FLYNN, C. J., dissenting in part. I agree with parts I, II and III of the majority opinion but respectfully dissent as to part IV. I would reverse the judgment of conviction on the charge of risk of injury to a child.

General Statutes § 53-21, the risk of injury to a child statute, is rendered constitutional, despite its broad language, only because of judicial glosses limiting its scope and defining its meaning, which render enforceable what otherwise would be an unconstitutionally vague statute. "Our case law has interpreted § 53-21 (1) [now § 53-21 (a) (1)] as comprising two distinct parts and criminalizing two general types of behavior likely to injure physically or to impair the morals of a minor under sixteen years of age: (1) deliberate indifference to, acquiescence in, or the creation of situations inimical to the minor's moral or physical welfare . . . and (2) acts directly perpetrated on the person of the minor and injurious to his moral or physical well-being. . . . Thus, the first part of § 53-21 (1) [now § 53-21 (a) (1)] prohibits the creation of situations detrimental to a child's welfare, while the second part proscribes injurious acts *directly perpetrated on the child*." (Citation omitted; emphasis added.) *State* v. *Padua*, 273 Conn. 138, 147–48, 869 A.2d 192 (2005).

In the present case, the defendant, Clifton Owens, took two or three steps toward the child involved, while armed with a knife, but he did not come into physical contact with her. In *State* v. *Schriver*, 207 Conn. 456, 466, 542 A.2d 686 (1988), our Supreme Court recognized "an authoritative judicial gloss that limits the type of physical harm prohibited by § 53-21 to instances of deliberate, blatant abuse." See, e.g., *State* v. *McClary*, 207 Conn. 233, 234–39, 541 A.2d 96 (1988) (six month old child suffered brain injury from violent shaking); *State* v. *Eason*, 192 Conn. 37, 38, 470 A.2d 688 (1984) (two year old child severely beaten with belt), overruled in part on other grounds by *Paulsen* v. *Manson*, 203 Conn. 484, 491, 525 A.2d 1315 (1987); *State* v. *Martin*, 189 Conn. 1, 6, 454 A.2d 256 (child violently pushed), cert. denied, 461 U.S. 933, 103 S. Ct. 2098, 77 L. Ed. 2d 306 (1983); *State* v. *Palozie*, 165 Conn. 288, 290–91, 334 A.2d 468 (1973) (child beaten and thrown around).

Pursuant to *State* v. *March*, 39 Conn. App. 267, 664 A.2d 1157, cert. denied, 235 Conn. 930, 667 A.2d 801 (1995), to meet its burden of proof under the act portion of § 53-21 (a) (1), the state was required to prove: "(1) the victim was less than sixteen years old; (2) the defendant committed an act *upon the victim*; (3) the act was likely to be injurious to the victim's health . . . and (4) the defendant had the general intent to commit the act upon the victim." (Emphasis added.) Id., 275.

In *State* v. *Winot*, 95 Conn. App. 332, 897 A.2d 115, cert. granted, 279 Conn. 905, 901 A.2d 1229 (2006), the defendant was charged with a violation of the act section of § 53-21 (a) (1). In the third count of the substitute information in *Winot*, the state had charged the defendant with "violating § 53-21. It alleged 'that on July 23, 2002 near the intersection of Bissell Street and Spruce Street in Manchester, Connecticut at approximately 5:00 p.m., the defendant did *an act* likely to impair the health of a twelve (12) year old girl, including but not limited to: driving his car down Spruce Street and stopping it alongside the girl, exiting the vehicle, approaching the girl, grabbing her arm, holding onto her, telling her to get into his vehicle, trying to drag her into his car, where he had a noose made of rope and duct tape.' " (Emphasis in original.) Id., 360. As we explained in *Winot*, however, "[t]he state conceded at oral argument that even when construed in the light most favorable to the state, the evidence that the defendant forcibly took and pulled on the victim's arm alone was insufficient to sustain a conviction for risk of physical injury under *State* v. *Schriver*, [supra, 207 Conn. 456]." *State* v. *Winot*, supra, 361.

In *Schriver*, the Supreme Court recognized a judicial gloss related to the act portion of § 53-21, such that it placed a limit on the type of physical harm prohibited by § 53-21 to instances of deliberate, blatant physical abuse. *State* v. *Schriver*, supra, 207 Conn. 466. In the present case, there was no physical harm resulting from some deliberate blatant physical abuse. In short, the defendant was charged by the state with engaging in conduct that did not fit the charged crime.

The state could have charged the defendant under the situation prong of § 53-21 (a) (1), which prohibits placing a child in a situation where his or her health may be endangered. See *State* v. *Padua*, supra, 273 Conn. 148 ("[u]nder the 'situation' portion of § 53-21 (1) [now § 53-21 (a) (1)], the state need not prove actual injury to the child"). Under this situation portion, the act of displaying the knife and taking two or three steps toward the child reasonably could have resulted in a guilty finding by the jury because it could have created a situation likely to have impaired the health of the child. See id., 158–59 (act of cutting and packaging marijuana in presence of children placed them in situation that might be harmful to their health). The *act* of creating such a *situation*, while sufficing to support a conviction under the situation portion of § 53-21 (a) (1), does not support a conviction under the act portion of § 53-21 (a) (1), for which the defendant in this case was charged and convicted.

The result of the majority holding is to meld impermissibly both the situational and act sections of the statute, placing the statute in constitutional jeopardy. In my opinion, this is exactly what our Supreme Court

sought to avoid in *Schriver* when it limited the act section of § 53-21 to instances of physical harm consisting of deliberate blatant physical abuse.

In this case, I would reverse the conviction of a violation of the act portion of § 53-21 and would affirm the judgment of the trial court in all other respects.

Respectfully, therefore, I dissent in part.