
OLR Bill Analysis

sHB 6629

AN ACT CONCERNING DOMESTIC VIOLENCE.

SUMMARY:

This bill makes numerous changes to the laws on family violence. Among other things, it:

1. protects victims of orders of protection from criminal liability under certain circumstances;
2. requires law enforcement officers to arrest a person who commits a family violence crime against someone he or she is dating;
3. limits participation in, and doubles the fee for, the pretrial family violence education program,
4. requires family violence offenders who use or attempt or threaten to use physical force to commit the crime to surrender any firearms they possess to the public safety commissioner; and
5. requires the chief court administrator to establish new domestic violence dockets and study and assess family violence training programs.

The bill establishes a 16-member task force to (1) evaluate law enforcement agencies' policies and procedures for responding to incidents of family violence and restraining and protective order violations and (2) develop a model statewide policy for such responses.

The bill specifically requires judges to consider the safety of victims and state this consideration on the record before releasing an arrestee

on bail.

It specifies that guardians ad litem acting within the scope of their employment are among the state employees immunized against personal liability.

With certain exceptions, a spouse may elect or refuse to testify against his or her spouse in a criminal proceeding. The bill modifies the exceptions to this so-called “spousal privilege.”

The bill makes changes to, and adds new, requirements for surety bail bond agents. (A surety bail bond agent, through a contract with an insurer, sells bail bonds in criminal cases and is regulated by the insurance commissioner.)

Lastly, the bill makes minor and technical changes.

EFFECTIVE DATE: October 1, 2011, except that the provisions on (1) the task force and chief court administrator’s assessments and studies and (2) domestic violence docket are effective upon passage and July 1, 2011, respectively.

§§ 1-6 — FAMILY VIOLENCE

Family Violence Defined

By law, “family violence” is an incident, other than the non-abusive disciplining of a minor child, 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 individuals in, or who were in, a dating relationship. The bill specifies that a person of any age may be in a dating relationship for the purpose of identifying family or household members under family violence laws.

Restraining Orders

The bill expands the conduct that can serve as the basis for a restraining order. It allows any family or household member to apply for such an order if he or she has been subjected to stalking or a pattern of verbal intimidation or threatening. By law, continuous threat of immediate physical pain or physical injury can be the basis for the

order.

By law, a court may issue a restraining order after a hearing or, in an emergency, without a hearing. The court may include in the order any provisions necessary to protect the victim from injury or intimidation, including requirements for temporary child custody or visitation rights. Orders typically prohibit the offender from assaulting, threatening, molesting, or restraining the victim or entering the family's or victim's dwelling. The order is effective for six months unless the court extends it upon the applicant's or its own motion. Anyone violating the order can be held in contempt of court. Additionally, entering or remaining on property in violation of the order constitutes first-degree criminal trespass.

Investigating Family Violence Crimes

The law outlines appropriate actions by police and court personnel responding to family violence crimes. The bill expands the people police officers must immediately arrest upon learning that such a crime has been committed in their jurisdiction. Under current law, police must arrest and charge any suspected family violence offender, other than a person involved in a dating relationship. The bill eliminates this exception, thus, requiring that any suspected family violence offender be arrested and charged.

Family Violence Response and Intervention Units

As required by law, the Judicial Department, through the Court Support Services Division, has a family violence intervention unit in each geographical area court to respond to family violence cases. The units prepare reports on each case for the court, provide or arrange for victim and offender services, and administer contracts to carry out these services. Generally, the information the units receive is confidential. However, the units may disclose information for specified purposes to its contract providers, prosecutors, employees of the Department of Children and Families, bail commissioners, law enforcement agencies, and probation officers.

The bill expands the circumstances under which the units may share

information with probation officers. It allows them to disclose to probation officers information that may be used to conduct a presentence investigation on, and recommend an appropriate sentence for, a defendant convicted of a family violence crime.

The bill eliminates the restriction on when the units may disclose information to their contract providers and restricts the information that may be provided. Under current law, they may disclose the information only after the disposition of the family violence case. The bill eliminates this restriction, thus allowing units to share the information during the pendency of the criminal proceedings. It prohibits the units from disclosing information to contract providers that would personally identify a victim.

Family Violence Education

By law, a Pretrial Family Violence Education program serves people who are charged with, but not convicted of, a family violence crime. In order to qualify for the program, a defendant must not:

1. be charged with an A, B, or C felony; unclassified felony punishable by more than 10 years imprisonment; or, unless there is good cause, a class D felony;
2. have previously participated in the program; or
3. have been convicted of, or accepted accelerated rehabilitation for, a family violence crime committed after October 1, 1986.

The bill further limits participation by excluding defendants who (1) previously participated in any diversionary program through a family violence intervention unit, instead of just the family violence education program or (2) were charged with an offense involving the infliction of serious physical injury.

Additionally, the bill permits a court to require a defendant to enter a conditional plea on the family violence charge against him or her as a condition to participating in the program. It requires the court to dismiss the charge if the defendant successfully completes the

program.

By law, any defendant placed in the program is released to the custody of a family violence intervention unit for up to two years under such condition as the court orders. By law, unchanged by the bill, if the defendant did not enter a conditional plea (presumably because he or she was not asked to do so), successfully completes the program, and complied with any conditions the court set, the court must dismiss the charges. If the defendant violates the program's conditions, he or she will be brought to trial.

The bill doubles, from \$200 to \$400, the fee defendants pay to participate in the program if they can afford it.

Standing Criminal Protective Order

The bill adds to the list of crimes for which, if violated, a court may issue a standing criminal protective. It allow courts to do so whenever a person is convicted of committing or attempting or conspiring to commit:

1. aggravated sexual assault of a minor,
2. fourth-degree sexual assault,
3. risk of injury by willfully or unlawfully causing or permitting a child under age 16 to be placed in danger or in a situation that is likely to result in the child being injured or his or her morals impaired, or
4. risk of injury by having contact with the intimate body parts of a child under age 16 or subjecting the child to the offender's intimate body parts in a sexual and indecent manner likely to impair the child's health or morals.

By law, unchanged by the bill, the court must find that (1) the victim is a member of the offender's family or household and (2) the order will best serve the victim and public's interest given the history, character, nature, and circumstances of the crime. Standing criminal

restraining orders are effective until the court modifies or revokes them.

Violators of the order are guilty of a class D felony, punishable by up to five years in prison, a \$5,000 fine, or both.

Restitution Services

The bill adds domestic violence victims and their families to the list of people for whom the Office of Victim Services may order restitution services, including medical, psychiatric, psychological, and social services. The office may already order restitution for families of homicide victims and victims of child abuse or sexual assault and their families.

The bill provides that offenders of the above-listed crimes are not eligible for restitution services as “family members.”

§ 5 — PROTECTIVE ORDER

The bill eliminates a requirement for protective orders issued after notice and a hearing to include notice that the order “is accorded full faith and credit pursuant to 18 USC Section 2265, as amended from time to time.” Instead, it requires that the order be accompanied by notice that is consistent with the full faith and credit provisions of the federal law (see BACKGROUND).

§§ 9 AND 10 — POSSESSION OF FIREARMS

The bill eliminates the option people who know they are the subject of a restraining or protective order or foreign order of protection resulting from the use or attempted or threatened use of physical force have to transfer any firearm they possess to someone legally allowed to possess it. Thus, they must deliver or surrender the firearm to the public safety commissioner within two business days after a court enters the order. By law, failure to relinquish possession is a class D felony, punishable by up to five years in prison, a \$5,000 fine, or both.

The bill broadens the information the public safety commissioner, chief state’s attorney, and Connecticut Police Chiefs Association must include in their update of the protocol they developed to ensure that

people who are ineligible to possess firearms either transfer them to someone eligible or deliver or surrender them to the commissioner to include specific instructions on delivering and surrendering firearms. The update must already include specific instructions on transferring firearms. By law, the protocol covers instances in which more than one law enforcement agency is necessary to ensure the transfer, delivery, or surrender.

§§ 11-13 — CRIMINAL LIABILITY OF PROTECTED PERSONS

The bill prohibits anyone listed as a protected person in a protective order, standing criminal protective order, restraining order, or foreign order of protection from being held criminally liable for (1) soliciting, requesting, commanding, importuning, or intentionally aiding in the order's violation or (2) conspiracy to violate it (see BACKGROUND).

§ 23 — TASK FORCE TO EVALUATE LAW ENFORCEMENT RESPONSES

The bill establishes a 16-member task force to (1) evaluate law enforcement agencies' policies and procedures for responding to incidents of family violence and restraining and protective order violations and (2) develop a model statewide policy for such responses. The model policy must include arrest procedures currently required by law, as amended by the bill.

The task force must report its recommendations for a model policy and implementation plan to the Judiciary Committee by December 1, 2011. The task force terminates on that date or January 1, 2012, whichever is later.

The task force consists of:

1. one person each appointed by the governor and top four legislative leaders;
2. a representative of the Police Officer Standards and Training Council experienced in domestic violence training appointed by the council chairperson;

3. a representative of the Office of the Chief State's Attorney, Office of the Chief Public Defender, and Office of the Victim Advocate appointed by the head of each office;
4. a representative of the Division of State Police experienced in domestic violence training appointed by the public safety commissioner;
5. a Superior Court judge assigned to hear criminal matters appointed by the chief court administrator;
6. a domestic violence victim, victim advocate with in-court experience in domestic violence matters, and Connecticut Coalition Against Domestic Violence, Inc. representative each appointed by the coalition's executive director;
7. a Legal Assistance Resource Center of Connecticut representative appointed by the center's executive director; and
8. a Connecticut Police Chiefs Association representative appointed by the association's president.

The bill requires the appointing authorities to (1) make their appointments within 30 days after the bill's passage and (2) fill vacancies. The task force members must select two chairpersons from their ranks who must schedule the first meeting to be held within 60 days after the bill's passage. The Judiciary Committee's administrative staff serve as such for the task force.

§ 8 — DOMESTIC VIOLENCE DOCKET

The bill requires the chief court administrator, by December 31, 2011, to designate geographical areas that do not have a domestic violence docket for the establishment of new domestic violence dockets. The bill requires her, by June 30, 2012, to establish a domestic violence docket in each of the designated areas, within available resources. By July 15, 2012, the chief court administrator must report to the Judiciary Committee on the designated geographic areas and her progress toward establishing the new dockets.

By law, a domestic violence docket is a docket in a geographical area separate and apart from other criminal matters for hearing family violence matters.

§ 24 — JUDICIAL DEPARTMENT TRAINING

The bill requires the chief court administrator to:

1. assess training programs for judges and Judicial Department staff on family violence and, at the very least, compare them to similar training programs in other Northeastern states;
2. study the principles and effectiveness of the pretrial family violence education program using results-based accountability;
3. as a part of the study, identify the program's goals, fundamental elements, and critical components; assess its short- and long-term outcomes; assess the feasibility and cost of extending (a) the program beyond its nine week and (b) the EVOLVE and EXPLORE programs (see BACKGROUND) to all regions of the state; and compare the pretrial family violence education program to the pretrial diversionary domestic violence programs in other Northeastern states; and
4. study the principals and effectiveness of Connecticut's domestic violence dockets and related contracted programs using results-based accountability, including the goals, fundamental elements, critical components, and short- and long-term outcomes of the dockets and programs.

The chief court administrator must report on the assessments and studies to the Judiciary Committee by January 1, 2012.

§ 22 — COURT-ORDERED RELEASE ON BAIL

The bill specifically requires judges to consider the safety of victims and state this consideration on the record before releasing an arrestee on bail.

By law, when a person is arrested for aailable offense, including a

family violence crime, a judge must consider certain factors before determining what conditions of release will reasonably assure (1) the person's appearance in court and (2) that the safety of others will not be endangered. The judge must state on the record the factors he or she considered.

§ 7 — STATE EMPLOYEE IMMUNITY

By law, state officers and employees are not personally liable for damages or injuries caused while discharging their duties or acting within the scope of their employment, unless their actions are wanton, reckless, or malicious. The bill specifies that employees appointed as guardians ad litem or attorneys to represent a party in a neglect, abuse, termination of parental rights, delinquency, or family with service needs proceeding are acting within the scope of their employment.

§§ 14 AND 15 — SPOUSAL PRIVILEGE

By law, a person may elect or refuse to testify against his or her spouse in a criminal proceeding under the so-called spousal privilege. The bill modifies the exceptions to the privilege. Under the bill, a spouse may be compelled to testify in criminal proceedings involving (1) spousal abuse consisting of sexual assault, bodily injury, or any other violent act attempted, threatened, or committed; (2) child abuse consisting of sexual assault, risk of injury to a minor, bodily injury, or any other violent act attempted, threatened, or committed and involving the minor child of either spouse or a minor child in a spouse's care or custody; or (3) ongoing or future criminal conduct jointly engaged in by both spouses.

In other criminal proceedings in which a spouse elects to testify, he or she cannot be (1) required to divulge oral or written communications with the spouse that were intended to be confidential or (2) allowed to testify about the communication without the consent of the spouse, unless the spouse is deceased.

By law, a spouse can be compelled to testify in criminal cases involving spousal violence, cruelty to persons, risk of injury to a minor, abandonment of a child under age six, criminal nonsupport,

first- or second-degree sexual assault, first-degree aggravated sexual assault, and patronizing or promoting prostitution.

§ 17 — EXAMINATION OF BOOKS AND RECORDS; EXAMINATION FEE AND ACCOUNT

The bill permits the insurance commissioner to examine a surety bail bond agent's books and records as often he deems necessary to enforce the bill. He already has this power with respect to license eligibility.

The bill requires agents to pay the commissioner a \$450 fee by January 31 each year to cover the costs of these examinations. The commissioner must deposit the fees in a surety bail bond agent examination account, which the bill creates as a separate, non-lapsing account in the Insurance Fund. The account must contain any money required to be deposited in it. The commissioner must use the money in the account for examinations. Any money remaining in the account at the end of each fiscal year must be transferred to the General Fund.

§ 18 — PREMIUM REQUIREMENTS

The bill prohibits agents from executing a bail bond unless they charge the premium rate the insurance commissioner approved. It specifies that it does not prohibit or limit a premium financing arrangement that complies with its provisions (see § 19).

Premium Certifications

Monthly. The bill requires agents, by the 10th of each month, to certify under oath to the commissioner, on a form he prescribes, that the premium for each surety bail bond executed during the prior month did not differ from the approved premium rate.

If an agent files a false certification, the commissioner may, after notice and hearing, suspend or revoke the agent's license, impose a penalty of up to \$ 5,000, or both.

Annual. By January 31 each year, the bill requires insurers to file a statement with the commissioner certifying the total amount of bail bonds executed and the total amount of premiums collected in the

preceding calendar year.

Audit Requirement

The bill requires insurers transacting surety bail bond business in Connecticut to audit their appointed agents twice per year to ensure each is charging the approved premium rate. The audits must cover (1) January 1 to June 30 and (2) July 1 to December 31.

Within 45 days after each audit period ends, insurers must notify the commissioner of any agent who failed to charge the approved premium rate. The notice must include the:

1. agent's name;
2. case docket number, if assigned;
3. total bond amount;
4. date the bond was executed,
5. insurer's National Association of Insurance Commissioners identification code; and
6. date the premium was due.

§ 19 — PREMIUM FINANCING ARRANGEMENTS

The bill allows surety bail bond agents to enter into premium financing arrangements with a principal or indemnitor where the agents extend credit. If they enter into such arrangements, they must require the principal on the bond or any indemnitor to (1) make a minimum down payment of 35% of the approved premium rate and (2) execute a promissory note for the remaining premium due. The promissory note must require payment in full within 15 months of its execution.

If the balance owed is not paid in full by its due date or a payment is more than 60 days past due, the bill requires the agent to (1) file a civil court action seeking appropriate relief within 75 days after the balance was due and (2) make a diligent effort to obtain judgment, unless good

cause is shown for failing to do so (e.g., the principal or indemnitor files for bankruptcy or service of process failed despite good faith efforts).

§§ 16 AND 20 — RECORD KEEPING AND ACCOUNTING FOR FUNDS

The bill deems premiums, return premiums, or other funds an agent receives that belong to insurers or others to be trust funds received in a fiduciary capacity. The agent must account for and pay the funds to the insurer or person entitled to them according to the agent's contract with the insurer or managing general agent. The bill prohibits any fees, expenses, or charges of any kind from being deducted from the return premiums, unless otherwise allowed under the bill. ("Return premium" is any part of a premium that a surety bail bond agent is obligated to return to a principal or indemnitor.) The bill defines "managing general agent" as a person an insurer appoints or employs to supervise the bail bond business that the insurer's appointed surety bail bond agents write in Connecticut.

The bill requires an agent to keep, and make available to the commissioner or his designee, books, accounts, and records as necessary to enable the commissioner to determine whether the agent is complying with the bill. An agent must keep books, accounts, and records relating to premium payments for at least three years after payments are made. The bill permits photographic and digital reproductions of records.

An agent who unlawfully diverts or appropriates trust funds for his or her own use is guilty of larceny. (Larceny ranges from a class C misdemeanor to a class B felony, depending on the amount involved.)

§ 21 — PROHIBITION AGAINST EXECUTING BONDS

The bill prohibits an agent or insurer from executing a future bond in Connecticut if a bond the agent executed is forfeited and the forfeiture has remained unpaid for at least 60 days after payment was due, until the full amount of the forfeited bond is paid to the Chief State's Attorney's Office.

BACKGROUND

EXPLORE and EVOLVE Programs

EXPLORE and EVOLVE are two of three of the Judicial Branch's family violence programs. The other is the Family Violence Education program. Both programs are available to men convicted of domestic violence. EXPLORE is a 26-session cognitive behavioral intervention program that focuses on behavior change by helping participants develop awareness, build positive interpersonal skills, and understand the harmful effects of violence on victims and children. The program is available in Bantam/Litchfield, Danbury, Danielson, Hartford, Manchester, Middletown, New Britain, New Haven, New London, Norwalk, and Stamford.

EVOLVE is a 52-session cognitive behavioral intervention program consisting of communication skill building, responsible parenting, and the impact of violence on victims and children. The program is available in Bridgeport, New Haven, New London, and Waterbury.

Definitions

Protective Order. Protective orders are criminal orders issued after an accused has been arrested for committing a family violence crime. They include provisions necessary to protect the victim from threats, harassment, injury, or intimidation. These orders generally terminate when the underlying criminal case concludes. However, under certain conditions, courts can issue a standing criminal protective order, in addition to any sentence of incarceration, against people convicted of certain family violence crimes. These orders stay in effect for a court-specified time period.

Restraining Order. A restraining order differs from a protective order in that restraining orders are civil and can be issued without the target of the order being arrested.

Foreign Order of Protection. A foreign order of protection is any injunction or other order issued for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to, another person, including any

temporary or final order issued by a civil and criminal court of another state; the District of Columbia; a U.S. commonwealth, territory, or possession; or an Indian tribe.

Full Faith and Credit. A protection order issued by the court of one state, Indian tribe, or territory must be accorded full faith and credit by the court of another state, Indian tribe, or territory (and enforced by the court and law enforcement personnel of the other jurisdiction as if it were the order of its own court.

Covered protection orders are those issued by a state, tribal, or territorial court:

1. with jurisdiction over the parties and matter under the law of such state, Indian tribe, or territory; and
2. after reasonable notice and an opportunity to be heard. In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by state, tribal, or territorial law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights (18 USC 2265 (a) and (b)).

Related bills

sSB 28 (File 41) makes changes to, and adds new, requirements for surety bail bond agents. It expands surety bail bond licensing and appointment requirements. It establishes (1) bail bond solicitation, record retention, and reporting standards and (2) premium financing, build-up funds, and collateral security requirements and restrictions. It requires agents to certify under oath to the insurance commissioner that they charged the bond premium rates the commissioner approved.

sHB 6053 (File 479) increases state and local officials' responsibilities to respond to acts of family violence.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 45 Nay 0 (04/14/2011)