

CCDLA
"Ready in the Defense of Liberty"
Founded 1988

Connecticut Criminal Defense
Lawyers Association
P.O. Box 1766
Waterbury, CT 07621-1776
(860) 283-5070 Phone/Fax
www.ccdla.com

March 17, 2014

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. 462
An Act Concerning Civil Restraining Orders and Protective Orders**

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 2 through 10 of Raised Bill No. 462, An Act Concerning Civil Restraining Orders and Protective Orders which seeks to enhance the penalties proscribed in Subsection (b) of section 46b-15 of the 2014 supplement to the general statutes; subsection (c) of Sections 4 through 6 of Section 53a-223; Subsection (e) of Section 7 of section 46b-38c of the 2014 supplement of the general statutes; Subsection (b) of section 8 of section 54-1k of the general statutes; Subsection (b) of section 54-82r of the general statutes; and Subsection (b) of section 54a-40e of the general statutes.

I. Increasing the Penalty for Certain Violations of Restraining Orders and Protective Orders is Unnecessary and Will Cause More Individuals to be Incarcerated at the Pretrial Stage

Sections 2 through 10 of Raised Bill No. 462, An Act Concerning Civil Restraining Orders and Protective Orders increase the penalty for certain violations from a Class D felony (five years and/or a \$5000 fine) to a Class C felony (ten years and/or a \$10,000 fine). CCDLA recognizes that civil restraining orders and protective orders are effective tools for curtailing and preventing incidents of domestic violence, however increasing the penalty for violations is unnecessary because under our current statutory scheme law enforcement almost always charges people for

the distinct conduct defined in this bill in addition to the protective or restraining order violation.

For example, anyone who assaults, threatens, molests, sexually assaults, harasses, etc. a protected person will face arrest for that aforementioned conduct in addition to any violation of a restraining order or protective order charge.

It's also important to note that the Court already has the authority to impose various conditions of release which provide separate significant penalties for conduct that violates any law or court order. Such conditions of release function more directly and efficiently to protect domestic violence complainants since they allow the Court to monitor a defendant's compliance and this in turn helps the prosecution and defense determine the appropriate pretrial strategy, i.e., mental health or substance abuse treatment, Family Violence Education Program/Explorer Program, tailored plea deals, etc. This process helps all the parties make informed decisions concerning the ultimate disposition of the case. Under our current pretrial protocols, the existence of an enhanced penalty will serve to undermine this process by causing more people to be incarcerated on high bonds rather than released with appropriate court ordered conditions and program referrals.

II. Increasing the Penalty for Certain Violations of Restraining Orders and Protective Orders Will Impede the Fair Administration of Justice

CCDLA is concerned that this proposal is exceptionally harsh and redundant in that it seeks to create a truly draconian penalty that would be applied to an extraordinarily wide range of conduct from serious assaultive behavior to the most innocuous violation, i.e., a husband returning to his wife's residence at her request to fix a broken toilet. By enhancing the penalty for violations of these court orders the legislature, in effect, will provide Family Relations Officers and prosecutors with excessive power to induce defendants to accept plea deals and suffer extraordinary collateral consequences as a result. CCDLA opposes these enhancements as inherently too harsh. Ultimately an increase in the penalty will not serve the ends of justice since an individual facing a C felony is much more likely to be leveraged into a plea deal rather than to be offered diversionary or rehabilitative/educational programs that seek to prevent future domestic violence incidents.

And finally, an enhanced penalty also will result in the expenditure of more judicial resources as defendants seek trials as a result of being charged with C felonies. As a general consideration, it would be prudent for this committee to note that cases involving the prosecution of C felonies take more time to resolve than those involving Class D felonies.

Page 3

Testimony Re: Raised Bill No. 462
CCDLA

III. Increasing the Penalty for Certain Violations of Restraining Orders and Protective Orders Ignores the Practical Aspects of Reducing and Preventing Domestic Violence

CCDLA notes there has been a nationwide trend to increase penalties for domestic violence offenders in an effort to protect victims. At the federal level the Violence Against Women Act and the Family Violence Prevention and Services Act seek to help families struggling with domestic violence through direct federal funding of state and local programs. CCDLA wishes to emphasize its position that the path to reducing and preventing domestic violence requires effective and culturally appropriate educational and rehabilitative measures for offenders rather than increased penalties.

On a practical level enhanced penalties for restraining order and protective order violations will impede the use of intervention programs that address the underlying causes of domestic violence, i.e., mental health/behavioral issues, substance abuse, cultural norms, etc. Defendants and their families will be ill served by a statutory scheme that seeks to primarily punish offenders rather than offer support and rehabilitation. Also, CCDLA is concerned that this bill fails to acknowledge the fact that many domestic violence charges arise from the specious claims of spouses during divorce proceedings. A better approach might be to establish enhanced penalties for serial offenders rather than to create a blanket penalty for all offenders regardless of their particular histories and their cultural backgrounds. CCDLA respectfully recommends further research to determine whether this bill serves a legitimate judicial purpose in view of the practical considerations discussed above.

CCDLA urges the Judiciary Committee to vote against Raised Bill 462 for all of the above stated reasons.

Respectfully submitted,
CCDLA

By,



ELISA L. VILLA, Vice President
CCDLA Executive Committee