



# Senate

General Assembly

**File No. 577**

January Session, 2001

Substitute Senate Bill No. 1401

*Senate, May 3, 2001*

The Committee on Judiciary reported through SEN. COLEMAN of the 2nd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

## **AN ACT CONCERNING RESTRAINING AND PROTECTIVE ORDERS IN FIREARMS CASES.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (e) of section 46b-15 of the general statutes is  
2 repealed and the following is substituted in lieu thereof:

3 (e) The applicant shall cause notice of the hearing pursuant to  
4 subsection (b) of this section and a copy of the application and of any  
5 ex parte order issued pursuant to subsection (b) of this section to be  
6 served on the respondent not less than five days before the hearing.  
7 Upon the granting of an ex parte order, the clerk of the court shall  
8 provide two certified copies of the order to the applicant and a copy to  
9 the Family Division. Upon the granting of an order after notice and  
10 hearing, the clerk of the court shall provide two certified copies of the  
11 order to the applicant and a copy to the Family Division and a copy to  
12 the respondent. Every order of the court made in accordance with this  
13 section after notice and hearing shall contain the following language:

14 "This court had jurisdiction over the parties and the subject matter  
15 when it issued this protection order. Respondent was afforded both  
16 notice and opportunity to be heard in the hearing that gave rise to this  
17 order. Pursuant to the Violence Against Women Act of 1994, 18 USC  
18 2265, this order is valid and enforceable in all fifty states, any territory  
19 or possession of the United States, the District of Columbia, the  
20 Commonwealth of Puerto Rico and tribal lands." The clerk of the court  
21 shall send a certified copy of any ex parte order and of any order after  
22 notice and hearing to the [appropriate] law enforcement agency for the  
23 town in which the applicant resides and, if the respondent resides in a  
24 town different than the town in which the applicant resides, to the law  
25 enforcement agency for the town in which the respondent resides,  
26 within forty-eight hours of [its] the issuance of such order. If the  
27 applicant is employed in a town different than the town in which the  
28 applicant resides, the clerk of the court shall, upon the request of the  
29 applicant, send a certified copy of any such order, to the law  
30 enforcement agency for the town in which the applicant is employed  
31 within forty-eight hours of the issuance of such order.

32 Sec. 2. Subsection (c) of section 46b-38c of the general statutes is  
33 repealed and the following is substituted in lieu thereof:

34 (c) Each such local family violence intervention unit shall: (1) Accept  
35 referrals of family violence cases from a judge or prosecutor, (2)  
36 prepare written or oral reports on each case for the court by the next  
37 court date to be presented at any time during the court session on that  
38 date, (3) provide or arrange for services to victims and offenders, (4)  
39 administer contracts to carry out said services, and (5) establish  
40 centralized reporting procedures. All information provided to a family  
41 relations officer in a local family violence intervention unit shall be for  
42 the sole purpose of preparation of the report for each case and  
43 recommendation of services and shall otherwise be confidential and  
44 retained in the files of such unit, and not be subject to subpoena or  
45 other court process for use in any other proceeding or for any other

46 purpose, except that if the victim has indicated that the defendant  
47 holds a permit to carry a pistol or revolver or possesses one or more  
48 firearms, the family relations officer shall disclose such information to  
49 the court and the prosecuting authority.

50 Sec. 3. Section 53a-217 of the general statutes is repealed and the  
51 following is substituted in lieu thereof:

52 (a) A person is guilty of criminal possession of a firearm or  
53 electronic defense weapon when such person possesses a firearm or  
54 electronic defense weapon and (1) has been convicted of a felony, [or]  
55 (2) has been convicted as delinquent for the commission of a serious  
56 juvenile offense, as defined in section 46b-120, (3) knows that such  
57 person is subject to a restraining or protective order issued by a court,  
58 after notice and an opportunity to be heard has been provided to such  
59 person, in a case involving the use, attempted use or threatened use of  
60 physical force against another person, or (4) knows that such person is  
61 subject to a firearms seizure order issued pursuant to subsection (d) of  
62 section 29-38c after notice and an opportunity to be heard has been  
63 provided to such person. For the purposes of this section, "convicted"  
64 means having a judgment of conviction entered by a court of  
65 competent jurisdiction.

66 (b) Criminal possession of a firearm or electronic defense weapon is  
67 a class D felony, for which two years of the sentence imposed may not  
68 be suspended or reduced by the court.

**Statement of Legislative Commissioners:**

In the new language in section 1, a reference to "the affidavit of the applicant" was deleted for consistency since the other new provisions concerning affidavits had been deleted.

**JUD**      *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

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**OFA Fiscal Note**

**State Impact:** Potential Cost, Potential Minimal Revenue Gain

**Affected Agencies:** Various Criminal Justice Agencies

**Municipal Impact:** None

**Explanation**

**State Impact:**

The bill could result in cost to criminal justice agencies by broadening the crime of possession of a firearm or electronic defense weapon. Although the number of cases that would be affected by the bill's provisions is anticipated to be minimal, due to the crime's accompanying two-year mandatory minimum sentence, the cost would not be minimal even in the case of one conviction. The cost of two years of incarceration is about \$60,800<sup>1</sup> in an average Department of Correction facility. Minimal to no revenue is anticipated from additional fines.

During the year 2000, about 54 individuals were incarcerated at any point in the year under CGS 53a-217 (the bill's penalty provision). The cost of incarcerating this number of individuals for one year is about \$1.6 million. The state collected \$0 for 53 offense convictions in the

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<sup>1</sup> This figure includes the cost of employee fringe benefits.

year 2000.

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**OLR BILL ANALYSIS**

sSB 1401

***AN ACT CONCERNING RESTRAINING AND PROTECTIVE ORDERS IN FIREARMS CASES.***

**SUMMARY:**

By law, a court may issue a restraining or protective order to safeguard victims of family violence. If the target of any such order uses, attempts, or threatens to use physical force against another, he (1) loses his eligibility to carry a pistol or revolver and (2) must surrender any permit or eligibility certificate he has to carry such weapons.

This bill makes him guilty of criminal possession of a firearm (any weapon from which a shot may be fired) or electronic defense weapon if he possesses the weapons knowing that he is the target of such an order, which is issued after notice and the opportunity for a hearing. It also makes him guilty of this crime if he is subject to a firearms seizure order issued by a court after notice and the opportunity for a hearing.

The bill requires local family violence intervention units' family relations officers (courts refer family violence offenders to them for counseling and other services) to disclose to the court and prosecutors information that a family violence offender has a pistol or revolver permit or possesses one or more firearms. The requirement creates an exception to current law, which requires family relations officers to generally keep information that they receive confidential.

By law, the court must send a certified copy of any restraining order to an appropriate law enforcement agency within 48 hours of its issuance. The bill specifically requires the court to send the copies to the law enforcement agency in the town where the (1) restraining order applicant lives or works, or (2) family violence offender lives.

EFFECTIVE DATE: October 1, 2001

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**CRIMINAL POSSESSION OF A FIREARM OR ELECTRONIC DEFENSE WEAPON**

By law, a family violence offender who is the target of a protective or restraining order because he used, attempted or threatened to use physical force against another during the commission of the crime must (1) surrender any permit or eligibility certificate he has to carry a pistol or revolver and (2) transfer any such weapons that he possesses to a person eligible to carry them or to the public safety commissioner within two business days of becoming subject to the order.

Failure to surrender a permit or eligibility certificate is punishable by up to three months imprisonment, a \$500 fine, or both. Failure to transfer the weapons is punishable by up to five years imprisonment, a \$5,000 fine, or both.

The person is guilty of criminal possession of a pistol or revolver if he keeps the weapons after he has received notice of the order and has been given an opportunity to be heard. Criminal possession of a pistol or revolver carries a penalty of up to five years imprisonment, a \$5,000 fine, or both.

The bill makes it criminal possession of a firearm or electronic defense weapon for anyone to possess such weapons knowing that he is (1) the target of a civil restraining or criminal protective order, which was issued by a court, after notice and the opportunity for a hearing, in a case involving the use, attempted use, or threatened use of physical force against another person or (2) the subject of a firearms seizure order issued by a court after notice and the opportunity for a hearing.

**BACKGROUND*****Restraining and Protective Orders***

Protective and restraining orders are designed to protect family or household members from future threats, harassment, intimidation, or injury. Courts may include in these orders any provisions they deem necessary to protect the victim, including enjoining the offender from (1) restraining the victim's person or liberty; (2) threatening, harassing,

assaulting, molesting, or sexually assaulting the victim; or (3) entering the family or the victim's dwelling.

**Family Violence Crime**

A family violence crime is any crime between family or household members that either causes physical injury or creates fear that physical injury is about to occur. Family or household members include spouses, former spouses, parents and their children, people age 18 or older related by blood or marriage, people in a dating relationship, people age 16 or older either living together or who have lived together, and people who have a child together whether or not they are or have been married or have lived together. Parental disciplining is not a crime.

**Family Violence Intervention Units**

The Judicial Department runs a family violence intervention unit in each geographical area of the courts. The units:

1. accept referrals of family violence cases from a judge or prosecutor,
2. prepare written or oral reports on each case for the court,
3. provide or arrange for services to victims and offenders,
4. administer contracts to carry out these services, and
5. establish centralized reporting procedures.

A unit must use information it receives only for preparation of the report for each case and recommending services. The information is otherwise confidential and retained in each unit's files and cannot be subpoenaed or used in any other way in court proceedings.

The unit's report and recommendations must be available to the judge at the first court appearance. The judge may impose conditions to protect the parties, including issuance of a protective order, prohibiting further violence against the victim, referral to a family violence education program for batterers, and immediate referral for more extensive case assessment.

**COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute  
Yea 40 Nay 0