



**CONNECTICUT  
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DEFENSE LAWYERS  
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**Testimony of Attorneys Ioannis A. Kaloidis and John C. Drapp**  
**Connecticut Criminal Defense Lawyers Association**  
**Governor's Bill No. 5054 – *An Act Protecting Victims of Domestic Violence***  
**Judiciary Public Hearing – March 14, 2016**

The Connecticut Criminal Defense Lawyers Associations is a not-for-profit organization of more than three hundred lawyers who are dedicated to defending persons accused of criminal offenses. Founded in 1988, CCDLA is the only statewide criminal defense lawyers' organization in Connecticut. An affiliate of the National Association of Criminal Defense Lawyers, CCDLA works to improve the criminal justice system by insuring that the individual rights guaranteed by the Connecticut and United States constitutions are applied fairly and equally and that those rights are not diminished.

CCDLA opposes Governor's Bill 5054. The proposed legislation tramples the right to bear arms contained in the Second Amendment to the United States Constitution and article first, § 15 of the Connecticut Constitution. It also ignores constitutional guarantees to Due Process contained in the Fourteenth Amendment to the United States Constitution and article first, § 10 of the Connecticut Constitution. The specific sections of the proposed legislation which are problematic are addressed as follows:

**Section 7 - Changes to Connecticut General Statutes § 29-36k**

Subsection (b) of § 29-36k would now require that "immediately, but in no event more than twenty-four hours after notice has been provided to a person subject to a restraining or protective order...such person shall (1) transfer any pistol, revolver or other firearm or ammunition which such person then possesses to a federally licensed firearms dealer pursuant to the sale of the pistol, revolver or other firearm or ammunition to the federally licensed firearms dealer, or (2) deliver or surrender such" firearms to law enforcement.

The proposed change would require individuals who have been served with an ex parte civil restraining order to also surrender their firearms. Current law does not require the surrender of firearms until after notice and a hearing on the application for a restraining order. Put another way, current law affords those served with an ex parte order due process of law. The proposed change dispenses with this constitutional safeguard resulting in an unconstitutional deprivation of a fundamental right.

The right to keep and bear arms is guaranteed by the Second Amendment to the United States Constitution, and article first, § 15 of the Connecticut Constitution. When the government seeks to deprive an individual of a liberty or property interest, which is the case in this proposed bill, procedural due process imposes constraints on the governmental action involved. *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). A fundamental principle in our system and in the rule of law is that property cannot be taken without procedural due process. *Society for Savings v. Chestnut Estates, Inc.* 176 Conn. 563 (1979).

An individual lawfully in possession of firearms who becomes the subject of an ex parte restraining order issued based upon nothing more than a one-sided uncontested and uncorroborated affidavit would be forced to surrender their firearms and be deprived of his or her property without due process. While it is true that the legislation provides the right to a hearing within fourteen days, the fact that someone can be deprived of a Constitutional right on nothing more than an affidavit and without a right to be heard is contrary to the essence of our judicial system and results in an unconstitutional taking of a fundamental right.

With respect to the actual transfer of the firearms required by the proposed change to subsection (b) of §29-36k noted above, it should be noted that an individual cannot simply transfer their firearms to a third party who is eligible to have them, but must turn them over to a federally licensed firearms dealer for sale, or to the police. Under this framework, if an individual opts to turn them over to a dealer for sale, they are gone, permanently. If however the individual chooses to turn them over to law enforcement, he/she has a year under subsection (c) to arrange for their transfer to a federally licensed firearms dealer for sale. Whichever avenue is selected, it is highly unlikely that an individual will ever get their firearms back. The person subject to a restraining or protective order will have to choose between selling their firearms or having them destroyed by the State.

These limited options will have unintended consequences for situations where the firearms were antiques, collector's items, or heirlooms. It will also have a significant financial impact on many individuals as well. Often, serious collectors of firearms may have costly accessories such as scopes or other add-ons which can cost hundreds, if not thousands of dollars. There is a significant property interest involved that must also be taken into account.

While the legislation may be well intentioned it clearly is in response to a specific tragedy that occurred in this state within the last few years. Such reactionary legislation which seeks to prevent a "repeat" of a specific instance by depriving large numbers of Connecticut citizenry of basic constitutional rights is inappropriate and wrong.

According to Judicial Branch statistics, in 2015 there were 8,370 civil restraining orders applied for pursuant to Connecticut General Statutes § 46b-15. Of those, 4,417 were granted ex parte. However, only 2,788 were granted after a hearing on the merits. Therefore, under the proposed legislation one can estimate that as many as 1,629 individuals would have had their 2<sup>nd</sup> Amendment and article first, § 15 rights taken away from them where there was potentially no basis for the order after a hearing.

The proposed legislation also ignores the fact that far too often the extraordinary measures provided for in §46b-15 are misused by applicants entangled in custody or divorce proceedings. While there are no judicial department statistics available measuring this phenomena, the reality is that there are people who will make false allegations of domestic violence (sexual assault, emotional and physical neglect, etc.) in order to punish someone or for leverage in a pending matter. The proposed legislation provides no safeguards against or penalties for such actions. However, the respondent who has been wrongly accused pays a substantial price regardless of the ultimate disposition of the matter.

## Section 2 – Changes to Connecticut General Statutes § 46b-15

The proposed bill would change subsection (b) of §46b-15 to allow a somewhat expedited hearing in instances where the respondent “is employed in a position in which an essential requirement of the position is the ability to carry a firearm during the course of employment.” This language carves out a right to faster due process for those persons who must be able to carry a firearm for employment purposes. While this facially applies to more than police, it’s clear that this provision would benefit the police more than anyone else. To a certain extent, this may be warranted, because getting the issue of the order resolved as expeditiously as possible would be in any employee’s best interests if their job was at stake. However, employment is not a constitutional right, whereas the right to keep and bear arms is. Constitutional rights apply to citizen equally. Law enforcement do not have a greater entitlement to the right to bear arms than anyone else. So why then afford them a faster opportunity to protect their employment where every other individual will have their constitutional rights impinged for at least two weeks until a hearing on the application.

Subsection (h)(2) would allow the marshal serving the order the option to be accompanied by a local law enforcement officer. CCDLA opposes this change in the law. Enlisting law enforcement agencies to participate in the service of civil restraining orders is unnecessary, costly and will create additional police involvement into the lives of civilians where no such involvement is needed or appropriate. The service of civil orders is something that has traditionally been done by state marshal or other “proper officers”. Police officers should focus on actual police work, not serving civil orders. This puts an unnecessary additional burden on law enforcement and furthers the belief by many that we are moving towards a police state and away from a free society.

This legislation symbolizes a tremendous infringement on rights guaranteed to individuals by both the United States and Connecticut Constitutions. Due Process is an essential part of our criminal justice system and must be afforded to individuals prior to the taking of property and the taking of rights guaranteed by the Second Amendment and article first, § 15. While this may be a political “feel good” piece of legislation it tramples constitutional rights. Therefore, the Connecticut Criminal Defense Lawyers Association requests the Committee to take no action on this bill.