



State of Connecticut

DIVISION OF PUBLIC DEFENDER SERVICES

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**Testimony of the Office of Chief Public Defender
Jeffrey LaPierre, Senior Assistant Public Defender**

VETERANS' AND MILITARY AFFAIRS COMMITTEE - MARCH 7, 2024

Raised Bill No. 5403

AN ACT CONCERNING MILITARY PROTECTION ORDERS AND OTHER INTERPERSONAL VIOLENCE PROTECTIONS

I am Veteran and a current member of the Connecticut Army National Guard with over 32 years of service. I have commanded Army National Guard units at the company level three times, Battalion, and Brigade level twice. I am also a Senior Assistant Public Defender of over 23 years, practicing criminal indigent defense in multiple offices throughout the state.

I testify now on behalf of the Office of Chief Public which opposes any and all changes raised in this bill.

HB 5403, § 1, Extending Authority of Military Protection Orders

Adding the language expanding the scope of *foreign orders of protection* to include *military protection orders* [lines 10-14 of H.B. 5258] is unnecessary as currently both the state civil and criminal court systems have procedures in place to sufficiently protect victims as well as ensure those accused of crimes or are the subject of civil protective orders receive the required and necessary constitutional due process. Expanding the definition of *foreign orders of protection* to include *military protection orders* [lines 10-14 of H.B. 5258] likely violates or conflicts with the preexisting law in another section of GS 46b-15a(b)[lines 15-16 H.B. 5258]. Per GS 46b-15a(b), in order to provide full faith and credit to *foreign order of protection*, it must be consistent with 18 USC 2265. [lines 15- 16 H.B. 5258] 18 USC 2265 states:

(b) PROTECTION ORDER.—A protection order *issued by a State, tribal, or territorial court* is consistent with this subsection if—

(1) such court has jurisdiction over the parties and matter under the law of such State, Indian tribe, or territory; and

(2) reasonable notice and opportunity to be heard is given to the person against whom the order is sought sufficient to protect that person’s right to due process. In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by State, tribal, or territorial law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent’s due process rights.

Military protection orders are not issued by a court, rather they are issued by commanders including company commanders who could be officers with 3-4 years of service with no legal experience. Since *military protection orders* are not ordered by courts, they do not qualify as a valid foreign order under 46b-15a(b) [lines 15-16 of HB 5258] as they are not consistent with 18 USC 2265. Thus, this requested amendment creates an unnecessary legal conflict within the same statute.

Any issue related to domestic violence that has come to my attention or the attention of my subordinate commanders is normally **after** an arrest and imposition of a protective or civil order of protection. In instances where Soldiers are the victim, we refer them to local authorities and or office of victim services (OVS) who are trained and resourced to assist victims of domestic violence.

As a criminal defense attorney for over 23 years, this bill does nothing to increase the safety of victims nor protect the rights of the accused. It attempts to solve a problem that does not exist with language that at best will create confusion by law enforcement and at worst is legally inconsistent with the same statute. We have a judicial process with protections, safeguards, support, and funding to address issues of domestic violence for all citizens including Servicemembers and their families. We should not simultaneously increase criminal responsibility for Servicemembers while reducing legal safeguards that other Connecticut citizens rightly enjoy.

HB 5403, § 2, Expanding the law to criminalize National Guard members who do not follow directives of commanders

This section expands the scope of criminal law ONLY to members of the National Guard. This is unfair, unnecessary and creates confusion as to what conduct is prohibited. This legislation is a solution without a problem. Currently the law regarding Harassment is sufficient to protect the rights of the citizens of Connecticut including both victims and the accused. All National Guard members, just as other citizens of Connecticut, are protected by and subject

to the state criminal and civil law. There is no need impose greater criminal liability against National Guard members than we do for other citizens. This is counter to our state’s long standing statutory support for equity and fairness.

HB 5403, § 3, Unfunded mandate that applies only to the Connecticut National Guard

This section requires funding for victims of sexual harassment and sexual assault who are or where members of the National Guard. Although support of National Guard members is something this office fully supports, it is done through various other means. This proposed mandate is not funded. In addition, the state provides comprehensive and funded support for all victims of crime including victims of sexual assault through the Office of Victims Services (OVS). In addition to OVS, victims have access to the victims compensation fund, as well as family violence victim advocates all provided by the state through the Judicial department. If there is any additional need in this area, additional funding should be provided to the current programs and systems.

For the above reasons, the Office of Chief Public Defender strongly opposes this bill and urges the Committee to take no action.