



STATE OF CONNECTICUT

OFFICE OF VICTIM ADVOCATE
505 HUDSON STREET, HARTFORD, CONNECTICUT 06106

Michelle S. Cruz, Esq.
State Victim Advocate

**Testimony of Michelle Cruz, Esq., State Victim Advocate
Submitted to the Judiciary Committee
Friday, March 23, 2012**

Good afternoon Senator Coleman, Representative Fox and distinguished members of the Judiciary Committee. For the record, my name is Michelle Cruz and I am the Victim Advocate for the State of Connecticut. Thank you for the opportunity to provide testimony concerning:

Raised House Bill No. 5548, *An Act Concerning Domestic Violence (Proposed Amendments)*

The Office of the Victim Advocate (OVA), on behalf of the many victims of domestic violence the OVA has assisted, would like to thank the continued efforts of the Speaker's Task Force on Domestic Violence to improve the state's response to domestic violence. The OVA, again this year, submitted several legislative initiatives to the Task Force for consideration. The OVA greatly appreciates the collaborative path in which the Task Force operates and the inclusive and holistic vision demonstrated within their recommendations.

Section 1 of House Bill No. 5548 will extend the time period of a restraining order from six months to one year. This simple and logical change will (1) provide domestic violence victims with an enforceable safety measure for a reasonable period of time as they reassemble their lives in an effort to be free from abuse and (2) save the state money as a majority of restraining order applicants will apply for more than one restraining order within a year's time. Each new restraining order granted by the court must be served by a state marshal upon the respondent, which the state pays for. Lengthier restraining orders equals a reduction in the numbers of orders requiring service equals a savings to the state. Further, the Judicial Branch will likely experience a reduction of restraining order applications and fewer protracted restraining order hearings. Undoubtedly, this will ease the already overburdened family case dockets.

Section 2 through 4 of House Bill No. 5548 will eliminate the age barrier for victims of family violence seeking protection from abuse. As we have recognized the need to increase awareness of dating violence among our youth, at the same time, we must also provide meaningful protections to enhance the safety of our youth. Additionally, currently, at the request of the victim, the law enforcement agency in the town where the victim is employed is notified of an order of protection. Notification to the law enforcement agency in the town where the victim attends school or notification to the school directly, at the victim's request, is of equal importance.

Section 5 of House Bill No. 5548 will require the bail commissioner to consider the safety of any other person, in addition to ensuring a defendant's appearance in court, when setting bond and issuing the conditions of release. Currently, law enforcement may consider the safety of the victim in family violence cases, when setting bond and conditions of release. The court may also consider the safety of any person when setting bond and issuing conditions of release. It seems illogical for the bail commissioner to be limited in its considerations; Section 5 will bridge the gap of protection for victims when a bail commissioner is considering a defendant's bond and conditions of release.

Section 6 of House Bill No. 5548 seemingly attempts to further limit a defendant's eligibility for the family violence education program when charged with an offense which involved the infliction of serious physical injury. Currently, a defendant is ineligible for the program if charged with a class A, class B or class C felony. In most cases, an offense which involved serious physical injury will be classified as a class A, B or C felony, rendering the defendant ineligible based on the class of felony. For example:

- Assault 1st – "A person is guilty of assault in the first degree when: (1) with intent to cause *serious physical injury* to another person, he causes such injury to such person..." Class B felony
- Strangulation 1st – "A person is guilty of strangulation in the first degree when such person commits strangulation in the second degree as provided in section 53a-64bb and (1) in the commission of such offense, such person (A) uses or attempts to use a dangerous instrument, or (b) causes *serious physical injury* to such other person..." Class C felony

In cases where a defendant has been charged with a class D felony AND has inflicted serious physical injury, such as Assault 2nd (53a-60), the court must find "good cause" to invoke the family violence education program. However, it has been the experience of the OVA, and well documented through court transcripts, that this requirement to establish "good cause" is not being enforced. Additionally, Section 6, as proposed, will create a conflict within the statute itself. To remedy this conflict in the proposal and achieve the intended purpose, on line 232, strike the language "or unless good cause is shown," (see attached proposed amendment). This change will then limit the eligibility for the family violence education program to defendants who are (1) first time domestic violence offenders and (2) charged with less serious domestic violence offenses. After all, this was the original intent of the creation of the family violence education program when adopted in 1986.

Section 8 of House Bill No. 5548 seeks to clarify that when a person listed as the protected person on an order of protection receives an electronic or telephonic communication from the subject of the order, in violation of the order of protection, may file a complaint for the alleged violation with the law enforcement agency for the town in which (1) the protected person resides; (2) the protected person received the message; or (3) where the communicated was initiated. The proposed language, however, needs further clarification as it does not clearly identify the "protected person" and the "subject of the order of protection". I have attached a proposed amendment with language that will provide clarification and achieve the intended purpose of Section 8.

Section 10 of House Bill No. 5548 adds to the threatening first degree offenses to include that when the person commits threatening in the second degree and in the commission of the offense, the person uses, is armed with or threatens the use of a firearm. Currently, a person that threatens another person, regardless of whether the person uses, is armed with or threatens the use of a firearm, can only be charged with the offense of threatening in the second degree, which is an A misdemeanor. There is no doubt that a threat made against a person involving the use of or threatened use of a firearm holds an increased level of imminent threat than that of a threat made without the use of or threatened use of a firearm. Imagine a victim having a gun held to their head by a person and informed later that the only criminal charge available to law enforcement relating to the offense is threatening second degree, a class A misdemeanor. Additionally, the penalty should be reflective of the offense. To that end, I request the Committee further amend subsection (c) of Section 10 of House Bill No. 5548 to include an enhanced penalty for a person convicted of the crime of threatening with the use of or threatened use of a firearm (see attached amendment).

Section 11 of House Bill No. 5548 seeks to expand stalking first degree to include that a person convicted for a previous conviction of stalking second degree and stalking third degree would constitute a charge of stalking first degree. As technology has advanced and stalking predators have advanced, so too must the laws to protect victims of stalking. While legal definitions of stalking vary, the National Center for Victims of Crime (NCVC) provides a good working definition of stalking as *a course of conduct directed at a specific person that would cause a reasonable person to feel fear*. Research shows that two-thirds of stalkers pursue their victims at least once per week, many daily, using more than one method and that seventy-eight percent of stalkers use more than one means of approach. These methods and means of approach have expanded well beyond the stereotypical “follows or lies in wait” methods contained in Connecticut’s current stalking statutes. In fact, with advances in technology, a stalker can be hundreds of miles away and continue to stalk, threaten, harass and intimidate his/her victim. It is the result of the stalking behavior that one needs to examine rather than the actual actions of the stalker—*a course of conduct directed at a specific person that would cause a reasonable person to feel fear*.

Statistics further demonstrate that one in four victims report being stalked through the use of some form of technology, such as e-mail or instant messaging. Ten percent of victims report being monitored with global positioning systems (GPS), and eight percent report being monitored through video or digital cameras, or listening devices.¹ Those numbers are likely much higher now as we are well into 2012. The impact on stalking victims can range from anxiety, insomnia, social dysfunction, and severe depression. One in seven stalking victims move as a result of their victimization and one in eight employed stalking victims lose time from work as a result of their victimization; more than half lose five days of work or more.

¹ Katrina Baum et al., “Stalking Victimization in the United States,” (Washington, DC: BJS, 2009)

Stalking is a serious crime that it is often viewed unrealistically. When stalking is depicted as romantic or comical, or used casually to sell services and merchandise, it can be damaging and hurtful for victims and survivors. A leading department store once sold graphic tee shirts that said, "Some call it stalking, I call it love." Additionally, it can influence our perceptions of stalking, minimizing or trivializing this very dangerous and potentially lethal behavior. Intimate partner stalkers frequently approach their victims and their behaviors escalate quickly. Intimate partner stalking is often initiated during the relationship. For example, one study found that fifty-seven percent of stalking victims were stalked during the relationship. Another study found that between sixty-three and sixty-nine percent of attempted intimate partner murders or murders by their partners were stalked while in the relationship.

Connecticut is often far ahead of the nation when it comes to the recognition of social and trending issues. For example, Identity theft has surfaced as one of the fastest growing crimes in the nation. Connecticut responded with laws, severe penalties and tools to assist victims in the recovery of their good name and credit. Stalking victims are now in need of the same; in some cases, it can be a matter of life or death. The OVA is supporting the Connecticut Sexual Assault Crisis Services, Inc. proposed language (see attached proposed amendment) and encourages the Committee to do the same.

Section 13 of House Bill No. 5548 permits the family violence victim advocates, pursuant to an agreement with the Judicial Branch, to access nonconviction information in order for the advocates to assist victims develop a safety plan. The advocate is then duty bound to maintain the confidentiality of the information. Many victims of domestic violence fall into dangerous relationships without having the benefit of knowing the true history of the abuser. The OVA supports the proposal as it will provide the advocate with information that may or may not be known to the domestic violence victims, but crucial in developing a comprehensive safety plan. The proposal will allow the advocate to access information to enhance the safety of the victim and his/her children.

Last year, the General Assembly made significant improvements to the bail/bond requirements in response to considerable failures identified in the current, illegal practices of many of the licensed bail/bondsmen in Connecticut. To ensure compliance with the new requirements, the OVA met with the representatives of the Department of Insurance, who license bail/bondsmen. The OVA worked in collaboration with the Department of Insurance to enhance the training to current and future bail/bondsmen regarding their responsibilities when bonding out an offender, especially in cases involving domestic violence. As a result of this collaboration, the OVA learned that the Department of Insurance is at an extreme disadvantage when it comes to accessing information about current licensed bail/bondsmen. The OVA's review of the current licensed bail/bondsmen showed that many had obtained criminal felony convictions AFTER the issuance of their license. Those convictions, if known by the Department of Insurance, may have resulted in a revocation of their license. The current system relies on the bail/bondsmen to report any new arrests and convictions during the licensure period. The Department of Insurance is not able to readily access this information, unless and until, the license is scheduled for renewal, which is every two years.

In order for the Department of Insurance to properly monitor the licensed bail/bondsmen, the Department of Insurance must have access to nonconviction information. This information would allow the Department of Insurance to be informed of new arrests, follow the criminal matter, and if the bail/bondsmen obtains a felony conviction, or disqualifying misdemeanor conviction, appropriately respond in a timely manner. The proposed amendment (see attached) recommends the addition of employees of the Department of Insurance to allow such employees to ensure that any bondsmen licensed by the state has complied with the requirements to disclose information of a new arrest(s) from the original issuance of such license.

Section 16 of House Bill No. 5548 will expand the eligibility for victim compensation to children who witness domestic violence, including children who are not related to the victim. The OVA understands the intent of the proposal and recognizes the significant need to ensure that any child exposed to trauma has the resources available to access therapeutic services. The OVA also acknowledges that there are many different populations of "tertiary" victims, including children. However, the crime victim compensation fund is limited. It is limited to direct victims who sustain physical injury; limited to immediate family members only in cases involving a homicide; limited to assist with medical and other expenses related to the crime; limited to assistance with funeral expenses; it is limited.

Throughout the years, many studies have been conducted regarding the affects on children of incarcerated parents and children exposed to violence, especially those in urban environments and domestic violence households. As a result, many programs have been implemented to assist and support those children who otherwise may fall through the cracks of the system. However, very few, if any, research has been done regarding the affects of crime on children, especially the surviving children of homicide victims.

To fully understand this issue, the best response would be to bring together all of the key stakeholders and conduct a study that includes the impact of crime on children, both short and long term; an evaluation of the current services that are available; an evaluation of the compliance with crime victims' constitutional rights; trends throughout the nation; national survey of services; short and long term impact on tertiary victims, including communities; and report the findings of the study with recommendations to develop and improve Connecticut's response to victims of crime. Now is the time to really look at and study the impact that crime has had on children in Connecticut.

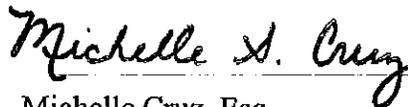
Finally, Section 17 of House Bill No. 5548 is the result of the hard work of the Statewide Model Policy for Law Enforcement's Response to Incidents of Domestic Violence Task Force. Largely in response to the increase in domestic violence fatalities, and as a result of the OVA's investigation reports, *The Murder of Jennifer Gauthier Magnano* and *The Murder of Tiana Notice*, the Speaker's Task Force on Domestic Violence recommended the development and implementation of a statewide model policy for Law Enforcement's response to incidents of domestic violence. Section 17 requires each law enforcement agency to develop and implement specific operational guidelines

for arrest policies in family violence incidents, which at minimum meet the standards set forth in the model policy developed by the Task Force. The OVA recommends that the Committee remove the language "meet the standards set forth in" on line 565-566; and insert "adopt" (see attached proposed amendment). The Task Force worked diligently for months on the development of a statewide model policy. The reason—to ensure that all law enforcement agencies in the state were responding to incidents of domestic violence in the same manner and that the best practices known and available were being utilized. As proposed, Section 17 unintentionally undermines and minimizes the work of the Task Force. There should be no ambiguity in any law enforcement's departmental policies for responding to incidents of domestic violence.

It has been demonstrated time and time again, that incidents of domestic violence run across jurisdictional lines, and if there is not a consistent, coordinated response, fatalities will occur. The Speaker's Task Force on Domestic Violence has worked tirelessly to ensure that Connecticut is at the forefront in its response to end domestic violence. Each law enforcement agency must be required to, at minimum, adopt the statewide model policy.

Thank you for consideration of my testimony.

Respectfully submitted,

A handwritten signature in cursive script that reads "Michelle S. Cruz". The signature is written in black ink and is positioned above a horizontal dashed line.

Michelle Cruz, Esq.
State Victim Advocate



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State Victim Advocate

Proposed Amendment to
House Bill No. 5548
Offered by
Michelle Cruz, Esq, State Victim Advocate
Office of the Victim Advocate

Further amend the section and strike the bracketed language (in red)

Sec. 6. Subsection (h) of section 46b-38c of the 2012 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2012*):

(h) (1) There shall be a pretrial family violence education program for persons who are charged with family violence crimes. At a minimum, such program shall inform participants of the basic elements of family violence law and applicable penalties. The court may, in its discretion, invoke such program on motion of the defendant when it finds: (A) That the defendant has not previously been convicted of a family violence crime which occurred on or after October 1, 1986; (B) the defendant has not had a previous case assigned to the family violence education program; (C) the defendant has not previously invoked or accepted accelerated rehabilitation under section 54-56e for a family violence crime which occurred on or after October 1, 1986; and (D) that the defendant is not charged with a class A, class B or class C felony, or an unclassified felony carrying a term of imprisonment of more than ten years, [or unless good cause is shown,] a class D felony, [or] an unclassified offense carrying a term of imprisonment of more than five years or an offense which involved the infliction of serious physical injury, as defined in section 53a-3. Participation by any person in the accelerated pretrial rehabilitation program under section 54-56e prior to October 1, 1986, shall not prohibit eligibility of such person for the pretrial family violence education program under this section. The court may require that the defendant answer such questions under oath, in open court or before any person designated by the clerk and duly authorized to administer oaths, under the penalties of perjury as will assist the court in making these findings.

(2) The court, on such motion, may refer the defendant to the family violence intervention unit, and may continue the defendant's case pending the submission of the report of the unit to the court. The court shall also give notice to the victim or victims that the defendant has requested assignment to the family violence education program, and, where possible, give the victim or victims opportunity

to be heard. Any defendant who accepts placement in the family violence education program shall agree to the tolling of any statute of limitations with respect to the crime or crimes with which the defendant is charged, and to a waiver of the defendant's right to a speedy trial. Any such defendant shall appear in court and shall be released to the custody of the family violence intervention unit for such period, not exceeding two years, and under such conditions as the court shall order. If the defendant refuses to accept, or, having accepted, violates such conditions, the defendant's case shall be brought to trial. If the defendant satisfactorily completes the family violence education program and complies with the conditions imposed for the period set by the court, the defendant may apply for dismissal of the charges against the defendant and the court, on finding satisfactory compliance, shall dismiss such charges.

(3) Upon dismissal of charges under this subsection, all records of such charges shall be erased pursuant to section 54-142a.

Strike Section 8 in its entirety and insert the following in lieu thereof:

Sec. 8. (NEW) (*Effective October 1, 2012*) Any person listed as the protected party on an order of protection who receives an electronic or telephonic communication by the subject of the order of protection in violation of section 53a-223, 53a-223a or 53a-223b of the general statutes may file a complaint reporting such alleged violation with the law enforcement agency for the town in which (1) such protected person resides, (2) such protected person received the communication, or (3) such communication was initiated. Such law enforcement agency shall accept such complaint, prepare a police report on the matter, provide the complainant with a copy of such report and investigate such alleged violation and any other offenses allegedly committed as a result of such violation and shall, if necessary, coordinate such investigation with any other law enforcement agencies and, upon request of the complainant, notify the law enforcement agency for the town in which the complainant resides.

Add new language to subsection (c):

Sec. 10. Section 53a-61aa of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2012*):

(a) A person is guilty of threatening in the first degree when such person (1) (A) threatens to commit any crime involving the use of a hazardous substance with the intent to terrorize another person, to cause evacuation of a building, place of assembly or facility of public transportation or otherwise to cause serious public inconvenience, or (B) threatens to commit such crime in reckless disregard of the

risk of causing such terror, evacuation or inconvenience; [, or] (2) (A) threatens to commit any crime of violence with the intent to cause evacuation of a building, place of assembly or facility of public transportation or otherwise to cause serious public inconvenience, or (B) threatens to commit such crime in reckless disregard of the risk of causing such evacuation or inconvenience; or (3) commits threatening in the second degree as provided in section 53a-62, and in the commission of such offense he uses or is armed with and threatens the use of or displays or represents by his words or conduct that he possesses a pistol, revolver, shotgun, rifle, machine gun or other firearm. No person shall be found guilty of threatening in the first degree under subdivision (3) of this subsection and threatening in the second degree upon the same transaction but such person may be charged and prosecuted for both such offenses upon the same information.

(b) For the purposes of this section, "hazardous substance" means any physical, chemical, biological or radiological substance or matter which, because of its quantity, concentration or physical, chemical or infectious characteristics, may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, or pose a substantial present or potential hazard to human health.

(c) Threatening in the first degree is a class D felony. Any person convicted under subdivision (3) of subsection (a) of this section, as amended, shall be guilty of a class C felony and be sentenced to a period of incarceration of which two years may not be suspended or reduced by the court.

Strike Section 11 in its entirety and insert the following and renumber the remaining sections:

Sec. 11. Section 53a-181c of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2012*):

(a) A person is guilty of stalking in the first degree when he commits stalking in the second degree as provided in section 53a-181d and (1) he has previously been convicted of [this section or] a violation of section 53a-181d, or (2) such conduct violates a court order in effect at the time of the offense, or (3) the other person is under sixteen years of age.

(b) Stalking in the first degree is a class D felony.

Sec. 12. (NEW) (*Effective October 1, 2012*) Definitions. As used in this section, the following terms have the following meanings:

- (1) "Course of conduct" means two or more acts, including, but not limited to, acts in which a person directly, indirectly, or through third parties, by any action, method, device, or means, follows, lies in wait for, monitors, observes, surveils, threatens, harasses, communicates with, or sends unwanted gifts to, a person, or interferes with a person's property.

Sec. 14. Section 53a-181d of the general statutes is repealed and the following is substituted in lieu thereof: (Effective October 1, 2012):

(a) A person is guilty of stalking in the second degree when [he, with intent to cause another person to fear for his physical safety, wilfully and repeatedly follows or lies in wait for such other person and causes such other person to reasonably fear for his physical safety.] such person knowingly engages in a course of conduct directed at a specific person that would cause a reasonable person to:

(1) fear for his or her safety or the safety of a third person

(2) fear that such person's employment, business or career is threatened, where such conduct consists of appearing at, telephoning to or initiating communication or contact at such other person's place of employment or business, and the actor was previously clearly informed to cease such conduct

(b) Stalking in the second degree is a class A misdemeanor.

Sec. 15. Section 53a-181e of the general statutes is repealed (Effective October 1, 2012):

Add new language (in blue) to Section 13

Sec. 13. Section 54-142m of the general statutes is repealed and the following is substituted in lieu thereof (Effective October 1, 2012):

(a) A criminal justice agency holding nonconviction information may disclose it to persons or agencies not otherwise authorized (1) for the purposes of research, evaluation or statistical analysis, or (2) if there is a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to such agreement. The Judicial Branch may disclose nonconviction information to a state agency pursuant to an agreement to provide services related to the collection of moneys due. Any such disclosure of information shall be limited to that information necessary for the collection of moneys due. Pursuant to an agreement, the Judicial Branch may disclose nonconviction information to the Department of Mental Health and Addiction Services for the administration of court-ordered evaluations and the provision of programs and services to persons with psychiatric disabilities and substance

abuse treatment needs. Pursuant to an agreement, the Judicial Branch may disclose nonconviction information to (1) advocates for victims of family violence to allow such advocates to develop plans to provide for the safety of victims and victims' minor children, provided such agreement prohibits such advocates from disclosing such nonconviction to any person, including, but not limited to, a victim of family violence and (2) employees of the Department of Insurance to allow such employees to ensure that any bondsmen licensed by the state has complied with the requirements to disclose information of a new arrest(s) from the original issuance of such license, provided such agreement prohibits any employee of the Department of Insurance from disclosing such nonconviction to any person

(b) No nonconviction information may be disclosed to such persons or agencies except pursuant to a written agreement between the agency holding it and the persons to whom it is to be disclosed.

(c) The agreement shall specify the information to be disclosed, the persons to whom it is to be disclosed, the purposes for which it is to be used, the precautions to be taken to insure the security and confidentiality of the information and the sanctions for improper disclosure or use.

(d) Persons to whom information is disclosed under the provisions of this section shall not without the subject's prior written consent disclose or publish such information in such manner that it will reveal the identity of such subject.

Delete the strike out language (in red) and insert the new language (in blue)

Sec. 17. Subsection (e) of section 46b-38b of the 2012 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2012*):

(e) (1) Each law enforcement agency shall develop, in conjunction with the Division of Criminal Justice, and implement specific operational guidelines for arrest policies in family violence incidents. Such guidelines shall include, but not be limited to: (A) Procedures for the conduct of a criminal investigation; (B) procedures for arrest and for victim assistance by peace officers; (C) education as to what constitutes speedy information in a family violence incident; (D) procedures with respect to the provision of services to victims; and (E) such other criteria or guidelines as may be applicable to carry out the purposes of sections 46b-1, 46b-15, as amended by this act, 46b-38a to 46b-38f, inclusive, as amended by this act, and 54-1g. Such procedures shall be duly promulgated by such law enforcement agency. On and after October 1, 2012, each law enforcement agency

shall develop and implement specific operational guidelines for arrest policies in family violence incidents which, at a minimum, meet the standards set forth in adopt the model law enforcement policy on family violence established in subdivision (2) of this subsection.

(2) There is established a model law enforcement policy on family violence for the state. Such policy shall consist of the model policy submitted by the task force established in section 19 of public act 11-152 on January 31, 2012, to the joint standing committee of the General Assembly having cognizance of matters relating to the judiciary, except that on and after October 1, 2012, the model law enforcement policy on family violence, as amended by the Family Violence Model Policy Governing Council established pursuant to section 17 of this act, shall be the model law enforcement policy on family violence for the state.

[(2)] (3) On and after July 1, 2010, each law enforcement agency shall designate at least one officer with supervisory duties to expeditiously process, upon request of a victim of family violence or other crime who is applying for U Nonimmigrant Status (A) a certification of helpfulness on Form I-918, Supplement B, or any subsequent corresponding form designated by the United States Department of Homeland Security, confirming that the victim of family violence or other crime has been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of the criminal activity, and (B) any subsequent certification required by the victim.

(4) Not later than July 1, 2013, and annually thereafter, each law enforcement agency shall submit a report to the Commissioner of Emergency Services and Public Protection, in such form as the commissioner prescribes, regarding the law enforcement agency's compliance with the model law enforcement policy on family violence for the state.