



State of Connecticut
DIVISION OF PUBLIC DEFENDER SERVICES

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Testimony of Dana E. Clark,
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Raised Bill No. 443
An Act Concerning Domestic Violence

Judiciary Committee Public Hearing
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The Office of Chief Public Defender opposes passage of subsection (b) of Section Three and Sections 4 and 5 of ***Raised Bill No. 443, An Act Concerning Domestic Violence*** and has concerns in regard to Sections One and Two.

Sections One and Two of this bill would permit police officers to set non-financial conditions of release for persons charged with domestic violence offenses. The concerns of this office are twofold. First, there can be often language barriers between the person arrested and the arresting officers. If an officer is permitted to set non-financial conditions of release, there is a high likelihood that non-English and non-Spanish speaking defendants could be set up for failure from the outset. If a defendant does not understand what is being told to him/her and cannot read or understand the conditions that are being prescribed, there is a strong likelihood that the defendant could violate the conditions of release. For instance, if a condition of release is set that the defendant cannot return to his/her home, if the defendant does not comprehend or understand the condition, it is likely that he/she could leave the police station and return home, thereby violating the conditions of release. While there may be fellow police officers immediately available that may be of assistance to interpret certain selected languages, there are many more languages where interpreters of such are not easily accessible or available. The inquiry becomes one of whether police departments have the funds necessary to employ interpreters, perhaps on an on-call basis, such as are available in the courts whenever a defendant is arraigned and throughout the criminal prosecution process. It would appear that due process would require the police to provide interpreters to assure that a defendant understood the conditions that were being set.

Second, if the defendant has mental retardation or is mentally ill, it is essential that there be available the assistance of trained professionals to identify that such an issue exists. Otherwise, upon release, a defendant with mental illness or mental retardation who may not understand the conditions that are imposed, may be set up for failure from the outset. Often times these individuals who are in need of professional

assistance need help in understanding the circumstances. For a police officer to tell a mentally disabled or mentally ill defendant not to go home, or to set some other non-financial condition, and then release the person without any support system may have a negative effect and lead to the arrest of the person for a violation of the conditions.

This office would oppose subsection **(b) of Section Three** of this bill which would enhance the penalty for a “violation of conditions of release” from an A misdemeanor to a Class D felony. Because this proposal would enhance the penalty for those who may not understand what actions led to their being charged and for the reasons stated aforesaid, this office would request that the offense remain as a class A misdemeanor. It is doubtful that any defendant who is going to *knowingly* violate the conditions of release will be deterred if the crime is a class D felony rather than a class A misdemeanor. However, for those defendants who will violate *unintentionally and unknowingly*, the penalty for a class D felony is far too great.

Sections Four and Five of this bill create new crimes of assault of a family or household member by strangulation in the first and second degree. These crimes as written have the effect of singling out a certain form of violence as somehow more egregious than another form of violence. For example, pursuant to this proposal, blocking the mouth *or* nose of a family or household member is “worse” than doing such conduct to someone who is not a family or household member. And for purposes of only this type of assault, strangulation of a family or household member, there would be an enhanced penalty. While it appears that the intent may be to have a special form of assault for a family or household member, the language as written is vague and overbroad.

For example, it is possible that passage of this legislation will provide probable cause for the arrest of children who are siblings who engage in “roughhousing” at home and their hands touch each other’s necks or faces in the process. This legislation will also encompass those situations where a parent holds the jaw or face area of an unruly and out-of-control teenager in order to get his/her attention. While in these scenarios there is probably no intent to “impede the normal breathing” of the other person, it is easy to foresee this statute being used unfairly in such situations. Moreover, these “new” crimes are already encompassed in the existing statutes pertaining to attempted murder, manslaughter and assault statutes.

For all of the reasons set forth above, The Office of Chief Public Defender opposes passage of subsection (b) of Section Three and Sections Four and Five and has concerns regarding Sections One and Two.