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Raised Bill No. 6629
An Act Concerning Domestic Violence

Judiciary Committee Public Hearing
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Raised Bill 6629, An Act Concerning Domestic Violence, represents an attempt to implement many of the recommendations contained in the ***Speaker's Task Force on Domestic Violence Report of February 2011 (Report).*** The Report reflects a comprehensive effort to "improve Connecticut's response to incidents of domestic violence." The Office of Chief Public Defender acknowledges the substantial efforts of the *Task Force* and the significant substantive legislative changes embodied in this raised bill. Nevertheless, this Office has serious concerns with the implementation and impact of several sections of this bill.

SECTION 4:

Section 4 of the raised bill makes significant changes to *C.G.S. §46b-38c*, the **Family Violence Education Program (FVEP).** The overall impact of the changes proposed by the new statutory scheme will serve to restrict the number of persons eligible to participate and receive benefit from the FVEP. The raised bill first proposes to disqualify any person who has merely been previously **arrested** and charged with a family violence crime even if no conviction resulted. This new limitation totally ignores the significance of the presumption of innocence afforded an accused person. The rationale offered to support this new restriction consists of a claim that some undetermined number of offenders "may have had multiple arrests and have been granted a number of informal diversion opportunities before they are required by the court to complete a formal diversionary program like the FVEP."

There is no question that a number of minor family violence cases are resolved by a defendant's participation in "an informal diversionary program" other than the FVEP. However, it is important to realize that when such "informal diversion opportunities" are afforded a defendant such an opportunity is generally the result of an agreement between the state's attorney, defense attorney and most significantly, the court, which can only be based upon the recommendation of a Family Relations officer. The supporting rationale offered for this proposed provision also ignores other critical reasons why an arrest in family violence cases may not lead to a conviction. Such reasons include whether (1) subsequent investigation reveals that a person was falsely accused; (2) a complainant has recanted the allegations; or, (3) a complainant cannot be located.

Under current law, participation in the FVEP is limited at the court's discretion to: (1) persons who have not been previously convicted of a family violence crime; (2) have not previously used the FVEP; (3) have not used accelerated rehabilitation under C.G.S. §54-56e for a family violence crime and; (4) those that are not charged with class A, B, C felonies or unclassified felonies carrying a term of imprisonment of more than ten years or any unclassified offense carrying a term of more than five years. Admission to FVEP for persons charged with a class D felony is contingent upon a showing by the defendant of good cause.

It is the position of this Office that the statutory scheme now in place sufficiently protects the integrity and efficacy of the FVEP. The current law provides that the ultimate decision to admit a person into the FVEP who is charged within the applicable range of offenses, remains appropriately, within the discretion of the court. Adoption of the raised bill would impinge upon the discretion of the court and hinder its ability to fashion rational dispositions that: (1) appropriately reflect the facts and circumstances of a particular case; (2) take into consideration the needs of the parties; and, (3) take into the account the input and needs of the victim.

The raised bill also proposes to eliminate the discretion of the court to consider whether good cause exists to allow for a person to participate in the FVEP if charged with a D felony. This Office is opposed to this elimination of the court's discretion. Current law already disqualifies those charged with A, B and C felonies from participation in the FVEP.

Finally, **Section 4** adds language that would permit the court to **require a defendant to plead guilty** in exchange for participation in the FVEP. Pursuant to the proposed language, such a guilty plea would be withdrawn by the court and the charges dismissed only upon the defendant's successful completion of the program. This Office strenuously opposes a requirement that a plea of guilty be entered first. The notion of requiring a plea to participate in a diversionary program is totally at odds with the concept underlying such programs. Diversionary programs such as accelerated rehabilitation, alcohol education, drug education, community service labor and the FVEP are by their very nature intended to offer a non-adversarial alternative to traditional criminal prosecutions. Participation requires the tolling of the statute of limitations and the right to a speedy trial. The policy supporting such diversionary programs is to offer first offenders an opportunity for rehabilitation and education to achieve the goal of reduced recidivism.

Of great concern to this Office is the lack of any provision to protect a defendant who might enter into such an agreement (i.e. a person pleads guilty and enters the program) but then, due to

unforeseen circumstances or circumstances beyond their control, is unable to complete the program. Such circumstances that might interfere with successful program completion include loss of employment, loss of transportation, illness, conflicts with employment and educational obligations as well as responsibilities regarding family and child care.

Finally, the argument that a guilty plea creates an incentive for active program participation and accountability with respect to alleged criminal conduct is specious. Defendants who are admitted to the FVEP are keenly aware that failure to complete the program successfully will result in the case being returned to the regular criminal docket for traditional prosecution on the pending charges. The possibility of such further prosecution serves adequately to incentivize compliance with the program rules and regulations.

SECTION 9:

Section 9 of the raised bill amends *C.G.S. §51-181e, Domestic Violence Dockets* and requires the Chief Court Administrator to identify and establish new domestic violence dockets in six geographical area courts. While generally supportive of such dockets, the Office of Chief Public Defender lacks the resources within its current budget to support and staff additional specialty courts. Three additional domestic violence courts were established in the last session without additional funding. An additional six dockets would result in a total of nine (9) new domestic violence dockets throughout the court system.

Domestic violence dockets intensify workloads for public defender staff. They require additional staff and resources to effectively represent the numbers of defendants referred to these dockets for frequent court appearances and participation in lengthy domestic violence programs such as Evolve and Explore. Currently in Bridgeport GA#2, six full time public defenders are assigned to the DV Docket, and GA#23 New Haven has two separate DV Dockets with similar staffing. It has been necessary for this Office to assign additional per diem attorneys and support staff to those courts with DV dockets such as GA#2 Bridgeport, GA#23 New Haven, GA#14 Hartford, and GA#10 New London to provide adequate coverage of DV and other court cases.

The Office of Chief Public Defender has estimated and requested that eighteen additional positions (8 attorneys, six investigators, and 4 support staff) be added to this Agency's permanent position count to be assigned as necessary among public defender offices most needing assistance with DV Docket caseloads.

SECTIONS 12, 13 and 14:

Sections 12, 13 and 14 of the raised bill each seek to achieve a similar result by immunizing a party from prosecution for aiding and abetting or conspiring to violate a protective or restraining order when he/she is protected by such pursuant to *C.G.S. §53a-223, Criminal Violation of a Protective Order; §53a-223a, Criminal Violation of a Standing Protective Order; or, §53a-223b, Criminal Violation of a Restraining Order.* The Office of Chief Public Defender contemplates that any such prosecution of a protected party would indeed be a rare event. This Office does, however, recognize that such orders often draw a fine line with respect to conduct of both

protected parties and the defendants subject to the orders. This Office is not opposed to the proposed language contained in Sections 12, 13 and 14. However, this Office requests that additional language be incorporated into each section to provide a defendant with a defense in those cases where the protected party initiated the contact with the defendant who is subject to the order.

In conclusion, this Office has serious concerns in regard to certain proposed sections of this Raised Bill and the impact upon the financial resources of the Division of Public Defender Services. Thank you for consideration.