

PA12-124

HB5148

House	7777, 7852-7854	4
Judiciary	2113-2117, 2313-2315	8
<u>Senate</u>	<u>4448, 4496-4499</u>	<u>5</u>
		17

**JOINT
STANDING
COMMITTEE
HEARINGS**

**JUDICIARY
PART 7
2004 - 2358**

2012

MOIRA BUCKLEY: Chairman Coleman, members of the Committee. My name is Moira Buckley and I'm the President-Elect of the Connecticut Criminal Defense Lawyers Association.

I'm here today to testify in support of two bills and in opposition, partially to one. The first two I'm not going to, I'll be brief. I'm not going to expand in terms of oral testimony.

CCDLA supports Raised Bill 364 AN ACT CONCERNING TRAFFIC STOP INFORMATION. We've submitted written testimony, which I will freely admit was, I don't it's (inaudible) if you ask permission, but I had reviewed the PD's testimony on that bill and I thought it appropriate and we've adopted that.

Similarly, for the most part we have adopted their testimony on Raised Bill 5366, which we oppose to the extent that it does not except habeas corpus petitioners from that act regarding civil lawsuits and subpoenas filed to harass and I won't read the whole name of it.

The one I would like to just expand on just briefly, and I missed the first couple of hours of the hearing, so I don't know if I missed someone talking about it. I didn't hear anyone testifying on it is actually Raised Bill 5148 AN ACT CONCERNING COMMUNICATIONS TO VICTIMS OF THE CRIMINAL OPERATION OF A MOTOR VEHICLE THAT RESULTS IN DEATH OR SERIOUS PHYSICAL INJURY.

And you know, essentially, one of the hard things about being a criminal defense attorney is sort of the moral side of it. Sometimes, not always. You can usually merge the two but there's always that difficulty when you have a client who actually does feel remorseful and hopefully it's not a surprise, but quite a few do, but you can't let them expand or really go

into sort of the remorse of the apology if there's a concern about that being used against them in an ancillary civil suit.

And what this Raised Bill proposed to do is enable a criminal defendant who's plead guilty, who's already convicted of that motor vehicle offense to apologize to a victim or the victim's family if the victim is deceased, or a representative of the victim, and to do so in a closed court setting prior to sentencing.

You know, I hate to sound naïve. I just don't see anything that could be wrong with this bill. It seems like it's a win all around. My testimony cites a Marquette Law Review article and other Law Review articles that talk about the benefit of apologies for defendants as well as victims, and I won't get too far into it.

But I think, you know, the notion of restorative justice is certainly at play here and I don't think it should be ignored, and I certainly hope that this is a bill that will be considered seriously by this Committee. Thank you. Any questions? I'm available.

SENATOR COLEMAN: In fact, you made Senator Kissel's day. He said he waited all day for --

MOIRA BUCKLEY: Someone.

SENATOR COLEMAN: -- someone to comment on that bill, and in the manner that you did.

MOIRA BUCKLEY: Uh-oh.

SENATOR COLEMAN: I think he said two brilliant minds can't be wrong.

MOIRA BUCKLEY: I assume you assume yours and someone else's.

SENATOR COLEMAN: Are there questions or comments from any members of the Committee? Chairman Fox.

REP. FOX: Thank you, Mr. Chairman, and I've had a chance to discuss this with Senator Kissel as well, and I guess one question I would have is, do you see any potential problem with doing this?

I mean, I think the fact that it's done before sentencing, so I think that kind of covers any other issues that might arise, but I don't know.

MOIRA BUCKLEY: Honestly, the only thing that could be a problem, and you know, they close down the courtroom. I mean, maybe I'm sort of narrow in my view of this but I see it as done before the actual sentencing occurs. I would assume, that same day. I don't know if it's envisioned to be different, but certainly that makes the most sense. It's the most efficient.

Either you have to remove the public from the courtroom, close it down. It may take a little bit of time to do that, but I don't think it's significant, a significant problem and you know, I mean, I've been at so many situations where I think the courts are run, most of the time as efficiently as they can be. But when you go to court for like a YO, a youthful offender matter and you know, sometimes it's the same time of thing with the closing down of the courtroom but you're actually in there longer for the YO matter. Maybe not the best comparison because that's something where you absolutely have to have the courtroom closed.

With an apology, you can apologize in an open court if you want. You may have a defendant who's willing to do that and many times you do.

But this is sort of a, it really enables the defendant to apologize and be as open in their apology, I think, as you'd want them to be and as a victim would want to hear them.

So the minimal delay of closing a courtroom and removing people, to me, I don't think would be enough of a negative not to pass this.

Another thing to consider, too is, if it's a sentencing that's done, if it's a serious, obviously these are for serious motor vehicle offenses, you may not be doing the sentencing at a point where there's so many people in the courtroom, so it may really not be an issue. A lot of words to say not much.

REP. FOX: Okay. Thank you. Just that it's different, so I wanted to know if there's anything that we should be thinking about that we could try to correct. Thank you.

SENATOR COLEMAN: Thank you. Representative Shaban.

REP. SHABAN: Thank you, Mr. Chair. A question occurred to me while I was sitting here, actually. It was whispered to me by my colleague to my right.

What if there's an appeal pending? How would that come into play because, for whatever reason, evidentiary ruling or whatever.

MOIRA BUCKLEY: Right. Well that's a good question. I read the bill, maybe I'm wrong, but I read the bill as precluding, I mean, if there's an appeal pending and let's say the defendant gets a reversal and you go back to trial, it looks

as though the bill keeps the admission from being entered into evidence in a future criminal proceeding. In my verbal testimony I only mention the civil proceeding, but it appears that it applies in a criminal proceeding as well, which is an excellent question, but it looks like it covers that as well.

And you know, and sometimes, and keep in mind, when you have people who plead guilty, it's not as frequent that there's going to be an appeal unless it's, you know, I mean, it happens. It certainly happens. But if they plead guilty and they're apologizing, that's more the norm that you're going to have somebody goes to trial, gets convicted.

Sometimes when they go to trial they're, you know, even if they get convicted they're not looking to apologize because they're still, you know, professions of innocence after convicted.

But I think you would see this more frequently protecting someone from a civil suit and it's more useful in that case.

SENATOR COLEMAN: Any other questions? Thank you very much.

MOIRA BUCKLEY: Thank you.

SENATOR COLEMAN: Daniela Giordano.

DANIELA GIORDANO: Good afternoon, or I don't know, is it good evening, yet?

SENATOR COLEMAN: Oh yeah.

DANIELA GIORDANO: Good evening, Senator Coleman, HB 5432
Representative Fox and members of the Judiciary
Committee. My name is Daniela Giordano and I'm



Michelle S. Cruz, Esq.
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OFFICE OF VICTIM ADVOCATE
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Testimony of Michelle Cruz, Esq., State Victim Advocate
Submitted to the Judiciary Committee
Monday, March 12, 2012

Good morning Senator Coleman, Representative Fox and distinguished members of the Judiciary Committee. For the record, my name is Michelle Cruz and I am the Victim Advocate for the State of Connecticut. Thank you for the opportunity to provide testimony concerning:

Raised House Bill No. 5148, *An Act Concerning Communications to Victims of the Criminal Operation of a Motor Vehicle that Results in Death or Serious Physical Injury.* (Oppose)

In 1996, Connecticut residents overwhelmingly supported passage of the Victims' Right Amendment to our State Constitution. Among the rights afforded to crime victims is the right to be treated with fairness and respect throughout the criminal justice process. This right supposes that a crime victim would be free from injustice and met with courtesy. Raised House Bill No. 5148 is an affront to a crime victim's constitutional right to be treated with fairness and respect.

The Office of the Victim Advocate (OVA) has been present at many sentencing hearings with crime victims. Some defendants offer an apology; some defendants maintain steadfast innocence; while other defendants say nothing. The OVA has also witnessed the court order a defendant to write a letter of apology to a crime victim as a condition of the defendant's supervision. There is currently nothing barring a defendant from expressing condolences or an apology to a crime victim, except of course, their own acceptance and responsibility for that apology.

Raised House Bill No. 5148 attempts to completely relieve a defendant from any true acceptance or responsibility for the actions for which they are apologizing. It equates to a meaningless apology—one better left unsaid. A true and meaningful apology does not carry limitations and conditions. A true and meaningful apology can be liberating but does not free one from all responsibility. Raised House Bill No. 5148 simply permits a defendant to apologize, in a closed setting, to give the appearance of remorse prior to be sentenced; the motivation is clear and offensive towards victims.

I strongly urge the Committee to reject **Raised House Bill No. 5148**.

Respectfully submitted,

Michelle Cruz, Esq.
State Victim Advocate

CCDLA
 "Ready in the Defense of Liberty"
 Founded 1988

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March 12, 2012

The Honorable Eric D. Coleman
 The Honorable Gerald M. Fox,
 Chairmen
 Joint Committee on Judiciary
 Room 2500, Legislative Office Building
 Hartford, CT 06106

Re: Raised Bill No. 5148

**AN ACT CONCERNING COMMUNICATIONS TO VICTIMS OF THE CRIMINAL
 OPERATION OF A MOTOR VEHICLE THAT RESULTS IN DEATH OR SERIOUS
 PHYSICAL INJURY**

Dear Chairmen and Committee Members:

The Connecticut Criminal Defense Lawyers Association (CCDLA) is a statewide organization of over 300 licensed lawyers, in both the public and private sectors, dedicated to defending persons accused of criminal offenses. Founded in 1988, CCDLA works to improve the criminal justice system by ensuring that the individual rights guaranteed by the Connecticut and United States constitutions are applied fairly and equally and that those rights are not diminished. At the same time, CCDLA strives to improve and suggest changes to the laws and procedures that apply to criminal justice. By way of this testimony, CCDLA supports Raised Bill No. 5148, An Act Concerning Communications to Victims of the Criminal Operation of a Motor Vehicle that Results in Death or Serious Physical Injury.

Raised Bill 5148 enables a person convicted of a motor vehicle offense resulting in death or serious physical injury to make a statement, affirmation, gesture or expression of apology, fault, sympathy, commiseration, condolence, compassion or a general sense of benevolence to the victim of such offense, a relative of the victim or a representative of the victim, prior to sentencing for the offense, without the statement being admissible as evidence of an admission of liability or as evidence of an admission against interest in any civil or criminal proceeding.


Enabling criminal defendants to apologize under these circumstances benefits victims and defendants alike. As a general matter, apologies and other expressions of remorse have been found to produce a range of effects that tend to be positive for both

apologizers and recipients of apologies. Victims who receive apologies or believe that their offenders are remorseful are more likely to find emotional restoration, to feel a reestablished sense of security, to view the moral relation between the parties as back in balance, and to forgive their offenders.¹ Apologies offer the opportunity for reconciliation and healing, which is viewed by many victims as being as important as financial compensation.²

Defendants also benefit from having the opportunity to apologize to their victims. This ability presents a restorative opportunity to the offender because it gives him/her the opportunity to make amends with both the victim and the community. It enables the offender to assuage negative emotions and "begin to repair their relationships with their victims and society, improve their reputations, and begin a process of reintegrating into society."³ Empirical evidence also shows that offenders are less likely to recidivate and more likely to be forgiven by their victims.⁴ Removing the possibility that such an apology could be used against an offender in litigation will enable offenders to freely express their remorse without limitation.

For these reasons, CCDLA supports Raised Bill No. 5148.

Respectfully submitted,
CCDLA

By, 
Moira L. Buckley
President Elect CCDLA

¹ See Margareth Etienne and Jennifer K. Robbennolt, *Apologies and Plea Bargaining*, 91 Marq. L. Rev. 295 (2007).

² *Id.* (citing Heather Strang & Lawrence W. Sherman, *Repairing the Harm: Victims and Restorative Justice*, 2003 UTAH L. REV. 15, 22-23).

³ *Id.* (citing Jonathan R. Cohen, *Advising Clients to Apologize*, 72 S. CAL. L. REV. 1009, 1015-23 (1999) (articulating benefits of apologizing in the civil context); Erin Ann O'Hara & Douglas Yarn, *On Apology and Consilience*, 77 WASH. L. REV. 1121, 1141-42 (2002); see also Jonathan R. Cohen, *The Culture of Legal Denial*, 84 NEB. L. REV. 247, 253-54 (2005)).

⁴ See William R. Nugent et al., *Participation in Victim-Offender Mediation and the Prevalence and Severity of Subsequent Delinquent Behavior: A Meta-Analysis*, 2003 UTAH L. REV. 137, 140, 162 (finding a reduction in reoffending); Barton Poulson, *A Third Voice: A Review of Empirical Research on the Psychological Outcomes of Restorative Justice*, 2003 UTAH L. REV. 167, 190-91 tbl.7 & fig.7 (reviewing four studies of offenders' apologies and one study of victims' forgiveness to find that restorative justice procedures greatly increase the likelihood of forgiveness).

H – 1145

**CONNECTICUT
GENERAL ASSEMBLY
HOUSE**

**PROCEEDINGS
2012**

**VOL.55
PART 23
7514 - 7863**

cd/sg/lg/sd/ev
HOUSE OF REPRESENTATIVES

599
MAY 8, 2012

number of other bills that require amendments to be called and will be calling them afterwards.

But for right now, Calendar 219 would be the first -- first bill to add to the consent calendar. Calendar 219. The second is Calendar 455. Third is Calendar 510. Fourth is Calendar 513. And the fifth is Calendar 320.

HB 5148
SB 62
SB 61
SB 353
SB 320

DEPUTY SPEAKER ARESIMOWICZ:

Thank you very much, sir.

The motion before us is to place the following items on the consent calendar for action later in the day: Calendar numbers are 219, 455, 510, 513 and 320.

Is there objection to the motion? Is there objection to the motion?

Hearing none, those items are placed on the consent agenda for action later today.

Will the Clerk please call Calendar 90?

THE CLERK:

On page 37, Calendar 90, House Bill Number 5022, AN ACT INCREASING PENALTIES FOR VOTER INTIMIDATION AND INTERFERENCE, favorable report by the Committee on Judiciary.

DEPUTY SPEAKER ARESIMOWICZ:

Representative Morin, you have the floor, sir.

cd/sg/lg/sd/ev
HOUSE OF REPRESENTATIVES

674
MAY 8, 2012

On page 7, Calendar 219, House Bill Number 5148,
AN ACT CONCERNING AN ACT CONCERNING COMMUNICATIONS TO
VICTIMS OF THE CURRENT OPERATION OF A MOTOR VEHICLE
THAT RESULTS IN DEATH OR SERIOUS PHYSICAL INJURY.
DEPUTY SPEAKER ARESIMOWICZ:

The distinguished Majority Leader, Representative
Sharkey.

REP. SHARKEY (88th):

Thank you, Mr. Speaker.

Good to see you up there.

DEPUTY SPEAKER ARESIMOWICZ:

Thank you, sir.

REP. SHARKEY (88th):

Mr. Speaker, this represents the consent calendar
and for everyone's edification, I will be listing off
the calendar numbers in numerical order so that
everyone can follow. I'll try keep it -- and make
sure that I do it in numerical order. Thank you.

These will be: Calendar Number 90, Number 155,
Number 219, Number 223, Number 290, Number 320, Number
338, Number 345, Number 389, Number 430, Number 444,
Number 455, Number 467, Number 470, Number 475, Number
481, Number 485, Number 488, Number 489, Number 494,

cd/sg/lg/sd/ev
HOUSE OF REPRESENTATIVES

675
MAY 8, 2012

Number 496, Number 497, Number 505, Number 510, Number 513, Number 525, and Number 531.

I move adoption, I move adoption.

And with that, Mr. Speaker, I move adoption of the consent calendar. I move the consent calendar.

(Speaker Donovan in the Chair.)

SPEAKER DONOVAN:

The question before us is on passage of the bills on today's consent calendar.

Will you remark?

If not, staff and guests please come to the well the House. Members take their seats. The machine will be open.

THE CLERK:

The House of Representatives is voting by roll call. Members to the chamber. The House is voting today's consent calendar by roll call. Members to the chamber please.

SPEAKER DONOVAN:

Have all members voted? Have all members voted?

Please check the roll call board to make sure your vote has been properly cast.

cd/sg/lg/sd/ev
HOUSE OF REPRESENTATIVES

676
MAY 8, 2012

If all members have voted, the machine will be locked, and the Clerk will take a tally.

The Clerk please announce the tally.

THE CLERK:

On today's consent calendar

Total number voting	144
Necessary for passage	73
Those voting Yea	144
Those voting Nay	0
Those absent and not voting	7

SPEAKER DONOVAN:

The consent calendar passes.

Any announcements or introductions? Any announcements or introductions?

Is there any business on the Clerk's desk?

THE CLERK:

A list of Senate bills, Mr. Speaker.

SPEAKER DONOVAN:

Representative Brendan Sharkey.

REP. SHARKEY (88th):

Thank you, Mr. Speaker.

I move that we waive -- waive the reading of the bills and have these items placed immediately on the House calendar.

S - 649

**CONNECTICUT
GENERAL ASSEMBLY
SENATE**

**PROCEEDINGS
2012**

**VOL. 55
PART 14
4223 - 4505**

rgd/tmj/gdm/gbr
SENATE

269
May 9, 2012

SENATOR LOONEY:

Yes. Thank you, Madam President. Those two items we previously adopted, Senate Agenda Number 1, those two items listed previously were actually on Senate Agenda Number 1 rather than on the calendar.

So would ask for suspension for taking up for purposes of placing on the consent calendar, House Bill 5148, which appears on Senate Agenda Number 1.

THE CHAIR:

Seeing no objection, so ordered, sir.

SENATOR LOONEY:

Thank you, Madam President.

In addition, Madam President, also appearing on Senate Agenda Number 1, Madam President, is Substitute for House Bill 5394. Would move for suspension to take of the item to place it on the consent calendar.

THE CHAIR:

Seeing no objection, so ordered, sir.

SENATOR LOONEY:

Thank you, Madam President.

Madam President, I believe the -- the initial motion was to suspend to take of the items. Now, I would move, Madam President, to place them on the consent calendar, that is placing House Bill five Number four -- 5148 and 5394 from Senate Agenda Number 1, to be placed on the consent calendar.

THE CHAIR:

Seeing no objection, so ordered, sir.

SENATOR LOONEY:

Thank you, Madam President.

rgd/tmj/gdm/gbr
SENATE

317
May 9, 2012

SENATOR LOONEY:

Yes.

THE CHAIR:

The Calendar Number 444 --

SENATOR LOONEY:

Yes.

THE CHAIR:

-- House Bill 5037 has just been added.

Senator Looney.

SENATOR LOONEY:

That's right, Madam President.

And -- and also, Madam President, calendar page -- excuse me, it's -- rather I don't have the calendar page but it's Substitute -- it is Calendar 507, Substitute for House Bill 5467, Madam President, move to place that item on the consent calendar.

THE CHAIR:

Got it. Thank you, sir.

SENATOR LOONEY:

Now, Madam President, if the Clerk would now proceed to call the consent calendar.

THE CHAIR:

Mr. Clerk, you may call the consent calendar now.

THE CLERK:

House Bill 5358; House Bill 5148; House Bill 5394; House Bill 5326; House Bill 5025; House Bill 5534; House Bill 5539; House Bill 5320; House Bill 5462; House Bill 5394; House Bill 5511.

rgd/tmj/gdm/gbr
SENATE

318
May 9, 2012

(HB 5283)

On page 3, Calendar 240, House Bill 3283; page 3, Calendar 299, House Bill 5437; page 5, Calendar 349, Senate Bill 374; page 6, Calendar 375, House Bill 5440; page 6, 362, House Bill 5011.

On page 7, Calendar 376, House Bill 5279; on page 7, 387, House Bill 5290; on page 8, 394, House Bill 5032; on page 8, 396, House Bill 5230.

Also on page 8, Calendar 398, House Bill 5241; on page 8, Calendar 393, House Bill 5307; on page 9, Calendar 403, House Bill 5087; on page 9, Calendar 406, House Bill 5276; on page 9, 407, House Bill 5484; on page 11, Calendar 424, House Bill 5495; on page 12, Calendar 435, House Bill 5232; on page 13, Calendar 5 -- excuse me Calendar 450, House Bill 5447; on page 14, Calendar 455, House Bill 3 -- I'm sorry -- House Bill 5353.

On page 14, Calendar 453, House Bill 5543; on page 14, Calendar 459, House Bill 5271; on page 15, Calendar 464, House Bill 5344; on page 15, Calendar 465, House Bill 5034; on page 16, Calendar 469, House Bill 5038; on page 17, Calendar 475, House Bill 5550; on page 17, Calendar 474, House Bill 5233; on page 17, Calendar 477, House Bill 5421.

Page 18, 480, House Bill 5258; on page 18, Calendar 479, House Bill 5500; page 18, Calendar 482, House Bill 5106; on page 18, Calendar 483, House Bill 5355; on page 19, Calendar 489, House Bill 5248; on page 19, Calendar 488, House Bill 5321; on page 20, Calendar 496, House Bill 5412.

On page 21, Calendar 504, House Bill 5319; page 21, Calendar 505, House Bill 5328; on page 22, Calendar 508, House Bill 5365; on page 22, Calendar 510, House Bill 5170; on page 23, Calendar 514, House Bill 5540; on page 23, Calendar 517, House Bill 5521.

Page 24, Calendar 521, House Bill 5343; page 24, Calendar 518, House Bill 5298; page 24, Calendar 523, House Bill 5504; page 29, Calendar 355, Senate Bill 418; on page 13, Calendar 444, 5037; and Calendar 507, House Bill 5467.

THE CHAIR:

Senator -- Senator Suzio.

SENATOR SUZIO:



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Bills placed on the Consent Calendar on May 9, 2012

- 5358
- 5148
- 5394
- 5326
- 5025
- 5534
- 5539
- 5320
- 5462
- 5394
- 5511
- 5283
- 5437
- 374
- 5011
- 5440
- 5279
- 5290
- 5307
- 5032
- 5230
- 5241
- 5087
- 5276
- 5484
- 5495
- 5232
- 5447
- 5543
- 5353
- 5271
- 5344
- 5038



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- 5233
- 5550
- 5258
- 5106
- 5355
- 5521
- 5248
- 5412
- 5319
- 5328
- 5365
- 5170
- 55440
- 5521
- 5298
- 5343
- 5504
- 418
- 5037
- 5467
- 5022
- 5259
- 5496
- 5360



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Bills from Senate Agenda Number 3 from the May 9th Senate Session that were placed on the Consent Calendar

HB5304
HB 5342

rgd/tmj/gdm/gbr
SENATE

319
May 9, 2012

Good evening, Madam President.

I just want to clarify. I thought I heard the Clerk call House Bill 5034? Is that on the consent calendar?

THE CHAIR:

Do you know what page that is, sir?

SENATOR SUZIO:

No I -- he was reading so fast, Madam, I couldn't get it.

THE CHAIR:

It's -- yes it's 53 -- I don't know.

SENATOR SUZIO:

5034.

THE CHAIR:

5034, yes sir.

SENATOR SUZIO:

I object to that being put on the consent calendar, Madam President.

THE CHAIR:

Okay, that will be removed.

Senator Looney.

SENATOR LOONEY:

Thank you, Madam President.

Yes, just seeing that -- ask to remove that item from the consent calendar.

THE CHAIR:

So ordered.

rgd/tmj/gdm/gbr
SENATE

320
May 9, 2012

At this time we'll call a roll call vote on the consent calendar.

Mr. Clerk.

THE CLERK:

Immediate roll call has been ordered in the Senate.
Senators please return to the Chamber. Immediate roll call has been ordered in the Senate.

THE CHAIR:

Senator Coleman, we need your vote, sir.

Senator Kissel, Senator Kissel. Senator Kissel, will you vote on the consent calendar please?

All members have voted?

If all members have voted, the machine will be closed.

Mr. Clerk, will you call the amendment -- I meant the tally.

THE CLERK:

On today's consent calendar.

Total Number Voting	36
Necessary for Adoption	19
Those Voting Yea	36
Those Voting Nay	0
Those Absent and Not Voting	0

THE CHAIR:

The consent calendar has passed.

Senator Looney.

SENATOR LOONEY:

Thank you, Madam President.

Madam President, I believe the Clerk is in possession of Senate Agenda Number 6 for today's session.