Division of Public Defender Services
State of Connecticut

OFFICE OF CHIEF PUBLIC DEFENDER
30 TRINITY STREET - 4th Floor
HARTFORD, CONNECTICUT 06106
(860) 509-6495 Fax
(860) 509-6405 Telephone

ATTORNEY MICHAEL ALEVY
SENIOR ASSISTANT PUBLIC DEFENDER
michael.alevy@jud.ct.gov

Testimony of Michael Alevy
Senior Assistant Public Defender
Office of Chief Public Defender

Raised Bill No. 856, An Act Concerning Domestic Violence
Committee on Public Safety and Security
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The Office of the Chief Public Defender opposes passage of ***Raised Bill No. 856, An Act Concerning Domestic Violence.*** Under current law when a person "with intent to cause serious physical injury" causes such injury to another person, that person is guilty of C.G.S. §53a-60(a), Assault in the 2nd degree, a class D felony punishable by up to 5 years in prison. When a person, acting with the same intent, causes serious physical injury **by means of a deadly weapon or dangerous instrument,** that person is guilty of C.G.S. §53a-59(a), Assault in the 1st degree, a class B felony punishable by up to 20 years in prison, 5 years of which is mandatory. The sole, significant distinction between Assault in the 1st degree and Assault in the 2nd degree as it relates to this bill, is whether the accused used a dangerous instrument or deadly weapon to cause the serious physical injury.

The proposed bill creates an exception to this "statutory scheme" by increasing the penalty for the conduct proscribed in the Assault 2nd statute - **serious physical injury inflicted in the absence of any dangerous instrument or deadly weapon** – to that found in the Assault 1 statute – a maximum of 20 years. The bill limits the exception proposed to cases of domestic or family violence[1] but most importantly results in effectively eliminating any distinction between these two degrees of assault. As

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[1] In relevant part ***C.G.S.§ 46b-38a*** provides:
(1) "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. Verbal abuse or argument shall not constitute family violence unless there is present danger and the likelihood that physical violence will occur.
(2) "Family or household member" means (A) spouses, former spouses; (B) parents and their children; (C) persons eighteen years of age or older related by blood or marriage; (D) persons sixteen years of age or older other than those persons in subparagraph (C) presently residing together or who have resided together; (E) persons who have a child in common regardless of whether they are or have been married or have lived together at any time; and (F) persons in, or who have recently been in, a dating relationship, regardless of the age of such persons.
(3) "Family violence crime" means a crime as defined in section 53a-24, other than a delinquent act as defined in section 46b-120, which, in addition to its other elements, contains as an element thereof an act of family violence to a family member and shall not include acts by parents or guardians disciplining minor children unless such acts constitute abuse.

noted below, such a result is problematic and represents a significant departure from existing standards and policies that underlie our criminal statutes.

The problems inherent in the approach taken by this bill have been indentified and discussed in a recent Connecticut Supreme Court case, *State v. Lafleur, 307 Conn. 115,(2012)* a decision released in September of 2012. In fact, the *Lafleur* case is the impetus behind this bill. *Lafleur* was a domestic violence case where the defendant was convicted after trial of assault in the 1st degree for causing serious physical injury by means of punching the victim. The Court, in a case of first impression, had to decide whether the defendant's fists could be considered a dangerous instrument and thus expose a defendant to a conviction for first degree assault. In a unanimous decision on this issue, the Court found that the term "dangerous instrument" meant a tool, implement or device that is external to, and separate and apart from, the perpetrator's body. Because the trial court had instructed the jury that a fist could by a dangerous instrument for purposes of assault in the 1st degree, it reversed the defendant's conviction on that charge. Central to the court's decision was the recognition that " if a person who caused serious physical injury could always be charged with first degree assault because of the broad definition of [dangerous] instrument [it] would make the second degree assault charge superfluous." The Court opined that such a circumstance would lead to absurd and unworkable results that should be avoided. Yet that is exactly the effect that this bill would have if passed. It would create the absurd and unworkable result warned of in *Lafeur*, a result wherein identical conduct, in a family violence case, would expose a defendant to prosecution for 2 distinct offenses with very different penalties, and in the process, render one "superfluous.

There is no question the criminal justice system currently faces significant challenges related to domestic violence crime. The problems cut across all demographic boundaries and are felt throughout the state; no one sector of our society is immune. In our criminal courts, approximately one third of all cases involve crimes of domestic violence. But addressing these serious issues need not lead to such a piecemeal effort - especially in view of the legitimate concerns which this bill attempts to address.

The Division of Public Defender Services is deeply involved with domestic violence issues on every level. Representatives from our agency sat on the Law Enforcement Response to Family Violence Task Force and worked collaboratively to achieve consensus recommendations that were enacted into law in 2012. We currently participate with CCADV on their domestic violence Fatality Review Committee and with DMHAS as a member of the Returning Veterans and Domestic Violence Advisory Group. In the courthouse, we are part of the DMHAS pilot program in New London, Norwich and Middletown that is an outgrowth of the Advisory Group's work. And we have instituted a federally funded pilot program that places dedicated DV social workers in our field office in New Haven and Bridgeport. Our Agency's experience gives us a unique and important perspective and an ability to contribute to the broader conversation that needs to take place regarding changes to the criminal statutes that intersect with domestic violence.

In light of this experience the Office of Chief Public Defender would suggest that the legislature consider alternative approaches to statutory changes in this area. There is a need for a broader and more comprehensive examination of this subject. It is our view that the Connecticut Sentencing Commission (CSC) is best suited to examine the broad issue of statutory changes related to domestic violence. Additionally, we believe that other critical aspects of the legislative response to domestic violence can be best examined in such a setting, including the role of dedicated dockets, rehabilitative and intervention programs, the impact on children and a thorough review of what is working in other states. Therefore, the Office of Chief Public Defender urges rejection of this bill and suggests that this subject matter be referred to the Connecticut Sentencing Commission for further examination.