CCDLA
"Ready in the Defense of Liberty"
Founded in 1988

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Raised House Bill No. 7313
An Act Concerning Domestic Violence
Judiciary Committee Public Hearing
March 12, 2007

TESTIMONY OF JON L. SCHOENHORN, PRESIDENT OF THE CONNECTICUT CRIMINAL DEFENSE LAWYERS ASSOCIATION, IN OPPOSITION TO HOUSE BILL NO. 7313, AN ACT CONCERNING DOMESTIC VIOLENCE

Chairman McDonald, Chairman Lawlor, and distinguished committee members:

The Connecticut Criminal Defense Lawyers Association (CCDLA) is a statewide organization of approximately 300 lawyers, in both the public and private sectors, dedicated to defending persons accused of criminal offenses. Founded in 1988, CCDLA works to improve the criminal justice system by ensuring that the individual rights guaranteed by the Connecticut and United States constitutions are applied fairly and equally and that those rights are not diminshed. At the same time, CCDLA strives to improve and suggest changes to the laws and procedures that apply to criminal justice.

CCDLA opposes Raised Bill No. 7313, an Act Concerning Domestic Violence.

This bill gives unprecedented authority to local and state police officers to issue protective orders that now requires the approval of a judge or bail commissioner. Violating such an order is, itself, a felony, which can result in imprisonment for five years. While setting conditions of release after arrest is ordinarily a judicial function that triggers the protection of absolute immunity when set by a judge, a police officer's authority pursuant to Conn. Gen. Stat. § 54-63c to set bail and other conditions of release is deliberately limited and should not be extended to give the same power as a judge.

In setting bail, a police officer, who is not neutral and involved in bringing criminal charges, never considers both sides of a dispute, and is not asked to weigh credibility. The officer has already concluded that the accused has committed a crime and therefore has an interest in the outcome of the case as it is. In contrast, in addition to having to adhere to statutory requirements not applicable to a law enforcement officer's setting of bail, a judge hears evidence and considers argument from interested parties, including the bail commissioner, the state's attorney, the

defendant by and through his or her counsel, and the victim by and through his or her advocate. Often a family relations officer submits a report in domestic cases.

Consequently, a police officer is not performing an adjudicative function, but, rather, is performing an administrative function that now basically allows unfettered discretion. In contrast, a bail commissioner, an employee of the Judicial Department exercising limited judicial authority, presumably is making an independent judgment from the police, as is the judge. Current Connecticut law recognizes these distinctions in setting forth the procedures governing the release of those arrested for criminal offenses, including domestic violence crimes. *See* Conn. Gen. Stat. § 54-63a, *et. seq.* and § 54-64, *et. seq.* The current statutory scheme grants to three categories of officials the authority to set bail: law enforcement officers, bail commissioners, and judges, and sets forth specific requirements, conditions, and guidelines each actor must satisfy in setting bail. *See* Conn. Gen. Stat. § 54-63c, § 54-63d, and § 54-64a. Section § 54-64a enumerates specific factors to be considered by the judicial authority, specific options for release, and also grants the court the authority to impose non-financial conditions of release where appropriate. Moreover, the standard for the court's action and scope of its authority to impose conditions "sufficient to reasonably assure the appearance of the arrested person in court," is also expressly set forth in that statute. A judge, therefore, is required to engage in a fairly structured analysis, and if the defendant is unable to post the amount set by the court, "the court shall order him committed to the custody of the Commissioner of Correction until he is released or discharged in due course of law." *See* Conn. Gen. Stat. § 54-64a (d).

On the other hand, a police officer who currently sets bail pursuant to Conn. Gen. Stat. § 54-63c, is not required to engage in any particular analysis or consider any specific factors. A police officer must only "promptly interview the arrested person to obtain information relevant to the terms and conditions of the person's release from custody, and [to] seek independent verification of such information where necessary."[1] *See* Conn. Gen. Stat. § 54-63c. Additionally, a police officer may only release a person "upon the execution of a written promise to appear or the posting of such bond as may be set by [him];" *id.*; whereas a judicial authority may additionally impose "a written promise to appear with nonfinancial conditions [and] a bond without surety." Conn. Gen. Stat. § 54-64a (a)(1) and (b)(1).

Finally, the result of a police officer's action is either that the arrested person will be released – by written promise to appear or by posting the set amount of bond – or that the

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[1] The function of a police officer also differs from that of a bail commissioner, who is required to engage in a determination substantially similar to the judicial authority. Moreover, the bail commissioner, unlike a police officer, must engage in an interview covering certain topics, pursuant to Conn. Gen. Stat. §§ 54-63d and 54-63b. Also, the Bail Commission is an arm of – and therefore must answer to – the Judicial Department . Conn. Gen. Stat. § 54-63b.

officer must "immediately" notify the bail commissioner of the person's detention. Conn. Gen. Stat. § 54-63c(a). The bail commissioner must then "promptly" conduct another interview and then determine under what financial or nonfinancial conditions the arrested person may be released, if at all. Conn. Gen. Stat. § 54-63d. Thus, the officer's truncated and preliminary setting of bail need not involve the detail or analysis of the decisions of bail commissioners or judges and is, therefore, susceptible to arbitrary and improper considerations. If an officer quickly determines that the arrested person may be released, then court officers and/or judicial authorities conceivably never address the issue. If the officer cannot quickly determine that the person should be released, however, a bail commissioner and/or a judge must then make a prompt, independent, more probing and specific analysis to determine the propriety of the person's detention. The roles of the bail commissioner and judge serve to provide the due process required to detain the person and, generally, to safeguard the rights of the accused. There is no reason why police cannot contact a judge or bail commissioner, as they are already required to do, if they believe a need arises to issue a protective order. This is no difficult task since bail commissioners are available 24 hours a day.

From our experience in dealing with police, which is often in an adversarial setting, officers who set conditions of release are not engaged in an adversarial proceeding, listening to arguments on all sides. Rather, they engage in a brief interview of the accused, who has been placed under arrest based on their own determination – right or wrong – of probable cause. Their involvement in the arrest, itself, adversely affects their judgment in setting conditions of release, particularly where they have an interest in keeping an accused from going home to family. Deprivation of contact with one's family, or forcing someone from his or her home, even for a short period of time, have been held to be fundamental constitutional rights, the deprivation of which requires due process of law. It cannot reasonably be argued that a police officer setting bond under these circumstances is performing a role substantially similar to that of the judicial authority or bail commissioner. Such power, even if temporary, offers no process at all.

Finally, there are practical reasons why CCDLA opposes this unnecessary expansion of police powers. Violation of a domestic violence protective order is a felony, and neither the bill, nor our experience with police officers, suggests that non-native speakers will fully understand the consequences of ignoring such an order, resulting in a potential second arrest the same day. Furthermore, this bill won't ameliorate the fact that some domestic cases involving verbal arguments, for example, are not subject to protective orders, but that won't stop the police from issuing such orders anyway, thereby turning an alleged disorderly conduct into a Class D felony.

Respectfully submitted,

Jon L. Schoenhorn
CCDLA President