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VERTEFEUILLE, J., with whom, SULLIVAN, C. J., and ZARELLA, J., join, concurring. I concur with the two conclusions set forth in the accompanying per curiam opinion, and set forth my reasoning, and those of the justices joining me, in this concurring opinion.

I

The first conclusion reached in the per curiam opinion is that Judge Fracasse, a judge trial referee, properly resentenced the defendant, Santos Miranda, pursuant to General Statutes § 51-183g, following our remand in *State* v. *Miranda*, 260 Conn. 93, 794 A.2d 506, cert. denied, 537 U.S. 902, 123 S. Ct. 224, 154 L. Ed. 2d 175 (2002) (*Miranda II*). The per curiam opinion rejects the defendant's claim that General Statutes § 52-434 (a) (1) applied to the defendant's resentencing and required the defendant's consent before he could be resentenced by a judge trial referee.

In order to determine whether a judge trial referee is authorized to preside over a resentencing hearing following remand from the Appellate Court, we must construe the relevant statutory provisions, namely, §§ 51-183g and 52-434 (a) (1). The question of whether resentencing constitutes an unfinished matter within the meaning of § 51-183g or whether § 52-434 (a) (1) requires the parties' consent to resentencing by a judge trial referee presents questions of statutory interpretation over which our review is plenary.[1] See *Waterbury* v. *Washington*, 260 Conn. 506, 546–47, 800 A.2d 1102 (2002).

"The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered." General Statutes § 1-2z.[2] In the present case, I conclude that the meaning of §§ 51-183g and 52-434 (a) (1) is plain and unambiguous.

Before I turn to the text of the statutes at issue, I note that the constitution of Connecticut, article fifth, § 6, as amended by article eight, § 2, of the amendments, establishes a mandatory retirement age of seventy for all judges. Under that constitutional provision, upon attaining the age of seventy, a retired judge may become a state referee and "may exercise, as shall be prescribed by law, the powers of the superior court or court of common pleas on matters referred to him as a state referee." Id. State referees may be designated as judge trial referees and, accordingly, may preside over civil and criminal cases. General Statutes § 52-434 (b). Sec-

tion 52-434 (a) (1) delineates the manner in which cases, both civil and criminal, may be referred to a judge trial referee. As to criminal cases, § 52-434 (a) (1) provides in relevant part: ''The Superior Court may, with the *consent* of the parties or their attorneys, refer any *criminal* case to a judge trial referee who shall have and exercise the powers of the Superior Court in respect to trial, judgment, sentencing and appeal in the case . . . .'' (Emphasis added).

Because the matter in the present case is criminal in nature and the defendant refused to consent to a judge trial referee, the crux of the issue presented is whether a resentencing hearing, on remand after appeal, constitutes an unfinished matter within the meaning of § 51-183g, thereby allowing a judge trial referee to preside without the consent of the parties, or whether § 52-434 (a) (1) applies and the consent of the parties is required. To resolve this issue, I begin with the language of the statutes. Section 51-183g provides that, ''[a]ny judge of the Superior Court may, after ceasing to hold office as such judge, settle and dispose of all matters relating to appeal cases, as well as any other *unfinished matters* pertaining to causes theretofore tried by him, *as if he were still such judge*.'' (Emphasis added). The phrase ''unfinished matters'' is not defined by the statute.

General Statutes § 1-1 (a) provides in relevant part: ''In the construction of the statutes, words and phrases shall be construed according to the commonly approved usage of the language . . . .'' In order to determine the commonly approved usage of language in a statute, we refer to the definition of a word as found in a dictionary. Webster's Third New International Dictionary defines ''unfinished'' as ''not brought to an end or to completion . . . .'' The text of § 51-183g therefore provides that a person who has ceased to be a Superior Court judge may dispose of any matter relating to a case previously tried by him or her as a judge that was not completed before he or she ceased to be a Superior Court judge. Based on its express language, § 51-183g plainly applies to the circumstances in the present case. The defendant's case initially was tried before Judge Fracasse as a Superior Court judge in 1994. At the time of resentencing in 2003 on remand after the most recent appeal in this case, Judge Fracasse had become a judge trial referee after ceasing to be a Superior Court judge because he reached the mandatory retirement age of seventy. Consent of the parties therefore was not required for Judge Fracasse to preside at the defendant's resentencing.

Analysis of the text of § 52-434 (a) (1), on which the defendant relies, reveals that it applies to different circumstances from those in the present case. Specifically, § 52-434 (a) (1), which requires the consent of the parties, contemplates the referral of ''any criminal case to a judge trial referee who shall have and exercise

the powers of the Superior Court in respect to *trial, judgment, sentencing and appeal* in the case . . . .'' (Emphasis added.) The breadth of this language strongly suggests that the statute contemplates the referral of a criminal case to a judge trial referee *prior to trial* and authorizes the judge trial referee to preside over the trial and all subsequent proceedings. Those are not the circumstances of the present case.

Section 51-183g plainly, however, pertains exclusively to ''appeal cases'' and other ''unfinished matters pertaining to causes *theretofore tried by [the judge] as if he or [she] were still such judge.*'' (Emphasis added.) Thus, § 51-183g, which does not require the consent of the parties, applies by its express terms to matters that were tried at a time when the referee was a Superior Court judge and have carried over from his or her prior tenure as a trial judge. I conclude, therefore, that § 51-183g plainly authorized Judge Fracasse to resentence the defendant, without the consent of the parties, after the case was remanded for resentencing after appeal, and the trial court properly determined that it had the statutory authority to resentence the defendant.

The defendant advocates for a narrow reading of § 51-183g. Specifically, the defendant interprets § 51-183g to refer only to unfinished matters that are ministerial in nature. This interpretation finds no support in the text of the statute itself and runs afoul of several well established principles of statutory construction.

''It is our duty to interpret statutes as they are written. . . . Courts cannot, by construction, read into statutes provisions which are not clearly stated. . . . The legislature is quite aware of how to use language when it wants to express its intent to qualify or limit the operation of a statute.'' (Citations omitted; internal quotation marks omitted.) *State* v. *Ingram*, 43 Conn. App. 801, 825, 687 A.2d 1279 (1996), cert. denied, 240 Conn. 908, 689 A.2d 472 (1997). Additionally, ''[a]s a general rule of statutory interpretation, we will not read a statute in such a way as to render a portion of it superfluous.'' *State* v. *Christiano*, 228 Conn. 456, 472, 637 A.2d 382, cert. denied, 513 U.S. 821, 115 S. Ct. 83, 130 L. Ed. 2d 36 (1994).

The defendant's interpretation is in derogation of both of these principles. There is no indication in the text of § 51-183g that the legislature intended to limit a judge trial referee to the performance of ministerial acts. Indeed, the language of the statute suggests the contrary, that the legislature did *not* intend to impose such a restriction. Section 51-183g specifically provides that a judge trial referee may settle and dispose of unfinished matters ''as if he were still such judge.'' It is beyond dispute that a judge of the Superior Court has the authority to perform both ministerial and discretionary tasks. See, e.g., *State* v. *Francis*, 267 Conn. 162, 181, 836 A.2d 1191 (2003) (subject to sixth amendment

to federal constitution, restrictions on scope of cross-examination are within discretion of trial judge); *State* v. *Reynolds*, 264 Conn. 1, 117, 836 A.2d 224 (2003) (trial court vested with wide discretion in determining competency of jurors to serve), cert. denied, 541 U.S. 908, 124 S. Ct. 1614, 158 L. Ed. 2d 254 (2004); *State* v. *Anderson*, 212 Conn. 31, 47, 561 A.2d 897 (1989) (sentencing judge has broad discretion in imposing sentence within statutory limits). Therefore, by authorizing a judge trial referee to settle and dispose of unfinished matters ''as if he were still such judge,'' § 51-183g contemplates both ministerial and discretionary acts.

The defendant next claims that a broad reading of § 51-183g would create an impermissible constitutional conflict. Specifically, the defendant contends that if § 51-183g is read to allow a judge trial referee to perform discretionary acts, it would conflict with the constitutionally mandated retirement age of seventy. I disagree.

''It is fundamental . . . that this court reads statutes so as to avoid, rather than to create, constitutional questions. . . . More specifically, [i]n choosing between two statutory constructions, one valid and one constitutionally precarious, we will search for an effective and constitutional construction that reasonably accords with the legislature's underlying intent.'' (Citation omitted; internal quotation marks omitted.) *Barton* v. *Ducci Electrical Contractors, Inc.*, 248 Conn. 793, 829, 730 A.2d 1149 (1999).

In the present case, interpreting the ''unfinished matters'' clause of § 51-183g to include ministerial and discretionary acts does not result in a constitutional conflict. In fact, this broad reading comports with the mandate of the constitution of Connecticut, article fifth, § 6, as amended by article eight, § 2, of the amendments, that ''a judge of the superior court . . . who has attained the age of seventy years and has become a state referee may exercise . . . the *powers of the superior court* . . . .'' (Emphasis added.) As I previously have noted, a judge of the Superior Court is vested with the authority to undertake discretionary actions. Therefore, because the state constitution directs a judge trial referee to exercise ''the powers of the superior court''; id.; interpreting § 51-183g to permit a judge trial referee to preside over any unfinished matter, regardless of the level of discretion involved, is consistent with the dictate of article fifth, § 6, as amended.

The defendant further claims that reading § 51-183g to encompass resentencing on remand impermissibly would conflict with § 52-434 (a) (1), which requires the consent of the parties before a judge trial referee can be referred a criminal case. As previously addressed herein, I do not perceive any conflict. Section 51-183g applies to situations where the judge trial referee was a judge at the time the trial started and became a judge trial referee at a subsequent time. Section 52-434 (a)

(1) applies to matters referred to a judge trial referee for trial when he or she already is a referee.

The defendant further claims that the textual distinctions between §§ 52-434 (a) (1) and 51-183g reveal the legislature's intent to limit judge trial referees to ministerial duties. Specifically, the defendant points to the language in § 52-434 (a) (1) that specifically authorizes judge trial referees to ''have and exercise the powers of the Superior Court . . . .'' This, the defendant maintains, recognizes the full scope of a judge trial referee's authority and is in stark contrast to the two limited situations, namely, ''appeal cases'' and ''unfinished matters,'' delineated in § 51-183g. This argument, however, fails to consider the last line of § 51-183g, which permits a judge trial referee to settle and dispose of matters ''as if he were still such judge.'' I can conceive of no reasonable distinction between exercising the ''powers of the Superior Court'' as authorized in § 52-434 (a) (1) and functioning as if one ''were still such judge'' pursuant to § 51-183g. As I already have stated, judges of the Superior Court are not limited to the performance of ministerial tasks. Accordingly, I find this distinction unavailing.

Finally, the defendant claims that this court's opinion in *Griffing* v. *Danbury*, 41 Conn. 96 (1874), requires us to construe § 51-183g narrowly so as to prevent a judge trial referee from presiding over a resentencing hearing. In *Griffing*, this court concluded that a judge lacked authority to rule on a motion two days after his *resignation* took effect. Id. The one page opinion sets forth the unanimous conclusion of the court without analysis and without any reference to statutory, constitutional or common-law precedent. I conclude that the brief opinion in *Griffing*, which arises in the context of a judge who resigned rather than retired, is not at all instructive with regard to the proper interpretation of § 51-183g.

II

I also concur with the conclusion set forth in the accompanying per curiam opinion that *State* v. *Miranda*, 245 Conn. 209, 715 A.2d 680 (1998) (*Miranda I)*, must be overruled. I do so because, in my view, a failure to act cannot constitute assault within the meaning of General Statutes § 53a-59 (a) (3).[3]

In *Miranda I*, this court concluded that the defendant, who was not the biological or legal parent of the child victim, could be convicted of assault in the first degree in violation of § 53a-59 (a) (3) for failing to protect his girlfriend's child from physical abuse by her mother. The majority first concluded, after a brief analysis that did *not* address the text of the statute or its legislative history, that the failure to act can be punishable as an assault under § 53a-59 (a) (3). Id., 217. The majority thereafter determined, after a lengthier analy-

sis, that under the facts of the present case, ''there existed a common-law duty to protect the victim from her mother's abuse, the breach of which can be the basis of a conviction under § 53a-59 (a) (3).'' Id., 218. I disagree with the initial premise in *Miranda I*, that a failure to act can constitute assault under § 53a-59 (a) (3), and therefore I do not address the secondary issue concerning the defendant's legal duty.

I begin with the text of § 53a-59 (a) (3), which was not addressed in the majority opinion in *Miranda I*.[4] Whenever this court interprets a statute, ''the language of the statute is the most important factor to be considered, for three very fundamental reasons. First, the language of the statute is what the legislature enacted and the governor signed. It is, therefore, the law. Second, the process of interpretation is, in essence, the search for the meaning of that language as applied to the facts of the case, including the question of whether it does apply to those facts. Third, all language has limits, in the sense that we are not free to attribute to legislative language a meaning that it simply will not bear in the usage of the English language.'' *State* v. *Courchesne*, 262 Conn. 537, 563–64, 816 A.2d 562 (2003).[5]

Section § 53a-59 (a) provides in relevant part: ''A person is guilty of *assault* in the first degree when . . . (3) under circumstances evincing an extreme indifference to human life he recklessly *engages in conduct* which creates a risk of death to another person, and thereby causes serious physical injury to another person . . . .'' (Emphasis added.) The statute does not define the words ''assault'' or ''conduct,'' both of which are key terms in § 53a-59 (a) (3). When a statute does not define a term, ''it is appropriate to look to the common understanding of the term as expressed in a dictionary.'' (Internal quotation marks omitted.) *State* v. *Love*, 246 Conn. 402, 408, 717 A.2d 670 (1998).

According to common understanding as expressed in dictionary definitions, ''assault'' is a crime caused by affirmative action. Webster's Third New International Dictionary defines assault as ''a violent attack with physical means'' and, alternatively, as an attempt or threat to do violence without actually inflicting the violence. Black's Law Dictionary (8th Ed. 2004) further defines assault as ''[t]he threat or use of force on another that causes that person to have a reasonable apprehension of imminent harmful or offensive conduct'' or ''[a]n attempt to commit battery requiring the specific intent to cause physical injury.'' An accompanying commentary to that definition of assault provides: ''In popular language [assault] has always connoted a physical attack. When we say that D assaults V, we have a mental picture of D *attacking* V, by striking or pushing or stabbing him.'' (Emphasis added.) Id.

Likewise, the common understanding of ''engages in conduct'' connotes affirmative action. The term

''engage'' is defined as ''[t]o employ or involve oneself; to take part in; to embark on.'' Id. Webster's Third New International Dictionary similarly defines engage as ''to employ or involve oneself . . . to take part: participate . . . .'' Webster's Third New International Dictionary defines conduct as ''the act, manner, or process of carrying out (as a task) or carrying forward (as a business, government or war) . . . .''

Although the dictionary definitions are strongly suggestive of interpreting § 53a-59 (a) (3) as requiring affirmative conduct, I cannot say the statute is plain and unambiguous with regard to whether a failure to act can constitute an assault. See General Statutes § 1-2z. I therefore consult extratextual evidence with regard to the meaning of the statute. I begin with the legislative history and circumstances surrounding the enactment of § 53a-59 (a) (3) for assistance concerning its proper interpretation. The majority in *Miranda I* did not address the legislative history of § 53a-59 (a) (3).

Section 53a-59 was adopted in 1969, after extensive study and debate, as part of the legislature's wholesale revision of our state's criminal law and the adoption of our Penal Code. ''The general purpose of the [Penal Code] [was] to create a rational, coherent, cohesive, substantive criminal law within the state . . . .'' Conn. Joint Standing Committee Hearings, Judiciary, 1969 Sess., p. 3, remarks of David Borden, then executive director of the commission to revise the criminal statutes and member of the Connecticut Bar Association's committee on the administration of criminal justice. Considerable debate accompanied the adoption of the Penal Code. Two remarks specifically addressed the assault provision and indicate that legislators contemplated affirmative conduct when enacting the assault statute. During the floor debate in the House of Representatives, Representative John A. Carrozzella, a proponent of the Penal Code, stated: ''[A]n assault is an *act* with intent to cause physical injury. You have to have an intent to cause injury.'' (Emphasis added.) 13 H. R. Proc., Pt. 2, 1969 Sess., p. 962. Borden, one of the drafters of the Penal Code, addressed the assault provisions in his testimony at a public hearing, stating: ''The area of assault, the assault crimes are divided into three degrees and they take into account not only *the means used in the assault* but the effect on the victim.'' (Emphasis added.) Conn. Joint Standing Committee Hearings, supra, p. 6. Both of these remarks support the common understanding of assault in § 53a-59 (a) (3) as requiring affirmative conduct.

Further support for requiring an affirmative act for the commission of an assault is found in the rejection of the American Law Institute's Model Penal Code definition of ''conduct'' when our Penal Code was drafted. Our Penal Code was drawn from the Model Penal Code and the penal code of other states. Conn. Joint Standing

Committee Hearings, supra, p. 11, remarks of Robert Testo, chairperson of the commission to revise the criminal statutes. Section 1.13 (5) of the Model Penal Code specifically defines ''conduct'' as ''an action *or omission* . . . .'' (Emphasis added.) Despite the drafters' adoption of many other provisions of the Model Penal Code, our Penal Code, when enacted in 1969, did not include this important definition of ''conduct.'' I therefore conclude that there is ''nothing in the text of § 53a-59 (a) (3), or its legislative history, to support [the] conclusion that conduct under § 53a-59 (a) (3) includes the failure to act.'' *Miranda I*, supra, 245 Conn. 239 (*Berdon, J.*, dissenting).

The rule of lenity provides further support for construing § 53a-59 (a) (3) to require an affirmative act to constitute an assault. ''Special rules govern our review of penal statutes. We have long held that [c]riminal statutes are not to be read more broadly than their language plainly requires . . . . Thus, we begin with the proposition that [c]ourts must avoid imposing criminal liability where the legislature has not expressly so intended . . . and ambiguities are ordinarily to be resolved in favor of the defendant. . . . In other words, penal statutes are to be construed strictly and not extended by implication to create liability which no language of the act purports to create.'' (Internal quotation marks omitted.) *State* v. *Lutters*, 270 Conn. 198, 206, 853 A.2d 434 (2004); see also *State* v. *Sostre*, 261 Conn. 111, 120, 802 A.2d 754 (2002) (''A penal statute must be construed strictly against the state and liberally in favor of the accused. . . . Criminal statutes are not to be read more broadly than their language plainly requires and ambiguities are ordinarily to be resolved in favor of the defendant.'' [Citation omitted; internal quotation marks omitted.]). Construing § 53a-59 (a) (3) strictly in accordance with the rule of lenity, the statute should not be extended by implication to encompass the defendant's failure to act in the present case.

Having forsaken an analysis of the text of § 53a-59 (a) (3) and its legislative history, and having ignored the rule of lenity, the majority opinion in *Miranda I* was based on case law from Connecticut and other jurisdictions. As the defendant in the present case correctly claims, however, the cases relied upon by the majority in *Miranda I* are largely inapposite. In both Connecticut cases cited by the majority in *Miranda I*, the defendant directly caused serious injury or death to the victim. See *State* v. *Tomassi*, 137 Conn. 113, 75 A.2d 67 (1950) (defendant could be found guilty of either murder or manslaughter, as evidence may prove, for shooting victim with deadly weapon, despite negligent medical care after incident that may have contributed to death); *State* v. *Jones*, 34 Conn. App. 807, 644 A.2d 355 (defendant convicted of first degree assault for violently shaking baby and not seeking help when baby exhibited signs of severe injury), cert. denied, 231 Conn.

909, 648 A.2d 158 (1994). In *Jones*, the defendant's failure to seek help for the victim served as evidence that the defendant exhibited a conscious disregard of a substantial risk of death, but that inaction was not the sole basis for the defendant's conviction. *State* v. *Jones*, supra, 812–13. In *Tomassi*, the court did not consider criminal liability for inaction. Rather, the question before the court was whether the defendant could be held liable for the death of the victim, whom he intentionally had shot, when the direct cause of death was poor medical care. *State* v. *Tomassi*, supra, 119. Thus, any discussion of liability based on omission in either *Tomassi* or *State* v. *Block*, 87 Conn. 573, 576, 89 A. 167 (1913), the case cited in *Tomassi* for the proposition that an act or omission need only be a contributory cause of death, is relevant solely on the question of causation.

The cases from other jurisdictions on which the majority in *Miranda I* relied, and on which the dissent in the present case also relies in part, were dependent on statutes that are not analogous to § 53a-59. In *State* v. *Peters*, 116 Idaho 851, 854, 780 P.2d 602 (1989), the defendant was convicted under Idaho Code § 18-1501 (1), which is not similar to § 53a-59, but more closely resembles General Statutes § 53-21, our risk of injury statute that criminalizes behavior that places a child in a situation where his life or limb is endangered. In *State* v. *Williquette*, 129 Wis. 2d 239, 242–43 and n.1, 385 N.W.2d 145 (1986), the defendant was charged and convicted of child abuse under Wisconsin Statutes § 940.201, which covers torture and maltreatment of children. Finally, in *Smith* v. *State*, 408 N.E.2d 614, 622 (Ind. 1980), the defendant was charged with involuntary manslaughter for the death of her four year old son primarily under Indiana Code § 35-46-1-4, which criminalizes the neglect of a dependent. Although the defendants in *Peters*, *Williquette* and *Smith* had failed to help children who were endangered by others, the statutes under which they were charged directly criminalized inaction as well as action. Thus, these cases are not helpful in deciding the present case, which concerns an assault statute that does *not* specifically criminalize inaction.

The courts in both *People* v. *Stanciel*, 153 Ill. 2d 218, 222–23, 606 N.E.2d 1201 (1992) (mothers convicted of murder of their children based on their accountability because they knew about and continued to expose children to on-going abuse by their boyfriends), and *State* v. *Walden*, 306 N.C. 466, 476, 293 S.E.2d 780 (1982) (mother convicted of assault with deadly weapon inflicting serious bodily injury by aiding and abetting because she was present and failed to stop abuse of child by her male companion), affirmed murder and assault convictions, respectively, based on the failure to stop another person's action. In both cases, however, the mothers of the victims were convicted based solely

on accessorial liability. In the present case, however, the defendant was found directly liable for assault under § 53a-59 (a) (3), and not as an accessory. Thus, neither *Stanciel* nor *Walden* is relevant to the interpretation of § 53a-59 (a) (3) as applied to the defendant in the present case.[6]

''The question for this court, in cases such as this, is whether the legislature intended to make the conduct with which the defendant was charged criminal under . . . 53a-59 (a) (3) . . . . It is not whether this court, were it sitting as a legislature, would have proscribed the conduct at issue.'' *Miranda I*, supra, 245 Conn. 236 (*Berdon, J.*, dissenting). I conclude, based on the all-important text of § 53a-59 (a) (3), and it's accompanying legislative history, and applying the rule of lenity, that the legislature did not intend that inaction, such as the failure to protect a child, should constitute assault under this statute.[7]

The dissenting opinion in the present case by Justice Katz points out that the legislature has had the opportunity to modify § 53a-59 since *Miranda I* was decided to exclude assault by omission if the majority had misinterpreted the statute. The dissent construes the legislature's failure to amend § 53a-59 as an acceptance of this court's interpretation in *Miranda I*. It is true that ''we presume that the legislature is aware of our interpretation of a statute, and that its subsequent nonaction may be understood as a validation of that interpretation.'' *Ralston Purina* v. *Board of Tax Review*, 203 Conn. 425, 439, 525 A.2d 91 (1987). However, ''[w]e have also overruled precedent interpreting a statute even when the legislature has had numerous occasions to reconsider that interpretation and has failed to do so.'' *Conway* v. *Wilton*, 238 Conn. 653, 662, 680 A.2d 242 (1996). This is one of the rare cases in which it is necessary for this court to reconsider a previous statutory interpretation despite the legislature's inaction.

[1] In his initial brief to this court, the defendant addressed both the ''unfinished matters'' and ''appeal cases'' clauses of § 51-183g. The state in its brief, however, addressed only the ''unfinished matters'' clause. In his reply brief, the defendant noted that the state addressed only the ''unfinished matters'' clause, and therefore recognized that the salient question on appeal is whether a resentencing hearing constitutes an unfinished matter, not an appeal case. Moreover, at oral argument before this court, the defendant specifically limited his argument to the ''unfinished matters'' language. Further, at oral argument, when questioned about which clause it was addressing, the state indicated that it considered the ''unfinished matters'' language to refer to a broad category that encompasses the ''appeal cases'' clause. Accordingly, we limit our analysis to the ''unfinished matters'' language.

[2] Section 1-2z was enacted in order to overrule our rejection of the plain meaning rule in *State* v. *Courchesne*, 262 Conn. 537, 577, 816 A.2d 562 (2003).

[3] See footnote 2 of the accompanying per curiam opinion.

[4] I acknowledge that in the majority opinion in *Miranda II*, supra, 260 Conn. 106, which I authored, we stated that we had examined the plain language of § 53a-59 (a) (3) in *Miranda I*. Simply put, I was wrong in making that statement.

[5] Although our conclusion in *State* v. *Courchesne*, supra, 262 Conn. 569–70, rejecting the ''plain meaning'' rule of statutory interpretation was legislatively overruled by § 1-2z, our emphasis on the importance of the text of a statute

is consistent with § 1-2z.

[6] In her dissent, Justice Katz, the author of the majority opinion in *Miranda I*, relies on several cases from other jurisdictions that were not cited previously in her opinion in *Miranda I*. While these cases might appear similar to the present case at first blush, subtle differences in the pertinent statutory language or the common law of the other state make them inapposite to our analysis of § 53a-59 (a) (3) in the present case. In *Michael* v. *State*, 767 P.2d 193 (Alaska App. 1988), rev'd on other grounds, 805 P.2d 371 (Alaska 1991), the defendant father was convicted of assault in the second degree for failing to protect his child from abuse by the child's mother. The statutory provision under which the defendant in *Michael* was convicted provides in relevant part: "A person commits the crime of assault in the second degree if . . . (2) that person recklessly causes serious physical injury to another person." Alaska Stat. § 11.41.210 (a). The Alaska Court of Appeals' analysis rested largely on a dictionary definition of the term "causes," a term which is not found in § 53a-59 (a) (3). *Michael* v. *State*, supra, 197. Similarly, the defendant in *People* v. *Burden*, 72 Cal. App. 3d 603, 140 Cal. Rptr. 282 (1977), was convicted of murder in the second degree for starving his six month old child and permitting his wife to starve the child. The instruction given to the jury stated that the word "act" under California law includes an omission or failure to act in those situations where a person is under a legal duty to act. Id., 614. This instruction was found to be a correct statement of the law on appeal. Id., 616. Given Connecticut's failure to adopt the definition of "conduct" found in the Model Penal Code, which includes an omission, however, it cannot be said that Connecticut law generally is consistent with California law on this point. In *Degren* v. *State*, 352 Md. 400, 722 A.2d 887 (1999), the defendant was convicted of sexual assault for watching and failing to prevent her husband from sexually assaulting a child in her presence. The sexual assault statute in effect at the time of her conviction prohibited "any *act* that *involves* sexual molestation or exploitation of a child." (Emphasis added.) Md. Code, art. 27, § 35C (a) (6) (i) (1957). The Maryland Court of Appeals affirmed the conviction based in part on the use of the word "involves," a broad term of inclusion that is not employed in § 53a-59 (a) (3). *Degren* v. *State*, supra, 419. In *Smith* v. *State*, 408 N.E.2d 614 (Ind. App. 1980), *Palmer* v. *State*, 223 Md. 341, 164 A.2d 467 (1960), and *State* v. *Mahurin*, 799 S.W.2d 840 (Mo.), cert. denied, 502 U.S. 825, 112 S. Ct. 90, 116 L. Ed. 2d 62 (1990), the defendants were convicted of involuntary manslaughter, a crime that does not require the direct, purposeful action necessary for first degree assault. Finally, in *State* v. *Zobel*, 81 S.D. 260, 134 N.W.2d 101, cert denied, 382 U.S. 833, 86 S. Ct. 74, 15 L. Ed. 2d 76 (1965), the court held that a father's wilful neglect of his children, depriving them of food and medical care, when combined with his failure to protect them from their mother's beating constituted second degree manslaughter. Under the South Dakota statutory provision then in effect, however, a crime was defined as an act *or omission* forbidden by law. Id., 277; see S.D. Code § 13.0103 (Michie 1939). Connecticut has no similar provision.

[7] The failure to protect a child from physical assault does constitute a crime under the risk of injury statute, § 53-21. The defendant has never challenged his conviction under that statute.