



STATE OF CONNECTICUT  
GOVERNOR DANIEL P. MALLOY

**Testimony submitted on behalf of Governor Daniel P. Malloy in SUPPORT of HB 5054 – AA Protecting Victims of Domestic Violence**

Good morning Senator Coleman, Representative Tong, Senator Kissel and Representative Rebimbas. My name is Karen Buffkin and I serve as Governor Daniel P. Malloy's General Counsel. I am here on his behalf, joined by Mike Lawlor, Undersecretary of Criminal Justice Policy and Planning, to testify in strong support of HB 5054 – An Act Protecting Victims of Domestic Violence.

Governor Malloy, with the support of countless advocates and survivors of domestic violence, has introduced this legislation to protect victims of domestic violence during a particularly dangerous period of time. *The hours following service of a temporary restraining order and the days leading up to the first court appearance are the most dangerous for victims of domestic violence.* The danger in these situations is prompted by the service of the restraining order on the alleged abuser, and is further enhanced when that individual has access to firearms. We have seen this play out in headlines here in Connecticut and around the country. Most recently, an individual in Kansas who was hours earlier served with a restraining order by his girlfriend, went on a shooting spree that left three people dead and 14 wounded. Many states already prohibit firearm possession during this volatile period, but unfortunately, Connecticut is not one of them. This has got to change.

The Governor's proposal makes a person temporarily ineligible to possess firearms and ammunition while he or she is subject to a temporary restraining order pending a hearing in court. It requires respondents to transfer their firearms and ammunition to law enforcement or to a federally licensed firearm dealer immediately, but no later than 24 hours, after having been served with the order. Failure to make such a transfer will subject that person to criminal liability – if they are found with a firearm, they will be liable for criminal possession of a firearm, a class C felony with a mandatory minimum two year sentence and a \$5,000 fine.

This year's bill has several significant clarifications and improvements on the Governor's proposal from last year. These changes stemmed in large part from conversations the administration has had with stakeholders, including members of the State Police, the Judicial branch, and Democratic and Republican legislators and staff, to name a few. This year's bill clarifies that firearm and ammunition permits must be returned and permits must be reinstated by the State Police upon the expiration of a temporary restraining order that is not extended into a "full" restraining order after a hearing. It allows the court to set an expedited hearing date if the respondent is employed in a position requiring them to carry a firearm. It provides protection for state marshals by creating a process by which they can request police accompaniment during service of an order during this particularly volatile window of time. Finally, it includes recommendations by the Restraining Order Task Force that make the process for the victim as safe, predictable and navigable as possible. Under this process, the victim will have control over when the temporary restraining order is served. Giving the victim this control allows that individual to make sure that they are out of harm's way during this period of heightened danger.

There are a few points that have been raised over the past year with regard to this legislation that I would like to clarify:

1. **This proposal is constitutional, and is not a violation of due process.** The *ex parte* process that this legislation uses is the existing process that is on the books for temporary restraining orders. Under current law, the court may, in its discretion, make orders it deems appropriate to protect the applicant and the applicant's children, including orders that may restrict constitutionally protected rights. For example, the court may restrict the liberty of the respondent by prohibiting that individual from entering the family home. The state can restrict a respondent's constitutional right to liberty in this way because it has a compelling interest in doing so – an interest in protecting victims of family violence. The court also uses this balancing test regularly when issuing search and arrest warrants. Courts have recognized that in instances such as these where time is a critical factor, it is appropriate for the state to take action prior to a hearing. The *ex parte* process used in this bill is constitutional and consistent with these familiar processes that police and courts use every day.
2. **People who lie on applications for TROs are criminally liable for perjury and will be held accountable.** Last year, there was a suggestion that people lie and make false accusations on TRO applications in order to obtain restraining orders to harass estranged partners. Under the existing TRO application process - that is unchanged with this proposal - a TRO applicant is required to swear to the truth of the statements in their application under oath. An individual who lies on an application for a temporary restraining order is – and would be continue to be - criminally liable for perjury, a Class D felony, punishable by 1 to 5 years in prison and a fine of up to \$5,000.
3. **The risk warrant process does not provide the necessary protections for victims of domestic violence.** In order to obtain a "risk warrant," a judge must make an *ex parte* finding that: "(1) a person poses a risk of imminent personal injury to himself or herself or to other individuals, (2) such person possesses one or more firearms, and (3) such firearm or firearms are within or upon any place, thing or person". This risk warrant process is not appropriate because it may not be possible in domestic violence situations for a judge to make these findings. In particular, although a judge may have enough evidence to make a finding of a risk of imminent personal injury, the judge may not have enough information to know that an individual possesses a firearm, or to know the location of that firearm.

In addition, the risk warrant process is far more invasive - for both the applicant and the respondent - because if a risk warrant is approved, police are authorized to search the place the firearm is located, typically a home, and to seize any firearms or ammunition they find. The Governor's proposed bill, in contrast, prohibits persons served with a temporary restraining order from possessing firearms and requires that that person arrange to temporary transfer any firearms in their possession to police or sell them to a licensed firearms dealer. It does not authorize a search for those weapons.

Finally, the risk warrant statute is not intended to meet the needs of the victim. Under the temporary restraining order process, the victim is in control of when the notice is served, and therefore can insure that he or she and any family members are out of the house at that time.

In addition, the restraining order can contain other protections for the victim as well, above and beyond the transfer or firearms that are not contemplated in the risk warrant process.

In order to make the risk warrant search and seizure procedure appropriate for domestic violence situations, 29-38c would have to be substantially amended. Under current law, "risk warrants" are only to be used when "there is no reasonable alternative available". In instances of domestic violence, the temporary restraining order process set out in the Governor's bill is that reasonable alternative.

This legislation is about victim safety and saving lives. Women in abusive relationships are five times more likely to be killed if their abuser has access to a firearm. Connecticut averaged 14 intimate partner homicides per year from 2000 through 2012 and firearms were used in 39% of those 188 homicides, making them the most commonly used weapons to commit intimate partner homicide in Connecticut. On behalf of Governor Malloy, I respectfully ask that this committee support and pass this piece of legislation this year.