
make sure your vote is properly cast.

If all members have voted, the machine will be
locked and the Clerk will take a tally.

Will the Clerk please announce the tally.

CLERK:

H.B. 5680, as amended by House Amendment Schedules
"A", "B", "D", and "E"

Total Number Voting	146
Necessary for Passage	74
Those voting Yea	144
Those voting Nay	2
Those absent and not Voting	5

DEPUTY SPEAKER CURREY:

The bill passes, as amended.

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GEN. ASSEMBLY
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minutes. We need to move business.

On motion of Representative Godfrey of the 110th District, the House recessed at 6:19 o'clock p.m., to reconvene at the Call of the Chair.

The House reconvened at 7:12 o'clock p.m., Speaker Lyons in the Chair.

SPEAKER LYONS:

Would the House please come to order. Would the House please come to order.

Would the Clerk please call Calendar 301. What did I say? I apologize. I meant 301, if I didn't say that correctly. It is 301 that I would like to call.

CLERK:

Calendar 301, Substitute for H.B. 5680 AN ACT CONCERNING PENALTIES FOR SEXUAL ASSAULT OF A MINOR.
Favorable Report of the Committee on Judiciary.

SPEAKER LYONS:

Representative Lawlor, you have the floor.

REP. LAWLOR: (99TH)

Thank you, Madam Speaker. I move acceptance of the Joint Committee's Favorable Report and passage of the bill in concurrence with the Senate.

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SPEAKER LYONS:

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

REP. LAWLOR: (99TH)

Thank you, Madam Speaker. I believe the Chamber is familiar with this bill. We previously acted upon it.

The Senate adopted an amendment. Madam Speaker, the Clerk has LC05390 previously designated Senate "B". I'd ask the Clerk to please call and I be allowed to summarize.

SPEAKER LYONS:

The Clerk has in his possession LC05390 previously designated Senate "B". Will the Clerk please call. The gentlemen has asked leave to summarize.

CLERK:

LC05390, Senate "B" offered by Senator Aniskovich
et al.

SPEAKER LYONS:

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you, Madam Speaker. This amendment strips Section 19 from the bill. Section 19 is the in effect a rewrite of the existing confidentiality provision applicable to clergymen or members of the clergy in our statutes.

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Madam Speaker, I urge adoption.

SPEAKER LYONS:

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

REP. LAWLOR: (99TH)

Thank you, Madam Speaker. This is a very complicated and emotional issue. I think we're all aware of that. In light of the lateness of the session, I think it's not necessarily, it's unnecessary to go through all of the elaborate reasons why people have a different view about the impact of the existing mandated reporter statute and whether or not this particular confidentiality provision applies to it.

I think, suffice to say, Madam Speaker, that I've come to the conclusion over the past few days that the main difference of opinion here is whether or not you think that the mandated reporter statute actually overrides the confidentiality provision. I happen to think that is the case. I think there's a lot of precedent for that in the law.

In any event, what the Senate has done is to leave that law as it stands today and people disagree about this but I believe that all mandated reporters are required to report as provided in the statute and all other confidentiality provisions in the statute are in

effect overridden by this provision.

The bill is an extraordinarily good bill beyond this amendment, Madam Speaker. If we adopt this amendment in concurrence with the Senate, the bill would go to the Governor. I think it contains many appropriate changes in our statutes and for that reason, I urge adoption.

SPEAKER LYONS:

Thank you, Sir. The question before the Chamber is on adoption. Representative Cafero.

REP. CAFERO: (142ND)

Thank you, Madam Speaker. Madam Speaker, I rise to also support the adoption of Senate Amendment "B". And the primary reason that I'm rising in support is also to add my voice to what I presume will be the legislative record with regard to this amendment.

Representative Lawlor indicated that there has, especially in the last week since we in the House initially adopted this bill, been a lot of talk about how this affects clergy and their right of confidentiality with those they counsel, etc.

And I believe, obviously, last night that issue came to a head in the Senate and there was much talk about our current law which of course, the adoption of this amendment would allow to stay in place and what our

current law actually means.

And though Representative Lawlor, and I certainly respect his opinion has certain beliefs with regard to whether the reporting statute takes precedent over the privileged communications made to a clergyman statute, I think at best the issue is up in the air.

Section 52-146b of our General Statutes is the privileged communications made to clergymen statute, and unlike the other privileges that are afforded, doctor/patient and attorney/client privilege, it is without exception and briefly what I mean by that is, in the doctor/patient privilege that is codified in our statutes.

There are several exceptions to that privilege that allows disclosure of a communication made between a patient and a doctor, typically that when an imminent danger or harm of an individual is involved.

With regard to our attorney/client privilege, it is not codified in our statutes but is set out in the Connecticut Practice Book. And like the patient/doctor privilege has several exceptions to it.

Different from those two privileges, of course, is the priest/penitent privilege that's codified in 52-146b. One can argue it is a higher privilege, because unlike the other two, it has no exceptions. And read in

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conjunction with our reporting statute which is again the current law, one could argue that these issues mandating the reporting of an incident by a clergyman is a matter of fact and that certainly, any communication made in the confessional would be privileged.

So therefore, though I respect Representative Lawlor's interpretation of current law, I think it best it is subject to interpretation by a body other than ourselves, at least at this stage.

So I don't want anyone to think that the legislative intent of what was done by Senate Amendment "B" has made anything clear because I don't think it has. I still think it is a matter of fact on a case by case basis.

However, Representative Lawlor and I do agree that it is in the best interest of this bill and in this Chamber at this time to adopt Senate Amendment "B" because then we would be in concurrence with the Senate and the entire bill, that I think we as a Chamber should take a lot of pride in, will be on its way to the Governor's desk for signature and become law.

And with that, Madam Speaker, I would urge adoption of the amendment. Thank you.

SPEAKER LYONS:

Thank you, Sir. Will you remark further?

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you, Madam Speaker. Since Representative Cafero made a brief record about the precedent, I just wanted to briefly mention that there are 12 separate privileges, confidentiality privileges in the statute. They all are applicable between the professional involved or the patient or client, as the case may be.

Not all of them provide, not all of them allude to the mandated reporter statute. I believe the privilege most analogous to the clergy privilege is the psychiatrist privilege which does not allude to the mandated reporter statute, but nonetheless the psychiatrists had long interpreted the mandated reporter statute to override what otherwise would be privileged communications.

People do disagree. I would also point out, Madam Speaker, that in 1994 this Legislature considered a bill that specifically would have written into the mandated reporter statute an exemption for the clergy. It was passed in the House, not taken up in the Senate and the very issue at hand was the need to insert an exemption into the mandated reporter statute.

Finally, Madam Speaker, before the Senate, was Senate Amendment "A" which was rejected which would

actually have interjected a specific exemption for the confessional type setting. I would just point out that the existing privilege for the clergy is extraordinarily broad. It was one of the first privileged statutes enacted in Connecticut. All of the rest came subsequently. All of the rest are very different. All of the rest have very specific definitions contained in them.

One interpretation of the clergy privilege could be that no communication under any circumstances to a member of the clergy could be communicated regardless of whether or not it was done in a confessional or in a public setting.

And moreover, Madam Speaker, what is different about the clergy privilege is that even if a member of the clergy wanted to reveal the information in a situation of imminent harm, totally outside of the confessional context in another faith, it really doesn't matter that one interpretation of the current confidentiality rule would actually prohibit a member of the clergy from warning somebody, even if their faith allowed it, even if they chose to do so. Psychiatrists, doctors, lawyers and all other have similar exemption to their confidentiality laws.

And I would just point out, once again, that the

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existing clergy confidentiality law is broad. It goes well beyond the confessional. I think there's two separate issues. The special confessional issue which the Senate had an opportunity to address last night and the very, very broad issue about whether, under any circumstances, a member of the clergy can if he or she chooses, to warn someone of imminent risk. So I think that is the open question. There is an honest disagreement.

I think the law is on the side of an override of the mandated reporter statute which came after the clergy confidentiality statute and is much more specific and according to normal interpretations of the law, that would control.

So if there is a disagreement a court would have to decide. One thing for sure, if this bill passes as amended in the Senate today, the law will remain what it has been for 31 years and for that reason, I urge adoption.

SPEAKER LYONS:

Thank you, Sir. Will you remark further?

Representative Fox.

REP. FOX: (144TH)

Thank you, Madam Speaker. To begin with, I, too, rise to support the amendment. I think the underlying

bill is one that has been worked at for some time and one that is important and I would urge this body to adopt it.

I, too, however, would respectfully disagree with Chairman Lawlor in terms of the interpretation of the privilege. I think for the record, and for the benefit of some person or persons who will eventually rule on this for us, I think it is fair to say there is a question.

However, I think it is important to emphasize that our Constitution clearly provides that we would not interfere with the free exercise of religion. There are certain first amendment rights that are important, important to this body and important to the citizens of the State of Connecticut.

I think it's also important to recognize that a few years ago this body adopted 52-571 which provides that we shall not do anything to burden a person's exercise of religion. If in fact we are suggesting that a confession is somehow going to be subject to disclosure at a later time, I think a strong argument can be made that we are effectively interfering with the practice of one's religion.

I think it's also important for purpose of legislative history, in response to some of the comments

that have been made, that the protection, the privilege provided for in the applicable statute has no exceptions. If you go back and look at the other exceptions, including that for psychiatrists, which Representative Lawlor referred to, there is an exception. When the doctor determines there's a substantial risk of physical imminent injury.

There are comparable exceptions in the psychologist exception, the physician exception, the marital and family exception, the social worker exception, the professional counselor exception. There is no such exception when it comes to the priest and penitent privilege.

I also think it is important to recognize that certainly back in 1994 it was the will of this body, and admittedly it did not pass the Senate, but it was the will of this body that it was important to clarify it and to give that privilege priority.

If I might cite briefly from the comments that were made at that time, by State Representative Farr, he indicated, it probably should be corrected even more by making it clear that the duty of the clergy only arises when he has observations or conversations with the child. I don't think we ever intended in this legislation to put a duty on a religious, a member of a

religious order to turn in someone because that person confessed to something, keeping in mind there is no such duty in any other areas of our criminal statues for clergies.

I think with all due respect to Representative Farr, I think he said it very well and accurately at that time. That legislation passed this body overwhelmingly.

So I think we're not going to resolve it this evening. It is a difficult issue, but I would submit that the appropriate analysis of it, for the benefit of rights such as freedom of religion, which are so terribly important to all of us, would give priority to that privilege and that protection and for future reference for all those that read it, there was a difference of opinion and a different analysis within this body as to how that should be interpreted.

SPEAKER LYONS:

Thank you, Sir. Will you remark further?

Representative Rowe.

REP. ROWE: (123RD)

Thank you, Madam Speaker. I rise in support of Senate "B" and am pleased that the Senate did what I believe this House ought to have done last week. And that is, preserve the sanctity and the inviability of

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the confessional.

Communications made to a priest in the confessional are part of a sacred sacrament which the state has no business violating. When a penitent is making a confession, they are not speaking so much to the priest as they are speaking to God, and that matters, and that makes a difference in the analysis.

Now, we have mandatory reporting laws on the books. 17a-101a, for example. And those are strong, and those require clergy to make disclosures of abuse they become aware of in many areas outside of the confessional. But it's a different story when you're inside the confessional and in my view, that's when 52-146b, the section of our statutes that we're restoring with Senate "B" kicks in.

The narrow confessional exception of Senate "B" reflects the sanctity of the sacrament of confession. It reflects a respect for religious freedom and expression and I certainly think this body ought to adopt it and I'm very pleased that the Senate saw fit to make the changes. Thank you, Madam Speaker.

SPEAKER LYONS:

Thank you, Sir. Representative Belden.

REP. BELDEN: (113TH)

Thank you, Madam Speaker. Madam Speaker, I fully

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support this amendment and I'll be very pleased after it passes to vote for this bill and the protection of our youngsters and I will have an opportunity to change my previous no vote to a yea vote. Thank you.

SPEAKER LYONS:

Thank you. Representative Farr.

REP. FARR: (19TH)

Thank you, Madam Speaker. I think, unfortunately, in this bill, we seem to have gotten a little sidetracked. To my knowledge, none of the cases which have been in the press lately, have involved information that was revealed through confessions.

I don't believe it was the intent of the underlying bill to do away with the confidentiality of confessions.

I don't, with the amendment, obviously, we won't change the existing law. Frankly, I'm a little disappointed that we didn't clarify it because it seems to me that it cries for clarification as to what, exactly, that confidentiality covers.

But I think it's important to understand that the true major change that we intended to do and which we are doing here is, we're changing, which is in Section 15 which provides when a report has to be made. And the problem has been until recently, that the interpretation of that language was that a mandated reporter only had

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to make a report for, of abuse if they had knowledge about the abuse by an individual who was entrusted with the care of the child.

And the difficulty, therefore, was if the child was abused by another member of the clergy, it was not at all clear that there was a duty to report. I think the major thrust of what we're making, change we're making here is we're making it clear that there is a duty that mandated reporters have a duty to report abuse of children, even if that abuse does not occur by somebody entrusted, that they're in the custody of so that if it's someone other than the parent who are abusing the child, under this law, I believe they clearly have a duty to report.

And I don't believe it was clear in the past and it certainly hasn't been the practice of DCF to interpret the law as requiring that.

So I would urge passage. I will support the amendment. Voice a little disappointment in that we couldn't clarify the language since there still seems to be some disagreement as to what the privileged communication ought to cover, but I would urge passage of the amendment and then support of the bill.

Thank you.

SPEAKER LYONS:

Will you remark further? Representative Eberle.

REP. EBERLE: (15TH)

Thank you, Madam Speaker. I rise also in support of the amendment. I would have been happy to support Senate "A" if that had come down to us.

I do believe the underlying bill is an important bill and makes some very important changes. It's unfortunate that we allowed it to get sidetracked on this issue and I would like the record to reflect that in voting for this bill with this amendment, I vote for it with the understanding that current law exempts what's heard in the confession from disclosure and from mandated reporting.

I've had a good deal of communication with my pastor about it and some of the things he said have been very poignant. He indicated that of course he would insist if he heard something in confession. He would urge the penitent to seek, to go to the authorities. He would urge a victim to go to the authorities.

But he said, to violate the seal of confession for him is a higher law than the civil law. That for him, the sacrament of penance is a source of much peace and much comfort to many people in torment and above all, he would like that sacrament to be able to be there for them.

His fear is that violating the seal of confession will undermine the integrity of it and will undermine the usefulness of it for many people who will no longer seek it.

I think it's a very important statement that we make tonight that we do not intend it with this bill and that the very good things that this bill will do go forward without this clouding the issue.

Thank you, Madam Speaker.

SPEAKER LYONS:

Thank you. Representative Newton.

REP. NEWTON: (124TH)

Thank you, Madam Speaker. I just have a couple of questions for the proponent of the amendment.

Representative Lawlor, the House passed the bill. The Senate amended it to include clergy. Do you think we would have been in conflict with church and state?

Through you, Madam Speaker.

SPEAKER LYONS:

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you, Madam Speaker. Well, actually the Senate didn't amend the language. They simply deleted, the amendment we're debating deletes the entirety of Section 19, and Section 19 was basically a rewrite of

the existing privilege for members of the clergy which would have made it more like the privilege that is provided in other context.

And I just, so I'm not, I don't think anything here violates the separation of church and state because in this particular section it doesn't impose any particular obligation, legal obligation on the part of any member of the clergy to reveal anything. It simply would provide that option.

And I think that's important to point out because almost all of the discussion is related to the confessional itself and I have to say that although that's where most of the discussion has taken place, this privilege is much wider than that and applies to all faiths, whether or not they incorporate a confession as part of their ritual.

Although I think it's appropriate to pass this bill, I just look at the existing privilege in Section 19 and look at how broad it is. It goes well beyond the confessional. It goes into virtually any type of interaction between a member of the clergy and someone else.

So, under the current law in effect, a member of the clergy would be prohibited of warning someone, even if there's no confession involved, even if it's simply

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an interaction where there was some type of expectation of confidentiality, even if the faith required the member of the clergy to warrant. So this is a very broad privilege that the current law contains and I think that there may be some room to work this out. Not tonight obviously.

This, I think it's the broadest of this privilege which led to the Department of Children and Families to suggest the language that you see to replace it. I think we could have accommodated the confessional situation without eliminating all of this language but nonetheless that's the outcome tonight but I don't think it's a violation of church and state, Madam Speaker.

SPEAKER LYONS:

Representative Newton.

REP. NEWTON: (124TH)

Thank you, Madam Speaker. I rise in opposition of the amendment. And with all the things that we're reading about, I just think there's certain things that if we're serious about protecting children, those individuals have to come forward if it's to put their child's life in jeopardy.

What you say to your God or to whoever, that might be that there's certain things, you're right, that should be held confidential. But I think what has taken

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place, I think certain things ought to be said. And I think that it's important, I like the underlying bill and I recognize that it's important to pass this amendment, but I do think if we're going to be serious about sexual assaults on minors, that we've got to undo a lot of the privileges that we've given certain people when it comes to children.

Thank you, Madam Speaker.

SPEAKER LYONS:

Will you remark further? Representative Noujaim.

REP. NOUJAIM: (74TH)

Thank you, Madam Speaker. I rise in strong support of this amendment and I will be very brief in my comments.

Also, I heard from my pastor over the weekend and he basically said the same things to me that Representative Eberle was so clear and eloquent in expressing.

I'd also like to take a moment to extend my gratitude to Representative Lawlor for his indulgence and to Representative Fox for the clear explanation about the historical events that surrounded that issue.

I would urge passage to this amendment. Thank you.

SPEAKER LYONS:

Representative Fleischmann.

REP. FLEISCHMANN: (18TH)

Thank you, Madam Speaker. I rise in opposition to the amendment that's before us and I wouldn't speak if we were having a roll call but it's going to be a voice vote and I just wanted to make it clear that my voice will be among those shouting nay.

We're clearly faced right now with two competing good ends, which is always the most challenging situation for those of us in a democracy. One good end is protection of religion and conscience. The other good end is protection of children.

There's not necessarily any clear right answer when we have a collision of two competing goods in this way.

Based on the discussion that's happened so far, it's clear that there's some disagreement over interpretation of current law. Section 19 of the underlying bill would resolve completely, disagreements we've heard on this floor about how to interpret current law. Section 19 would have said, treat all religions equally. When someone speaks to a pastor about abuse of a child, about rape of a child, report it. You have no choice. You report it.

I think every moral doctrine would favor reporting, would say protect that child. I think every moral doctrine agrees that abuse of children is wrong, that

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rape of children is wrong and so to have in a system of laws where we're constantly trying to figure out which should be preeminent over which, to have a clear statement that for every religion the duty to report abuse of a child will be preeminent. I think that was the right thing to do.

This is an awkward situation because I know Representative Lawlor was a drafter of Section 19. I know he would like to see it pass and I recognize we're all trying to make law. I expect, unfortunately, that this amendment before us is going to pass. But I don't think it's the right thing and I do hope that we will have more chances to clarify the law so that we're in agreement here that when a clergy person learns of abuse, it's reported. Period.

Thank you, Madam Speaker.

SPEAKER LYONS:

Representative Dandrow.

REP. DANDROW: (30TH)

Thank you, Madam Speaker. I rise in support of the amendment. There has been a great deal of discussion about it. And when we were on the Public Health Committee, we saw many instances of people coming in asking for religious exemptions in whatever area. And we toiled long and hard about giving religious

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exemptions.

But the one thing that I can tell you over the weekend is that my phone rang loud many, many times, that the State of Connecticut want us to have religious freedoms. They feel it is their right. They want it clearly spelled out that the right of the priest in confessional is there and that it's between God and the priest and the person there and they want no infringements on that right.

I, too, met with my pastor who certainly said many of the same things that Representative Eberle did and I think that it is important for Connecticut to go forth and to continue on to respect and to go on with the rights of religious freedoms for all. Thank you.

SPEAKER LYONS:

Representative Dillon.

REP. DILLON: (92ND)

Thank you, Madam Speaker. I rise in support of the amendment, very strongly. I've listened to some of the conversations tonight and I supported the intent Representative Rowe mentioned although I had trouble with the timing and the language of it.

And it seemed to me in the Chamber that evening that people were so distressed about the identity, excuse me, that people were so distressed and rightly

so, and so outraged about some of the stories that we had heard, that they were confusing the identities of some of the perpetrators with the practicing of the sacrament and that's troubling, although it's understandable if someone is unfamiliar with the penance of a particular religion.

To me, if someone who is a bureaucrat who happens to be a bishop who receives a report of a child who is abused is not acting within the capacity of a confessional. That is a totally separate situation from that which this amendment addresses.

And I recognize very well and sometimes regret, and sometimes differ very strongly when there is so much noise about condoms and vaccines and so forth. It may very well be that some folks do not understand how central the forgiveness of sins is to some faiths. But so it is. That is core. It is absolute. And it is quite different from some of the other peripheral cultural issues that we come across.

This has, it's absolutely fundamental. As Americans, as those who believe in the practice of religion. And the debate that I've heard in this Chamber, conversations outside, some of the conversations tonight from people whom I love and respect who I believe misunderstand some of the issues

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at stake, makes me feel even more strongly than ever that this amendment was quite properly done in the Senate to put the halt to some misunderstanding and I think puts a burden on many of us here in the Chamber and outside, to do some public education about exactly what the issues are.

I think this is a very positive move and I think it's a very good bill and I hope we move forward from this.

SPEAKER LYONS:

Representative Diamantis.

REP. DIAMANTIS: (79TH)

Thank you, Madam Speaker. I rise in opposition to the amendment. I understand perfectly that the language that is suggested in 19 could probably be put together better.

But I've also stood in this Chamber time and time again and heard about the need to protect children. Our need to protect children. And a balancing test between our need to protect children and the needs of others in that particular circumstances. Now, yeah, and I've heard this Chamber react time and time again with legislation to individual instances that occurred in one town or another and we rushed to pass legislation that impacts an entire entity because of one particular

situation.

In this particular circumstance, and I understand the underlying bill is one thing. This particular amendment is another. But it is that circumstance again that we are dealing with. We are dealing with the rights and the importance of a particular act within a religious sect and we are dealing with perpetrators in every aspect of life, including the clergy.

The question begins, where does one child's right end so that the others begin? How, in fact, do we deal with that very specific issue? Striking Section 19 doesn't deal with it at all.

We let that very issue slip from our hands. Is it perfect? No. Do we trust that they will police themselves. Obviously not. Does it require some action on our part? I think it does.

Striking Section 19 does nothing to protect children, nothing. I've heard debate and we have had discussions on sexual predators and I think not long ago and I remember strongly and vehemently Representative Nystrom opposing the 18 year old issue and the change of four years and suggesting there are predators and we need to deal with predators.

Section 19 is talking about predators. Do we go after predators? And now, because it becomes slightly

difficult because it imposes upon us in our religious aspects of our lives, does not negate the fact that we must deal with predators in every aspect of our society, one of which also has come unfortunately, within the aspects of the clergy.

Running and hiding doesn't do it. On behalf of that five year old, eight year old, ten year old, twelve year old and so on.

Because it's a short session we strike it. It's the easy way out. No language. We'll deal with it another time. I think not. Thank you, Madam Speaker.

SPEAKER LYONS:

Will you remark further? If not, let me try your minds. All those in favor --

REP. WARD: (86TH)

Madam Speaker.

SPEAKER LYONS:

Representative Ward.

REP. WARD: (86TH)

Sorry, Madam Speaker. I didn't have my mike on because it was live and --

SPEAKER LYONS:

That's all right.

REP. WARD: (86TH)

Madam Speaker, I rise to support the amendment, and

I do so for several reasons. First, I believe that the underlying bill without the amendment remains a very good bill.

I believe as we pass it in this House it raised more questions than it answered, yet clearly, I believe, attempted in its language to violate the sanctity of the confessional.

I've heard some that said we should treat all religions equal. Absolutely. And that means respect. The fundamental tenets of all religion.

Representative Fox mentioned 52-571b which is the standard in this state for how we judge a law of general applicability if it conflicts with the free exercise of religion. And as the principal author of that legislation, it was actually designed to help provide guidance when other laws were passed that didn't touch upon the issue because it wasn't thought of in exactly that time.

That says there must be a compelling state interest and you must use the least restrictive means available in order to override one's free exercise of religion. I think there can be no question that a sacrament in a religion, a fundamental tenet is one of those free exercise that would have to be overridden, be a compelling state interest and in the least restrictive

manner.

There is no record before the Judiciary Committee that would suggest that children are being unprotected because of what was said in the confessional. There is no record in front of the House of Representatives that suggests that children will be left unprotected if the sanctity of the confessional is not breached. There is no record in common literature, newspapers, magazines, evening news that I have seen, that suggest that if we don't violate the sanctity of the confessional, children are left unprotected.

So that I believe there is no basis for finding that there is a compelling state interest. I think that the amendment before us appropriately takes out a complicated language with regard to what is privileged and leaves the law as it is. I think that means for most situations, a clergyman is a mandated reporter. For certain confidential communications in the Catholic faith, that clearly at a minimum means, a communication in the confessional. I can't tell you in other faiths what might or might not be confidential because I've since high school, haven't studied comparative religion and probably didn't pay enough attention to it even then.

But I can certainly say this is not about treating

one religion over another, but is at least recognizing that what we know to be one faith and a fundamental tenet will be respected.

And I would point out there are always, we have an exclusionary rule. If you confess child abuse to the police, but they didn't properly advise you of your rights, we throw the evidence out. We dismiss the charges if there's no other evidence, but we erase the record. So there is always some balancing.

The record before the Judiciary Committee, the record before the General Assembly, the record in the general public would not cause us to violate this fundamental tenet.

Is there a record of absolutely atrocious acts on the part of some clergymen? Yes. Is there a record of absolutely atrocious conduct on the part of some clergymen who could have done more? Yes. Does the underlying bill suggest we're going to enforce the law, not suggest, yes, we will. Have we reminded clergy where there is a duty to report that they must do so, yes, that is appropriate.

We should pass the amendment and then pass the bill which strikes the proper balance of protecting children and recognizing the free exercise of religion. Thank you, Madam Speaker.

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SPEAKER LYONS:

Thank you. Would you remark further? If not, we realize it's 8:00 o'clock. We've got a bunch of stuff to do. If you want to be considerate of your other folks, I think everyone knows how to vote. So, with that, let me call the vote.

All those in favor please signify by saying "aye".

REPRESENTATIVES:

Aye.

SPEAKER LYONS:

Those opposed, "nay"?

REPRESENTATIVES:

No.

SPEAKER LYONS:

The ayes have it. The amendment is adopted. Okay. With that, if you don't want to remark further, staff and guests come to the well. Members take your seats.

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.

SPEAKER LYONS:

Have all the members voted? Have all the members voted? Would the members please check the board to make

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sure your vote is accurately recorded. If all the members have voted, the machine will be locked. The Clerk will take a tally.

Will the Clerk please announce the tally.

CLERK:

H.B. 5680 as amended by Senate Amendment Schedule "B" and House "A", "B", "D" and "E" in concurrence with the Senate.

Total Number Voting	148
Necessary for Passage	75
Those voting Yea	148
Those voting nay	0
Those absent and not voting	3

SPEAKER LYONS:

The bill as amended passes.

With that, Representative Gerratana.

REP. GERRATANA: (23RD)

Thank you, Madam Speaker. I rise for a point of personal privilege.

SPEAKER LYONS:

Please proceed.

REP. GERRATANA: (23RD)

Thank you, Madam Speaker. Madam Speaker, this evening I announce with great joy and also great regret that I will be leaving the Chamber. I will not be here

JOINT
STANDING
COMMITTEE
HEARINGS

JUDICIARY
PART 6
1515-1836

2002

CINDY ROBINSON: Good afternoon, Representative Lawlor and members of the Judiciary.

My name is Cindy Robinson and I'm a civil trial lawyer and I'm here in support of Judiciary Committee H.B. 5680, extending the criminal statute of limitation for the prosecution of child sexual abuse cases.

For the past nine years, my law firm, Tremont and Sheldon in Bridgeport, Connecticut has represented over 30 young people who were sexually abused as children. And in almost all of those cases, these individuals came to us because they wanted to criminally prosecute the perpetrator, but unfortunately, the criminal statute of limitations had long since passed.

As a result of the many civil lawsuits that we brought, I have spent much time with these people, our clients who are sometimes called victims and more often called survivors and indeed, they are both. I've represented them in depositions and I have had the experience of reviewing their medical records and evaluations.

And one thing is crystal clear to me. Sexual molestation of children is one of the most heinous violations that can occur and that is why in 1991 this State Legislature decided to extend the civil statute of limitations.

Why should the fact that these young people were unable to speak for themselves, so utterly unprotected, prevent them from waging a criminal prosecution against their perpetrators, people who are, in the true sense of the word, childhood monsters? Why should these perpetrators be able to get away with what has rightfully been called murder of the soul?

Now, I am well aware that due process concerns for a potential accused are always paramount and should be paramount. However, the fact that we are thinking of extending the criminal statute of limitations and its retroactive application, will not effect the due process rights of accused

because the State will still have to prove its case beyond a reasonable doubt. What that means is that perhaps not all accused will be persecuted, prosecuted by the State Attorney's Office. They will have to make judgments as to what cases to pursue.

However, the fact that all perpetrators may not be prosecuted by the State Attorney's Office should not prevent it from prosecuting those cases which are very strong. And I'd like to give you a for instance.

One of the perpetrators that we brought suit against was a Father Raymond Pacholka who is a priest within the Roman Catholic Diocese of Bridgeport. We know of 25 young people that Father Pacholka sexually molested, abuses that include the rape and sodomy of children as young as seven years of age. And despite the fact that civil lawsuits have resulted in monetary settlements for 17 of these victims, Father Pacholka still lives and moves unaffected by these cases.

The fact is, he is still a priest and if the statute of limitations was extended, I can assure you that the State Attorney's Office would have ample evidence to prove its case beyond a reasonable doubt. They should be given that opportunity and the victims should have an opportunity to go forward on these cases.

So I would urge you to extend the statute of limitations as it relates to the criminal prosecutions of these kinds of cases.

And I'd be more than happy to answer any questions.

REP. LAWLOR: Thank you. I just have a couple of categories of questions.

CINDY ROBINSON: Sure.

REP. LAWLOR: For starters, last year when this bill was being debated, the retroactive aspect was, without a doubt, the most controversial portion of the bill.

CINDY ROBINSON: Yes.

REP. LAWLOR: And one of the concerns that was raised by a number of people at the time was whether or not it would be fair, in any way, to expose persons to criminal prosecution based on statements they might have made in the context of a civil lawsuit when they thought it would was not - that the statute of limitations had expired.

So my question is, at least in the cases that your firm has been involved with, were there actual admissions made by the defendants in those civil cases, admissions to what would otherwise be criminal conduct?

CINDY ROBINSON: Well, the one court proceeding that I can tell you about because, unfortunately, there are sealing orders for all of those cases. So I can't share with you any of the testimony that was given by the named priest in deposition based on these sealing orders.

But there was in court testimony regarding Father Pacholka that Father Pacholka took the Fifth Amendment over 100 times in his deposition and we actually went to court and tried to get answers to those questions and we were told that there was still the risk of criminal prosecution, perhaps not in Connecticut, but in New Hampshire so that he was not required to answer those questions. So I don't know of any cases that I can answer you on, other than that one situation in which our argument to have him answer those questions was denied.

REP. LAWLOR: Well, let me ask you a general question, then.

CINDY ROBINSON: Sure.

REP. LAWLOR: Has it been your experience as a person experienced in these types of cases that even though it appears that the statute of limitation has expired, persons who are defendants or potential defendants can and do effectively claim the Fifth Amendment privilege in a civil

proceeding?

CINDY ROBINSON: Yes, that has been my experience.

REP. LAWLOR: Okay. My second question is, there's another concern last year and I don't know the extent to which you've done research on this narrow issue about retroactivity, but it is the case that this state has retroactively eliminated statutes of limitations before. The Michael Skakel prosecution being the classic example of this. When that homicide was committed, it was a five year statute of limitations for murder, which has long since expired. Nonetheless, he was arrested two years ago and charged with that crime.

Also in 1999, I believe this legislature retroactively eliminated the statute of limitations for sexual assault cases involving DNA evidence. And I noted with some interest a few months ago on an overwhelming vote, the United States Congress retroactively eliminated the statute of limitations for terrorism crimes.

So I was wondering if you could tell us, if you know, what are the constitutional ramifications of retroactive eliminations of statute of limitations?

CINDY ROBINSON: Unfortunately, Representative Lawlor, I don't think I'm going to be able to give that credit or do justice to going through the constitutional aspects of retroactivity, but I think what I can say -- because I haven't enough research on it, but I think what I can say is that there are certain categories of crimes which you can justify there being retroactivity application, such as terrorism, as you had just indicated and other crimes. And I think this is one of those crimes that clearly you can justify it from a constitutional basis because of the nature, the heinous nature of the crime and the affect on society that there are certain categories of crimes that you can justify that and not get too intertwined with potential constitutional concerns.

REP. LAWLOR: And why is it, since you've had the opportunity to deal with so many of the victims in

these abuse cases, why is it that they didn't immediately notify the authorities when they were the victims of sexual abuse?

CINDY ROBINSON: Well, that goes to, I think, the psychological state of mind of a seven year old or a thirteen year old who cannot really even fully appreciate what's happening, especially if they're being sexually abused by a person in trust. And that's the very reason why this State Legislature extended the civil statute of limitations based on the testimony of both psychologists and survivors who were not able to come to terms with what happened to them until they were young adults and could look back on and have some type of perspective.

So it's not that they're just waiting for some point in time. It's that this is something that rises up to such a level emotionally that it's an explosion and they have to do something, they have to talk about it, they have to come to terms with it and it's something that they haven't been able to deal with.

And I can say that none of the people that we represented had any oppressed memories. (some testimony not recorded due to tapes switching from 1B to 2a) felt dirty, felt that no one would believe them and it's for those reasons that they never told anybody.

REP. LAWLOR: Thank you. Are there other questions?
Representative O'Neill.

REP. O'NEILL: I hear what you're saying, and I wonder, however, if there's another side to this that we're not hearing. Sometimes we do pass legislation when we hear from, in effect, one side of the equation, especially in this area. I'm thinking in particular of the Megan's Law list which we passed that legislation and then a couple of years later we had the now adult children of men who were being placed on that list who were basically upset and very angry at the Legislature for having effectively told the world that their fathers had molested them when they were children.

And that they had gotten past that and it's bringing it all back up and reviving it all.

In this case, unlike the situation where a person brings a civil case and they personally control that case, but what we would be doing is opening the door for people to - prosecutors to go ahead and prosecute some of these cases. And I think I've seen or read about cases, let's say, have two sisters. One says molestation happened. The other one says it didn't. The prosecutor is going to have to decide who - basically to go forward with the case, seems to have evidence, at least has a witness whose willing to go forward and testify and so on.

I'm just wondering about the degree to which we're opening a door that there are people who may not want to see prosecutions occur and they don't have the power really to -- the victims, some of them, to stop that if the prosecutor is determined to go ahead and conduct the prosecution.

Do you run into people - situations like that or is that just something I see on t.v.?

CINDY ROBINSON: I don't know whether it's something you see on t.v. That hasn't been my personal experience dealing with the people that I've represented. Almost all of them have wanted to go forward with the criminal prosecution.

But let's just take the example that you've given. I think the prosecution would be hard pressed to go forward on a prosecution if the victim was unwilling to participate. So I think that would be difficult for the State to do.

Typically, the State would need a willing witness. I guess they could compel the testimony, but I think the inquiry that the -- the State's going to have to have a very deep inquiry into which cases it will pursue and I am sure there are many cases where the allegations are true, but they may not be able to prosecute it and I think that's the way it has always been because the evidence is just going

to be too difficult. If anything, the fact that there's been such a long hiatus between the date of the commission of the crime and the prosecution is going to make it harder, I think, on the State to prove its case and for that reason, there maybe cases that are going to be unable to prosecute.

So my feeling is we should at least give them the opportunity to pursue strong cases, cases in which the victim or victims are willing to come forward and testify and that there's going to be strong documentation. So they're going to be able to meet their burden, which, let's face it, it's a high burden beyond a reasonable doubt, as it should be in a criminal prosecution.

So, I (inaudible) that particular experience with the clients that I have represented.

REP. O'NEILL: Well, I guess 90%, I think -- I don't know if the prosecutors are still here -- my recollection is that about 90% of all cases end up being plea bargained out. I don't know if that's the case in this area in those states that have changed this particular law. If those cases end up all going to trial because somebody refuses to go along or it sounds like since there have been apparently settlements and sealed orders and that sort of thing, that on the civil side, these things do settle and, in effect, people make decisions to settle these cases.

CINDY ROBINSON: That's correct.

REP. O'NEILL: Or fight them to the bitter end. So that what we're going to be looking at is, though, at least I think, a good bit -- perhaps, a good bit of the time, the prosecutor just starts a prosecution, just as currently if somebody was accused of embezzlement or some other crime that happened last month, they may very well decide they think they have a shot, they may not be able to prove, they might have an alibi or an excuse or a justification, but their lawyer says, they're offering you five years suspended or whatever the deal is going to be, so plead guilty or plead nolo contendere or something and just get this over with,

otherwise you're looking at years of potential incarceration and lots of expenses and so on and so forth.

CINDY ROBINSON: Right.

REP. O'NEILL: In other words, in the bulk of cases it's not going to be proved in court, necessarily. All the prosecutor is going to have to do is get past, essentially, a level of probable cause for a lot of these cases to settle out.

CINDY ROBINSON: Sure, but that's the way it is with all
--

REP. O'NEILL: That's what I'm saying. The implication is the prosecutor is going to have to prove absolutely everything even though it's 30 years old and it's going to be hard, but it's also 30 years later for anybody to come up with an alibi defense, I mean, that kind of thing.

My assumption is we have statutes of limitations for purposes, largely for the convenience of the prosecutors so they don't have to worry about trying to keep all the evidence together, but also for everyone else to understand that the door is closed on this particular period of time.

Do you think it is just a convenience for the prosecutor or do you think that other people have an interest in statutes of limitations?

CINDY ROBINSON: Well, especially in crimes of sexual molestation, society as a whole has a great interest because these are repetitive crimes. In other words, I think we would be naive to believe that Father Pacholka has and will not abuse again. So even, for instance, going back to the victim who doesn't want to prosecute, well unfortunately, I think you have to think of the State as a whole and the people within the State and that the State has a duty to protect its citizens and that you have to go beyond that. It's not just for convenience, but this is a crime that's very much at risk of being repeated because of the nature of pedophilia. And for that reason, you really need to be aggressive

and I that's why I think it justifies the extension of the statute of limitations for these kinds of crimes.

REP. O'NEILL: Thank you. Thank you, Mr. Chairman.

REP. LAWLOR: Thank you. And i just want to clarify one thing. The bill is very clear that although it would certainly extend the statute of limitations considerably and do so retroactively, nonetheless once a report was made by a victim to a police officer or to a prosecutor that the abuse had actually taken place then, there would, in fact, be a five year statute of limitation.

CINDY ROBINSON: That's correct.

REP. LAWLOR: So the concerns that Representative O'Neill was raising, I think in part, at least, would be allayed by that. The prosecutors wouldn't have to sit on the evidence for years. They would have an obligation to bring charges within the normal five year period.

CINDY ROBINSON: Within that limited time period, that's true.

REP. LAWLOR: Thank you. Representative Farr.

REP. FARR: Just a -- if I could understand the types of crime this would apply to because we think of pedophilia, but this would also apply to the class of statutory rape cases, is that correct?

CINDY ROBINSON: That's true and in fact the bill is a little bit different than last year. In looking through it, it specifically refers to what I think is 53a-71 and it goes back to Representative Lawlor's reporting requirement.

REP. FARR: And we have another bill before us that was going to raise the statutory rape to a five year -- there had to be a five year difference in order to be statutory rape. So that sex with a 13 year old by an 18 year old or by a 17 year old wouldn't -- let me put it this way. Sex with a 14 year old by a 19 year old who is clearly an adult, wouldn't it,

under this new statute, be a crime? And if this had happened prior to ten years ago under the extents of the statute of limitations, even though it wasn't prosecutable today, we're saying that one, you want to go back and prosecute cases like this. At the same time, we're no longer making them crimes.

REP. LAWLOR: Just for a factual matter. It does retain the five year statute of limitations for statutory rape. That's what that language is at the end. Section (a) of 53a-71.

CINDY ROBINSON: And that was written into this bill. I don't think that was on the bill -- last year's bill.

REP. LAWLOR: It wasn't in last year, but this was an amendment adopted in the House last year to exclude statutory rape from the reach of this particular statute of limitations extension.

REP. FARR: So this does not apply to statutory rape. So if the individual were - well, I guess I'm trying to understand how you define if -- statutory rape says that if there's consent that that's not a defense to it. So we're talking about cases where there's no consent. Is that an essential element of what we're talking about?

CINDY ROBINSON: And I don't know whether they use or discuss the term "consent", but it appears that the bill now has this amendment which specifically separates statutory rape, 53a-71. So I think that would answer your concern. If there is another bill, which I'm not familiar with, which is trying to effect 53a-71.

REP. FARR: I guess I'm just trying to understand what section would individuals that you're dealing with be prosecuted under?

CINDY ROBINSON: It would be --

REP. FARR: Are any of those statutory rape cases?

CINDY ROBINSON: They wouldn't be statutory rape cases,

no.

REP. FARR: And why wouldn't they be statutory rape cases?

CINDY ROBINSON: Because these were acts involving - well, first of all, many of them were under the age of 13 and I'm just looking at, at least what the law is right now, and it states, "such other person is 13 of age or older." And many of our clients were under the age of 13, but these were acts of violence, of sexual abuse, and sexual assault. They were not, in any way, shape or form, --

REP. FARR: Not consensual --

CINDY ROBINSON: Consensual sexual relations.

REP. FARR: Okay. Okay, thank you.

REP. LAWLOR: Further questions? If not, thank you very much.

CINDY ROBINSON: Thank you.

REP. LAWLOR: Go back to Commissioner Armstrong. And Commissioner Armstrong will be followed by Diane Lepper.

CMSR. JOHN ARMSTRONG: Good afternoon. Good afternoon, Chairman Lawlor, Senator Coleman, and all the honorable members of the Judiciary Committee.

I'm pleased to have the opportunity to speak regarding three bill proposals, which are before you today.

In the interest of time, I'll briefly state my position on each of the bills.

The first is H.B. 5029, AN ACT CONCERNING INMATES IN OUT-OF-STATE FACILITIES. This bill would authorize the Department of Correction to increase our statutory authority to place inmates out-of-state from 500 to 1,000.

As the Commissioner of the Department of

today to speak in support of three bills before you, S.B. 562, AN ACT CONCERNING AN ADDRESS CONFIDENTIALITY PROGRAM; H.B. 5680, AN ACT EXTENDING THE STATUTE OF LIMITATIONS ON THE PROSECUTION OF OFFENSES INVOLVING THE SEXUAL ASSAULT OF A MINOR; H.B. 5694, AN ACT CONCERNING THE PUBLIC AWARENESS CAMPAIGN ABOUT THE RIGHTS OF CRIME VICTIMS. And we're speaking regarding H.B. 5691, AN ACT CONCERNING DRUG TREATMENT PROGRAMS AT ALTERNATIVE INCARCERATION CENTERS.

In regards to S.B. 562, the PCSW supports this proposal, which would establish a confidentiality program for victims of family violence, sexual assault or stalking.

The PCSW participated on the Law Revision Study Committee that looked at this proposal and we also testified in support of a similar bill before the GAE Committee, which is H.B. 5626, AN ACT CREATING A FREEDOM OF INFORMATION EXEMPTION FOR ADDRESSES OF REGISTERED VOTERS WHO ARE VICTIMS OF DOMESTIC VIOLENCE, STALKING, OR SEXUAL ASSAULT.

This type of proposal has been instituted in seven other states, most effectively in the State of Washington. If instituted in Connecticut, it would assist many individuals fleeing violent relationships and offenders.

Because of the nature of the crimes, most of the information we have on this matter is anecdotal. But there is no question in my mind that address confidentiality is needed for victims of domestic violence.

Prior to coming to the PCSW, I practiced in Massachusetts and Connecticut as a legal service attorney for domestic violence victims. I assisted clients in obtaining restraining orders, divorces and child support. Many of my clients had escaped domestic violence situations by moving frequently to seek anonymity in other neighborhoods or states. Despite their efforts, they were often found through public records.

By instituting this proposal, you will assist many

victims are there on an annual basis in Connecticut that ought to be notified and what is the nature of - are these victims from property crimes, personal injury crimes, etcetera.

Thank you.

REP. LAWLOR: And if I understand it correctly, what you're saying is when the police officer is taking the report from the person, what's your name, what's your address, what's your date of birth, you're saying in addition to that, say when he's done, here's the victim card. That's what you're saying. You're not talking about mailing stuff --

JAMES PAPILO: No, absolutely.

REP. LAWLOR: Or drive it over to their house. You're just saying, here you go.

JAMES PAPILO: Yes.

REP. LAWLOR: Thank you. Any further questions? If not, thank you very much.

JAMES PAPILO: Thank you.

REP. LAWLOR: Is Beverly Brakeman here?

BEVERLY BRAKEMAN: Good afternoon, Senator Coleman, Representative Lawlor and members of the Judiciary Committee. Thank you for letting me come in after Mr. Papillo. I was testifying in the other hearing.

My name is Beverly Brakeman. I'm the Executive Director for the Connecticut Chapter of the National Organization for Women.

You have my written testimony, so I'll just summarize.

I'm here to support three bills today, H.B. 5693, AN ACT CONCERNING THE DEFINITION OF A CRIME VICTIM; S.B. 562, AN ADDRESS CONFIDENTIALITY PROGRAM; H.B. 5680, AN ACT EXTENDING THE STATUTE OF LIMITATIONS IN CHILD SEXUAL ABUSE; AND H.B. 5694, AN ACT CONCERNING PUBLIC AWARENESS CAMPAIGN FOR RIGHTS OF

CRIME VICTIMS.

With regards to H.B. 5693, this is the definition of a crime victim, Connecticut NOW strongly supports this bill that would provide surviving domestic partners of homicide victims with the right to be present at their partner's court proceedings in a homicide.

We believe in times when the definition of family is changing and broadening daily. Partnerships come in all different compositions and society is beginning to recognize that marriage is not the litmus test for a legitimate relationship.

The stories of gay and lesbian partners have absolutely no legal rights to learn about, care for, or pick up the pieces after their partner was killed in the September 11th attacks have clearly demonstrated the need for this type of legislation which simply recognizes the changing nature of relationships and allows for a more compassionate and appropriate criminal justice response to victims of homicide and their families.

And I would just like to say a few words on the act extending the statute of limitations, as well, that child sexual abuse victims commonly remain silent for years post abuse for reasons that include shame, psychological or physical trauma, misplaced guilt, family pressure, threats, and more.

HB 5680

As a result, it is imperative that we allow the maximum amount of time possible to ensure that these victims have the opportunity to report their abuse and get retribution within this state's criminal justice system.

By making this legislation retroactive, we are giving child sexual abuse victims who are suffering in silence the opportunity to seek retribution and stop their abusers from committing further offenses.

Connecticut NOW urges you to make Connecticut the next state to change its statute of limitations which is currently not -- that's it. Sorry. It's

been a long day. That's it.

If anybody has questions.

REP. LAWLOR: Thank you very much. On this definition of a crime victim in the homicide cases. I was actually watching one of the morning talk shows this morning and they had fiances of some people killed in the World Trade Center bombing and, in effect, their problem was that even though they tried to become involved and tried to be notified of what was going on because they had not yet been married, they were not allowed to take advantage just of the basic notice kind of stuff that the next of kin typically were getting in that situation. And there were tragic stories.

HB 5693

So it's not limited only to same sex partners. It's anyone who is living together with a person, as these persons were.

Representative Farr.

REP. FARR: That reminds me. I was involved one time in a case where my client had been murdered and he was engaged. I don't know that they were living together. And so this doesn't really address that issue.

BEVERLY BRAKEMAN: Right. I think it talks about living together and share a common residence, held themselves out in the community as husband and wife or were in a committed relationship.

I mean, I think you're right that that's maybe something that you need to look at in the legislation.

REP. FARR: Or it doesn't say committed. It says, "or domestic partners", doesn't it?

BEVERLY BRAKEMAN: I'm just looking. In Section 1b it talks about the victim was ineligible to get married and such person and the victim were in a committed relationship, shared a common residence, and held themselves out in the community as husband and wife or as domestic partners.

the safety at the facilities right now when we're getting as overcrowded as we are. And I think that's an enormous concern and I think the only short term solution I see is to send some of them out-of-state.

MICHAEL MINNEY: Well, as I stated to you earlier, there is an alternative out there that's been discussed. And it's a 1,500 cell facility that would cost a fraction of what it's going to cost to do all these expansions. They're talking about expanding Osborne Correctional Institution, which was built in 1963 to house 950 inmates. There's currently 1,800 inmates.

Commissioner Armstrong just testified earlier today that he's opposed to dormitories, yet he's currently, as we speak, setting up another dormitory inside the Osborne Prison with 75 inmates in it. A dormitory that was shut down back in 1983 when I was at Somers Prison because it was too dangerous. So he's setting up more dormitories as he's saying he doesn't want dormitories.

What I'm saying is that instead of spending \$20 million over at Suffield, and then another \$20 million or \$30 million up at Somers to expand, if you spent \$20 million more than that, you'd have 1,500 cells, 3,000 beds, and you would alleviate your overcrowding problem probably for the next ten years.

I think it's an alternative that needs a big (inaudible).

SEN. COLEMAN: Are there questions from other members? Seeing none, thank you for your testimony.

MICHAEL MINNEY: Thank you, Senator.

SEN. COLEMAN: Next is Natasha Pierre, to be followed by Dennis O'Neil.

NATASHA PIERRE: Good morning, Senator Coleman and members of the committee. I am Natasha Pierre. I'm the Legislative Analyst for the Permanent Commission on the Status of Women and I am here

today to speak in support of three bills before you, S.B. 562, AN ACT CONCERNING AN ADDRESS CONFIDENTIALITY PROGRAM; H.B. 5680, AN ACT EXTENDING THE STATUTE OF LIMITATIONS ON THE PROSECUTION OF OFFENSES INVOLVING THE SEXUAL ASSAULT OF A MINOR; H.B. 5694, AN ACT CONCERNING THE PUBLIC AWARENESS CAMPAIGN ABOUT THE RIGHTS OF CRIME VICTIMS. And we're speaking regarding H.B. 5691, AN ACT CONCERNING DRUG TREATMENT PROGRAMS AT ALTERNATIVE INCARCERATION CENTERS.

In regards to S.B. 562, the PCSW supports this proposal, which would establish a confidentiality program for victims of family violence, sexual assault or stalking.

The PCSW participated on the Law Revision Study Committee that looked at this proposal and we also testified in support of a similar bill before the GAE Committee, which is H.B. 5626, AN ACT CREATING A FREEDOM OF INFORMATION EXEMPTION FOR ADDRESSES OF REGISTERED VOTERS WHO ARE VICTIMS OF DOMESTIC VIOLENCE, STALKING, OR SEXUAL ASSAULT.

This type of proposal has been instituted in seven other states, most effectively in the State of Washington. If instituted in Connecticut, it would assist many individuals fleeing violent relationships and offenders.

Because of the nature of the crimes, most of the information we have on this matter is anecdotal. But there is no question in my mind that address confidentiality is needed for victims of domestic violence.

Prior to coming to the PCSW, I practiced in Massachusetts and Connecticut as a legal service attorney for domestic violence victims. I assisted clients in obtaining restraining orders, divorces and child support. Many of my clients had escaped domestic violence situations by moving frequently to seek anonymity in other neighborhoods or states. Despite their efforts, they were often found through public records.

By instituting this proposal, you will assist many

victims in establishing a new life without fear that they would be found by their abusers through public records.

I would like to note that since we've written our testimony, some of the DV advocates have talked to us about the issue of funds that you were talking about earlier. And they are just concerned that since they are the front line workers, that they would actually have some financial hardship in getting people into this program. It's additional paperwork for individuals that are already loaded up with certain mandates and requirements. So just to keep that in mind when you're considering funding for this proposal.

In regards to H.B. 5694, we support this, as well. Over the past 30 years, Connecticut's response to victims' rights has been one of significant progress in the areas of social services, health care, and the private sector. Yet, despite this progress, victims remain dissatisfied with their actual access to information and the actual participation within the system.

H.B. 5694 would remedy this situation by establishing a statewide public assistance campaign about crime victims' rights.

Regarding H.B. 5680, it will also assist victims of sexual assault in prosecuting their alleged attackers by extending the statute of limitations from two years after their victim reaches age 18 to 30 years after the victim reaches age 18.

The basic premise is that it will allow victims who were sexually abused, sexually exploited, or sexually assaulted, when she or he was a minor, to make a claim later in life. This is critical for victims of these types of offenses. Because of the nature of the assault, the age of the minor victim and too frequently the familiar relationship with the attacker, many minor victims do not even take - do not even begin to address the harm until they're much older. The reality is, that it takes victims years to acknowledge the assault, process it by seeking therapy, and then finally decide that they

are strong enough to put closure on the matter.

For many, the closure needed is a criminal proceeding, but as the statute stands now, often they would not be able to do that because the time would have expired. So this bill would provide them with the avenue to seek justice and fully heal if they so choose to.

Regarding H.B. 5691, AN ACT CONCERNING DRUG TREATMENT PROGRAMS AT ALTERNATIVE INCARCERATION CENTERS, PCSW fully supports the language or the intent of this proposal because we support public policies that increase drug and mental health alternatives to incarceration treatment. We don't have a strong position about it having to be at the facility where they're saying it would be.

But we've learned that alternatives to incarceration decrease the prison population, but they also treat addiction and mental health as a public health problem and not a criminal problem. Behavioral health initiatives that address relapse and continued community support for substance abuse and the mentally ill offenders will enhance public safety through the reduction of recidivism.

Adequate funding of programs that keep non-violent offenders with behavioral health problems out of prison, reduces the cost of incarceration to taxpayers. Over the long term it reserves secure prison space for violent offenders.

It is unclear whether this legislation would include both men and women in the facilities. Therefore, we would respectfully suggest that a program of equal substance be provided for women as an alternative to incarceration.

By equal substance, we mean a program where women and men are housed in separate facilities, with programming that has proven to be successful for women as maintained, and inpatient programs that would provide space for women and their children.

Thank you for allowing us to express our opinion on this.

SEN. COLEMAN: Thank you. Are there questions for Ms. Pierre? Representative Cafero.

REP. CAFERO: Thank you. Ma'am, with regard to your testimony concerning the bill of extending the statute of limitations for sexual assault. Many of us here believe that is very necessary prospectively. Meaning that from this point on, let it be known that anyone who sexually assaults a minor will have to look over their shoulder, in this case, thirty years and frankly, if it was up to me, it would have the same statute of limitations as murder, which is no statute of limitations.

HB5680

The problem many of us had - in fact, about 85 in the House and several in the Senate had last year was this business about retroactivity at this stage. The fact that, under our current law, the statute of limitations being two years and the statute of limitations could have expired on certain individuals if this bill were passed some 28 years ago and now retroactively you could go back in time.

From a moral point of view, for those who are actually guilty of the crime, I have no sympathy for them. But there are certain circumstances that were brought up in debating this bill last year that showed some real life inequities that could happen if, in fact, you were to pass this law which would make it retroactive.

Have you or your group considered those kinds of scenarios and have any opinion on them?

NATASHA PIERRE: We have not. For the most part, most of our information, most of the stories we get from people, it's over the phone and it's usually within a few years after the assault that we may hear something.

So we have not really addressed whether or not it should be retroactive. We know that it may cause a lot of legal battles that - as someone said before, the burden to even prove this is going to be very

high and a lot of people might not be able to do it. So to actually try to go back thirty years, we understand it would be difficult, but we have not researched whether like how many people it would impact or not.

REP. CAFERO: One of the things that is tough to measure is certainly the burden might be very difficult to proving it on the person whose the victim, alleged victim. But because of the nature of the crime itself, it's the kind of thing that also a defense would be difficult some thirty years with regard to retroactively especially when one was under the impression that the law had said two years.

And the concern is that it's such a hot button crime, if you will. It's the kind of crime that even if you were accused of, in many instances your reputation - even if you're found completely innocent, can be forever stained and tarnished. That is, again, for me personally, that is not my concern prospectively. But to go retroactively and to change the law retroactively, that's my concern. And I -- again, and I hope that this committee considers from this point forward prospectively changing the statute of limitations to thirty years or frankly, eliminating it all together.

So again, let the word go (inaudible) look over their shoulder for the rest of their lives.

But to make this retroactive has so many, in some cases, individually devastating consequences, that frankly is precedent saying. We never, ever, in my mind, have passed a law changing the crime or the statute of limitations retroactively. And it is a very dangerous precedent.

That's my concern and I wondered if you had an opinion.

NATASHA PIERRE: We haven't really addressed that, but I can speak to our (inaudible) and really talk that through and get back to you on that.

SEN. COLEMAN: Are there further questions for this witness? Representative Green.

REP. GREEN: Thank you, Mr. Chair. Just to follow up on Representative Cafero. Is the intent here or is it your belief that this would be applied to cases before the law takes effect so that someone can go back - that, for example, if this had been committed, say eight years ago, that person can now file a claim. Is that your belief in terms of what this legislation does?

NATASHA PIERRE: No. We did not even address the issue of retroactively. When I wrote this testimony and when I thought about this issue, I was thinking of it as being established from that point forward. So I would really have to go back and discuss that issue of retroactivity with my - with our office.

REP. GREEN: So at this point, your office has not taken a stance one way or the other?

NATASHA PIERRE: No.

REP. GREEN: Okay.

NATASHA PIERRE: The thought process was that at the time of writing this, was that it was going to be an effective date of our usual effective dates and from that point forward. We - our history has been that that's how things happen. So we do have to address this issue on this bill.

REP. GREEN: Okay.

REP. LAWLOR: Mr. Chairman, if I could just - just one factual matter. I know Representative Cafero raised this a moment ago was that factually though, in 1999 we actually retroactively changed the statute of limitations for sexual assault involving DNA evidence and the murder statute retroactively we eliminated the statute of limitations for murder in the late 1970's and that's the basis upon which Michael Skakel is being prosecuted now and the challenge to that retroactive change was not successful. And last year in the Patriot Act, the federal law in terrorism, retroactively the statute of limitations was eliminated for acts of terrorism under the old law.

Where there was a federal statute of limitations, now that has been retroactively eliminated. So it has happened a few times.

NATASHA PIERRE: Okay, I'll look at that and research this.

REP. LAWLOR: Thank you. Representative Green.

REP. GREEN: I'm sorry, I missed your first comment because I had asked her and I was informed that the language does talk about it being retroactive. Is that what you were just reiterating?

REP. LAWLOR: Correct, yes.

REP. GREEN: Okay. Let me then ask -- can I ask Ms. Pierre a question then, based on that comment?

REP. LAWLOR: Sure.

REP. GREEN: I was concerned also and my specific concern was that I have some concern about teenage pregnancy and I know many cases, for example, that a 15 year old might become impregnated by someone whose 20 years old. And it's consensual sex and there was -- and technically that person 20 years old could have been arrested under current statute.

If this bill was to pass, 25 years from now the State, in effect, could file charges against that actor, in fact that they violated the law 20 years ago. And my concern is that we still haven't adequately addressed that question of is the State willing to enforce its own law, which is right now Sexual Assault 4 with a child under 15 years old, 15 and under, that we know with teen pregnancy by consensual sex, that technically that's illegal and I'm just wondering now how we might address that if something like this was to come in fact. I think that I would be hard pressed to say do we really go after what I might have considered predators at that point when someone's 15 and someone's 21, 22.

So that is one concern of mine in terms of how do we address that small population of consensual sex.

There was an age gap, an age difference and the person became impregnated. That is a concern of mine. If we just go back to retroactiveness.

But you guys have not had any thoughts on consensual sex that would also be included in this?

REP. LAWLOR: If I could just say a factual thing. This bill does not include that situation. Representative Green offered an amendment on the House floor last year on that and that amendment is incorporated in the language here today. So it does not apply to the statutory rape statute.

REP. GREEN: Thank you.

REP. LAWLOR: Are there other questions? If not, thank you very much.

NATASHA PIERRE: Thank you.

REP. LAWLOR: Next is - is Dennis O'Neil still here?
No. Lisa Holden.

LISA HOLDEN: Good evening, Senator Coleman and Representative Lawlor and members of the Judiciary Committee.

My name is Lisa Holden and I am the Executive Director of the Connecticut Coalition Against Domestic Violence. I am here today with my colleagues, Kathy Saja whose a family violence victim advocate in the New Haven Court and Lieutenant Kelly Dillon who is a police officer for the New Haven Police Department.

I am here today to support H.B. 5692, AN ACT CONCERNING FIREARMS IN FAMILY VIOLENCE. I will also provide oral testimony on S.B. 562, AN ACT CONCERNING AN ADDRESS CONFIDENTIALITY PROGRAM and written testimony on twelve other bills that are important to us.

There are essential reasons to support H.B. 5692. First, it is estimated that Connecticut issues 6,000 restraining orders and 30,000 protective orders annually. The Connecticut Coalition Against

victim can file a writ of error.

REP. SPALLONE: Well, it will certainly be interesting to see how the court rules this spring and thank you again for your testimony.

Thank you, Mr. Chairman.

SEN. COLEMAN: Thank you. Are there further questions? Seeing none, thank you, Attorney Smyth and Attorney Radler.

ATTORNEY MONTE RADLER: Thank you.

GERARD SMYTH: Thank you.

SEN. COLEMAN: Next, we'll hear from Carol Bojka. Am I misreading this name?

FANOL BOJKA: It's actually Fanol Bojka.

SEN. COLEMAN: Okay. My apologies to you.

FANOL BOJKA: Committee members, thank you for allowing me to appear here today. My name is Fanol Bojka.

SEN. COLEMAN: Before you get rolling, can you spell your first name?

FANOL BOJKA: Sure. F-A-N-O-L. Last name is B-O-J-K-A.

SEN. COLEMAN: Thank you.

FANOL BOJKA: I practice criminal defense law in Waterbury and I've been practicing there for approximately the last eight years.

HB 5680

SB 559

I'm a member of the Connecticut Criminal Defense Lawyers Association. I'm here speaking on their behalf today. And I'd like to give testimony, in addition to the written testimony given by our organization with regard to H.B. 5596, the statute which expands the age difference between young persons who have sexual relations from two years to five years. We strongly support this bill because it reflects reality.

setting when the act occurs these students are in high school. After they're convicted, they're generally in college and sometimes out-of-state. And once they are convicted, and they seek to transfer this probation to the out-of-state setting, many of the states don't accept these students because there aren't those ties that are required under the Interstate Compact for Probationers. And so what you end up doing is getting into a battle with the states as to whether or not they should take these students as probationers.

We have to keep in mind that these are not sexual predators the way we would traditionally think of a sexual predator. These are otherwise decent young men who are now turned into sexual predators because of operation of law.

The other statute I'd like to address is H.B. 5680, expanding the statute of limitations for sexual assault on minors. We would strongly object to expanding that, especially as to the issue of retroactivity.

Fundamentally, I don't know how to defend a person as a criminal defense attorney whose been charged with that 30 years after the fact. Records are lost, evidence is not around, witness testimony is vague, if anything. If those people are around at all. I am not sure how, as a criminal defense lawyer, I can represent somebody who has been charged with this crime 30 years after the fact.

In reality, what will happen is many innocent people may end up getting convicted of these charges because of the fact that prosecutors won't just dismiss these charges. What they will do is they will say because the case is so old or because memories have faded, we will offer you a plea bargain that will not involve jail time, which 99% of these people will jump at in order to avoid jail even if they are innocent.

I'd be happy to answer any questions.

SEN. COLEMAN: Are there questions? Representative

LISA WINJUM: I'm Lisa Winjum. Senator Coleman, Representative Lawlor, and members of the committee.

HB 5680

I'm the Director of Public Policy and Communication for ConnSACS. I've also submitted written testimony on several bills and I would like to just kind of go over the highlights of some of these bills.

The first one I'd like to address is raised S.B. 559, AN ACT CONCERNING CONSENSUAL SEXUAL ACTIVITY BETWEEN YOUNG PERSONS. ConnSACS supports the intention of this bill which would de-criminalize adolescent consensual sexual activity. However, we are opposed to the five year age difference and we would ask this committee to change that age difference to four years. Four years is more developmentally appropriate and it's also what is being done in some other states, mainly Pennsylvania and Rhode Island.

The next bill I'd like to speak on is raised S.B. 562 concerning an address confidentiality program. We also support this bill which would create the address confidentiality program in the Secretary of the State's Office for victims of sexual assault, stalking, and domestic violence. ConnSACS was part of the multi-disciplinary Law Revision Study Commission that recommended the creation of this program and based on the experience in other states that you heard about, this kind of program is working to protect victims.

It's our understanding that the Secretary of the State will fund this program within her office from available appropriations.

As community-based rape crisis centers, our member centers will be a primary gateway into this program for participants. And this year ConnSACS is facing a 7% decrease in the funding we receive from the Department of Public Health.

As a primary gateway into this program, we would ask that the Legislature would help us with the

funding to make that program successful.

The next bill I would like to address is H.B. 5680 which is AN ACT EXTENDING THE STATUTE OF LIMITATIONS FOR PROSECUTION OF SEXUAL ASSAULT OF A MINOR. We also strongly support this bill which extends the statute of limitations for the prosecution of sex offenses involving sexual abuse of a minor until the victim is 30 years beyond the age of majority or 48 years old.

Currently, victims of child sex abuse only have until their 20th birthday to report this abuse and receive intervention from the criminal justice system. Young adults often -- children often don't come forward and certainly young adults often don't come forward even at 20 (inaudible--due to tapes switching from 5b to 6a)

Last week Missouri Governor Bob Holden signed legislation clarifying that there's no statute of limitations for prosecuting rape or sodomy in the State of Missouri. And I think that was a great decision and I hope that we can do the same here in Connecticut.

And I'm happy to take any questions.

SEN. COLEMAN: Are there any questions? There apparently are none. Thank you for your testimony, both of you.

GAIL BURNS-SMITH: Thank you.

SEN. COLEMAN: Helen Meganigle is next.

HELEN MEGANIGLE: Good evening, Senator Coleman, Representative Lawlor, and members of the Judiciary Committee.

My name is Helen Meganigle. I'm a lawyer in private practice in Brookfield, Connecticut. I've been practicing law for sixteen years. I also happen to be the Victims Rights Committee Chair for the Connecticut Bar Association, as well as a charter member of the National Crime Victims Bar Association.

I'm here to address you on H.B. 5680, which is the act to extend the statute of limitations for prosecution of child sexual abuse claims. I've submitted written testimony and I'd like to address really two main issues.

One, is why do people delay? And two, is the question of the retroactivity because that's where the bill stalled last year. It made it far through the legislative process, but got caught up when it reached the House the second time on the issue of retroactivity.

First, why do people delay reporting? Well, there are two reasons. You heard earlier today, this afternoon from Attorney Cindy Robinson about some of the psychological reasons. The fear, the shame, the guilt, the humiliation, but it's not just the psychological. It goes beyond psychological. There's also physiological responses that the body makes when it's traumatized, particularly if you're a victim of child sexual abuse.

And one of the things that researchers have been able to develop in the past couple of years, in particular a M.D. neuro-scientist at - well, he's a Yale professor as well as he's done a lot of work at the West Haven VA Hospital on brain imaging and mapping, is that there's actual physiological effects to the brain in different areas of the brain, particularly the limbic regions. So it's not just the psychological phenomena in the delay of reporting, it's also a physiological phenomena because there's chemical changes in the brain that bring about responses that cause the delay. Now we know that's been documented in the sciences.

Now, let me address the question of the retroactivity. I view this in two ways. The legal issues and then the political issues. And they converge and they're different, as well.

On the legal side, this law can constitutionally be retroactively applied for three reasons.

The first reason is we have a Connecticut Supreme

Court case that was decided in 1994, State vs. Crowell, it's in my written testimony, the cite. And that Connecticut Supreme Court decision said that the extension of a criminal statute of limitations can be retroactively applied and there's no due process violation in so doing.

So that's argument number one.

Argument number two is, we have a civil statute of limitations that gives victims up until age 35 - it enables victims up until age 35 to file civil lawsuits. The case that I handled in the federal courts was one of the first cases -- it was the first case Borwith vs. Shea to establish that the civil statute of limitations could be retroactively applied and that was not a due process violation.

Another case, Roberts vs. Catin at literally the same time, weeks later it was decided in the Connecticut Supreme Court also holding that the civil statute of limitations could be retroactively applied. It wasn't a due process violation.

So that's argument number two.

Now, the third issue to look at, under this legal heading of whether this bill could be retroactively applied, is the expos facto considerations and for those of you that don't understand that what terminology means, well, it's a Latin phrase that basically says that we can't criminalize past behavior. It's unfair to do so, past acts. So we can't today decide that drinking milk and driving is criminal behavior.

Well, the thing to look at when you're analyzing this issue from the expos factos standpoint, is there's a 9th Circuit Court -- U.S. Court of Appeals case that has been taken up by the U.S. Supreme Court on Megan's Law registries and this case arose out of the State of Alaska and what makes it a little more -- what distinguishes it from this bill is first of all, when you're looking at Megan's Law registries, you're talking about possibly penalizing a defendant twice. They've served their sentence. Now they're going to be put

on a registry. Is it fair to have that kind of registry and those laws retroactively applied?

Well, the 9th Circuit, at least in that particular case, Doe vs. Ott, decided this past spring, said that doesn't pass the muster of the expos facto rule of law. We can't retroactively apply and mandate that sex offenders from past (inaudible) should be on the registry. Well, that's a little different because what they went into was an analysis of what constitutes a violation of the expos facto rule of law. And what constitutes a violation is a law which is designed to be punitive in nature, that makes changes and substantive rights with a purely punitive design.

Now, the bill that's before you, H.B. 5680 is a procedural change in the law. It's extending the criminal statute of limitations. It's not a substantive change. It's not creating a new crime of any sort. It was a crime 20 years ago to molest kids. And it's a crime today. So we're not creating a new crime.

In enacting the bill, we're not creating a new punitive code. We're not creating new criminal conduct.

The other component to looking at what passes the expos facto muster, at least as decided by the 9th Circuit Court of Appeals and the U.S. Supreme Court is going to be reviewing it, is what the Legislature has to say about the bill itself. And if, in the legislative history, there's an expressed intent that the bill be retroactive, and that it not be punitive in nature, then it should pass the analysis that the courts would undertake in terms of the expos facto rule of law.

So, those are the three legal reasons why I believe retroactive application of this bill will work. It will be challenged. Criminal defense lawyers will do their jobs and try to challenge it, absolutely.

Now, the other side to this is the political debate and whether it's fair to retroactively apply this statute of limitations. Now, I've heard testimony

such as records are lost, evidence will be missing, and the crimes are just too old. Well, if the evidence is missing and the records are lost, then the prosecutor is not going to prosecute the case because he has nothing to go on.

We can't refuse to adopt a rule of law simply because there's some cases that may fall in the category of being weak cases to prosecute. There may very well be cases that are very strong to prosecute.

And the other political part of this debate probably revolves around the clergy abuse cases, which have been erupting in the past year since I was last before you testifying. Up in Boston, the Boston Diocese is dealing with a horrible crisis with a now defrocked priest, John Googin, who is now serving nine to ten years in jail for having molested a young child. Over 130 people have come forward and claimed that they've been sexually abused by John Googin. The folks up in Massachusetts have been pleading for Cardinal - the Cardinal up there who knew that Googin was a predator and transferred him to another diocese, that he stepped down and resigned.

So, we've got those sort of political issues that are out there that can't be ignored, but we can't sweep the issue under the rug either. When the Catholic Church did it, they committed a gross error of judgment and now something has to be done to address the issue.

I thank you and I ask you to vote favorably on this bill.

SEN. COLEMAN: Thank you. Are there questions?

HELEN MEGANIGLE: Oh, I'm sorry. Any questions?

SEN. COLEMAN: There don't appear to be any.

HELEN MEGANIGLE: Okay.

SEN. COLEMAN: Thank you.

JOINT
STANDING
COMMITTEE
HEARINGS

JUDICIARY
PART 7
1837-2157

2002



Judiciary Committee Co-Chairs
Senator Coleman and Representative Lawlor

March 8, 2002

Dear Senator Coleman and Representative Lawlor:

I am writing to you concerning various acts of legislation that directly impact victims of sexual assault in the state of Connecticut, as well as the general need for increased public awareness and education around this most pertinent issue. These bills are a priority for victims of sexual assault at this time, as well as for the community rape crisis centers that serve them, including ourselves.

The first bill **AN ACT CONCERNING AN ADDRESS CONFIDENTIALITY PROGRAM, SB 562**, is critical to victims of both sexual assault, stalking and domestic violence statewide. Additionally, the multidisciplinary Law Revision Commission unilaterally supported the implementation of this program. For victims of violent crime confidentiality is essential for continued safety, both physically and emotionally, from further violence. Similar programs have been implemented in other states with success.

Additionally, it is community rape crisis centers that will serve as the primary avenue for victim access to the program. We are asking the legislature to help us with funding so that we may ensure the program's success.

AN ACT CONCERNING A PUBLIC AWARENESS CAMPAIGN ABOUT THE RIGHTS OF CRIME VICTIMS. Last year, the Through any Door Coalition was supported by this committee and the legislature. However, Governor Rowland eliminated funding for the public awareness campaign. We are asking that grant funds be instituted to support a public awareness campaign. Victims of crime in Connecticut need to understand their rights under the State Constitution. Every citizen, and every victim of crime, should have the opportunity to be aware and knowledgeable of their rights if s/he becomes a victim of crime. HB5694

We are also asking the **H.B. 559, AN ACT CONCERNING CONSENSUAL SEXUAL ACTIVITY BETWEEN YOUNG PERSONS.** We ask that you please support this bill, BUT only after changing the age difference in the bill from 5 years to four years. As written, this bill would contribute to manipulation of power and increased sexual assault of younger youth. With an age difference of FOUR years, this new legislation would serve its purpose effectively. HB5680

Lastly, we ask that you please support **AN ACT EXTENDING THE STATUTE OF LIMITATIONS ON THE PROSECUTION OF OFFENSES INVOLVING THE SEXUAL ASSAULT OF A MINOR.** This bill could potentially save thousands of children from sexual assault by allowing young adults to prosecute their childhood offenders. This bill would help to hold child molesters accountable while preventing future abuse of our children.

Thank you for time and attention to both these matters. If I can be of further assistance, please call me at (203) 753-3613.

Sincerely,
Sharlene B. Kerry, MDW
Sharlene B. Kerry
Program Director

P.O. Box 1503 ■ Waterbury, CT 06721 ■ (203) 575-0388 ■ Fax (203) 574-3306
Domestic Violence Hotline (203) 575-0036 ■ Sexual Assault Hotline (203) 753-3613

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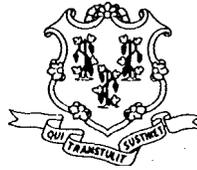
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State Of Connecticut
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PERMANENT COMMISSION ON
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Testimony of
Natasha M. Pierre
Legislative Analyst
Permanent Commission on the Status of Women
Before the Judiciary Committee
Monday, March 11, 2002

In Support Of:

S.B. 562, AAC An Address Confidentiality Program

H.B. 5680, AA Extending the Statute of Limitations on the Prosecution of Offenses Involving the Sexual Assault of a Minor

H.B. 5694, AAC A Public Awareness Campaign About the Rights of Crime Victims

Re:

H.B. 5691, AAC Drug Treatment Programs At Alternative Incarceration Centers

Good morning Senator Coleman, Representative Lawlor and members of the Committee. My name is Natasha Pierre and I am the Legislative Analyst for the Permanent Commission on the Status of Women. At the current rate of crime in the United States, within the next hour, 2 people will be murdered, 78 women will be raped, 240 women will be battered, 84 individuals will be stalked, and 360 children will be abused or neglected. In Connecticut, in 1997, victims of family violence related arrests totaled 17,637 with 79% of those victims being women.¹ Therefore, we are pleased to testify this morning in support of several bills before you today that would assist and protect victims of crime.

¹ *Family Violence Related Arrests-Victims, CT*, available at <http://www.domesticabuseawareness.org/ct.htm>.

Natasha M. Pierre
Before the Judiciary Committee, March 11, 2002
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S.B. 562, AAC An Address Confidentiality Program

The PCSW supports S.B. 562, which would establish an address confidentiality program for victims of family violence, sexual assault or stalking. As you may know the PCSW participated on the Law Revision's study committee, which was formed to address this proposal, and we believe the end result embodies the elements discussed in the committee. We also testified in support of a similar bill before the GAE committee, H.B. R.B. 5626, An Act Creating a Freedom of Information Exemption For Addresses of Registered Voters Who Are Victims of Domestic Violence, Stalking or Sexual Assault.

This type of proposal has been instituted in seven other states, most effectively in the state of Washington. If instituted in Connecticut, it would assist many individuals in fleeing violent relationships and offenders. Because of the nature of the crime, most of the information we have on this matter is anecdotal, but there is no question in my mind that address confidentiality is needed for victims of domestic violence. Prior to coming to PCSW, I practiced in Massachusetts and Connecticut as a legal services attorney for domestic violence victims. I assisted clients in obtaining restraining orders, divorces and child support. Many of my clients had escaped domestic violence situations by moving frequently to seek anonymity in another neighborhood or state. Despite their efforts, they were often found through public records. By instituting this proposal, we will assist many victims in establishing a new life without fear that they would be found by their abusers through public records. Please support this proposal to assist those families that are seeking safety in this state.

H.B. 5694, AAC A Public Awareness Campaign About the Rights of Crime Victims
H.B. 5680, AA Extending the Statute of Limitations on the Prosecution of Offenses Involving the Sexual Assault of a Minor

Over the past 30 years, the national response to victims' rights has been one of significant progress in the areas of social services, health care, and the private sector. Yet, despite this progress, victims remain dissatisfied with their actual access to information and their actual participation within the system. H.B. 5694 would remedy this situation by establishing a statewide public awareness campaign about crime victim's rights.

H.B. 5680 will also assist victims of sexual assault in prosecuting their attackers, by extending the statute of limitations from two years after the victim reaches age 18 to 30 years after the victim reaches age 18. The basic premise is that it will allow a victim who was sexually abused, sexually exploited, or sexual assaulted when she or he was a

Natasha M. Pierre
Before the Judiciary Committee, March 11, 2002
Page 3

minor to make a claim later in life. This is critical for victims of these types of offenses. Because of the nature of the assault, the age of the minor victim, and too frequently the familial relationship with the attacker, many minor victims do not even begin to address the harm until they are much older. The reality is that it takes victims years to acknowledge the assault, process it by seeking therapy, and then finally decide that they are strong enough to put closure on the issue. For many, the closure needed is often a criminal proceeding. But often they are barred from filing criminal charges because of the current statute of limitations. This bill would provide them an avenue to seek justice and fully heal if desired.

HB 5691, AAC Drug Treatment Programs At Alternative Incarceration Centers

This proposed legislation would reuse the Maloney Correctional Center as an alternative center; require participation in a drug treatment program in lieu of incarceration for certain persons who commit a nonviolent drug possession offense or violate probation or parole by committing a nonviolent drug offense; establish a diversionary program for persons with psychiatric disabilities; establish a presumption that persons convicted of violent offenses will not be released on bail pending sentencing or appeal; prohibit the housing of inmates in for-profit prisons, and; provide risk assessment of persons eligible for parole.

The Permanent Commission on the Status of Women (PCSW) fully supports this language as written because we support public policies that increase drug and mental health alternative to incarceration treatment programs for women. This not only decreases the prison population, but also treats addiction and mental health as a public health problem and not a criminal problem. Behavioral health initiatives that address relapse and continued community support for substance abusing and mentally ill offenders will enhance public safety through the reduction of recidivism. Adequate funding of programs that keep non-violent offenders with behavioral health problems out of prison reduces the cost of incarceration to tax payers over the long-term and reserves secure prison space for violent offenders.

It is unclear in this legislation whether both men and women would be served at the Maloney facility. Therefore, we respectfully suggest that a program of equal substance be provided for women as an alternative to incarceration. By equal substance, we mean a program where women and men are housed in separate facilities, programming that has proven to be successful for women is maintained, and in-patient programs provide space for women and their children.

Thank you.

**IN SUPPORT OF JUDICIARY COMMITTEE BILL NO. 5680 EXTENDING
THE CRIMINAL STATUTE OF LIMITATIONS FOR THE
PROSECUTION OF CHILD SEXUAL ABUSE CASES**

My name is Cindy Robinson and I am a trial lawyer. For the past nine (9) years my firm, Tremont & Sheldon, P.C. in Bridgeport, has represented over thirty (30) people who were sexually abused as children.

In almost all of these cases, these individuals came to us because they wanted to prosecute the perpetrator in criminal court. Unfortunately, in all of these cases, the criminal statute of limitations had long since passed. As a result of the many civil cases that we have brought for these abuses, I have spent much time with our clients, who are sometimes called victims and more often called survivors – they are, indeed, both. I have met with them in private and represented them in depositions. I have reviewed their private medical records and evaluations. One thing is crystal clear to me: childhood sexual abuse is one of the most heinous violations that can occur. In 1991, the civil statute of limitations for these crimes was extended after much testimony from both survivors and psychologists. Why should the fact that these young victims who were unable to speak for themselves, who were so utterly unprotected, foreclose the criminal prosecution of their perpetrators – people who are childhood monsters in the truest sense of the word? Why should these perpetrators be able to get away with what has been rightfully called murder of the soul?

While I am aware that due process concerns for a potential accused are always paramount, an extension of the statute of limitations will not interfere with those rights. The state will still have to prove its case beyond a reasonable doubt. The state will still have to make judgments as to when to pursue prosecution. All perpetrators may not be prosecuted; however, that should not prevent the state from going forward on those cases that are strong and can be proven. For instance, Father Raymond Pcolka is a Roman Catholic priest within the Diocese of Bridgeport. We know of over twenty five (25) young people who were sexually abused by Father Pcolka when they were children. This abuse includes rape and sodomy of children as young as seven (7). Yet, despite the fact that civil lawsuits against him by seventeen (17) people resulted in monetary settlements, the perpetrator lives and moves freely and unaffected. In fact, he is still a priest. We would be naïve to think that Father Pcolka will not sexually abuse again. The state should be given the chance to prosecute him – a prosecution that would be successful given the weight of the evidence against him. The extension of the statute of limitations will allow the state to do so. Please extend the statute of limitations for the prosecution of sexual offenses against children. Thank you.



Connecticut Sexual Assault Crisis Services, Inc.

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To: Senator Coleman, Representative Lawlor, and Members of the Judiciary
 Committee

From: Lisa Winjum, Director of Public Policy and Communication
 Connecticut Sexual Assault Crisis Services, Inc.

Re: R.B. 5680 AA Extending The Statute Of Limitations On The
 Prosecution of Offenses Involving the Sexual Assault of a Minor

Position: SUPPORT

My name is Lisa Winjum and I am Director of Public Policy and Communication for Connecticut Sexual Assault Crisis Services, the statewide association of community-based sexual assault crisis centers in Connecticut. CONNSACS seeks to end sexual violence through victim assistance, community education, and public policy advocacy.

CONNSACS strongly supports this bill, which extends the statute of limitations for the prosecution of sexual offenses involving the sexual abuse of minors until the victim is 30 years beyond the age of majority, or age 48.

Currently, victims of sexual abuse only have until their 20th birthday to report childhood sexual abuse and receive intervention from the criminal justice system. The short statute of limitations is insufficient to protect both current victims sexual abuse and adult survivors of sexual abuse. Child sex abuse victims need more time to report the abuse because the psychological trauma can make victims delay reporting until long after the abuse or threat of further abuse has ended.

Child sexual abuse and sexual exploitation are shrouded in silence and secrecy. Children and teens who have been sexually victimized do not come because of fear, shame, misplaced guilt, and psychological abuse. They often face enormous pressures to remain silent because of threats, fear, and family dynamics. Offenders, and sometimes even the victims' families, will threaten, coerce, or bribe a victim to keep quiet about the abuse to protect the family structure.

Connecticut's short statute of limitations for prosecuting child sexual abuse allows perpetrators to escape prosecution because victims are so traumatized by the harm inflicted that they delay reporting until after the statute runs out. Once a victim removes him or herself from the abusive situation, he or she may need years to get help and come to grips with the abuse. During that time, the child sex abuse victim may struggle with a range of problems including substance abuse, Post Traumatic Stress Disorder, and destructive relationships.

A sexual assault occurs every 45 seconds in this country with less than 1/2 or 29% of all forcible rapes on children less than eleven years old and 32% on children between the ages of eleven and seventeen. CONNSACS' community based member centers

provided services for 797 victims of child sexual abuse during fiscal year 2000-2001, that is 24% of all the victims we assisted during the 12-month period.

Connecticut can and must do better to protect the victims of child sexual abuse. Increasing the statute of limitations to 30 years after the victim reaches the age of majority (to age 48) affords victims the time they need to come forward. Many have no statute of limitations in child sexual abuse cases. Last week, Missouri Governor Bob Holden signed legislation clarifying that there is no statute of limitations on prosecuting rape or sodomy in Missouri. According to a press release from his office, Governor Holden stated that "denying women, or any person who is the victim of these crimes, the protections available to others is a terrible injustice – an injustice that is now corrected."

Connecticut must address the injustice of its current statute of limitations for prosecutions of child sexual abuse cases. Increasing the time allowed for prosecution to thirty years after the victim attains the age of majority is necessary to protect children from abuse to allow victims of this devastating crime to seek the protections they deserve.

We strongly urge you to support this bill.

March 11, 2002

Dear Honorable Representatives,

I am writing in reference to advocate HG 5680. I am thirty-eight years old, a mother of three children and a prominent member of my community.

My uncle began sexually abusing me when I was around three years of age. This continued until I was in my early twenties. Unfortunately, his behavior went undetected by those around me, so thus he was allowed to do whatever he chose with me whether it was in the back seat of a car, a family gathering or in my own bed. I was taught to never, never tell anyone for if I did, I would be taken away for that's what happens to 'tattlers'. Being adopted, this was an insurmountable fear that he controlled me by. To this day, I cannot remember all of the details but those that I have, caused me a tremendous amount of anguish, nightmares and shame. No amount of water will ever cleanse the atrocities that he performed on me.

After my mother's death in my late twenties I began having severe anxiety attacks and nightmares. This completely incapacitated me to the point of being non-functioning. At this time, I sought psychological assistance to try to find out the origin of these attacks.

Over the last ten years, I have been in therapy learning to cope with what had happened to me. It has affected me in every aspect of my life. However, I have grown stronger over the years to where I feel safe enough within myself to face my abuser. Unfortunately, the current laws of the State of Connecticut will not allow that.

Due to my age, I will never get the opportunity to make this man pay for what he had done to me. I cannot believe that when the current law was written, the legislature intended for survivors of abuse to have a specific timeline in which they were required to heal. With some individuals, it takes much longer to find the strength than others.

I humbly request to pass Bill 5680 into law. I did not choose to be raped, sodomized and photographed. Nor did I have the opportunity to control my fate, but I do now. Please allow me and other survivors the right to have our abusers prosecuted for their crimes, for their theft of our innocence.

Sincerely yours,

Donna B. Jacobson

HELEN L. MCGONIGLE
Attorney At Law

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March 10, 2002

The Judiciary Committee
Legislative Office Building - Room 2500
Hartford, CT 06106

**RE: House Bill 5680(Comm) - An Act Extending the Statute of Limitations on the
Prosecution of Offenses Involving The Sexual Abuse of a Minor**

Dear Senators and Representatives of the Judiciary Committee:

Good afternoon. My name is Helen McGonigle, I am attorney from Brookfield and I have been in private practice for the past 16 years. I am also a Charter member of the National Crime Victims Bar Association and chair of the Connecticut Bar Association's Victims' Rights Committee. Thank you for providing me with this opportunity to address you regarding House Bill 5680. I ask that you all report favorably on the bill.

Delayed recognition and reporting, together with the strong public policy reasons for deterring child sexual abuse, all heavily weigh in favor of extending the criminal statute of limitations. The current statute is far too short. Under the current statute, 54-193a, a perpetrator can only be prosecuted for sexually abusing a child within two years from the date the victim reaches age 18 or within five years from when the little boy or little girl notifies a police officer or state's attorney acting in their official capacity, *whichever is earlier*. For example, in an unreported case, the prosecution of a perpetrator who sexually abused a 6 year old child is barred when the victim reaches only age 20. If the abuse was promptly reported to the police or prosecutor by the child at age 6, the prosecution would be time barred when the victim reached only age 11.

I have litigated and consulted on a number of cases which involve allegations of child sexual abuse. There are both psychological and physiological reasons for delayed reporting by children and young adults. Even in cases where a young child always remembers the gist of what happened, I have observed that oftentimes the child victim is nonetheless disabled by age, fear, threats, shame, misplaced guilt, family dynamics, an inability to connect psychological symptoms to the abuse, and even documented physiological changes to the brain, all of which prevent the prompt reporting of the sexual abuse. J. Douglas Bremner, M.D., of Connecticut, and a faculty member at Yale University School of Medicine, is known

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page 2

for his work documenting changes to the right hippocampal and medial prefrontal cortex regions of the brain using functional MRIs and PET scans in individuals with PTSD, including war veterans and survivors of sexual abuse. See J. Douglas Bremner, MD, *The Invisible Epidemic: Post Traumatic Stress Disorder, Memory and the Brain* (URL in references). These two brain regions are involved in memory processing and emotional response. Bremner's studies demonstrate that the long term effects of post-traumatic stress disorder (PTSD) brought about by child sexual abuse are not merely psychological, but also physiological. Why should the perpetrator be able to escape prosecution by virtue of the very damage he has inflicted? The more severe the trauma, the more likely it is to be repressed. If the victim's memory is impaired how is the perpetrator to be caught unless we have an extended statute of limitations.

There are also many examples of sexual offenders using drugs or alcohol with their victims, like the Dallas diocese case where Rudy Koos used anesthetic doses of Valium and alcohol to disable his victims, which of course can impair memory and contribute to delays in reporting. This method of drugging not only made his 11 male victims less able to resist sexual advances, but relaxed the muscles necessary to accomplish anal penetration of his male victims without detection.

In addition, between one quarter to one-third of the victims experience periods of repression or what is called full or partial "dissociative amnesia" following the abuse. Meaning the victims may not remember until their twenties, thirties or forties. In the article *Recovered Memories: The Current Weight of the Evidence in Science and in the Court* published in the Journal of Psychiatry and Law, the authors review 68 research studies on memory, all of which found naturally occurring dissociative amnesia for childhood sexual abuse. In the award winning book *Memory, Trauma Treatment and the Law*, a review of 30 studies shows the average rate of full amnesia across all thirty studies was approximately 29.6%. In other words, the psychological trauma from child sexual abuse can make the victim delay reporting until the statute runs, allowing the perpetrator to escape prosecution because of the very harm inflicted.

Sexual predators should not be permitted to "beat the statute of limitations clock" and repeatedly re-offend children. If child victims have to live with the long term psychological trauma caused by the abuse, then sexual predators likewise should have the long term threat of prosecution hanging over their heads. Connecticut would not be alone in extending its criminal statute of limitations. Fourteen states in some fashion already have no period of limitations for cases of child sexual abuse. Some examples include Alabama, Kentucky, Louisiana, Maryland, Mississippi, Missouri (for Class A felonies such as forcible rape), New Jersey and New Mexico (if victim is under 13), North Carolina, Rhode Island (for 1st degree sexual assault), South Dakota (if victim is under 10), Virginia, West Virginia and Wyoming. Other states have very long statutes of limitations, such as Ohio (20 years after commission of offense) and Massachusetts (15 years after commission of offense). In response to yet another clergy abuse case involving a Catholic

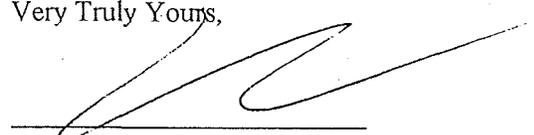
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page 3

priest arising out of Philadelphia, the State of Pennsylvania is now considering abandoning its time bar. This case follows on the heels of the explosive case in Boston involving defrocked priest John Geoghan, who also has been convicted of child molestation is serving a 9 to 10 year sentence and is facing additional charges. Over 100 victims have come forward and Cardinal Law has released to prosecutors the names of dozens of current and former alleged pedophile priests and suspended 10 active priests.

As far as the question of retroactivity and the prosecution of old crimes, the Connecticut Supreme Court has held that an extension to a criminal statute of limitations can be retroactively applied if expressly stated in the language of the statute or if supported by the legislative history. *State vs Crowell*, 228 Conn. 393 (1994). Not only does this bill serve to protect future generations of children, but acts committed before its passage can be prosecuted. The Office of the State's Attorney will have the discretion to prosecute only those cases which are well corroborated, through other victim evidence, DNA when available, medical records and other evidence that they abuse took place. This screening process will undoubtedly limit the number of prosecutions involving older crimes. In those instances where an older case is well corroborated, why not prosecute the perpetrator? For example, I am familiar with a case prosecuted to conviction in Massachusetts where the father impregnated his biological daughter who carried the baby to term. The child was still born, its body was later exhumed and a positive DNA match made with the perpetrator. Should this perpetrator be allowed to walk free when he has destroyed two lives - that of his daughter and grandchild? If victims of child sexual abuse must live with the long term consequences of their abuse 24 hours a day 7 days a week, why shouldn't the perpetrators be held accountable?

If there is any additional information I can provide to the Judiciary Committee, please feel free to contact me. In the meantime, I ask you all to report favorably on House Bill 5680 and thank you for this opportunity to address you.

Very Truly Yours,



Helen L. McGonigle

HLM/lom

References, Resources & Websites:

For more information on the physiological effects to the brain caused by Post Traumatic Stress Disorder (PTSD), see J. Douglas Bremner, MD, *The Invisible Epidemic: Post Traumatic Stress Disorder, Memory and the Brain* at:
http://thedoctorwillseeyounow.com/articles/behavior/ptsd_4.

Judiciary Committee

March 10, 2002

page 4

Dr. Bremner, is also know for his work documenting atrophy of the right hippocampal region of the brain using functional MRIs and PET scans in individuals with PTSD, including war veterans and survivors of sexual abuse. The most common cause of PTSD in women is childhood abuse.

Similar findings on effects to the brain were made by Joan Arehart-Treichel published in the fall 2000 issue of *Cerebrum*. See, <http://www.psych.org/pnews/01-03-02/abuse.html>

Brown, Schefflin and Hammond, *Memory, Trauma Treatment and the Law* (W.W. Norton and Co., New York 1998). The authors, review 30 studies all of which demonstrate that amnesia for child sexual abuse is a consistent finding across all 30 studies. The average rate of full amnesia across all thirty studies was found to be approximately 29.6%. This book won the American Psychiatric Association's Manfred S. Guttmacher award as the best book in forensic psychiatry for 1999. Book Review at Connecticut Trial Lawyers Association Forum March/April 1999, page 89, by Helen L. McGonigle.

Brown, Schefflin and Whitfield, *Recovered Memories: The Current Weight of the Evidence in Science and in the Court* published in the *Journal of Psychiatry and Law*, Vol. 26, 1998-9. Back issues of this journal can be ordered for \$14.00 by calling (914)-279-0362. The authors, review 68 studies all of which demonstrate that amnesia for child sexual abuse is a consistent finding across all 68 studies.

Website URL with 80 corroborated cases of recovered memories.

http://www.brown.edu/Departments/Taubman_Center/Recovermem.Archivex.html or search for the Recovered Memory Project. This website includes a description of James Porter's abuse of over 68 victims spanning a time of 34 years until Frank Fitzpatrick of Rhode Island recovered memories of Porter's sexual abuse. Fitzpatrick's repressed memories were corroborated by the continuous memories of numerous other victims.

A state by state review of the various criminal statutes of limitations in sexual assault cases is available through the National District Attorneys Association at their website <http://www.ndaa.org/apri/Vawa/LegalIssues/StatebyState.html>.

Also see the website of Connecticut attorney Susan K. Smith at <http://www.smith-lawfirm.com> This site includes legal articles and briefs by attorneys, as well as articles by clinicians on child sexual abuse.



Connecticut National Organization for Women
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March 11, 2002

To: Senator Coleman, Representative Lawlor and Members of the Judiciary Committee
From: Beverley Brakeman, Executive Director
Connecticut National Organization for Women
Re: R.B. 5680 An Act Extending the Statute of Limitations on the Prosecution of Offenses Involving the Sexual Assault of a Minor

I am the Executive Director for The Connecticut Chapter of the National Organization for Women (CT NOW). Connecticut NOW is a statewide association of over 2500 members committed to addressing and challenging public policies and practices that negatively impact a woman's right to self-determination in all areas of her life. Addressing and eliminating violence against women is an ongoing priority for CT NOW.

Connecticut NOW strongly supports this bill that would extend the current statute of limitations for child sexual abuse to 30 years past the age of majority.

Currently in the State of Connecticut, a child sexual abuse victim has until they are 35 to file a complaint in civil court against their abuser. In contrast, this same victim has approximately 5 years to receive any criminal justice intervention or support. We think this is highly problematic because civil judgments often do not hold the offender accountable in any long-term manner or result in any substantial assistance or retribution for the victim.

Child sexual abuse victims commonly remain silent for years post-abuse for reasons that include shame, psychological or physical trauma, misplaced guilt, family pressure/dynamics, threats, and more. As a result, it is imperative that we allow the maximum amount of time possible to ensure that these victims have the opportunity to report their abuse and get retribution within this state's criminal justice system. By making this legislation retroactive, we are giving child sexual abuse victims who are suffering in silence, the opportunity to seek retribution and stop their abusers from committing further offenses.

Connecticut NOW urges you to make Connecticut the next state to change its statute of limitations, which while certainly not arbitrary, is currently not helpful to the majority of our child sexual abuse victims.

Thank you.



Ready to the Defense of Liberty

CONNECTICUT CRIMINAL DEFENSE LAWYERS ASSOCIATION

Hope Seeley, President

**STATEMENT OF JON L. SCHOENHORN, LEGISLATIVE CHAIR
FOR THE CONNECTICUT CRIMINAL DEFENSE LAWYERS ASSOCIATION
IN OPPOSITION TO H.B. NO. 5680
*AN ACT EXTENDING THE STATUTE OF LIMITATIONS ON THE
PROSECUTION OF OFFENSES INVOLVING THE SEXUAL ASSAULT OF A
MINOR.***

Judiciary Committee – Public Hearing

March 11, 2002

Senator Coleman, Representative Lawlor, and Committee Members:

The Connecticut Criminal Defense Lawyers Association (CCDLA) is a Connecticut-based legal organization comprised of some two hundred and eighty members, all of whom are involved in defending persons accused of criminal and motor vehicle offenses. Founded in 1988, the CCDLA serves to protect and ensure that those individual rights guaranteed by the Connecticut and United States constitutions are applied fairly and equally, as well as further the interests of those Connecticut lawyers and legal workers who practice in the field of criminal defense. The above-noted legislative proposals are scheduled for public hearing before the Judiciary Committee on March 11, 2002. CCDLA takes the following position on these bills:

The CCDLA strongly opposes Raised H.B. No. 5680, *an Act Extending the Statute of Limitations on the Prosecution of Offenses Involving the Sexual Assault of a Minor.* The entire purpose of statutes of limitations is to make sure that allegations that are made accusing someone of a crime are fresh, not the result of tainted or altered memories, and to allow a person falsely accused to adequately defend oneself. More outrageous is the fact that it is intended to apply retroactively, resulting in possible violations of the constitutional Ex Post Facto clause. This bill will make it virtually impossible to ensure that a trial will be fair.

Particularly where the so-called “recovered memory” industry is under increased scrutiny because of its lack of scientific reliability, and the increased number of false memories, there is no reason to trust an accusation made years after an incident, where there is no physical evidence of any sort to support the claim. At least where a crime of murder is charged, there is, generally, an autopsy and physical evidence to mount a prosecution many years after the killing itself. There are no such safeguards in an allegation of sexual assault. Even a civil action only results in money damages, so the risk of a miscarriage of justice is reduced.

CCDLA
Page Two

There are several major problems with this legislation. First, allowing a complaint of sexual assault to be lodged for the first time five years after an alleged event, but then not prosecuting it for up to 30 years later, almost guarantees that there will be no evidence to back it up. Memories will have failed. Investigators will have retired or died. And exculpatory evidence, including medical and psychiatric records, will have been destroyed. Second, the bill would increase the statute of limitations to 30 years on all types of sexual "abuse" including misdemeanor sexual assault fourth degree and otherwise consensual "statutory rapes." Third, the fact of "notification" within five years only applies to subdivision (1) of subsection (a) of Section 53a-71 (i.e. where there is consensual sexual activity with two persons more than two years apart in age), and not to allegations against teachers, clergy, family members, etc., who can have their lives turned upside down as a result of an accusation made for the first time 30 or more years later.

Finally, there is no limitation on such prosecutions in cases where forensic evidence or DNA samples have been obtained, so that a person can be prosecuted 30 or 40 years after an alleged event based solely on the word of an accuser.

Raised Bill No. 5680 should be rejected by the committee as unwise and unworkable.



State of Connecticut

DIVISION OF PUBLIC DEFENDER SERVICES

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TESTIMONY OF DEBORAH DEL PRETE SULLIVAN, LEGAL COUNSEL OFFICE OF CHIEF PUBLIC DEFENDER

H.B. No. 5680

AN ACT EXTENDING THE STATUTE OF LIMITATIONS ON THE PROSECUTION OF OFFENSES INVOLVING THE SEXUAL ABUSE OF A MINOR. March 11, 2002

The Office of Chief Public Defender would urge this committee not to support H.B. 5680, *An Act Extending The Statute Of Limitations On The Prosecution Of Offenses Involving The Sexual Abuse Of A Minor.* Current law provides for a two-year statute of limitation from the date the victim attains the age of majority or within five years of the victim notifying a police officer or state's attorney of the offense. The proposal would expand the statute of limitations to thirty years from the date the victim attains the age of majority.

The Office of Chief Public Defender is concerned that due to the thirty-year time period, evidence may be destroyed or may deteriorate. In addition, memories of witnesses fade and sometimes no longer exist. Thirty years beyond the age of majority presents a giant leap from the two-year statute of limitations that currently exists. While a lengthier statute of limitations as currently exists may be appropriate, it must remain reasonable to ensure that an innocent accused can fairly defend himself.

Lastly, without guaranteed access to DNA testing, it may be a difficult, if not impossible, task to defend against such a charge arising so many years later. Therefore, the Office of Chief Public Defender would urge this committee not to support this proposal.



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Member Shelter Programs

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The Center for Women & Families
 Bridgeport, CT

Women's Center
 Danbury, CT

United Services, Inc.
 Domestic Violence Programs
 Dayville, CT

Network Against Domestic Abuse
 Enfield, CT

Women's Support Services
 Falls Village, CT

Greenwich YWCA
 Domestic Abuse Service
 Greenwich, CT

Hartford Interval House
 Hartford, CT

Meriden-Wallingford Chrysalis
 Meriden, CT

New Horizons
 Middletown, CT

Prudence Crandall Center
 New Britain, CT

Domestic Violence Services
 New Haven, CT

Women's Center of SE CT
 New London, CT

Domestic Violence Crisis Center
 Norwalk, CT

Domestic Violence Crisis Center
 Stamford, CT

Susan B. Anthony Project
 Torrington, CT

Safe Haven
 Waterbury, CT

United Services, Inc.
 Domestic Violence Programs
 Willimantic, CT

To: Members of the Judiciary Committee

From: Lisa Holden, Executive Director
 Connecticut Coalition Against Domestic Violence, Inc.
 Linda Blozie, Associate Executive Director
 Connecticut Coalition Against Domestic Violence, Inc.

Date: March 11, 2002

Re: · H.B. 5692 - AAC Firearms and Family Violence
 · S.B. 562 - AAC An Address Confidentiality Program
 · S.B. 410 - AAC The Duties of the Victim Advocate
 · H.B. 5515 - AAC Protection for Victims of Crime
 · H.B. 5517 - AAC Notification to Victims of Crime
 · H.B. 5694 - AAC A Public Awareness Campaign About the Rights of
 Crime Victims
 · S.B. 557 - AAC Social Supports for Crime Victims
 · S.B. 558 - AAC An Affirmative Defense
 · S.B. 568 - AA Appropriating Funds for Programs for Juveniles
 Concerning Domestic Violence
 · H.B. 5520 - AAC Victim Services
 · H.B. 5681 - AAC A Study of the Relationship Between Domestic
 Violence and Poor Birth Outcomes
 · H.B. 5693 - AAC The Definition of a Crime Victim
 · S.B. 559 - AAC Consensual Sexual Activity Between Young Persons
 · H.B. 5680 - AA Extending the Statute of limitations on the Prosecution
 Of Offenses Involving the Sexual Assault of a Minor

Good afternoon Senator Coleman and Representative Lawlor, and members of the Judiciary Committee. My name is Lisa Holden and I am the Executive Director of the Connecticut Coalition Against Domestic Violence. I am here today with my colleague Linda Blozie to support H.B. 5692 - AAC Firearms and Family Violence. I will also provide oral testimony on S.B. 562 and written testimony on thirteen other bills that are important to us.

There are substantial reasons to support H.B. 5692:

First, it is estimated that Connecticut issues 6000 restraining orders and 30,000 protective orders annually. The Connecticut Coalition Against Domestic Violence, Inc. last year alone provided services to over 41,000 victims of domestic violence. The mission of our work is to assist victims achieve safety. Offenders who have access to weapons are a real and potential threat to victims of domestic violence and their children. This bill would provide a much-needed safety net by removing firearms when a police officer determines that a family violence crime has been committed. Removal of firearms quickly and efficiently

would significantly affect a victim's sense of safety. Holding the firearms for fourteen days would allow the victim to pursue a restraining order or a protective order when appropriate.

Second, in 1994 a law was created to ensure safety of an individual who obtained a restraining order or a protective order. Currently, offenders subject to a restraining order are notified that they must surrender gun permits within five days to the issuing agency. They then must transfer any handguns to law enforcement within two business days. To the best of our knowledge, there is no clear or consistent protocol that ensures that this mechanism is enforced. This bill would significantly reduce the chance that an offender would continue to illegally possess firearms.

Third, in 1999 another law was created that called for local law enforcement agencies to establish a policy to "confiscate" guns. This bill brings additional supports particularly when there are multiple law enforcement agencies involved.

In regard to S.B. 562, the Connecticut Coalition Against Domestic Violence, Inc. supports the ACP in theory, however we are not in the position to support this bill at this time.

There are expenses associated with the operation of the ACP. CCADV's eighteen member programs would rightfully be responsible for educating eligible clients and completing the necessary paperwork. In addition, the advocates who would be assigned as "application assistants" would have to be trained by the Secretary of State's office. Therefore, the programs would have to assign an individual to the ACP and would have to assure coverage for that individual while they are performing the work. Current funding of the eighteen domestic violence programs does not provide such flexibility. They are already overwhelmed with providing domestic violence services to clients.

In order to make an advocate available for all victims who request an application to the ACP, a small amount of funding is needed to offset the costs of providing additional staff to cover services such as the hotline. CCADV has estimated that each program needs to be reimbursed \$1,200.00 annually, for a total of \$21,600.00. To date we have been told that it is possible that the Department of Social Services may be able to cover this program, however only if they receive Federal Funds to do so. Because this funding is not secure, we simply cannot support this bill. As the numbers of domestic violence victims who seek our services continues to increase each year, and the funding for these services does not increase accordingly, we are forced to provide more services with fewer dollars. If the funding for the ACP were to become secure, we would support it wholeheartedly.

S.B. 410 - We oppose this bill because it is necessary and crucial for the Victim Advocate to be able to file a special appearance in court, which he has only exercised six times since his office opened, yet this duty has allowed him to advocate effectively on the behalf of victims of crime. The domestic violence case in Danielson highlights this issue. An offender who had previously violated a protective order five times was held

accountable after the victim contacted the OVA and his presence in court seemed to positively influence the judge.

H.B. 5515 – We support this bill in its entirety. Violators of protective orders must be held accountable. Victims who rely on protective orders for safety need to have the confidence that the orders mean something. We know that there have been multiple domestic violence murders in Connecticut where a restraining order or a protective order were in force but the offenders who violated these orders were not stopped. Stricter penalties and increased attention to violations will finally elevate orders of protection to the standard for which they were created.

H.B. 5517 – We support this bill in that victims should have the right to be notified as to the time and place of any hearings and/or any change in the status of the defendant such as when an offender is charged with violation of conditions of probation or conditional discharge. This would also apply to incidences when the offender applies for a reduction in sentence, discharge on probation or conditional discharge. Such victim or a legal representative should have the right to make a statement for the record concerning the disposition of the case including written testimony.

H.B. 5694 – We support this bill in its entirety, as it will create a more sophisticated approach to public awareness for Connecticut's citizenry on the rights of crime victims. This campaign was supported last year by the legislature and it led to enhanced victim advocate services for Mothers Against Drunk Driving and Survivors of Homicide. The public awareness campaign is needed because there is ample evidence that crime victims are not aware of their rights as written in the Constitutional amendment.

S.B. 557 – We support this bill. Through the Victim's Compensation Program, victims may be compensated for medical and dental costs related to the crime, counseling for victims and family members, victim's lost wages and loss of support and/or funeral costs for family members of homicide victims. Unfortunately, those are not the only losses victims have. Through SB 557, victims will be provided with another avenue of social support.

S.B. 558 - We support SB 558- ACC an affirmative defense. The purpose of this bill is to provide an affirmative defense in a prosecution for a violation of a no contact order that the defendant did not initiate the prohibited contact.

CCADV, through its member programs, works with thousands of victims each year who are provided protection through the issuance of a protective order. Oftentimes, the offender has no regard for the law and therefore protective orders are repetitively violated. When brought back to court, the offender claims that he or she did not initiate contact. When questions exist about who initiated contact, the victim is many times placed in a compromising position, leading to increased violence.

Not only is it essential to determine if there are poor birth outcomes but also to determine the contributing factors. Are women being denied prenatal care due to the violence in their relationship, is the stress of a violent relationship negatively impacting the pregnancy, or is the mother more likely to deliver pre-term because of the abuse are questions to be asked. The Coalition would be honored to sit on this task force. In addition CCADV and its member programs are prepared to respond to the findings of this task force and to offer their expertise to the health care profession.

H.B. 5693 - As you know the purpose of this bill is to insure that a surviving domestic partner of a homicide victim is included within the definition of "crime victim" and "representative of a homicide victim" for purposes of court proceedings.

Losing a loved one to violence can have a profound and lasting impact on the survivors of the homicide victim. No one can know the pain and sorrow that survivors experience unless they themselves have gone through the horror of losing someone they love at the hands of another human being.

The State of Connecticut can help by identifying these individuals as crime victims. By understanding the three major needs they have after a crime has been committed: the need to feel safe; the need to express their emotions; and the need to know "what comes next" after their victimization. Please support their right to be recognized for what they are, for they are victims too.

S.B. 559 - We support this bill that would decriminalize adolescent consensual sexual activity, however we are opposed to the five-year age difference in the bill and recommend that the age difference be changed to four years. We support this bill because we agree that teenagers should not be branded as criminals or sex offenders for engaging in consensual sexual relationships. Sexual activity by and between adolescents should not be a violation of the criminal law. In the context of adolescent behavior, a four-year age difference between the parties, rather than the five-year age difference proposed by this bill is more developmentally appropriate.

H.B. 5680 - We support this bill that extends the statute of limitations for the prosecution of sexual offenses involving the sexual abuse of minors until the victim is 30 years beyond the age of majority, or age 48. Currently, victims of sexual abuse only have until their 20th birthday to report childhood sexual abuse and receive intervention from the criminal justice system. The short statute of limitations is insufficient to protect both current victims of sexual abuse and adult survivors of sexual abuse. Child sexual abuse victims need more time to report the abuse because the psychological trauma can make victims delay reporting until long after the abuse or threat of further abuse has ended.

Thank you for your time and attention to these important topics that affect victims of domestic violence.



3/11/02

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Kristine Hazzard, M.S.W.

Dear Connecticut State House of Representatives and Senate,
RE: HB 5694, HB 5680, SB 558, and SB 562

The Center for Women and Families is a non-profit agency that is dedicated to strengthening women and families and to eliminating violence and abuse through education, intervention, advocacy and community collaboration. More specifically, we provide crisis intervention to victims of domestic violence and sexual assault, as well as education to the community on these social epidemics. While we are located in Bridgeport, we also serve Easton, Fairfield, Monroe, Stratford and Trumbull.

Our agency supports the following bills:

HB 5694 - RE: The Through Any Door Coalition

HB 5680 - RE: Extension of Statute of Limitations for Child Sexual Abuse

SB 559 - RE: Extending the Age Difference Between 13, 14, and 15 Year Olds For Consensual Sexual Activity

SB 562 - RE: Confidentiality

As both your constituent (Bridgeport 06604-2819) and an advocate for your constituents, I urge you also to support these bills.

Thank you,
Sasha Summer Cousineau
Sasha Summer Cousineau
Coordinator of Volunteers and Training



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2002

simply impractical to have acknowledgments signed for every person on your staff.

In addition, we suggest that in Subsection 8 it should be clarified that the disciplinary authority "may" revoke licensure of a licensed personnel who fails to report or has another violation under this bill as opposed to "shall" which is the way it's currently worded.

I'd be happy to answer any questions and I thank you for considering our position.

REP. LAWLOR: Thank you very much. Are there questions? If not, thank you.

CARRIE BRADY: Thank you.

REP. LAWLOR: Next is Lisa Winjum.

LISA WINJUM: Good evening, Representative Lawlor, members of the Judiciary Committee. My name is Lisa Winjum and I'm Director of Public Policy and Communications for Connecticut Sexual Assault Crisis Services.

ConnSACS has submitted written testimony on nine bills today, but I am going to confine my remarks here one bill only and that would be raised H.B. 5680, AN ACT EXTENDING THE STATUTE OF LIMITATIONS ON THE PROSECUTION OF OFFENSES INVOLVING SEXUAL ASSAULT OF A MINOR.

And even more specifically, I'm going to confine my remarks here today to addressing some of the recent public criticism about this proposal, which focuses on the retroactivity provisions of the bill and our concerns about the defendant's rights.

We're asking you to support this bill and the retroactivity provisions that are in there. The retroactivity provision in this bill does not run afoul of Connecticut law or of the constitutional ex post facto clause. Criminal statutes of limitations may be given retroactive effect if the statute clearly states - clearly expresses retroactivity or if retroactive application is

clear from the legislative intent.

This bill does not criminalize new conduct or create new penalties. Therefore, it is not contrary to the *expos facto* clause in the Constitution. The conduct, sexual intercourse or sexual contact with a minor was criminal at the time it occurred.

A minor statute of limitations is not unfair to defendants in these actions as it does not alter their constitutional or other substantive rights as a defendant in a criminal case. The State will still have to prove the elements of the crime beyond a reasonable doubt and I'm confident that the Office of the State's Attorney is not going to prosecute cases that lack the evidence of abuse. But when evidence does exist, which includes corroboration through other victim evidence, DNA or medical records, and the normal process for criminal prosecution occurs, it will limit the number of old cases that are prosecuted. It is not unjust or unfair to expect that the perpetrators of these crimes will be prosecuted when there is ample evidence of their crime, nor does it infringe upon a substantive right to hold the potential defendant responsible for a long period of time. No one has a vested right in the lapsing of a statute of limitation.

The statute of limitations to bring a civil action arising out of a sexual assault on a minor is 17 years after the victim reaches the age of majority or age 35. And while different interests are at stake for defendants in civil actions that aren't criminal actions, the harm suffered by victims of child sex abuse is the same and the consequences of child sexual victimization can be lifelong.

I would like to give you some figures about child sex abuse. It's a serious crime in Connecticut and throughout the nation. A sexual assault occurs every 45 seconds in this country, with less than one-half or 29% of all forcible rapes on children less than 11 years old and 32% on children between the ages of 11 and 17. One in three girls and one in five boys will be sexually assaulted by the time they reach 18.

ConnSACS community based number centers provided services to 3,293 primary victims of sexual assault in fiscal year 2000-2001. Of this number, 797 were victims of child sexual abuse.

Thank you and if you have any questions, I'd be happy to answer them.

REP. LAWLOR: Thank you. Representative Hamm.

REP. HAMM: Thank you, Mr. Chairman. Is thirty years long enough?

LISA WINJUM: Thirty years post majority, yes. I feel thirty years post majority is long enough. That would give the victim to the age of 48 which should be ample time for the victim to - who has not yet addressed the abuse by the time they're 20 to address the issues and feel strong enough to come forward.

REP. HAMM: And does your support of retroactivity apply only to this crime or to others, as well?

LISA WINJUM: I can't speak as to other --

REP. HAMM: For example. Do you think we should make our crimes for prosecution of all sexual assaults for adults retroactive?

LISA WINJUM: As a general policy, ConnSACS would support lengthening or eliminating these statutes of limitations on the crime of sexual assault.

REP. HAMM: Including retroactivity?

LISA WINJUM: I have not really looked at retroactivity as with adults. With children there are specific concerns as to trauma, as to the fact that children will often not come forward because they are afraid, they will be coerced, they will be threatened by the perpetrators of these crimes.

REP. HAMM: And those aren't the same that happen with adults?

LISA WINJUM: In some cases with adults, yes. That certainly happens. However, with children that fear - children have a lot more -- the perpetrators often have a lot more control over a child than sometimes an adult. I'm not saying I don't support eliminating the statute of limitations for sexual assaults on adults and hopefully making it retroactive. What I'm saying is I haven't really looked at that the way I have looked at this issue.

REP. HAMM: Well, I guess many in this room are quite aware. I have a little trouble with retroactivity despite my activism on most sexual assault issues. And I guess I'm wondering as a policy matter, as a governing policy matter, what your argument is for why we should be able to reach back forever to prosecute on this crime and why it's different from reaching back on others. Breach of peace or - I mean, what's the basis for making and separating this out?

LISA WINJUM: The consequences of childhood sexual abuse are - our civil law, I guess is the best way to do this. The civil statute of limitation clearly recognizes the nature of the harm suffered by a victim of childhood sexual abuse. There's shame. There's misplaced guilt. There's psychological abuse. There are potentially lifelong health consequences, post traumatic stress disorder, substance abuse.

Our current statute of limitations, two years post-majority. Some of these children, especially children who are molested by their parents are still living at home or under their parents' financial control for their education.

REP. HAMM: I hear you and --

LISA WINJUM: And many children do not come forward and address the actual issue or say I was molested until they are far post-majority. Thus the nature of the psychological trauma to the victim.

REP. HAMM: Are you saying that it is the nature of the victim that requires that the bill be retroactive? That the nature of this victim is different from

the nature of other victims?

LISA WINJUM: Yes. It is the nature of the harm. The very nature of the crime and the psychological trauma inflicted on a child - it's very hard to put yourself and think in the place of a victim of childhood sexual abuse. Very hard to understand --

REP. HAMM: Do you mean -- I understand the harm. I'm trying to understand as a policy-maker what is unique about this crime that means that you can prosecute it no matter when it happened, no matter how long ago, no matter how old the witness and the evidence and all of that and you can't do it with any other crime.

LISA WINJUM: Well, I would give you two reasons. The first is that the nature of the offense allows offenders to go undetected and live in our communities. It also allows them to re-offend. The National Institute of Health reports that the typical sex offender molests an average of 117 children, most of whom do not report.

It is the nature of the crime that leads to not reporting. So the nature of the crime allows us to keep these people in our communities, where they pose a threat to continue to offend and to continue to be around children.

REP. HAMM: What about battered women and the assaults to battered women? Do you think that should be retroactive for prosecution?

LISA WINJUM: As I said, that is not an issue that I have looked at, but with regard to this crime and the specific nature of the harm, I do believe that retroactivity is important and we certainly recognize retroactivity as being important --

REP. HAMM: How about bank robbery or --

LISA WINJUM: Well, if I could finish, Representative Hamm. We recognize from -- this Legislature recognized retroactivity as being important for these crimes when the extension of the civil statute of limitations for these crimes was

extended. And that retroactivity was recognized because of the special nature of the harm to the victim.

REP. HAMM: That was on the civil side. That did not require a prosecution. That had the test of a civil court being able to find the witnesses to get monetary damages.

LISA WINJUM: Correct. And there are different interests at stake --

REP. HAMM: You don't think the criminal law is completely and totally different for purposes of prosecution and incarceration?

LISA WINJUM: There are different interests at stake for the defendant, one being money, the other being a liberty interest, yes. However, if there's ample evidence of the crime, there's no reason to allow these people to escape prosecution. We're not criminalizing a new behavior. Child sex abuse was criminal whether it was committed five years before someone or --

REP. HAMM: So would bank robbery and domestic violence and sexual assault of adults. I'm trying to figure out whether you believe, as a matter of policy, it's okay for the criminal law of our state to always prosecute crimes or if it's only this category.

LISA WINJUM: As a matter of policy, retroactivity should not run afoul of the *expos facto* clause and in this case, as a matter of policy, it is important to be retroactive because of the special nature of the harm to victims.

Would I say that as a blanket statement? No, probably not. We have chosen not to have an infinite length of time for which we will hold someone liable for a crime. But we do hold people liable for an infinite length of time for murder.

REP. HAMM: Yes we do.

LISA WINJUM: And certain other violent crimes and this

not even asking for a never ending statute of limitations. This is asking simply to expand it from the current two years post-majority to thirty years post-majority.

REP. HAMM: I'm not struggling with the extension of the statute of limitations. I'm struggling with why it should be retroactive and whether or not, assuming that we were to make this law, this category retroactive, that we would not then next year have another category, another domestic violence or bank robbers or other felons who would say, the State's Attorney would obviously think it's a great idea, right? That he ought to be able to prosecute forever on all crimes if he finds the evidence. If the witnesses come forward that the nature of protecting society generally should be that there's no statute of limitations going backwards, only going forward.

Do you see the point about the slippery slope?

LISA WINJUM: I understand your point and however, I do think that the nature of this crime and our public policy about protecting children and protecting children from harm make a longer statute of limitations and retroactivity acceptable.

REP. HAMM: How is protecting society, how does that compare with protecting children? Are those interests one in the same in your view?

LISA WINJUM: In my mind, in terms of protecting society and the community from these types of offenders, absolutely. If a victim is not going to come forward until she's 25 years old and an offender has lived in the community all these years, he's out there re-offending or she because not just men are sex offenders, women are, as well. He or she who has sexually molested a child is remaining in the community and if the first victim doesn't come forward until she's 25, then we may find other victims, current instances of abuse.

So there's no reason to stop prosecution just because someone has gone two years beyond the age of majority.

REP. HAMM: Or thirty years.

LISA WINJUM: Or thirty years.

REP. HAMM: Thank you, Mr. Chairman.

REP. LAWLOR: Just a technical note. The bill doesn't totally eliminate the statute of limitations. It's five years from the date the crime is reported or - but it could be reported, in theory, up until someone reaches age 35 or 45, for that matter.

But if they did report it - in a bank robbery case, for example, generally speaking people call the cops right away. There would still be the five year statute of limitations even under this bill for sexual assault of a child. It's only if the report doesn't come in until quite a bit later and that's, I think, the unique situation here.

Also, I know it's before you joined ConnSACS, but ConnSACS did support a change in the law two years ago to retroactively extend the statute of limitations for sexual assault of adults where the basis for the arrest was DNA evidence and that was done retroactively and that actually passed in an unanimous vote in both the House and the Senate to retroactively extend the statute of limitations. And I know ConnSACS supported that, but I realize it's before your time and I just wanted to fill in the blank on that one there.

LISA WINJUM: I appreciate that, thank you.

REP. LAWLOR: Thank you. Are there further questions? Thank you very much.

LISA WINJUM: Thank you.

REP. LAWLOR: Next is Brian Anderson.

BRIAN ANDERSON: Good evening, Chairman Lawlor and the members of the Judiciary Committee.

My name is Brian Anderson and I'm a lobbyist for AFSCME Council 4, which represents 36,000 state and

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JUDICIARY
PART 9
2524-2849

2002



March 15, 2002

Dear Representative Lawlor, Senator Coleman, and the Members of the Judiciary Committee,

I'm writing to you in regards to HB 5680 concerning extension of the statute of limitations for prosecution of offenses involving sexual assault of a minor. This bill would extend the time for charging sexual abuse of a minor from 2 years after the victim attains the age of majority to 30 years after the victim attains the age of majority.

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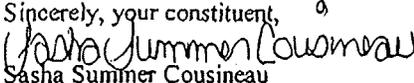
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Kristine Hazzard, M.S.W.

I work at The Center for Women and Families (CWF) in Bridgeport, CT. CWF is dedicated to strengthening women and families and to eliminating violence and abuse through education, intervention, advocacy, and community collaboration. More specifically, we provide services to victims of sexual assault and domestic violence.

CWF supports HB 5680. Sexual abuse is a very difficult and confusing trauma to try and deal with for any adult...now compound that difficulty and trauma by seeing it through a child's eyes. Statistics show, and our clients confirm for us, that the majority of child sexual assault is perpetrated by somebody who knows the victim, usually somebody in a position of trust. Perpetrators of child sexual abuse are often relatives, family friends, or other person's charged with the care of our youth. A child may be manipulated into not reporting the abuse for several reasons: first, the perpetrator often leads them to believe that what is happening is not wrong; second, the child is often told that nobody would take their word over an adult's; third, children are often threatened by the perpetrator that if they do tell, something bad will happen to them or their loved ones; fourth, although it may seem hard to believe, if the perpetrator is a family member, the child may honestly love that person and knows that bad things will happen if they tell. This is a scary place to be! Furthermore, Marion Gaetano, the Coordinator of CWF's Sexual Assault Crisis Services, reports that children often attempt to push the memories of the abuse out of their minds so that they can function in their day to day lives. For all of these reasons, many victims of childhood sexual assault don't deal with the emotional trauma until they get to the age where they begin to engage in long-term intimate relationships or until they have children, when the issues of the trauma tend to resurface.

Sexual Assault is truly an epidemic. In this fiscal year alone, CWF has completed 300 intakes related to sexual assault, approximately 45% of those were children. Please let your constituents who have been affected by this awful social epidemic know that you don't think they are not "true victims" because they either chose not to report, or simply couldn't report, at the time of the abuse. In the interests of justice, please support HB 5680.

Sincerely, your constituent,

Sasha Summer Cousineau
Coordinator of Volunteers and Training



United Way
of Eastern
Fairfield County

753 Fairfield Avenue, Bridgeport, Connecticut 06604 • Tel: 203/334-6154 • Fax: 203/579-8882



Rape Crisis Center of Milford, Inc. • P.O. Box 521, Milford, Connecticut 06460

March 15, 2002

Dear Representative Lawlor and Senator Crisco:

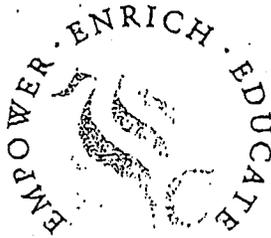
My name is Melinda Bottone I am the Executive Director of the Rape Crisis Center of Milford, Inc. I have been working at the Center for over 6 years. I started out at the Center as the Child Advocate. During this time, I have worked with many 18-25 year olds. The majority of them have waited many years and have struggled and contemplated about telling someone they have been sexually assaulted by a family member or close friend. It is very disheartening to the advocate that has to explain to the sexual assault victim that finally gain the strength to tell someone that nothing can be done because the statute of limitation has run out. I worked with one 18 year old that was sexually assaulted by a family member for many years. I went with her to the police for the statement. The perpetrator confessed to the police and an arrest warrant was written and presented to the court only to find out the statute of limitations ran out. It was very sad to watch this person curl up into a ball and back into her shell. She now does not trust anyone and does not believe in the judicial system. Something needs to be done to retroact and extent the statute of limitations.

I support increasing the statute of limitations for criminal prosecution. H.B. 5680 An act extending the statute of limitations on the prosecution of offenses involving the sexual assault of a minor needs to be retroactive and extended 30 years after the age of majority to age 48.

Thank you,
Melinda Bottone
Melinda Bottone
Executive Director

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FUNDED BY CONNSACS, EVE'S FUND AND YOUR UNITED WAY AGENCY





THE WOMEN'S CENTER
of GREATER DANBURY, INC.

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Fax
(203) 731-5207

E-mail
women@cntr@snet.net

Sexual Assault Hotline
731-5204

Domestic Violence Hotline
731-5206

Women's Resource Helpline
731-5200

March 15, 2002

Representative Michael Lawlor
Judiciary Committee
Legislative Office building
Hartford, CT

Dear Representative Lawlor,

The Women's Center of Greater Danbury, a CONNSACS member agency covering upper Fairfield County, which provided crisis services to 411 adult and 136 child victims of sexual assault during the past fiscal year, submits this testimony in support of HB 5680 providing for the extension of the statute of limitations for the prosecution of child sexual assault.

A child victim of sexual assault is more likely *not* to report the abuse, or repress conscious acknowledgement of its occurrence, than report. Fearing she or he will not be believed, having been threatened if disclosure happens or brainwashed that the sexual activity is their own fault, a child may not come forward. If, when they have tried to disclose, either directly or indirectly, their disclosures have been ignored or minimized by the adult, children may abandon their attempts for intervention, and be silent. If a child does not have the emotional, intellectually, or psychologically maturity to process and handle more extreme forms of sexual abuse - extreme including abuse involving the disruption of trust between the child and someone they are absolutely suppose to be able to rely on for protection (as a parent or clergy may be) - a child may actually repress the consciousness of what is happening.

It is critical that when the child, as he or she matures, gains the *power* and knowledge to report, that a justice system exists that will validate the illegality of that abuse not only in the civil court, but in the criminal court as well. A clear message must be sent to offenders in the community that child sexual abuse will not be tolerated, and criminal sanctions are the strongest way to send this message.

Experience counseling child sexual assault survivors supports that disclosures are facilitated by time, and that it is more often the adult incest survivor rather than the child sexual assault victim who is *able* to report. For these reasons, we strongly urge your support of HB 5680.

Sincerely,

Melanie E. Danyliw
Program Manager
Education, Training, & Volunteer Services
Legislative Liaison
(203-731-5200 x 224)

All calls are confidential.
We do not subscribe to Caller ID.





Connecticut Sexual Assault Crisis Services, Inc.

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To: Senator Coleman, Representative Lawlor, and Members of the Judiciary Committee

From: Lisa B. Winjum, Director of Public Policy and Communication
 Connecticut Sexual Assault Crisis Services, Inc.

Re: R.B. 5680 AA Extending The Statute Of Limitations On The
 Prosecution of Offenses Involving the Sexual Assault of a Minor

Position: **STRONGLY SUPPORT**

Connecticut Sexual Assault Crisis Services (CONNSACS) strongly urges this committee to support H.B. 5680 *An Act Extending The Statute Of Limitations On The Prosecution of Offenses Involving the Sexual Assault of a Minor*. This bill will extend the statute of limitations for prosecuting offenses involving the sexual abuse of minors until the victim is 30 years beyond the age of majority, or age 48. The extended statute of limitations is necessary to protect current and future victims from sex offenders who prey on children. The extended statute of limitations recognizes the trauma of child sex abuse and affords victims sufficient time to come to terms with the abuse and then to seek the intervention of the criminal justice system.

Recent public criticisms of this proposal focus on concerns about the bill's retroactivity provisions, and on the defendants' rights; including, the ability to defend against the charge.

The retroactivity provision in this bill does not run afoul of Connecticut law or of the constitutional Ex Post Facto clause. Criminal statutes of limitation may be given retroactive effect if the statute clearly expresses retroactivity or if retrospective application is clear from the legislative intent. *State v. Crowell*, 228 Conn. 393 (1994). The bill does not criminalize new conduct or create new penalties; therefore it is not contrary to the ex post facto clause in the constitution. The conduct— sexual intercourse or sexual contact with a minor —was criminal at the time it occurred.

A longer statute of limitations is not unfair to defendants in these actions, as it does not alter their constitutional or other rights as a defendant in a criminal case. The state will still have to prove the elements of the crime beyond a reasonable doubt. I am confident that the Office of the State's Attorney will not prosecute cases that lack evidence of the abuse, whether such evidence includes corroboration through other victim evidence, DNA, or medical records. The

normal process of screening cases for prosecution will certainly limit the number of "old cases" that are prosecuted. It is not unjust or unfair to expect the perpetrators of these crimes to be prosecuted where there is ample evidence of their crime. Nor does it infringe upon a substantive right to hold the potential defendants responsible for this crime for a longer period of time, as no one has a vested right in the lapsing of a statute of limitations.

The statute of limitations for a person to bring a civil action arising out of sexual assault as a minor is seventeen years after the victim reaches the age of majority, age 35. While different interests are at stake for the defendants in civil actions than are in criminal actions, the harm suffered by the victim of abuse is the same. Connecticut's law for civil claims clearly recognizes the nature of the harm suffered. Children and teens who have been sexually victimized do not come forward because of fear, shame, misplaced guilt, and psychological abuse. They often face enormous pressures to remain silent because of threats, fear, and family dynamics. Offenders, and sometimes even the victims' families, will threaten, coerce, or bribe a victim to keep quiet about the abuse to protect the family structure. Once a victim removes him or herself from the abusive situation, he or she may need years to get help and come to grips with the abuse. During that time, the child sex abuse victim may struggle with a range of problems including substance abuse, Post Traumatic Stress Disorder.

Child sexual abuse and exploitation is a serious crime, which occurs with staggering frequency throughout Connecticut and the nation. A sexual assault occurs every 45 seconds in this country with less than 1/2 or 29% of all forcible rapes on children less than eleven years old and 32% on children between the ages of eleven and seventeen. CONNSACS' community-based member centers provided services to 3,293 primary victims of sexual assault in fiscal year 2000-2001. Of this number, 797 were victims of child sexual abuse (24% of all the victims we assisted during the 12-month period) and 666 were incest victims/survivors. Of the 3,293 victims we served in that 12-month period, 934 were "current" cases of child sexual abuse and 531 were adults molested as children.

Connecticut's current statute of limitations is insufficient to provide justice for these victims and to protect both current and potential victims because it allows offenders to escape prosecution. The media attention given to the numerous cases of child sexual abuse by adults (most notably priests and coaches) who despite a history of repeated abuse live in the community and work with children makes it all too clear that we are not doing enough to ensure that these perpetrators are detected and punished. As long as the passage of time prevents prosecutions of child molesters, repeat offenders will pose a threat to our children's safety and security because the very nature of the crime and the harm caused allows them their freedom to re-offend.

We strongly urge you to support this bill.