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SPEAKING OUT FOR THOSE
WHO CAN'T - CHILDREN

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May 2, 2012

Alan Shatter TD
Minister for Justice
94 St. Stephens Green,
Dublin 2

Re: The Criminal Justice (Withholding Information on Offences against Children and Vulnerable Persons) Bill 2012

Dear Minister Shatter,

I read of the above-mentioned Bill in the newspaper last week and read the Bill itself as presented on the Oireachtas website. At first glance the Bill appears to be a step forward in the protection of children. On further examination it is clearly not.

Of concern is the inclusion in the Bill of the myriad provisions that allow 'designated professionals, prescribed persons or prescribed organizations,' a defense for not reporting abuse.

Either the requirement to report child abuse is all inclusive for every citizen or it is not; there can be no half-measures. As it reads, this Bill is a waste of time and taxpayer money by writing into law methods for avoiding a responsibility to report criminal actions to law enforcement. As such it is designed to provide a loop-hole for a certain class of reporter, not the advancement of the protection of children from abuse. There are eight specific issues that should be noted.

1. **Child abuse is a criminal offence and as such must be reported to the Gardai immediately. It is the role of the Gardai to determine how that report is handled, or acted upon, not the reporter.**
2. In providing these defense clauses to select reporters of child abuse you are bestowing law enforcement powers on them. As such, you are allowing 'designated professionals, prescribed persons or prescribed organizations,' to determine the child's best interests in the face of a criminal act(s) against them. That determination, outside of the framework of law enforcement, is subjective, and as such is not in the best interest of the child.
3. The viewpoint of a criminal offence by the 'designated professionals, prescribed persons or prescribed organizations,' is, by their very nature myopic, as they are care-givers not law enforcers. Law enforcement's position should always prevail in criminal matters.
4. Putting these defense provisions into law exposes the State and the tax-payer to unlimited financial risk and damages. In the event that a child is abused further or killed as a result of non-reporting, the State leaves itself wide open to being sued.
5. This Bill provides serial perpetrators of child abuse with a method of ensuring the continued silence of their victims and allows them to continue their abuse of children, unhindered. Even a hint that their safety is in jeopardy will ensure that incidents will not be reported by 'designated professionals, prescribed persons or prescribed organizations,' due to the child's fear of consequences; consequences they will face regardless, except now without the protection of the Gardai.
6. The defense provisions encourage the continued silence, endemic in Irish society, about the abuse of children. The overall affect will be fewer reports and less child protection, not more.
7. While the big stick of penalties for not reporting is impressive, it is made irrelevant by the defense clauses which will be used whenever someone is prosecuted for not reporting.
8. What if the 'designated professionals, prescribed persons or prescribed organizations,' are themselves child abusers? Many are. This Bill affords them unlimited protection from prosecution.

This Bill puts child protection back, not forward, by formalizing an escape mechanism for anyone who decides not to report abuse. Many of those accused over the past 25 years would have used these clauses successfully to defend themselves as they will in the future.

Everyone is obliged – morally and legally - to report the criminals acts of suspected or actual abuse to the Gardai right away. There should be no reason, rationalization or excuse – ever – that a report is not made.

I urge you to revise this Bill and eliminate all defenses for not reporting child abuse. By doing so you will make this Bill what it should be - relevant to the further protection of children.

In the event that you wish to respond, email is preferred as I am currently travelling in the U.S..

Sincerely yours,

EVIN M. DALY

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