



STATE OF CONNECTICUT
JUDICIAL BRANCH

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**Testimony of the Judicial Branch
Judiciary Committee Public Hearing
March 13, 2023**

H.B. 6877, An Act Concerning Risk Protection Orders or Warrants and Disqualifiers for Firearm Permits and Eligibility Certificates Based on Temporary Commitment Under a Physician's Emergency Certification

Thank you for the opportunity to submit written testimony on behalf of the Judicial Branch regarding *H.B. 6877, An Act Concerning Risk Protection Orders or Warrants and Disqualifiers for Firearm Permits and Eligibility Certificates Based on Temporary Commitment Under a Physician's Emergency Certification*.

The Judicial Branch suggests that the following changes be made to Sections 29-38c and 46b-15e of the Connecticut General Statutes:

1. Make minors and persons who have been convicted of a crime that renders the person not eligible to possess, purchase or otherwise receive a firearm ineligible to be the subject of a risk protection order.

Reason: As minors and individuals convicted of certain crimes are currently not eligible to possess, purchase or otherwise receive a firearm by law, it is duplicative for law enforcement to obtain a risk protection order for the purpose of entering the person's name in the National Instant Criminal Background Check System to prevent the person from purchasing a firearm.

This will permit law enforcement and judges to devote scarce resources to those cases where an individual is legally able to purchase, possess or otherwise receive a firearm. In 2021, before the law changed, a total of 224 risk warrants were filed for the entire year. Since January 1, 2023, there have been a total of 541 risk protection orders filed. In just over two months, the increase has been 142%. If the numbers remain consistent for the remainder of 2023, we could be looking at 3,000 risk protection orders filed in 2023, which would represent an increase of 1,239% since the law changed last year.

2. Remove the words “before the judge,” in Section 1 (c).

Reason: The Judicial Branch would like to develop an electronic system for law enforcement officers to use to obtain risk protection orders after court hours, which will increase efficiency for both law enforcement and judges. This will be similar to the system that is in place for judges to review, after hours, requests for Take into Custody orders in juvenile cases. (Law enforcement officers seeking a risk warrant will still have to physically appear before a judge to obtain such a warrant.)

3. Require law enforcement officers to serve an order and, if applicable, a risk warrant no later than three days before the hearing.

Reason: Currently law enforcement officers have to serve a risk protection order and then the court has to send notice of the court date. This change will permit law enforcement officers to provide the order, warrant (if applicable), and the notice of the hearing at one time. (Requiring the service of the order and warrant, if applicable, at least three days prior to the scheduled hearing is consistent with the current timeline used for serving family restraining orders.) This will also reduce the number of individuals to whom the court is unable to mail notice of the hearing (e.g., homeless individuals, individuals with unknown addresses, etc.). If people subject to a risk protection order do not get notice of the hearing date, they may not appear to contest the continuation of the order. This change will help ensure due

process in that individuals subject to risk protection orders and warrants get notice, not only of the fact that they are subject to those orders and warrants, but also the date of their hearing.

4. Permit one police officer to apply for the risk protection order.

Reason: This change will reduce law enforcement resources needed to obtain a risk protection order. (Two police officers will continue to be needed to apply for a risk warrant where the officers will be entering a home or place of business to seize firearms, ammunition, and other deadly weapons.)

Attached to this testimony is our suggested changes. Thank you for your time and attention to this matter.

Judicial Branch's Suggested Changes to An Act Concerning Risk Protection Orders

Related to H.B. 6877, An Act Concerning Risk Protection Orders or Warrants and Disqualifiers for Firearm Permits and Eligibility Certificates Based on Temporary Commitment Under a Physician's Emergency Certification

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 29-38c of the 2022 supplement to the general statutes is repealed and the following is substituted in lieu thereof (Effective July 1, 2023):

(a) Upon complaint on oath by any state's attorney or assistant state's attorney or by any [two] police officer[s], to any judge of the Superior Court, that such state's attorney, assistant state's attorney or police officers have probable cause to believe that a person 18 years of age or older who has not been convicted of a crime that renders the person ineligible to possess, purchase, or otherwise receive a firearm poses a risk of imminent personal injury to himself or herself or to another person, the judge may issue a risk protection order prohibiting such person from acquiring or possessing a firearm or other deadly weapon or ammunition. As part of or following the issuance of such order, [if] upon complaint on oath by any state's attorney or assistant state's attorney or by any two police officers that there is probable cause to believe that (1) such person possesses one or more firearms or other deadly weapons, and (2) such firearm or firearms or other deadly weapon or deadly weapons are within or upon any place, thing or person, such judge [shall] may issue a warrant commanding a police officer to enter into or upon such place or thing, search the same or the person and take into such officer's custody any and all firearms and other deadly weapons and ammunition. Such state's attorney, assistant state's attorney or police officers may not make such complaint unless such state's attorney, assistant state's attorney or police officers have conducted an independent investigation and determined that such probable cause exists. Upon the issuance of any such order and warrant, if applicable, the judge shall order the clerk of the court to give notice to the Commissioner of Emergency Services and Public Protection of the issuance of such order and warrant, if applicable.

(b) (1) Any family or household member or medical professional who has a good faith belief that a person 18 years of age or older who has not been convicted of a crime that renders the person ineligible to possess, purchase, or otherwise receive a firearm poses a risk of imminent personal injury to himself or herself or to another person may make an application for a risk protection order investigation with the clerk of the court for any geographical area. The application and accompanying affidavit shall be made under oath and indicate: (A) The factual basis for the applicant's belief that such person poses a risk of imminent personal injury to himself or herself or to another person; (B) whether such person holds a permit under subsection (b) of section 29-28, or an eligibility certificate issued under section 29-36f, 29-37p, or 29-38n or currently possesses

one or more firearms or other deadly weapons or ammunition, if known; and (C) where any such firearm or other deadly weapon or ammunition is located, if known.

(2) Upon receipt of an application and affidavit pursuant to this subsection, if the court finds that there is a good faith belief that a person 18 years of age or older who has not been convicted of a crime that renders the person ineligible to possess, purchase, or otherwise receive a firearm poses a risk of imminent personal injury to himself or herself or to another person, the court shall order a risk protection order investigation to determine if the person who is the subject of the application poses a risk of imminent personal injury to himself or herself or to another person. Upon issuance by the court of an order for investigation, the court shall: (A) Give notice to the Commissioner of Emergency Services and Public Protection of the issuance of the order for a risk protection order investigation; and (B) immediately give notice of the order and transmit the order and the application and affidavit on which the order is based to the law enforcement agency for the town in which the subject of the investigation resides. The court shall immediately enter into the National Instant Criminal Background Check System (NICS) a record indicating that the person who is the subject of the investigation is ineligible to possess, purchase, or otherwise receive a firearm.

(3) Upon receipt of an investigation order, the law enforcement agency shall immediately investigate whether the subject of the investigation poses a risk of imminent personal injury to himself or herself or to another person. If the law enforcement agency determines that there is probable cause to believe that the subject of the investigation poses a risk of imminent personal injury to himself or herself or to another person, such law enforcement agency shall seek a risk protection order, and when applicable, a warrant pursuant to subsection (a) of this section not later than twenty-four hours after receiving the investigation order, or, if the law enforcement agency needs additional time to complete the investigation, as soon thereafter as is practicable. If the law enforcement agency determines that there is no probable cause to believe that the subject of the investigation poses a risk of imminent personal injury to himself or herself or to another person, the law enforcement agency shall notify the court, the applicant, and the Commissioner of Emergency Services and Public Protection of such determination, in writing, not later than forty-eight hours after receiving the investigation order, if practicable, or, if the law enforcement agency needs additional time to complete the risk warrant investigation, as soon thereafter as is practicable. Upon receiving such notification that there was not a finding of probable cause, the court shall immediately remove or cancel any record entered into the National Instant Criminal Background Check System associated with such investigation for which there was no finding of probable cause.

(c) A risk protection order [and warrant, if applicable,] issued under subsection (a) of this section[,] may issue only on an affidavit sworn to by the complainant [or complainants before the judge and] establishing the grounds for issuing the order [and warrant, if applicable, which shall be part of the court file]. A risk warrant issued under subsection (a) of this section may issue only on

an affidavit sworn to by the complainant or complainants before the judge establishing the grounds for issuing the warrant. Such affidavits shall be part of the court file. In determining whether there is probable cause for a risk protection order and warrant, if applicable, under subsection (a) of this section, the judge shall consider: (1) Recent threats or acts of violence by such person directed toward other persons; (2) recent threats or acts of violence by such person directed toward himself or herself; and (3) recent acts of cruelty to animals as provided in subsection (b) of section 53-247 by such person. In evaluating whether such recent threats or acts of violence constitute probable cause to believe that such person poses a risk of imminent personal injury to himself or herself or to others, the judge may consider other factors including, but not limited to (A) the reckless use, display or brandishing of a firearm or other deadly weapon by such person, (B) a history of the use, attempted use or threatened use of physical force by such person against other persons, (C) prior involuntary confinement of such person in a hospital for persons with psychiatric disabilities, and (D) the illegal use of controlled substances or abuse of alcohol by such person. In the case of a complaint made under subsection (a) of this section, if the judge is satisfied that the grounds for the complaint exist or that there is probable cause to believe that such grounds exist, such judge shall issue a risk protection order and warrant, if applicable, naming or describing the person, and, in the case of the issuance of a warrant, the place or thing to be searched. [If the requisite circumstances are met, the judge shall issue a risk protection order regardless of whether the person is already ineligible to possess a firearm.] The order and warrant, if applicable, shall be directed to any police officer of a regularly organized police department or any state police officer. The order and warrant, if applicable, shall state the grounds or probable cause for issuance and, in the case of a warrant, the warrant shall command the officer to search within a reasonable time the person, place or thing named for any and all firearms and other deadly weapons and ammunition. A copy of the order and warrant, if applicable, shall be [given within a reasonable time to] served upon the person named in the order no later than three days before the hearing scheduled pursuant to subsection (e) of this section, together with a notice informing the person that such person has the right to a hearing under this section, the telephone number for the court clerk who can inform the person of the date and time of such hearing, and the right to be represented by counsel at such hearing.

(d) (1) In the case of a warrant, the municipal or state police agency that executed the warrant shall file a copy of the application for the warrant and all affidavits upon which the warrant is based with the clerk of the court for the geographical area within which the search was conducted and with the state's attorney's office for such judicial district no later than the next business day following the execution of the warrant. Prior to the execution and return of the warrant, the clerk of the court shall not disclose any information pertaining to the application for the warrant or any affidavits upon which the warrant is based. The warrant shall be executed and returned with reasonable promptness consistent with due process of law and shall be accompanied by a written inventory of all firearms and other deadly weapons and ammunition seized.

(2) In the case of a risk protection order, not later than the next business day following the service of the order, the municipal or state police agency that served the order shall file with the court of the geographical area in the location in which the subject of the order resides a copy of the order and transmit to the state's attorney's office for such judicial district a return of service stating the date and time that the order was served. Prior to the service and return of the order, the clerk of court shall not disclose any information pertaining to the application for the order or any affidavits upon which the order is based to any person outside the Judicial Branch, the municipal or state police agency that served the order, or the state's attorney's office for the judicial district within which the order was served. The order shall be served and returned with reasonable promptness consistent with due process of law.

(e) Not later than fourteen days after the [service] issuance of a risk protection order [or] and, if applicable, [execution of] a warrant under this section, the court for the geographical area where the person named in the order or warrant resides shall hold a hearing to determine whether the risk protection order should continue to apply and whether the firearm or firearms or other deadly weapon or deadly weapons and any ammunition seized should be returned to the person named in the warrant or should continue to be held by the state. At such hearing the state shall have the burden of proving all material facts by clear and convincing evidence. If, after such hearing, the court finds by clear and convincing evidence that the person poses a risk of imminent personal injury to himself or herself or to another person, the court may order that the risk protection order continue to apply and that the firearm or firearms or other deadly weapon or deadly weapons and any ammunition seized pursuant to the warrant issued under subsection (a) of this section continue to be held by the state until such time that the court shall terminate such order pursuant to subsection (f) of this section and order the firearm or firearms or other deadly weapon or deadly weapons and any ammunition seized to be returned as soon as practicable to the person named in the warrant, provided such person is otherwise legally able to possess such firearm or firearms or other deadly weapon or deadly weapons and ammunition. If the court finds that the state has failed to prove by clear and convincing evidence that the petitioner poses a risk of imminent personal injury to himself or herself or to another person, the court shall terminate such order and warrant, if applicable, and order the firearm or firearms or other deadly weapon or deadly weapons and any ammunition seized to be returned as soon as is practicable to the person named in the warrant, provided such person is otherwise legally [able] eligible to possess such firearm or firearms or other deadly weapon or deadly weapons and ammunition. If the court finds that the person poses a risk of imminent personal injury to himself or herself or to another person, the court shall give notice to the Department of Mental Health and Addiction Services which may take such action pursuant to chapter 319i as the department deems appropriate.

(f) A risk protection order, and warrant, if applicable, shall continue to apply and the firearm or firearms or other deadly weapon or deadly weapons and any ammunition held pursuant to subsection (e) of this section shall continue to be held by the state until such time that the person

named in the order and warrant, if applicable, successfully petitions the court to terminate such order and warrant, if applicable. The person named in the order may first petition the court of the geographical area where the proceeding was originally conducted for a hearing to terminate such order, and warrant if applicable, at least one hundred eighty days after the hearing held pursuant to subsection (e) of this section. Upon the filing of such petition, the court shall (1) provide to the petitioner a hearing date that is on the twenty-eighth day following the filing of such petition or the business day nearest to such day if such twenty-eighth day is not a business day, (2) notify the Division of Criminal Justice of the filing of such petition, and (3) direct the law enforcement agency for the town in which the petitioner resides to determine, not later than fourteen days after the filing of such petition, whether there is probable cause to believe that the petitioner poses a risk of imminent personal injury to himself or herself or to another person. No finding of probable cause may be found solely because the petitioner is subject to an existing risk protection order or warrant. If the law enforcement agency finds no probable cause, the agency shall so notify the court which shall cancel the hearing and terminate the order and warrant, if applicable. If the law enforcement agency finds probable cause, the agency shall notify the court of such finding and the hearing shall proceed as scheduled. At such hearing the state shall have the burden of proving all material facts by clear and convincing evidence. If the court, following such hearing, finds by clear and convincing evidence that the petitioner poses a risk of imminent personal injury to himself or herself or to another person, the order and warrant, if applicable, shall remain in effect. If the court finds that the state has failed to prove by clear and convincing evidence that the petitioner poses a risk of imminent personal injury to himself or herself or to another person, the court shall terminate such order and warrant, if applicable. Any person whose petition is denied may file a subsequent petition in accordance with the provisions of this subsection at least one hundred eighty days after the date on which the court denied the previous petition.

(g) The court shall immediately, upon termination of a risk protection order pursuant to this section, remove or cancel any record entered into the National Instant Criminal Background Check System associated with such order.

(h) Any person whose firearm or firearms and ammunition have been ordered seized pursuant to subsection (e) of this section, or such person's legal representative, may transfer such firearm or firearms and ammunition in accordance with the provisions of section 29-33 or other applicable state or federal law, to a federally licensed firearm dealer. Upon notification in writing by such person, or such person's legal representative, and the dealer, the head of the state agency holding such seized firearm or firearms and ammunition shall, within ten days, deliver such firearm or firearms and ammunition to the dealer.

(i) Notwithstanding the provisions of section 29-36k, the Commissioner of Emergency Services and Public Protection holding any firearm or firearms or other deadly weapon or deadly weapons and any ammunition seized pursuant to a warrant issued under this section, or any local police department holding on behalf of said commissioner any such firearm or firearms or other deadly

weapon or deadly weapons or ammunition, shall not destroy any such firearm or other deadly weapon or ammunition until at least one year has passed since the date of the termination of a warrant under subsection (e) of this section.

(j) For purposes of this section, (1) “ammunition” means a loaded cartridge, consisting of a primed case, propellant or projectile, designed for use in any firearm, (2) “family or household member” means (A) a person eighteen years of age or older who is a: (i) Spouse, (ii) parent, (iii) child, (iv) sibling, (v) grandparent, (vi) grandchild, (vii) step-parent, (viii) step-child, (ix) step-sibling, (x) mother or father-in-law, (xi) son or daughter-in-law, or (xii) brother or sister-in-law of the person who is the subject of an application pursuant to subsection (b) of this section; (B) a person residing with the person who is the subject of the application; (C) a person who has a child in common with the person who is the subject of the application; (D) a person who is dating or an intimate partner of the person who is the subject of the application; or (E) a person who is the legal guardian or former legal guardian of the person who is the subject of the application, (3) “medical professional” means any person who has examined the person who is the subject of the application and who is (A) a physician or physician assistant licensed under chapter 370, (B) an advanced practice registered nurse licensed under chapter 378, (C) a psychologist licensed under chapter 383, or (D) a clinical social worker licensed under chapter 383b, and (4) “deadly weapon” means a deadly weapon, as defined in section 53a-3.

Section 2. Section 46b-15e of the 2022 supplement to the general statutes is repealed and the following is substituted in lieu thereof (Effective June 1, 2022):

(a)(1) The office of the Chief Court Administrator shall revise and simplify the process for filing an application for relief under section 46b-15. The office of the Chief Court Administrator shall ensure that any person seeking to file an application for relief is provided with a one-page, plain language explanation of how to apply for relief under section 46b-15.

(2) The office of the Chief Court Administrator shall develop and make available to the public educational materials concerning the risk protection order and warrant processes set forth in section 29-38c relating to a person 18 years of age or older who has not been convicted of a crime that renders the person ineligible to possess, purchase, or otherwise receive a firearm and who poses a risk of imminent personal injury to himself or herself or to another person. The office of the Chief Court Administrator shall develop and make available to the public in hard copy and electronically on the Internet web site of the Judicial Branch a form to enable a family or household member or medical professional, each as defined in section 29-38c, to apply to have a risk protection order investigation ordered and a one-page, plain language explanation of how to apply for such order. The form shall contain questions designed to solicit information significant to a determination. The public educational materials and form shall prominently advise the applicant that a risk protection order or warrant may be sought through and with the assistance of a municipal or state police agency or a state's attorney's office, and of the benefits of doing so.