

CCDLA
"Ready in the Defense of Liberty"
Founded 1988

**Connecticut Criminal Defense
Lawyers Association**
P.O. Box 1766
Waterbury, CT 07621-1776
(860) 283-5070 Phone/Fax
www.ccdla.com

Judiciary Committee Public Hearing

**RAISED BILL NO. 6629
AN ACT CONCERNING DOMESTIC VIOLENCE
March 30, 2011**

**TESTIMONY OF JENNIFER L. ZITO, PRESIDENT OF THE
CONNECTICUT CRIMINAL DEFENSE LAWYERS ASSOCIATION,
IN OPPOSITION TO RAISED BILL NO. 6629**

Chairman Coleman, Chairman Fox, and Distinguished Members
of the Judiciary Committee:

CCDLA opposes the passage of Raised Bill 6629 on several grounds, the most important of which relate to Section 4(h) altering the eligibility requirements of the Pretrial Family Violence Education Program (FVEP) for persons charged with family violence crimes so as to preclude a large class of applicants from eligibility for this necessary early intervention program.

Specifically, the bill seeks to preclude persons from eligibility who have previously been ARRESTED for a family violence crime, but not convicted, and who have not previously used this program. Mere arrests should not preclude eligibility on the basic fundamental tenet of the presumption of innocence. In most of these situations, the previous charges were

Page 2

Bill No. 6629

Testimony of CCDLA

dismissed or nolle because the State did not believe the charge could be substantiated or proved. This disqualifier is even more egregious if the accused had been acquitted of the previous charge(s), and therefore legally found not guilty. The bill makes no distinction. Prior arrests should never disqualify individuals especially in family violence cases where allegations are often found to be fabricated for the benefit of divorce or custody proceedings.

Secondly, the bill seeks to preclude all defendants charged with a felony ineligible, rather than maintaining the current standard of eligibility of those charged with a Class D felony for good cause shown. This provision inspires overcharging and denies defendants and their families the educational and beneficial components of the early intervention program based merely on a charge. By doing so, the Legislature seeks to minimize the role of the Judiciary in exercising its discretion.

Moreover, the bill seeks to preclude those charged with ANY OFFENSE, misdemeanor or otherwise, from eligibility if the offense charged involves the infliction of serious physical injury. As this is a pretrial diversionary program it is unknown if the accused actually caused the serious physical injury; it is better if the Court decides if the accused should benefit from the program in light of the facts of the case, taking into consideration the serious injuries.

In addition, the bill as proposed allows the court to require the defendant to enter a plea on the family violence charges as a condition for entrance into the FVEP with the right to

ostensibly withdraw the plea and dismiss the charge upon successful completion. While conditional guilty pleas are appropriate in violation of probation situations or repeat offender circumstances, they thwart the intent and usefulness of a pretrial diversionary program, and have adverse collateral consequences. The purpose of pretrial diversionary programs is to resolve matters productively without a hearing on the merits of the case. If the accused is successful in the program, the charges are dismissed. If not, the charges stand and the defendant has burned the program forever. As it stands, the Court has the authority to order the FVEP as a post-conviction condition of probation; forcing a plea to gain admission to the program will make participation in the program unfeasible for many people, particularly those involved in parallel divorce or custody cases who can't risk the admission of wrong-doing.

Conditional guilty pleas for entrance into the FVEP will also trigger immigration issues for non-citizens regardless of the later dismissal. In fact, forcing a conditional plea for entry into the program will make the program unavailable to non-citizens since the conditional plea will be construed as a conviction or an admission of the facts by immigration authorities resulting in removal, inadmissibility and denial of citizenship.

In Section 4(i), the bill raises the entrance fee from \$200 to \$400. While CCDLA appreciates the necessity of raising fines and fees in the State to set off budget cuts and rising costs, we submit that the drastic rate increase for this unique and necessary program will result in a significant increase in

waiver requests and a greater inability to pay by Connecticut families who can most benefit from such a program.

Finally, CCDLA opposes the requirements of Section 12, subsection (b), Section 13, subsection (b), and Section 14, subsection (b) affording criminal immunity to protected persons under protective and restraining orders without adding as an affirmative defense to the subsections (a) of Sections 12-14 the assertion that the violations or prohibited conduct was initiated or inspired by the protected person. Immunizing an entire class of adults from prosecution is novel and ripe for abuse by the protected class particularly when protective and restraining orders are often sought in the context of divorce or custody proceedings.

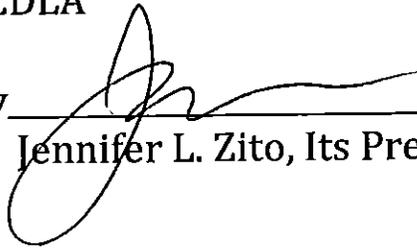
Domestic violence is a very real and dangerous problem in our State. This program, however, is a very useful tool to formulate an education/treatment plan for up to two years for first time wrongdoers of less serious family violence offenses thereby preventing recidivism and risk to victims. The intent is to prevent the violence from repetition and escalation by INTERVENTION at an early stage. Bill 6629 undermines the program's original purpose by (1) precluding a larger class of offenders from eligibility, particularly those with merely a prior ARREST, (2) affording the court discretion to mandate a plea in exchange for admission, and (3) doubling the entry fee. This bill will have the effect of burdening the system further by forcing trials on the merits of these cases, increasing the numbers of convicted felons in the State, and by depriving first time offenders and their families of the education and

Page 5
Raised Bill 6629
Testimony of CCDLA

counseling they need under the supervision of Family
Relations to avoid future violence.

Respectfully submitted,
CCDLA

By

A handwritten signature in black ink, appearing to read "Jennifer L. Zito", written over a horizontal line.

Jennifer L. Zito, Its President

