



State of Connecticut
DIVISION OF PUBLIC DEFENDER SERVICES

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**Raised Bill No. 5310 - AN ACT CONCERNING AN AFFIRMATIVE DEFENSE FOR
A CRIMINAL VIOLATION OF A PROTECTIVE ORDER OR A STANDING
RESTRAINING ORDER**

The Office of Chief Public Defender (OCPD) supports *Raised Bill 5310, An Act Concerning an Affirmative Defense for a Criminal Violation of a Protective Order or a Standing Restraining Order*, proposed by this office, which provides for an affirmative defense when a protected person directly, indirectly, or through a third person, initiates or encourages the contact or conduct prohibited pursuant to the order, unless the defendant's resulting contact or conduct constitutes a separate criminal offense.

These offenses function very similarly to strict liability offenses but are general intent crimes. Public Defenders have represented thousands of indigent defendants who would agree that there is a fundamental unfairness in the design of these offenses and the lack of any affirmative defense. This bill would provide an opportunity for a person so charged to present evidence as to why they committed the conduct they are charged with.

These individuals would still be subject to an arrest. What is proposed is simply a defense to what we as public defenders see throughout the State – many situations where the protected party initiates contact and, but for that contact, the respondent nonetheless is arrested for violation of a protective order – a D Felony generally (this can also be charged as a C Felony). This would be an affirmative defense and can only be raised at trial.

The protected party is well protected by statute to ensure that even if they conspire to violate the protective order, they will not be charged.

Raising an affirmative defense is separate from the prosecution's burden, which is to prove every element of an offense beyond a reasonable doubt. Raising an affirmative defense places the burden on the defendant to demonstrate that they were justified or had a reason for committing the conduct. This bill provides a specific factor which can be presented by the defendant when raising an affirmative defense – generally, that they did not initiate contact and that the protected person, directly, indirectly or through a third person, initiated or encouraged contact, unless the defendant's resulting contact or conduct constitutes a separate and apart criminal offense.

There are several situations this proposed legislation is intended to address. For example, when there is a domestic violence arrest, generally, across the state there is a protective order issued. There are different types of protective orders that can be issued. This proposed legislation is proposed to address, but is not limited to, the following examples that public defenders have observed:

1. **Family** – An initial arrest occurs because there is an arrest within a family setting. For example, this could be a disagreement among siblings, between parents, or between children and parents. This can be as simple as a disorderly conduct that is a broad catch-all statute used for behaviors intended to cause inconvenience, annoyance, or alarm, or recklessly involve thereof. It may also involve engaging in fighting, tumultuous or threatening behavior, unreasonable noise, and other similar behavior.¹ The point is that it doesn't have to involve even touching or an assault.

It's a fact that individuals have been arrested after being invited over to their parents' home over the holidays to try to gather everyone together and discuss what happened, only to end up arrested for Violating a Protective Order because someone calls the police (including neighbors) simply because there is contact. It could be as simple as a text to get together. That would also lead to an arrest for a violation of a protective order.

¹ (a) A person is guilty of disorderly conduct when, with intent to cause inconvenience, annoyance or alarm, or recklessly creating a risk thereof, such person: (1) Engages in fighting or in violent, tumultuous or threatening behavior; or (2) by offensive or disorderly conduct, annoys or interferes with another person; or (3) makes unreasonable noise; or (4) without lawful authority, disturbs any lawful assembly or meeting of persons; or (5) obstructs vehicular or pedestrian traffic; or (6) congregates with other persons in a public place and refuses to comply with a reasonable official request or order to disperse; or (7) commits simple trespass, as provided in section 53a-110a, and observes, in other than a casual or cursory manner, another person (A) without the knowledge or consent of such other person, (B) while such other person is inside a dwelling, as defined in section 53a-100, and not in plain view, and (C) under circumstances where such other person has a reasonable expectation of privacy
(b) Disorderly conduct is a class C misdemeanor.

2. **The Pull Over** -There have been numerous cases where the protected party initiated contact to get together with an individual to try to work things out. They may have then gone out to eat, to the casino, or to meet with friends, only to be pulled over by the police for violating some traffic infraction. When both parties' identification are run by the police, our client would be taken into custody simply for being in the same car with the protected party.
3. **The Really Unexpected** – Innumerable clients have been arrested where they may be hanging out and/or in bed sleeping, and the police are called for a reason that has nothing to do with the client or the protected party. Once the police are involved and they run everyone's identification, based on the protective order, the client will be arrested, taken into custody, and charged with a felony.

While this office could provide further examples and would be happy to discuss further, it is important to also point out that there were over 11,363 violations of protective orders last year where every defendant arrested was held on bond for a period of time. That is for a D felony. The second most common D felony charge among those detained was Burglary in the Third Degree, for which 3,867 individuals were detained.

As a member of the Pre-trial Detention working group for the Sentencing Commission, this office presented a PowerPoint presentation on some of these issues. The numbers referenced here were received from members of this collaborative working group that involves heads of all relevant agencies.

Additionally, we would point out again that passage of this bill does not mean an individual would not be charged. They would still be arrested for violation of a protective order. However, they would simply be permitted to assert a defense that so far has been unavailable despite the disparate unfairness that sometimes occurs in these cases.

To prove an affirmative defense, the defendant must prove the affirmative defense by a preponderance of the evidence. The jury must be instructed that while the state must prove the crime beyond a reasonable doubt, the defendant must prove the affirmative defense. Again, the affirmative defense is one where the protected party initiates contact and, but for that contact, the respondent nonetheless is arrested for violation of a protective order. Being able to raise an affirmative defense at trial presents evidence for the court or jury to consider that explains the defendant's reasoning based upon other factors.

In conclusion, the Office of Chief Public Defender thanks the Committee for its consideration **and respectfully requests that this Committee vote favorably** on this bill. Thank you.