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Honorable Kristine D. Ragaglia, J.D.
Commissioner
Department of Children and Families
505 Hudson Street
Hartford, Connecticut 06106

Dear Commissioner Ragaglia:

You have asked for an opinion interpreting Conn. Gen. Stats. § 17a-101a, the mandated reporter statute. Section 17a-101a requires certain individuals enumerated in Conn. Gen. Stats. § 17a-101(b)¹ to notify the Department of Children and Families (the Department or DCF) or a law enforcement agency when they have "reasonable cause to suspect or believe" that child abuse or neglect, as defined in Conn. Gen. Stats. § 46a-120, has occurred. Your question concerns the obligations of a mandated reporter who becomes aware that a minor under the age of sixteen is engaged in a sexual relationship.

You have informed us that the Department evaluates the responsibilities of mandated reporters according to the age of the parties involved, and has determined that the statutes create a per se reporting obligation in certain situations, but do not require mandated reporters to automatically report consensual sexual relations involving minors 13 years or older with an individual under 21 in all instances :

¹ Conn. Gen. Stats. §17a-101(b) provides: "The following persons shall be mandated reporters: Any physician or surgeon licensed under the provisions of chapter 370, any resident physician or intern in any hospital in this state, whether or not so licensed, any registered nurse, licensed practical nurse, medical examiner, dentist, dental hygienist, psychologist, school teacher, school principal, school guidance counselor, school paraprofessional, social worker, police officer, clergyman, pharmacist, physical therapist, optometrist, chiropractor, podiatrist, mental health professional or physician assistant, any person who is a licensed substance abuse counselor, any person who is a licensed marital and family therapist, any person who is a sexual assault counselor or a battered women's counselor as defined in section §2-146k, any person paid to care for a child in any public or private facility, day care center or family day care home licensed by the state, the Child Advocate and any employee of the Office of Child Advocate."

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The Department has taken the position that a mandated reporter is obligated to report any sexual relations involving a minor under the age of 13 and sexual relations between a minor under the age of 16 and a person over the age of 21 years, regardless of whether there are any other facts known to the mandated reporter. On the other hand, a mandated reporter need not automatically report consensual sexual relations between two minors who are 13 years of age or older and who are within 2 years of age of each other unless the reporter has other facts to provide reasonable cause to suspect that child abuse or neglect has occurred.

This part of the policy is not at issue here and we do not address it. You inform us, however, that a question has arisen "whether a mandated reporter is obligated to report consensual sexual relations between a minor over 13 years and under 16 years with another person under the age of 21 years who is more than 2 years older." Although you recognize that "[s]uch a circumstance would constitute a violation of the criminal statutory rape statute, Conn. Gen. Stats. § 53a-71," you state that "the Department has historically taken the position that the law does not require a mandated reporter to report a violation of this particular section of the penal code unless the reporter has other information that causes him to suspect child abuse or neglect as defined in Conn. Gen. Stats. § 46b-120." You are concerned that an obligation on the part of physicians, nurses, teachers and other mandated reporters to automatically report consensual sexual relations in such a situation as per se child abuse without any other indication of abuse "could have a significant chilling effect on minors seeking necessary health care services."

You ask for a formal opinion "on whether a mandated reporter should be required to report this situation under Conn. Gen. Stats. § 17a-101a without any further indication that abuse or neglect has occurred." For the reasons that follow, we conclude that Conn. Gen. Stats. § 17a-101a is ambiguous on this point, but that your interpretation of the statute is reasonable: that because of the possible variations in situations involving sexual relations between a minor 13 years or over and under 16 years with a partner under 21 years who is more than two years older than the minor, § 17a-101a does not impose a per se or automatic obligation on mandated reporters to report such behavior in every situation, but rather

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requires a report whenever the mandated reporter has a reasonable suspicion, based on his or her professional judgment and all the information available to him, including the ages of the parties involved, that a child has been abused or neglected. We emphasize that this opinion does not affect criminal prosecutions under the statutory rape statute, nor does it suggest that mandated reporters are not required to report sexual relations involving a minor whenever they have a reasonable suspicion that a child has been abused or neglected. We also note that because §17a-101a provides criminal penalties for any mandated reporter who fails to make a required report, the individual state's attorneys are charged with making prosecution decisions under this statute. This opinion does not purport to express the views of the state's attorneys or the Chief State's Attorney, which may differ from the views expressed here.²

Section 17a-101a, as amended by Public Act 02-138 provides³:

Any mandated reporter, as defined in section 17a-101, as amended by this act, who in the

² A mandated reporter who fails to make a required report is subject to a \$500 fine and participation in an educational and training program. Conn. Gen. Stat. § 17a-101a, as amended by P.A. 02-138.

³ Section 17a-101a as amended by P.A. 02-138, § 13 will become effective on October 1, 2002. The statute was amended to clarify that all child abuse must be reported and that the reporting obligation is not limited to abuse occurring within the family. As Representative Lawlor remarked in support of passage of P.A. 02-138, "[abuse inflicted by] a teacher, a camp counselor, . . . a member of the clergy, or a scout master . . . any of that type of thing" must be reported as well as abuse occurring "within the family." __ H.R. Proc., Pt. __, 2002 Sess., pp. 3977, 4038 (comments of Rep. Lawlor). Prior to the effective date of the amendment, Section 17a-101 provides:

"Any mandated reporter, as defined in section 17a-101, who in his professional capacity has reasonable cause to suspect or believe that any child under the age of eighteen years has been abused, as defined in section 46b-120, or has had nonaccidental physical injury, or injury which is at variance with the history given of such injury, inflicted upon him 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, or is placed at imminent risk of serious harm by an act or failure to act on the part of such responsible person, or has been neglected, as defined in section 46b-120, shall report or cause a report to be made in accordance with the provisions of sections 17a-101b to 17a-101d, inclusive. Any person required to report under the provisions of this section who fails to make such report shall be fined not more than five hundred dollars."

Because the interpretation contained in this opinion will be used to guide mandated reporters in the future, we refer to the amended version effective on October 1, 2002.

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ordinary course of such person's employment or profession has reasonable cause to suspect or believe that any child under the age of eighteen years (1) has been abused or neglected, as defined in section 46b-120, (2) has had nonaccidental physical injury, or injury which is at variance with the history given of such injury, inflicted upon such child, or (3) is placed at imminent risk of serious harm, shall report or cause a report to be made in accordance with the provisions of sections 17a-101b to 17a-101d, inclusive, as amended by this act. Any person required to report under the provisions of this section who fails to make such report shall be fined not more than five hundred dollars and shall be required to participate in an educational and training program pursuant to subsection (d) of section 17a-101, as amended by this act.

This statute by its terms requires a mandated reporter to make a report to DCF or a law enforcement agency whenever he or she has reasonable cause to suspect or believe that any child under the age of eighteen years has been abused. As relevant here, "abused" is defined in subsection 4 of Conn. Gen. Stats. § 46b-120 as "in a condition which is the result of maltreatment such as, but not limited to ... sexual molestation or exploitation...." To answer your inquiry, we must determine whether the phrase "sexual molestation or exploitation" automatically includes, without more, consensual sexual activity between a minor thirteen years or older and an individual who is younger than 21 years of age but more than two years older than the younger partner.

In construing statutes, "[o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature.... In seeking to discern that intent, we look to the words of the statute itself, to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter. (Internal quotation marks omitted.) *Flaming v. Garnett*, 231 Conn. 77, 91-92, 646 A.2d 1308 (1994); *State v. Metz*, 230 Conn. 400, 409, 645 A.2d 965 (1994)." *Maxwell v. Freedom of Information Commission*, 260 Conn. 143, 147-48, 794 A. 2d 535 (2002).

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Our analysis begins with the language of the relevant statutes. Section 17a-101a requires all mandated reporters to make a report to DCF or a law enforcement agency whenever they have a reasonable basis to suspect that a minor has been "abused." Subsection 4 of section 46b-120 defines "abused" to encompass "sexual molestation or exploitation," but it does not further define or give guidance on the scope of these terms. It is notable that neither §17a-101a nor subsection 4 of § 46b-120 makes reference to Conn. Gen. Stats. § 53a-71, which establishes the crime commonly referred to as statutory rape.⁴ Had the legislature intended the definition of "abused" for purposes of the reporting statute to include the definition of statutory rape under the criminal statutes, it could have said so explicitly. Indeed, it would have been expected to say so specifically, as a matter of statutory construction. See *International Brotherhood of Police Officers, Local 364 v. Jewett City*, 234 Conn. 123, 137-38, 661 A.2d 573 (1995); *Petco Insulation Co., Inc. v. Crystal*, 231 Conn. 315, 325, 649 A.2d 790 (1994); *Buonocore v. Branford*, 192 Conn. 399, 403, 471 A.2d 961 (1984) (noting that when the General Assembly intends a statute to have a particular meaning, it knows how to effect that intent).

Further, the provisions of Conn. Gen. Stat. § 19a-216, governing the examination and treatment of minors for venereal disease, indicate that the General Assembly did not intend for consensual sexual relations involving minors thirteen years of age or older to be the subject of automatic mandatory reporting. That statute provides in pertinent part:

Any municipal health department, state institution or facility, licensed physician or public or private hospital or clinic, may examine and provide treatment for venereal disease for a minor . . . The fact of consultation, examination and treatment of a minor under the provisions of this section shall be confidential and shall not be divulged by the facility or physician . . . except that, if the minor is not more than twelve years of age, the facility or physician shall report the name, age and address of that minor to the Commissioner of Children and Families or his designee .

(emphasis added).

⁴ Conn. Gen. Stats. § 53a-71 provides in relevant part: (a) A person is guilty of sexual assault in the second degree when such person engages in sexual intercourse with another person and: (1) Such other person is thirteen years of age or older but under sixteen years of age and the actor is more than two years older than such person."

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Thus, the legislature has envisioned certain instances when physicians and other mandated reporters will become aware of sexual activity involving minors thirteen years of age and older but determined that countervailing concerns of confidentiality, and the public policy interest in encouraging such minors to seek medical treatment, justify an exception to the mandated reporting requirement. Indeed, if we were to interpret §17a-110a to require physicians to make a report to DCF whenever they learn of sexual activity involving a minor 13 years or older with an individual under 21 years who is two years older, regardless of the circumstances, such a report, if it is based on treatment for venereal disease, could effectively conflict with the confidentiality requirements of §19a-216.

Significantly, the reporting requirement in § 19a-216 for minors twelve years or younger seeking treatment for venereal disease was added by § 7 of P.A. 73-205, entitled "An Act Concerning the Protection of Children." That act extensively amended and strengthened the mandated reporting statutes. Noteworthy is that although the General Assembly strengthened the mandated reporting statute in one part of the Act, it permitted only the very limited exception (discussed above) to the confidentiality accorded to sexually active minors seeking treatment for venereal disease in another section of the same Act.

We presume that the legislature intended statutory provisions to be read together to create a harmonious body of law. *Collins v. Colonial Penn. Ins. Co.*, 257 Conn. 718, 742 (2001); *Eskin v. Castiglia*, 253 Conn. 516, 527, 753 A.2d 927 (2000) ("in ascertaining [legislative] intent, we deem the legislature to have intended to harmonize its enactment with existing common law and statutory requirements"). In attempting to ascertain the intent of the legislature, we must construe statutory provisions in a manner that will avoid conflict between them. *Stern v. Allied Van Lines, Inc.*, 246 Conn. 170, 179, 717 A.2d 195 (1998).

Construing the relevant statutes to avoid conflict and to create a harmonious whole strongly suggests that the legislature did not intend to mandate the automatic reporting of all consensual sexual activity between a teenaged minor under 16 years and an individual under 21 years who is two years older than the younger partner, in the absence of other evidence of abuse or neglect.

This interpretation is bolstered by an examination of the federal Child Abuse Prevention and Treatment Act ("CAPTA"), 42 U.S.C.S. §§ 5101 *et seq.* We noted in a previous opinion that CAPTA:

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authorizes federal grants to states to implement child abuse and neglect prevention and treatment programs. To qualify for these funds, states must agree to carry out the requirements of the Act and related regulations. The principal requirement is that states accepting these funds must agree to operate a child protective service agency that responds to reports of child abuse and neglect, as defined by federal law. (emphasis added)

1993 Conn. Op. Atty Gen. No. 93-014 (June 17, 1993 to Hon. Rose Alma Senatore, Department of Children and Youth Services). Federal regulations provide that, in order for a state to receive federal funding, the state statutory definitions of terms relating to child abuse and neglect must be "the same in substance" as the definitions provided in federal law. 45 C.F.R. § 1340.14(b).

The General Assembly has explicitly recognized the necessity of conforming state statutory definitions relating to child abuse or neglect to those of federal law. In 1982, the legislature amended the mandated reporting statute (then codified at § 17-38a) to include, as examples of maltreatment of a child, "sexual abuse" and "sexual exploitation" instead of "sexual molestation." 1982 Conn. Pub. Acts No. 82-203. Speaking on behalf of the bill containing the amendment, Rep. Owens explained:

This bill would bring State law into conformity with Federal law relating to the reporting of child abuse by one, changing an example of maltreatment from sexual molestation to the more encompassing charge of sexual abuse which includes molestation according to the Federal (inaudible) of sexual abuse and two adding the term exploitation to the list of examples. It's something that's needed and it brings this into conformity with Federal statute.

25 H.R. Proc., Pt. 5, 1982 Sess., pp. 1426-27. See also 1985 Conn. Op. Atty Gen. 150 (June 6, 1985) (advising that the term "sexual exploitation" had the same meaning under both state and federal child protection statutes.)

According to 42 U.S.C. § 5106g(2), "child abuse and neglect" includes "sexual abuse or exploitation." "Sexual abuse," in turn, includes "the rape, and in cases of caretaker or interfamilial relationships, statutory rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with

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children. 42 U.S.C. § 5106g(4)(B). (Emphasis added). Under federal law, therefore, consensual sex between teenagers, or between teenagers and young adults, in the absence of a caretaker or interfamilial relationship, does not fall within the statutory definition of sexual abuse even when it would constitute statutory rape under a state's criminal law. Thus, federal law does not appear to support a conclusion that the sexual activity at issue here would necessarily constitute sexual molestation or exploitation under federal child abuse statutes. Since the intent of the legislature was apparently to ensure that the state child abuse reporting statute conforms to the requirements of the federal child abuse reporting statute, it is reasonable to conclude that the legislature did not intend to require mandated reporters to automatically report, without more, every instance of consensual sexual activity involving a teenaged minor under 16 with an individual under the age of 21 who is more than two years older.

We recognize that this question raises difficult policy issues, and we emphasize again that our conclusion does not affect criminal prosecutions for statutory rape, nor does it bind or speak for our prosecutors.⁵ In no way does it minimize the highly significant obligation of mandated reporters to report every instance where they have a reasonable basis to suspect that a child has been abused or neglected.

We conclude only that your interpretation of the statutory scheme is a reasonable one: that § 17a-101a does not require mandated reporters automatically to report, without more, sexual relations between a teenaged minor under 16 with an individual who is more than two years older but is under the age of 21, in every instance. Rather, the statute requires mandated reporters to use their professional judgment to assess all situations involving minors, including those involving consensual sexual relations between minors 13 or older with individuals under 21, to consider the relative ages of the parties involved along with all other information available to them, and to report to DCF or a law

⁵ This opinion is not affected by the recent Superior Court decision in *State v. Mukesh Kumar Shah*, Docket No. CR-02-178790 (J.D. Fairfield at Bridgeport) (Sept. 23, 2002). In that case, the court refused to dismiss a criminal prosecution brought against a doctor for failing to report the pregnancy of an eleven year old girl under the version of Conn. Gen. Stats. § 17a-101a in effect prior to October 1, 2002. The court's decision does not directly apply to the question posed here because the Court simply concluded, in response to the defendant's claim that § 17a-101a was unconstitutionally vague, that the statute gives fair notice to the regulated community that the failure to report the pregnancy of an eleven year old girl may constitute a violation of that statute. In fact, the decision implicitly recognizes that the question of whether a mandated reporter has "reasonable cause to suspect or believe" that abuse has occurred is an inherently factual question to be decided on a case-by-case basis. That analysis supports our conclusion here.

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enforcement agency any incident where the reporter concludes that he or she has reasonable cause to suspect or believe that the child has been abused or neglected.⁶

The ambiguity in the statute, and the uncertainty it has created among mandated reporters, strongly suggest a need for the legislature to review the statutory scheme and clarify the statute. I certainly recommend that it do so, and that it carefully balance the urgent importance of mandatory reports of child abuse with the profoundly significant goal of avoiding a chilling effect on minors who may wish to seek medical or other treatment while preserving their own confidentiality.

Very truly yours,



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⁶ In considering the information available to the reporters, the relative ages of the individuals will certainly be an important factor in the assessment. It may well be that the greater the disparity in age between the parties, the greater the likelihood that a reporter will have a reasonable basis to suspect abuse or neglect.