CCDLA
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March 23, 2012

The Honorable Eric D. Coleman
The Honorable Gerald M. Fox.
Chairmen
Joint Committee on Judiciary
Room 2500, Legislative Office Building
Hartford, CT 06106

Re: Raised Bill No. 5548
An Act Concerning Domestic Violence

Dear Chairmen and Committee Members:

The Connecticut Criminal Defense Lawyers Association (CCDLA) is a statewide organization of over 300 licensed lawyers, in both the public and private sectors, dedicated to defending persons accused of criminal offenses. Founded in 1988, CCDLA works to improve the criminal justice system by ensuring that the individual rights guaranteed by the Connecticut and United States constitutions are applied fairly and equally and that those rights are not diminished. At the same time, CCDLA strives to improve and suggest changes to the laws and procedures that apply to criminal justice. By way of this testimony, CCDLA objects to Sections 6 and 11 of Raised Bill No. 5548, An Act Concerning Domestic Violence.

Raised Bill 5548, An Act Concerning Domestic Violence, incorporates a number of recommendations made by the Speaker's Task Force on Domestic Violence and the Task Force on Law Enforcement Response to Family Violence in their current reports. CCDLA commends both task forces for their comprehensive work on a variety of issues related to domestic violence in Connecticut. While CCDLA generally supports the efforts of these two groups to address and improve our state's response to incidents of domestic violence, our organization has concerns with Section 6 of this bill.

CCDLA recognizes that effectively reducing domestic violence requires educational and rehabilitative measures. In its current form, the Family Violence Educational Program (FVEP) serves to prevent future domestic violence through education and counseling without exposing participants to the direct and collateral consequences of a criminal conviction. CCDLA opposes the changes contained in Section 6 because they are unnecessary and undoubtedly will negatively impact certain FVEP applicants, their families, and court resources. This section alters the eligibility requirements of the Pretrial Family Violence Program by precluding

individuals charged with "an offense that involves the infliction of serious physical injury, as defined in section 53a-3." Presently, the existence of physical injury or serious physical injury does not automatically bar acceptance into the FVEP.

In order to adequately consider the ramifications of the changes proposed in Section 6, it is necessary to compare the definitions of "serious physical injury" and "physical injury." C.G.S. Section 53a-3, subsection 4 provides: "Serious physical injury means physical injury which creates a substantial risk of death, or which causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ," while "physical injury" is separately defined under C.G.S. Section 53a-3(3) as "impairment of physical condition or pain."

Additionally, existing case law must be considered in any attempt to distinguish "physical injury" from "serious physical injury." Our judiciary has determined that whether a person has suffered a serious physical injury within the meaning of C.G.S. Section 53a-3(4) is a question of fact for the jury. *State v. Almeida*, 211 Conn. 441 (1989). Recently, our supreme court confirmed this conclusion by indicating that any inquiry pertaining to the nature of a "serious physical injury" is "fact intensive" and that it is often difficult to determine at what point a "physical injury" becomes a "serious physical injury." *State v. Ovechka*, 292 Conn. 533, 2009.

It's clear our statutory definitions and case law would present significant procedural hurdles for the court in its efforts to determine FVEP eligibility in cases involving various types of injuries. As an ethical matter, defense counsel would be required to pursue FVEP applications for their eligible clients and challenge preliminary claims of "serious physical injury." Additionally, even in cases where the existence of a serious physical injury is readily apparent, there may be any number of valid questions raised as to how the injury was inflicted and by whom. In view of this likely scenario, courts will be required to engage in extensive fact-finding hearings bordering on mini-trials to confirm the existence of a serious physical injury and/or how and by whom it was inflicted.

It is worth emphasizing that the FVEP statute, Subsection H of C.G.S. 46b-38c, in its current form adequately ensures that this program is granted only in appropriate cases. The existing statutory scheme provides that an individual charged with a class A, B, or C felony is ineligible for participation in the FVEP. Additionally, a person charged with a class D felony must make a showing of "good cause"[1] in order for the court to grant the program. The current good cause standard for a court's determination of FVEP eligibility does not entail a convoluted fact finding mission but if does provide an efficient and flexible tool by which a court can use its discretion to consider the appropriateness of granting an FVEP application. In all cases involving the showing of good cause, the court has the authority to use its discretion to grant or deny FVEP to any eligible applicant based upon the particular facts of the case and other relevant background information.

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[1]The phrase "good cause" is used in all areas of the law and its definition is usually left to its common understanding as " [a] legally sufficient reason." Black's Law Dictionary (9th Ed. 2009)

CCDLA is concerned that Section 6 seeks to remove a certain pool of applicants from the court's purview by imposing a blanket prohibition in cases involving allegations of "serious physical injury." As previously mentioned this restriction would require the court to engage in a fact finding hearing as part of the FVEP application process to determine the existence of a "serious physical injury." Such an inquiry would need to be built into the application process and would entail the extensive use of scarce judicial resources since the court would be required to make a finding of fact prior to the admission or denial of a FVEP application in any case involving an allegation of "serious physical injury." In its current form the FVEP statute provides a mechanism by which only appropriate candidates are granted the program. A convoluted application process is unnecessary since the prudent judgment of the court is predicated on the assessment and input of various judicial and non-judicial agencies including the State's Attorney's Office, Family Relations, the Victim's Advocate, the Department of Children and Families, and pretrial supervision programs such as Community Mental Health Affiliates and CRT's Alternative in the Community Program (AIC).

CCDLA urges the Judiciary Committee to vote against Raised Bill 5548 for all of the above stated reasons.

Respectfully submitted,
CCDLA

By, _____
ELISA L. VILLA, Member
CCDLA Executive Committee