ccadv

Connecticut Coalition Against Domestic Violence

Member Organizations

The Umbrella Center for Domestic Violence Services
Ansonia, CT

The Center for Family Justice
Bridgeport, CT

Women's Center
Danbury, CT

Domestic Violence Program United Services
Dayville, CT

Network Against Domestic Abuse
Enfield, CT

Domestic Abuse Services Greenwich YWCA
Greenwich, CT

Interval House
Hartford, CT

Meriden-Wallingford Chrysalis
Meriden, CT

New Horizons
Middletown, CT

Prudence Crandall Center
New Britain, CT

The Umbrella Center for Domestic Violence Services
New Haven, CT

Safe Futures
New London, CT

Domestic Violence Crisis Center
Norwalk, CT

Women's Support Services
Sharon, CT

Domestic Violence Crisis Center
Stamford, CT

Susan B. Anthony Project
Torrington, CT

Safe Haven
Waterbury, CT

Domestic Violence Program United Services
Willimantic, CT

Testimony in Support of

SB 650, AAC Temporary Restraining Orders
HB 6848, AA Protecting Victims of Domestic Violence

Judiciary Committee
March 11, 2015

Good morning Senator Coleman, Representative Tong and members of the committee. CT Coalition Against Domestic Violence (CCADV) is the state's leading voice for victims of domestic violence and our 18 member organizations that serve them. Our members provide essential services to nearly 50,000 victims of domestic violence each year. Services provided include 24-hour crisis response, emergency shelter, safety planning, counseling, support groups and court advocacy.

We urge your support of SB 650 and HB 6848.

SB 650

This bill makes several proposals related to the service of temporary restraining orders recommended by the Task Force to Study Service of Restraining Orders established pursuant Public Act 14-217, which I co-chaired along with Representative Michelle Cook. The task force, which met between September 2014 and January 2015, included a comprehensive set of stakeholders including domestic violence advocates, state marshals, law enforcement, attorneys (including a prosecutor, public defender and legal aid attorney), a family court judge and court operations personnel.

Temporary restraining orders, also called ex parte restraining orders, can be issued by the court upon an application for a civil restraining order in which the victim alleges an "immediate and present physical danger" (CGS § 46b-15). Such order may be issued by the court "granting such relief as it deems appropriate." With the ex parte order, the court also orders a hearing to be held within 14 days, commonly referred to as the "two week hearing," at which time the respondent has an opportunity to be heard. The respondent is not present when the court initially grants an ex parte order.

An ex parte restraining order provides temporary relief to a victim and may include an order for the defendant to stay away from the victim or to vacate the family home. The purpose of this temporary relief is to protect the victim during the two week period between the application for the restraining order and the court hearing. Enforceability of the order is dependent upon notice being provided to the respondent, which is currently done through the service of the order by a state marshal.

Subdivision (1) of this bill proposes that law enforcement be required to serve temporary, ex parte restraining orders when the applicant (victim) indicates on the restraining order application that the respondent (offender) has firearms or ammunition. Because ex parte orders are only issued in those instances where a judge believes that the victim faces an "immediate and present physical danger," this can be a particularly dangerous time and including law enforcement in the service of such orders will only enhance safety for all involved.

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The task force heard testimony from some marshals who indicated that they at times felt unsafe serving orders when they knew firearms were involved and would often request police assistance in serving those orders. Meanwhile, at least 33 other states authorize law enforcement or, where applicable, county sheriffs, to serve temporary restraining orders.[1] This includes the surrounding states of Maine, Massachusetts, New Hampshire, New York, Rhode Island and Vermont.

Requiring law enforcement to serve ex parte orders with allegations of firearms will neither create a large burden on police departments nor significantly impact the livelihood of state marshals who would no longer serve such orders. According to the CT Judicial Branch, during Fiscal Year 13, there were only ***628 ex parte orders issued statewide*** that included allegations of firearms. In Fiscal Year 14 there were only 568 such instances. Appendix A demonstrates a breakdown of that service by the respondent's town of residence (where service is likely to be made). Even large cities would not be overburdened. Below are the seven municipalities with the highest numbers in FY13 and FY14 (and the only municipalities with 20 or more such orders to serve in either year):

City	FY13 total ex parte w/ allegations of firearms	FY14 total ex parte w/ allegations of firearms
Bridgeport	23	21
Hartford	42	32
Meriden	14	22
New Britain	20	13
New Haven	35	39
Waterbury	23	22
West Haven	25	8

(CT Judicial Branch; see Appendix A for complete chart)

Subdivision (2) of the bill proposes that the court be allowed to extend temporary, ex parte orders if the applicant is present at the two week hearing but the order has not yet been served. Current state law requires that orders be served 5 days prior to the 14 day hearing, meaning state marshals have a maximum of 9 days to serve if they receive the order the same day it is granted (CGS § 46b-15). It is the responsibility of the victim to find a state marshal to serve the order, which can sometimes take more than one day.

State marshals face many challenges when serving restraining orders, including dealing with respondents who are aware that their victim has applied for an order so they (the respondents) actively avoid service of said order. If service cannot be successfully made 5 days prior to the hearing and the respondent does not show up to the hearing, the ex parte order may be dropped and the victim may have to reapply for the restraining order, often leaving her or him with the feeling that the system simply cannot help.

Allowing the court to extend the temporary protection so that service can be reattempted is a commonsense fix to assisting victims and ensuring that the system is responsive to them at a time when they are experiencing significant trauma. Twenty (20) states allow for the extensions of temporary restraining orders if service is not made prior to the hearing.[2] In these states, the hearing is rescheduled and the order automatically extended until the hearing.

Subdivision (3) of this bill calls for additional family violence victim advocates (FVVAs) to be placed in the state's family courts, which is where victims apply for a restraining order. Currently, Connecticut has 4 family violence victim advocates available to assist victims within their courts to apply for restraining orders – Bridgeport, Hartford, Meriden and Waterbury. This means that there are 12 family courts without such advocates. While many courts do have court service centers that are intended to be a resource for any individual seeking assistance within the civil court, they can become crowded and court personnel within these centers do not have extensive training related to domestic violence nor are they covered under the state's confidentiality statutes.

Family violence victim advocates are all certified domestic violence counselors. Not only are they there to explain the court process to the victim, but they also help the victim establish a safety plan, which is a critical piece of making a restraining order effective. FVVA's have the expertise to help keep victims of domestic violence safe when applying for a restraining order and they are also able to support victims of

domestic violence dealing with other aspects of family court, such as divorce or child custody. Finally, FVVAs can assist victims with providing details to the authorized agent of service who is tasked with making service of the restraining order on the respondent, helping make the process more efficient and less burdensome on both the victim and agent of service.

Subdivision (4) proposes that the methods by which respondents may be given legal notice of an ex parte restraining order be broadened. As previously discussed, service can be a challenge when respondents do not want to be found. In these instances an authorized service agent may opt to leave the order abode (at the place of residence but not in the hand of the respondent). When such an order is then violated, the state's attorney may not be able to prosecute for the violation because notice of the order may not be able to be proven.

In Massachusetts, law enforcement officers are permitted by statute to verbally inform/notify a respondent that they have an ex parte restraining order against them. The order then becomes enforceable. A Massachusetts state trooper who spoke to the Task Force to Study Service of Restraining Orders indicated that they have a great deal of success with this method and that it has also facilitated successful in-hand service because once respondents are on the phone and they know that they have been legally notified they are often willing to accept service of the order.

Subdivision (5) of this bill proposes that the court be allowed to remove firearms, ammunition, and gun permits/eligibility certificates during ex parte restraining orders. While current state law prohibits anyone who is the subject of a full, one year civil restraining order or criminal protective order from possessing firearms or ammunition, judges do not currently have the explicit authority to order respondents to surrender firearms for the duration of an ex parte restraining order. As previously mentioned, if a judge grants a temporary, ex parte restraining order, then the judge believes that the victim faces "immediate and present physical danger." So this proposal results in *someone who has placed a family member in immediate and present physical danger* losing their firearm for two weeks. At least 20 states give courts explicit authority to temporarily remove firearms from some or all individuals subject to an ex parte restraining order.[3]

The most dangerous time for a victim of domestic violence is when she or he takes steps to end the relationship.[4] Because domestic violence is all about power and control of one partner over the other, this can be a particularly difficult time for the abuser, who will begin to realize that he or she is losing control over their victim. This may result in the offender taking more extreme actions to regain control. This is exactly the time that firearms should be removed from the equation.

This proposal results in a temporary, two week removal of firearms and ammunition. If at the two week hearing a judge does not grant a full, one year restraining order, the respondent would have their firearms and ammunition returned. The existing gap in protection in Connecticut state law only heightens a victim's risk of being seriously injured or killed as she or he attempts to end an abusive relationship. Studies have shown that domestic assaults that involve firearms are 12 times more likely to result in death than those involving other weapons or bodily force.[5] And women in an abusive relationship are 5 times more likely to be killed if their abuser has access to a firearm.[6] Meanwhile, state laws prohibiting firearm possession by persons subject to restraining orders reduced rates of intimate partner homicide of women by 12-13%, decreasing overall intimate partner homicides by 10%.[7]

While CGS § 46b-15 allows courts that issue ex parte orders to grant "such relief as it deems appropriate," courts have not traditionally interpreted this language to extend to ordering respondents to surrender firearms. Connecticut's restraining order application (JD-FM-137) asks the applicant three optional questions regarding whether or not the respondent holds a permit to carry a pistol or revolver, possesses one or more firearms or possesses ammunition. This clearly demonstrates an acknowledgement of the role that firearms play in abusive relationships and yet at a time when those victims arguably in the most immediate danger seek protection from the court via an ex parte restraining order, their answers to those questions do not result in any action for two weeks. Explicit language allowing for the surrender of firearms at the time an ex parte order is issued, coupled with criminal liability when those firearms are not surrendered, will ensure that every victim has an equal opportunity to be protected.

This proposal is akin to existing state law that gives prosecutors and police officers the ability to apply for a warrant to seize firearms from a person who poses a risk of imminent personal injury to himself or others (CGS § 29-38c). Commonly referred to as a "risk warrant," if the warrant is issued, a hearing is held within two weeks to determine if the seized weapons should be returned. Although applying for a civil restraining order does not involve law enforcement, the ultimate determination about victim safety and the granting of an ex parte order is made by a judge, just as the decision is made under the risk warrant statute.

We recommend one change to the proposed bill:

> We recommend that individual's firearm permits and eligibility certificates not be removed as part of this proposal. The process to get a permit returned from the State Board of Firearms Permit Examiners can be somewhat lengthy and it is not our intent for someone who only has firearms and ammunition removed for two weeks to then have to wait months to get their permit back. It is our understanding that should this proposal of removal at ex parte be adopted, any individual who becomes ineligible to possess firearms or ammunition during the ex parte order would be flagged in the state's protective order registry which is checked as part of the background check in Connecticut when someone attempts to purchase a weapon.

Connecticut averaged 14 intimate partner homicides annually between 2000 and 2012. Guns were the most commonly used weapon (used in 39% of the homicides).[8] Temporarily removing a firearm for two weeks may mean that someone else's life is saved, as has been recognized by at least 20 other states. Perhaps the issue is best summed up by several proponents of this concept, including Governor Malloy – it is relatively easy to return a gun after two weeks, but a bullet cannot be unfired.

We thank Senator Looney and all of the bill's sponsors for their leadership to support victims of domestic violence.

HB 6848

Similar to subdivision (5) of SB 650, this bill proposes the removal of firearms or ammunition during an ex parte restraining order. Bill language proposes amending the criminal possession of a firearm statute (CGS § 53a-217) to remove the requirement of a hearing, effectively meaning that individuals who are the subject of temporary, ex parte restraining orders would also be ineligible to possess firearms and ammunition. As previously discussed, removing firearms and ammunition during an ex parte restraining order can save the lives of victims who are facing "immediate and present physical danger" (CGS § 46b-15). These are serious cases of family violence where victims deserve the most stringent protection of the law.

We understand and appreciate that there are concerns regarding how this proposal, if implemented, would affect individuals' rights to possess firearms. The United States Supreme Court, in challenges related to the Second Amendment of the Constitution, has stated that the core protection offered is the "right of lawabiding, responsible citizens" to possess firearms, and that this right is "not unlimited" and should not be understood to confer the "right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose."[9] As noted earlier, at least 20 other states have successfully implemented and upheld strong laws prohibiting possession of firearms during ex parte orders based on the state's interest to protect victims of domestic violence. This proposal only impacts those individuals who choose to put a family or household member in "immediate and present physical danger."

Additionally, this bill proposes reducing the amount of time to surrender or transfer firearms and ammunition for someone who has become ineligible because they are the subject of a civil restraining order or criminal protective order (CGS § 29-36k). The proposal reduces that timeframe from 2 business days to 24 hours, again increasing protections for victims of domestic violence at the most dangerous time.

A 2006 survey of domestic violence offenders attending offender intervention programs in Massachusetts revealed that offenders who continued to possess firearms after becoming ineligible to do so by federal law were more likely to attempt to or threaten to kill their partners with guns than those who had relinquished their firearms.[10] If the court believes that the victim faces immediate danger and grants an ex

parte restraining order, it is critical that firearms be surrendered as soon as possible. There is no value in waiting, only an increase in the likelihood of serious injury or death. Recognizing the deadly connection between firearms and domestic violence, it is essential to develop practical procedures to quickly and efficiently remove weapons from these situations. These policies must recognize the needs of law enforcement who are often in the position of accepting and storing surrendered firearms, but we believe that the shared goal of protecting lives will lead to effective policy.

We thank Governor Malloy for his continued leadership on protecting victims of domestic violence.

Thank you for your consideration. Please do not hesitate to contact me with questions or for additional information.

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[1] Alabama, Alaska, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, Rhode Island, South Dakota, Utah, Vermont, Virginia, West Virginia, Wyoming.
[2] Alabama, Arkansas, Colorado, Delaware, Florida, Hawaii, Kentucky, Maryland, New Mexico, North Dakota, Ohio, Oklahoma, Rhode Island, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin.
[3] Arizona, California, Hawaii, Illinois, Maine, Massachusetts, Michigan, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Pennsylvania, Texas, Utah, Virginia, Washington, West Virginia.
[4] Campbell, JC, et al. 2003. "Risk Factors for Femicide in Abusive Relationships: Results from a Multistate Case Control Study." *American Journal of Public Health*. 93(7): 1092.
[5] Center for Gun Policy and Research. "Intimate Partner Violence and Firearms." Johns Hopkins Bloomberg School of Public Health, citing Saltzman LE, et al, 1992. "Weapon Involvement and Injury Outcomes in Family and Intimate Assaults." *Journal of the American Medical Association*. 41(2): 281-83.
[6] Supra note 3
[7] Vigdor ER, Mercy JA. 2006. "Do Laws Restricting Access to Firearms by Domestic Violence Offenders Prevent Intimate Partner Homicide?" *Evaluation Review*. 30:313-46.
[8] Connecticut Coalition Against Domestic Violence. (July 2014) *Upon Further Examination: 2014 Findings & Recommendations of the Connecticut Domestic Violence Fatality Review Committee*. P. 10.
[9] District of Columbia v. Heller, 554 U.S. 570, 634-35, 128 S.Ct. 2783. (2008).
[10] Rothman, E, et al. 2006. "Gun Possession Among Massachusetts Batterer Intervention Program Enrollees." *Evaluation Review*. 30(3): 283-291.