Judiciary Committee
JOINT FAVORABLE REPORT

Bill No.: HB-5505
Title: AN ACT CONCERNING SELF-DEFENSE, DEFENSE OF A THIRD PERSON AND ASSISTING IN OR EFFECTING AN ARREST AS AFFIRMATIVE DEFENSES.
Vote Date: 3/28/2024
Vote Action: Joint Favorable
PH Date: 3/20/2024
File No.:

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SPONSORS OF BILL:

Judiciary Committee

CO-SPONSORS OF BILL:

Rep. Maryam Khan, 5th Dist.
Rep. Craig C. Fishbein, 90th Dist.
Rep. Susan M. Johnson, 49th Dist.
Rep. Aundre Bumgardner, 41st Dist.
Rep. Robyn A. Porter, 94th Dist.
Rep. Travis Simms, 140th Dist.

REASONS FOR BILL:

If someone witnesses an assault, their first instinct might be to help stop it, but they could fear getting arrested for assault themselves. This bill would permit a defendant to request a case be dismissed due to an affirmative defense of self-defense, defense of a third person or assisting in or effecting the arrest of a person. The bill also adds to the list of factors a court considers when determining conditions of pretrial release when someone has available affirmative defenses.

RESPONSE FROM ADMINISTRATION/AGENCY:

External Affairs Division, State of Connecticut Judicial Branch: The Judicial Branch takes no position on the bill; however, they expressed concerns in their testimony. They noted that the bill proposed changes that are "entirely contrary to the existing criminal justice process". They explained that this bill would allow the defendant to apply for dismissal before

trial and the court would be required to schedule a hearing within 45 days. If the defendant establishes by a preponderance of the evidence that they qualify for the affirmative defense, the court shall dismiss the case or charge, instead of the defendant having the burden of proof to show that an affirmative defense exists, and the prosecution having the opportunity to rebut the affirmative defense beyond a reasonable doubt, as established by current law. They also noted that this bill will have an impact on the Court Support Services Division (CSSD) and a resource impact on the Judicial Branch, by adding to the list of factors a court must consider when determining conditions of pretrial release of a defendant or arrested person and whether this individual has any available affirmative defense, which would require the division to revalidate its pretrial risk assessment tool. Additionally, if the defendant asserts an affirmative defense, the CSSD would be required to assess the validity of the affirmative defense, and they stated that the division has no expertise or resources to make such a determination. To finish, they expressed that this bill may also have an impact on the victims, as it is very likely that defendants will have the right to witnesses to testify at the hearing, which may include the crime victims.

Patrick Griffin, Chief State's Attorney, State of Connecticut Division of Criminal Justice: The Division of Criminal Justice testified in opposition to the bill because section one directly conflicts with Connecticut law regarding self-defense, defense of a third person, or assisting in or effectuating the arrest of a person. They also oppose section two of the bill, which adds to the list of factors that a court would consider when determining conditions of pretrial release of a defendant or arrested individual, whether such person has any available "affirmative defenses," which is not supported by law. He explained that section one of the bill would establish a mechanism for a defendant to obtain pretrial court dismissal of a case or charges due to an "affirmative defense" based on "self-defense, defense of a third person, and assisting in or effecting the arrest of a person"; however, those are not affirmative defenses according to Connecticut law; they are justified defenses.

NATURE AND SOURCES OF SUPPORT:

***Nicolle Lipkin, Attorney, Connecticut Criminal Defense Lawyers Association*:** She testified in support of the bill and provided three reasons for it. First, this bill would allow the accused individual to receive pretrial relief, which will enable them to avoid the burdensome "life" of a criminal case; this can subject them to an expensive and humiliating process, similar to someone who does not have a self-defense claim. The second factor is that this bill would require the court to consider the affirmative defense of self-defense when setting conditions of release, allowing an accused the liberty they deserve. The third reasoning is that this bill would allow the accused individual to have a hearing without being penalized; it would require the court to schedule a hearing within 45 days once the individual raises the issue in court. She mentioned that there is a similar procedure in place; however, this procedure requires an accused who believes their motion is dispositive of their criminal case, such as a motion to dismiss, to request a pretrial evidentiary hearing, but they would have to enter a conditional nolo contendere plea, which means that if they do not prevail at the hearing, the accused is immediately sentenced.

***Jess Zaccagnino, Policy Counsel, American Civil Liberties Union of Connecticut (ACLU-CT)*:** She testified in support of the bill, highlighting that it would enable a defendant to request dismissal of their case or charge by a judge based on the affirmative defense of self-defense, defense of a third person, or assisting in or effecting the arrest of a person.

Additionally, the bill would allow this affirmative defense to be a factor when determining the conditions of pretrial release, creating a specific process that permits the judge to determine whether to dismiss or charge the case, rather than a prosecutor. She also noted that the bill would aid individuals acting with the intention to protect another person, rather than with the intention to harm another. Furthermore, she mentioned that the bill would assist individuals by requiring judges to make a determination on the motion to dismiss within 45 days of the defendant's request, allowing them to avoid months of court dates and undergoing accelerated rehabilitation programs.

Terri Ricks, Smart Justice Leader, American Civil Liberties Union of Connecticut (ACLU-CT): She testified in favor of the bill, sharing a personal experience from 1991 in which she was shot by a man in a club after accidentally stepping on his foot. One of her friends intervened to defend her and prevent further harm but was subsequently arrested by the police and incarcerated for three days. She emphasized that jail was not the appropriate place for her friend and recounted that many others have experienced similar situations. Urging the committee to support the bill, she emphasized its importance in situations where individuals act with the intent to protect another person rather than to cause harm.

Ivelisse Correa, Vice President, Good Trouble Advocates, and Executive Director, BLM860 Organization: She testified in support of the bill emphasizing the importance of a citizen's ability to help and defend victims of a crime without fear or legal repercussions.

Aaron Romano, Managing Attorney: He testified in support of the bill and elaborated on the changes it would bring to the law. He explained that there are two proposed changes in this bill. Firstly, it pertains to bail, allowing the commissioner's office and the courts to consider self-defense when setting bail and evaluating the strength of the state's case. Secondly, it permits a motion to dismiss to be filed in cases where individuals claim self-defense, enabling attorneys to seek dismissal of their case prior to trial and empowering the court to make the decision to dismiss a case. He explained that the bill aims to alleviate backlog within the court system and reduce the impact on citizens who acted in self-defense.

NATURE AND SOURCES OF OPPOSITION:

None expressed.

Reported by: Katherine Tocto-Quituisaca **Date:** 4-3-24