
OLR Bill Analysis

sHB 5548 (as amended by House "A")*

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 without a court-ordered extension;
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;
 10. making a person guilty of second-degree harassment in the place where the communication originated or was received rather than where the telephone call made;
 11. 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;
 12. 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;
 13. specifying that prosecutors notify crime victims who ask when a defendant's criminal charges are dismissed or nolle;
 14. 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;
 15. establishing a state-wide model family law enforcement policy;
 16. requiring law enforcement agencies to, at a minimum, meet model policy standards and submit annual compliance reports; and

17. 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.

*House Amendment "A" among other things:

1. expands the definition of trauma-informed care,
2. requires clerks to send a notice of protective orders to a protected person's college or university president upon request,
3. requires courts to get information on whether parties to a family case have a pending family relations case,
4. limits people who may file complaints of electronic or telephonic violations of protective orders to protected people only,
5. eliminates changes to first-degree stalking included in underlying bill,
6. makes changes to second-degree stalking,
7. adds members to the family violence model policy governing council,
8. expands duties of POST,
9. expands the court's authority when sentencing defendants to probation, and

10. makes changes regarding transferring cases and court hearings.

EFFECTIVE DATE: October 1, 2012, except the provisions on (1) trauma-informed care are effective July 1, 2012 and (2) 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 and a pattern of threatening between such members are 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 or threats of violence. The bill specifies that the court can issue such orders if there is a pattern of threatening actions that constitute 2nd degree threatening. This crime is committed when a person (1) makes a physical threat that intentionally places or attempts to place another person in fear of imminent serious physical injury, (2) intentionally threatens to commit a violent crime to terrorize his or her target, or (3) performs the same acts as described in (2), but acts with reckless disregard to the target’s reaction.

Among other things, such restraining 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.

The bill requires clerks, at a victim's request, to send a copy of the order, including those issued *ex parte* (without a court hearing) 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 president and any special police force.

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 president and any 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.

Family Violence Response and Intervention Unit Reports

By law, counselors employed in a court's Family Violence and Intervention Units are required to provide courts with written or oral reports at the first family violence court date. Judges may use such reports to determine an appropriate disposition of the case before it. The bill requires that the counselors' reports to indicate whether the parties in the family violence case are parties to a case pending on the family relations docket. The latter include divorce, child custody, and other civil family matters.

Eligibility 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 & 9 — Reporting Electronic or Telephonic Communications and Prosecuting Violators

The bill permits any protected person on a restraining, protective, or standing criminal protective order or foreign order of protection who receives 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. 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.

§ 12 — 2nd Degree Stalking

The bill broadens the definition of 2nd degree stalking. Currently, a person commits this crime when, with intent to cause another person to fear for his physical safety, he willfully and repeatedly follows or lies in wait for another person and causes that person to fear for his or her safety or the physical safety of another.

Under the bill, a person commits the crime when he or she (1) knowingly engages in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her physical safety or the safety of third parties or (2) intentionally, and for no legitimate purpose, engages in a course of conduct directed at a specific person that would cause a reasonable person to fear that his or her employment, business, or career is threatened. In the latter case, the actionable conduct consists of the actor telephoning to, appearing at, or initiating communication with the victim at his or her workplace, and must be such that the actor was previously and clearly informed to

stop. The bill excludes situations under which the actor's conduct is protected by the U.S. Constitution's First Amendment.

Stalking in the 2nd degree is a class A misdemeanor.

Course of Conduct Defined. The bill defines "course of conduct as two or more acts, including those in which a person directly, indirectly, or through a third party, by any action, method device or means, to (1) follow, lies in wait for, monitors, observes, surveils, threatens, harasses, or communicates with or sends unwanted gifts to a person or (2) interfere with a person's property.

§ 15 — 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

§ 18 — 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.

§ 19 — 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 a model law enforcement policy on family violence that 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 as amended by the Family Violence Model Policy Governing Council the bill establishes (see below).

Annual Updates. The bill requires the chairperson of the Police Officer Standards and Training Council to provide notice of updates to the model policy, if adopted by the council during the prior calendar year. The update must go to the chief law enforcement officer of each municipality with its own police department, and its law enforcement instructor, and the commissioner of the Department of Emergency Services and Public Protection (DESPP).

The first update is due January 15, 2013.

Reports. Beginning July 1, 2013, the bill requires each law enforcement agency to submit an annual report to the Department of

DESPP) in such form as the commissioner requires, concerning the agency's compliance with the model policies on domestic violence.

§ 20 — Protective Orders for Probationers

Current law permits courts to issue protective orders when sentencing to probation a defendant who was or is currently subject to such an order for certain acts against children. The bill extends the courts authority to issue such order to defendants currently or previously subject to any protective order.

§ 21 — Transferring Cases for Prosecution.

Currently, prosecutors can transfer cases involving criminal violations of standing criminal protective orders from the geographical court where the violation occurred to the court that issued the order. The bill extends this authority to criminal violations of standing criminal protective orders and criminal violations of restraining orders.

§ 22 — Court Hearings Without Prior Notice to Sureties and Bail Commissioners

By law, prosecutors need not give sureties or bail commissioners notice of certain hearings involving modifications of an offender's conditions of release from incarceration. The bill adds criminal violations of standing criminal protective orders to the list of such crimes.

§§ 23-24 — Trauma informed Care

By law, police officers must give family violence victims counselors who are trained to provide trauma-informed care. Current law describes this as services directed by a thorough understanding of the neurological, biological, psychological, and social effects of trauma and violence on a person. The bill adds that the services must be delivered by a regional family violence organization that employs, or provides referrals to, counselors who:

1. make available to family violence victims resources on trauma exposure and its impact and treatment;

2. engage in efforts to strengthen the resilience and protective factors of victims of family violence who are impacted by and vulnerable to trauma;
3. emphasize continuity of care and collaboration among organizations that provide services to children; and
4. maintain professional relationships for referral and consultation purposes with programs and persons with expertise in trauma-informed care.

§ 25 — FAMILY VIOLENCE MODEL POLICY GOVERNING COUNCIL

The bill establishes an 19-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 each appointed by four top legislative leaders and the governor;
2. a municipal police officer with experience in domestic violence training, appointed by the House majority leader;
3. a victim of domestic violence, appointed by the Senate majority leader;
4. a representative of the Police Officer Standards and Training Council with experience in domestic violence training, appointed by the council's chairperson;

5. a representative of the Office of the Chief State's Attorney, appointed by the chief state's attorney;
6. a representative of the Office of the Chief Public Defender, appointed by the chief public defender;
7. a representative of the Office of the Victim Advocate, appointed by the victim advocate;
8. a representative of the Division of State Police with experience in domestic violence training and one commanding officer in the division, appointed by the DESPP commissioner;
9. a Superior Court judge assigned to hear criminal matters, appointed by the chief court administrator;
10. 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;
11. a representative of state legal aid programs, appointed by the executive director of the Legal Assistance Resource Center of Connecticut; and
12. 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 Public Safety Committee's administrative staff to serve as the council's administrative staff.

The bill requires the council to submit a report to the Judiciary and Public Safety committees by January 15, 2013, and annually thereafter. It must contain information about the effectiveness of the model law enforcement policy on family violence and identify amendments to the model policy adopted during the year.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 42 Nay 0 (03/26/2012)

Public Safety and Security Committee

Joint Favorable

Yea 22 Nay 0 (04/19/2012)

Government Administration and Elections Committee

Joint Favorable

Yea 11 Nay 0 (04/23/2012)