



State of Connecticut

DIVISION OF PUBLIC DEFENDER SERVICES

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**Testimony of the Office of Chief Public Defender
Attorney John R. DelBarba, Supervisory Assistant Public Defender**

JUDICIARY COMMITTEE - MARCH 11, 2024

Raised House Bill No. 5326

**AN ACT CONCERNING THE FACTORS THAT A COURT WILL CONSIDER WHEN
DECIDING WHETHER A RESTRAINING ORDER IS TO BE EXTENDED**

The Office of Chief Public Defender has concerns in regard to **H.B. 5326 An Act Concerning The Factors That A Court Will Consider When Deciding Whether A Restraining Order Is To Be Extended** and opposes it as drafted. Currently the time period for a restraining order cannot exceed one year pursuant to subsection (g) of C.G.S 46b-15, *Relief for victim of domestic violence. Application. Court orders. Duration. Service of application, affidavit, any ex parte order and notice of hearing. Copies. Expedited hearing for violation of order. Other remedies.* Under this statute, the court has the discretion to extend an order for "additional time as the court deems necessary."

The bill proposes criteria to be considered by the court if determining whether to extend the order. While this office is not opposed to articulating factors for the court's consideration when deciding whether to extend an order, the language as drafted does not consider risk and could permit an extension of an order to go on indefinitely.

This office proposes that when addressing whether or not an order should be extended, the court should consider *and weigh* the following factors:

- Whether there exists an **imminent or ongoing risk** to the applicant.
- The severity of the initial grounds of such order.
- The existence, if any, of ongoing impact on the applicant, if supported by evidence.
- Adherence by the respondent to the provisions of the existing restraining order.
- New or ongoing behavior on the part of the respondent that meets the criteria of domestic violence.

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The issuance of such initial order is based on imminent risk or threat. Therefore, a temporal element of risk should be considered and *weighed* in any extension of this order. Without any analysis of current risk, these orders appear that they could go on forever, which would be inconsistent with the issuance of the order in the first place.

The severity of the initial grounds of such order should be *weighed* among these other factors. Seriousness of the initial grounds speaks for itself. One may be involved with a relatively minor matter - for example - disorderly conduct which is a "C" misdemeanor versus a serious felony and a court may give different weight based on these grounds.

The existence, if any, of ongoing impact on the applicant. Ongoing impact on the applicant, if supported by evidence, is another factor that should be *weighed* by the court.

Adherence to the provisions of existing restraining order. Obviously, failure to comply with the existing order is a factor that should be *weighed and weighed against* the respondent in favor of extending the order.

New or ongoing behavior on the part of the respondent that meets the criteria of domestic violence. New or ongoing behavior - including the lack thereof - that meets the criteria of domestic violence should be a factor that either *weighs against or in favor* of the respondent.

Therefore, this office requests that the Committee take no action on the bill as drafted and suggest that the following language be substituted in lieu. Thank you.

The Office of Chief Public Defender proposes the following substitute language in lines 9 through 11 below, in **CAPS, BOLD AND UNDERLINED**:

4 (g) No order of the court shall exceed one year, except that an order

5 may be extended by the court upon motion of the applicant for such

6 additional time as the court deems [necessary.] advisable for continued

7 protection. In addition to other legally permissible factors to be

8 considered by the court when determining whether an extension is

9 advisable, the court shall consider **AND WEIGH: WHETHER THERE EXISTS AN**
IMMINENT OR ONGOING RISK TO THE APPLICANT; The severity of the initial grounds

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10 for such order, the ongoing impact on the applicant **IF SUPPORTED BY EVIDENCE**, the
11 respondent's

12 adherence to the provisions of any existing restraining order, [~~or~~] **AND** new or

13 ongoing behavior on the part of the respondent that meets the criteria

14 of domestic violence. The fact that a respondent has not engaged in acts

15 that constitute domestic violence, as defined in section 46b-1, during the

16 pendency of an order shall not itself constitute sufficient grounds for

17 denying or failing to extend the order, for allowing the order to expire

18 or be vacated or for refusing to issue a new order. If the respondent has

19 not appeared upon the initial application, service of a motion to extend

20 an order may be made by first-class mail directed to the respondent at

the respondent's last-known address.