
OLR Bill Analysis

sHB 5548

AN ACT CONCERNING DOMESTIC VIOLENCE.

SUMMARY:

This bill gives family violence victims greater support from the courts, law enforcement agencies, and court-based victim service providers by:

1. extending, from six months to one year, the maximum period that a civil restraining order can remain in effect;
2. making stalking or patterns of threatening between family or household members forms of family violence;
3. at the victim's request, requiring court clerks to notify various school and law enforcement officials about the existence and terms of protective orders;
4. identifying police departments victims can contact when they believe that a telephone call or electronic communication they received constitutes a criminal violation of a restraining, protective, or standing criminal restraining order;
5. making a parallel change to the statute that designates the judicial district where such crimes can be prosecuted;
6. modifying the Judicial Branch's Court Support Services Division's (CSSD) uniform, weighted, release criteria by adding that conditions sufficient to reasonably ensure that a pretrial release will not endanger the safety of others is taken into account;
7. with exceptions, excluding from CSSD's pretrial family violence education program those charged with a family violence crime

that inflicted serious bodily injury on victims unless good cause is shown;

8. adding to the list of crimes which, if committed against a family or household member, would require courts to make notations in a defendant's criminal history file that the crime involved family violence;
9. adding to conduct that constitutes 1st degree threatening and stalking;
10. requiring probation officers who notify police officers when they suspect a probationer has violated his or her terms of probation to also notify (a) the crime victim if he or she has given contact information and (b) the Office of Victim Services;
11. permitting the Judicial Branch, pursuant to written agreement, to disclose nonconviction information to family violence victim advocates to use in developing safety plans for such victims and their minor children;
12. specifying that prosecutors notify crime victims who ask when a defendant's criminal charges are dismissed or nolle;
13. allowing the Office of Victim Services to award medical, psychiatric, psychological, and social and rehabilitative services as restitution to children who witness domestic violence, including those not related to the victim;
14. establishing a state-wide model family law enforcement policy;
15. requiring law enforcement agencies to, at a minimum, meet model policy standards and submit annual compliance reports; and
16. establishing the Family Violence Model Policy Governing Council, charged with evaluating various methods police departments use to respond to family violence incidents.

The bill also requires the Office of State-Wide Emergency Telecommunications to study the cost, feasibility, and public safety considerations associated with redesigning the state-wide emergency 9-1-1 system to allow individuals and responders to communicate by text message or using other forms of mobile device. It must submit a report of its findings to the Public Safety Committee by January 15, 2013.

The bill also makes minor and conforming changes.

EFFECTIVE DATE: October 1, 2012, except the provisions regarding the family violence governing council and emergency 9-1-1 study are effective upon passage.

§ 2 — DEFINITIONS

Family Violence

By law, “family violence” means an incident resulting in physical harm, bodily injury, or assault, or an act of threatened violence that constitutes fear of imminent physical harm, bodily injury, or assault between family or household members. The bill specifies that stalking or a pattern of threatening between such members are non-exclusive forms of family violence.

The bill potentially extends the definition of a “family or household member” for purposes of family violence by eliminating the age restriction on people (1) related by blood or marriage and (2) living together or who used to live together. The current law limits the former to people age 18 or older and the latter to people age 16 or older. The bill makes people in these relationships family or household members regardless of their age.

§§ 1 & 3-7 — JUDICIAL BRANCH CHANGES

Restraining Order

By law, courts can issue civil restraining orders upon request to protect family violence victims from further violence. Among other things, such orders may include provisions necessary to protect the victim from further threats, harassment, injury, or intimidation from

the defendant. Under current law, these orders expire six months after issuance unless the court finds that granting the protected person additional time is necessary. Under the bill, these orders expire after one year. The protected person still has the option to request an extension.

Protective Order

By law, protective orders are criminal orders issued after an arrest for a family violence crime. They can include the same provisions as restraining orders. Protective orders generally terminate when the underlying criminal case concludes.

The law requires court clerks to send, within 48 hours of issuance, copies of protective orders or the information they contain to the applicant and law enforcement agency or agencies for the town or towns where the defendant lives and the victim lives or works.

The bill requires clerks, at a victim's request, to send a copy of the order or its contents to any educational institution he or she attends, including a public or private elementary or secondary school; regional vocational technical school; or institute of higher education, including its special police force.

Conditions of Release Criteria

The law requires CSSD to establish written, uniform, weighted criteria for releasing an accused after an arrest. Current criteria are based solely on the premise that the least restrictive condition or conditions of release necessary to ensure the arrestee's appearance in court are the release alternative of choice. The bill modifies this approach by adding that conditions of release must also be sufficient to reasonably ensure that the release will not endanger any other person.

Ineligibility for Pretrial Family Violence Education Program

The bill makes those who have committed family violence crimes that inflicted serious physical injury (i.e., those that create a substantial risk of death or caused disfigurement, serious health impairment, or serious loss or impairment of any bodily organ) ineligible for the

pretrial family violence education program unless they show good cause. They must still meet other eligibility requirements which exclude anyone charged with a (1) class A, B, or C felony or unclassified felony with a possible prison term of more than 10 years or (2) class D felony or unclassified felony with a possible prison term of more than five years, unless the person shows good cause. Thus, the bill's good cause requirement applies to someone charged with a misdemeanor or an unclassified felony punishable by a prison term of five years or less which involved inflicting serious physical injury.

By law, the two-year program serves people charged with, but not convicted of, certain family violence crimes. Courts can allow someone to participate if the person does not have a prior family violence conviction and has not previously participated in the program or accelerated rehabilitation for a family violence crime. Courts must dismiss the charges against those who successfully complete the program.

Court Records Indicating Family Violence Convictions

The law requires courts to include in court files a designation when a person is convicted of certain crimes against a family or household member. The bill adds 11 more crimes to the list of those requiring the "family violence" designation. They are:

1. assault of a pregnant woman-terminating pregnancy,
2. 2nd degree threatening,
3. 1st and 2nd degree reckless endangerment,
4. 1st, 2nd, and 3rd degree strangulation,
5. aggravated sexual assault of a minor,
6. disorderly conduct, and
7. 1st and 2nd degree harassment.

LAW ENFORCEMENT ACTIVITIES

§ 8 — Reporting Electronic or Telephonic Communications and Prosecuting Violators

The bill permits any recipient of a telephone call or electronic communication that he or she believes constitutes a criminal violation of a (1) protective order, (2) standing criminal protective order, or (3) restraining order to contact the law enforcement agency for the town in which (1) he or she lives or where the victim received the communication or (2) the communication was initiated.

Under the bill, the agency contacted must (1) accept the complaint; (2) prepare a report, giving the complainant a copy; and (3) investigate the incident and any other offenses allegedly committed as a result of the reported violation. If necessary, that agency must coordinate its investigation with other law enforcement agencies, and, at the victim's request, notify the law enforcement agency for the town where he or she lives.

Any defendant charged based on this contact may be arraigned in the geographic area court in the same locations as the appropriate law enforcement agency.

§ 10 — 1st Degree Threatening

The bill creates a new form of 1st degree threatening. A person commits the new crime when he or she commits 2nd degree threatening and uses, or is armed with and threatens the use of, displays, or represents, by words or conduct that he or she possesses, a pistol, revolver, shotgun, rifle, machine gun, or other firearm. A person commits 2nd degree threatening when he or she, by physical threat, intentionally (1) places, or attempts to place, another person in imminent risk of serious physical injury, (2) threatens to commit a violent crime with the intent to terrorize another person, or (3) commits such violent crime in disregard of the risk of terrorizing the victim.

1st degree threatening is a class D felony, punishable by imprisonment for up to five years, a fine of \$5,000, or both.

The bill specifies that anyone can be charged with, but not found

guilty of, this form of 1st degree threatening and 2nd degree threatening based on the same transaction.

§ 11 — 1st Degree Stalking

The bill reduces the standards for committing 1st degree stalking. Currently, a person commits this crime when he or she commits 2nd degree stalking (i.e., willfully and repeatedly follows or lies in wait for another with the intent to cause the victim to fear for his or her safety and the victim reasonably does so). Under existing law, the crime is elevated to 1st degree stalking when the perpetrator has a prior 2nd degree stalking conviction. Under the bill, a prior conviction for 3rd degree stalking is sufficient to elevate the crime to 1st degree stalking.

1st degree stalking is a class D felony.

§ 13 — Disclosure Of Nonconviction Information

In general, the law prohibits criminal justice agencies from disclosing nonconviction information to anyone other than the subject of the information and his or her attorney. They may also disclose it for limited purposes such as research and, by agreement, for the administration of criminal justice. By law, such agreements must specify:

1. the information to be disclosed,
2. who will have access to it,
3. the purpose for which it will be used,
4. precautions the recipient will take to ensure its confidentiality,
and
5. sanctions for improper disclosure or use.

If the Judicial Branch and advocates for victims of family violence execute such agreements, the bill permits the branch to disclose nonconviction information that they need to develop safety plans for family violence crime victims and their minor children. It prohibits the advocates from disclosing this information to others, including victims

of family violence.

VICTIM SERVICES

§ 16 — Office of Victim Services' Restitution

The law permits the Office of Victim Services or a supervising victim compensation commissioner to order restitution for qualified crime victims. Restitution includes medical, psychiatric, psychological, and social and rehabilitative services.

Current eligibility rules restrict these services to victims of (1) child abuse and their families, (2) sexual assault and their families, (3) victims of domestic abuse and their families, and (4) specified family members of homicide victims. The bill authorizes the office to provide these services to children who have witnessed family violence whether or not they are related to the victim.

§ 17 — POLICE POLICIES IN FAMILY VIOLENCE CASES

Existing law requires law enforcement agencies to develop, in conjunction with the Criminal Justice Division, and implement specific operational guidelines for arrest policies in family violence matters. Beginning October 1, 2012, the bill requires the guidelines to, at a minimum, meet the model standards the bill establishes.

The bill establishes two statewide model law enforcement policies on family violence. The first consists of the model policy the Task Force on Law Enforcement's Response to Family Violence submitted to the Judiciary Committee on January 30, 2012. The second one, which is effective on and after October 1, 2012, must be established by the Family Violence Model Policy Governing Council (see below). The legal effect of the first policy is unclear because it is obsolete by the date the bill takes effect.

Beginning July 1, 2013, the bill requires each law enforcement agency to submit an annual report to the Department of Emergency Services and Public Protection (DESPP), in such form as the commissioner requires, concerning the agency's compliance with the model policies on domestic violence.

§ 18 — FAMILY VIOLENCE MODEL POLICY GOVERNING COUNCIL

The bill establishes a 16-member Family Violence Model Policy Governing Council and charges it with:

1. evaluating policies and procedures law enforcement agencies use when responding to family violence incidents and violations of restraining and protective orders,
2. reviewing and updating the statewide model law enforcement policy on family violence described above, and
3. evaluating the accuracy of data collected by DESPP and CSSD.

Members and Administrative Procedures

Under the bill, council members are:

1. one person appointed by each legislative majority and minority leader and the governor;
2. a representative of the Police Officer Standards and Training Council with experience in domestic violence training, appointed by the council's chairperson;
3. a representative of the Office of the Chief State's Attorney, appointed by the chief state's attorney;
4. a representative of the Office of the Chief Public Defender, appointed by the chief public defender;
5. a representative of the Office of the Victim Advocate, appointed by the victim advocate;
6. a representative of the State Police with experience in domestic violence training, appointed by the DESPP commissioner;
7. a Superior Court judge assigned to hear criminal matters, appointed by the chief court administrator;
8. a domestic violence victim, victim advocate with courtroom

experience in domestic violence matters, and representative of the Connecticut Coalition Against Domestic Violence, Inc., (CCADV) each appointed by the CCADV executive director;

9. a representative of state legal aid programs, appointed by the executive director of the Legal Assistance Resource Center of Connecticut; and
10. a representative of the Connecticut Police Chiefs Association, appointed by the association president.

Legislative leaders may designate other legislators to serve on the council.

Members must be appointed by July 1, 2012. Each serves a four-year term and may be reappointed or continue to serve until a successor is appointed and qualified. The respective appointing authorities fill vacancies.

Council members must choose two members to serve as co-chairpersons. These officials must schedule the first meeting, which must be held no later than 60 days after the bill's passage. The bill requires the Judiciary Committee's administrative staff to serve as the council's administrative staff.

The bill requires the council to submit a report to the Judiciary Committee by January 15, 2013, and annually thereafter. It must contain information about the effectiveness of the model law enforcement policy on family violence.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable
Yea 42 Nay 0 (03/26/2012)