
OLR Bill Analysis

sSB 462

AN ACT CONCERNING CIVIL RESTRAINING AND PROTECTIVE ORDERS.

SUMMARY:

This bill makes numerous changes in the laws that govern restraining orders and protective orders. It:

1. expands the court's authority in civil restraining order cases by broadening the measures an order can contain, such as ordering the respondent to (a) refrain from terminating necessary utility services, cancelling or changing insurance policies, or transferring, concealing, or disposing of specified property, (b) make rent or mortgage payments, (c) maintain utilities and insurance, and (d) provide specified personal effects and financial support;
2. establishes other requirements pertaining to civil restraining orders such as, (a) prohibiting modification after it has been entered, (b) establishing an expiration date, (c) allowing any amounts owed on a financial order to be collected in divorce, annulment, or legal separation actions, and (d) requiring specific language pertaining to criminal violation of the order and the corresponding penalties;
3. establishes a task force to study service of restraining orders pertaining to family and household members;
4. increases, from a class D to a class C felony, the penalty for criminal violation of restraining orders, protective orders, and standing criminal protective orders involving such actions as threatening, harassing, and assault; and
5. requires the updating of the specific language contained in

certain protective and standing criminal protective orders to reflect the increased penalties.

The bill also makes technical and conforming changes.

EFFECTIVE DATE: October 1, 2014, except for the task force provision, which is effective upon passage.

§ 1 — RESTRAINING ORDERS: FAMILY AND HOUSEHOLD MEMBERS

The bill broadens the court's authority in civil restraining order cases, both upon receipt of an application for such an order and at a hearing on the application.

By law, any family or household member (see BACKGROUND) subjected to continuous threat of present physical pain or physical injury, stalking, or a pattern of threatening may apply to the Superior Court for a restraining order. The court may issue an order as it deems appropriate to protect the applicant and any dependent children or other people as it sees fit.

Under current law, the order, whether issued *ex parte* (i.e. without a hearing) or after a hearing, may include temporary child custody or visitation rights and provisions to protect any animals. It may also prohibit the respondent from:

1. imposing any restraint on the applicant;
2. threatening, harassing, assaulting, molesting, sexually assaulting, or attacking the applicant; or
3. entering the family home or the home of the applicant.

Ex Parte Order

By law, if an applicant alleges an immediate and present physical danger to the applicant, the court, upon receipt of the application may issue a restraining order *ex parte* that contains any of the orders described above.

The bill broadens the measures the order may contain when the applicant and respondent are (1) spouses or (2) people who lived together who have dependent children in common. If no order exists and the court deems it necessary to maintain the safety and the basic needs of such applicant and the children, it may:

1. prohibit the respondent from taking any action that could result in shutting off necessary utility services or other necessary services related to the family home or the applicant's home;
2. prohibit the respondent from taking any action that could result in the cancellation or change of health, automobile, or homeowners' insurance policy coverage or designated beneficiary to the detriment of the applicant or any dependent children they have in common;
3. prohibit the respondent from transferring, encumbering, concealing, or disposing of specified property the applicant owns or leases; or
4. require the respondent to temporarily provide the applicant with an automobile, checkbook, health documents, automobile or homeowners insurance, a document needed for proving identity, a key, or other necessary specified personal effects.

Hearing on the Application

Under the bill, at the hearing on the application, if the court grants relief under similar circumstances as described under the ex parte provisions, it may order the respondent to:

1. make rent or mortgage payments on the family home or the home of the applicant and their dependent children;
2. maintain utility services or other necessary services related to the family home or the home of the applicant and their dependent children;
3. maintain all existing health, automobile, or homeowners

insurance coverage without change in coverage or beneficiary designation; or

4. provide financial support for the benefit of any dependent children, if the respondent has a legal duty to support them and the ability to pay.

These are in addition to orders authorized under current law and those authorized in an ex parte order under the bill.

The bill prohibits the court from entering any financial support order without sufficient evidence of a person's ability to pay, including financial affidavits. And, it allows any amounts not paid or collected under an order to be preserved and collected in a divorce, custody, paternity, or support action.

Under the bill, if an order is not entered at the hearing, one cannot be entered after that. An order entered at a hearing cannot be modified and must expire 120 days after the issue date or upon issuance of a superseding order, whichever occurs first.

Specific Language in the Court Order

By law, any civil restraining order that the court makes must include specific language about what violation of the order constitutes 1st degree criminal trespass and the corresponding penalties.

The bill expands the required notice in the court order to also include specific language about what constitutes a criminal violation of a civil restraining order and the corresponding penalties.

§ 2 — TASK FORCE

The bill establishes a task force to study service of restraining orders pertaining to family and household members. The study must examine the:

1. policies, procedures, and regulations relating to state marshals serving restraining orders, including methods for their initial notification;

2. length of time available to serve a restraining order;
3. permissible methods of service;
4. effectiveness of the respondent profile information sheet and marshal access to databases containing identifiable respondent information;
5. reimbursement rates for service, including an assessment of other states' reimbursement rates;
6. other states' best practices, if any, with respect to service of restraining orders; and
7. feasibility of expanding the list of persons who can serve restraining orders.

Task Force Members and Appointments

The 16-member task force includes:

1. two members appointed by the Senate president pro tempore (representing the Connecticut Coalition Against Domestic Violence and the chief states attorney);
2. two members appointed by the Senate majority leader (an advocate for domestic violence victims and a representative of the State Marshal Commission);
3. two members appointed by the Senate minority leader (representing the Connecticut Police Chiefs Association and the Office of the Chief Public Defender);
4. two members appointed by the House speaker (a domestic violence victim and a representative from the speaker's task force on domestic violence);
5. two members appointed by the House majority leader (a state marshal and a representative of the State Police);
6. two members appointed by the House minority leader (a state

marshal and a representative of the legal aid assistance programs in the state);

7. two members appointed by the governor (representing the Connecticut Police Chief's Association and the Office of the Victim Advocate); and
8. two members appointed by the chief court administrator (a Superior Court judge assigned to hear civil matters and a Judicial Branch employee whose duties concern the operations of the Superior Court).

All appointments must be made within 30 days after the bill passes and any vacancies must be filled by the appointing authority.

The House speaker and Senate president pro tempore must select the task force's chairpersons from among its members. The chairpersons must schedule and hold the first meeting within 60 days after the bill passes. The Judiciary Committee's administrative staff must serve as the task force's administrative staff.

Reporting Requirement and Termination

The task force must report its findings and recommendations to the Judiciary Committee by December 15, 2014. It terminates when it submits the report or on December 15, 2014, whichever is later.

§§ 3-9 — INCREASED PENALTY FOR VIOLATING CERTAIN ORDERS

§§ 3-6 — Increased Penalty

Under current law, criminal violation of a protective order, standing criminal protective order, or civil restraining order is a class D felony punishable by imprisonment of up to five years, a fine of up to \$5,000, or both.

Under the bill, these crimes become class C felonies and the penalties increase to imprisonment for up to 10 years, a fine of up to \$10,000, or both, if the violation of any of these orders involves (1) imposing any restraint on the person or liberty of a person in violation

of the order or (2) threatening, harassing, assaulting, molesting, sexually assaulting, or attacking a person in violation of the order.

§§ 7-9 — Required Notice

The bill requires the specific language contained in standing criminal protective orders and certain protective orders to be updated to reflect the penalty increase. The affected protective orders are those related to (1) family violence; (2) stalking, harassment, sexual assault, and risk of injury; and (3) witness harassment.

BACKGROUND

Family or Household Members

By law, “family or household members” are any of the following, regardless of their ages:

1. spouses or former spouses;
2. parents or their children;
3. people related by blood or marriage;
4. people other than those related by blood or marriage living together or who have lived together;
5. people who have a child in common, regardless of whether they are or have been married or have lived together; and
6. people who are or were recently dating (CGS § 46b-38a).

Related Bills

sHB 5593, §§ 1-10, reported favorably by the Judiciary Committee, has similar provisions to this bill.

sSB 152, § 6, reported favorably by the Judiciary Committee, expands the crime of criminal violation of a protective order to include when a person violates a protective order issued by a court when sentencing a person to a period of probation.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 37 Nay 3 (04/02/2014)