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Raised Bill No. 5548
An Act Concerning Domestic Violence

Judiciary Committee Public Hearing
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Raised Bill 5548, An Act Concerning Domestic Violence, seeks to implement the recommendations contained in the current reports of both the ***Speaker's Task Force on Domestic Violence*** and the ***Task Force on Law Enforcement Response to Family Violence.*** Each report reflects ongoing efforts to examine and shape the public policy and legislation related to Connecticut's response to the serious issue of incidents of domestic violence. The Office of Chief Public Defender (OCPD) acknowledges the substantial efforts of both of these groups and significant legislative changes proposed in the raised bill. As a member of the ***Law Enforcement Response Task Force***, OCPD would like to thank co-chairs, Representatives Mae Flexer and Karen Jarmoc, for their leadership and acknowledge the other members of the task force for their hard work. While OCPD supports the recommendations of the ***Law Enforcement Response Task Force*** that have made their way into this bill, our Office has concerns with the implementation and impact of several sections of this bill.

The Office of Chief Public Defender opposes the changes found in **Section 6** of the Raised Bill and believes that such changes are unnecessary and will result in unintended negative consequences affecting courtroom practice. The bill adds language that appears to alter the eligibility criteria for entry into the Family Violence Education Program, (FVEP) by precluding offenders charged with *"an offense which **involves** the infliction of serious physical injury, as defined in section 53a-3"* of the statutes from program participation. The existing statute already adequately ensures that the FVEP is only granted in appropriate cases. Few, if any offenders whose conduct causes or results in "serious physical injury", are being granted the FVEP.

Under the existing law, an offender charged with any class A, B, or C felony is precluded from using the FVEP. An offender charged with a class D felony is required to make a showing of good cause before the program is granted. Most importantly, the court has the ultimate discretion to grant admission into the program in any case, even if the offender is charged with only a misdemeanor.

This bill introduces a requirement that the court conduct some type of inquiry into the existence of "serious physical injury" when considering an application to the FVEP. This will only serve to necessitate additional legal proceedings which may involve testimony that are not needed to make sound judgments related to FVEP use.

C.G.S. §53a-3(4) defines "serious physical injury" as a physical injury which creates a substantial risk of death, or which causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ. Our statutes also separately define "physical injury" as an impairment of physical condition or pain, C.G.S. §53a-3(3). Beyond these basic definitions, one must examine existing case law to determine what distinguishes "physical injury" from "serious physical injury".

Whether or not a "victim has suffered a "serious physical injury" within the meaning of C.G.S. §53a-3(4) is a question of fact for the jury . . . *State v. Almeda, 211 Conn. 441 (1989).* In 2009, in ***State v. Ovechka, 292 Conn. 533,*** our Supreme Court confirmed this noting that the nature of the inquiry regarding "serious physical injury" is "fact intensive" and "[g]iven the difficulty of drawing a precise line as to where 'physical injury' leaves off and 'serious physical injury begins' we remain mindful that '[w]e do not sit as a thirteenth juror who may cast a vote against the verdict based upon our feeling that some doubt of guilt is shown by the cold printed record'." *Ovechka at 547.* [1]

This conclusion has serious implications for the issue of FVEP eligibility. It is easy to imagine the need for the court to undertake time consuming hearings verging on mini-trials when determining the existence of "serious physical injury" in these cases. Arguments by counsel with respect to the issue are inevitable as counsel will be ethically obligated to brief and argue this issue as it arises when seeking admittance to the FVEP.

The fact is that the court need make no such "fact intensive" inquires when considering FVEP applications using the current "good cause" standard[2]. There are only two FVEP eligible charges that contain, as an element, the resulting infliction of "serious physical injury"[3]. In the case of other class D felonies which contain no element related to injury, the courts routinely examine all the facts and circumstance related to that particular case when considering FVEP eligibility. The "good cause" argument required by the current statute is a matter of regular

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[2] The term "good cause" is used in all areas of the law and the definition is usually left to its common understanding and usage. That common understanding and usage is articulated in Black's Law Dictionary (9th Ed. 2009) as "[a] legally sufficient reason. *State, Swoverland, 2011 Conn. Super. LEXIS 2342 (Conn. Super. Ct. Aug. 31, 2011).*

[3] §53a-60, et.seq, Assault 2nd degree and §53a-61, Assault 3rd degree.

courtroom practice. It requires that courts use common sense when considering supported facts and overarching policy considerations. It also permits the court to consider the input of victims and take into account victim and public safety. It is the experience of the attorneys of the Division of Public Defender Services that while the granting of FVEP and other diversionary programs is a frequent part of our daily dockets, the determination of eligibility and suitability is, appropriately, a contentious and highly scrutinized process.

As a final note, if section 6 of the proposed bill retains the current language, we would propose a minor change. We would recommend substitute language that uses either the word "cause" or "result" instead of the word "involves" in line 234. This change would create language that is more consistent with relevant and existing statutes.[4]

[4] See, *C.G.S. §53a-59, Assault in the first degree "*. . . he **causes** such injury . . ." and §53a-59c, *Assault of a pregnant woman* . . . "(2) such assault **results** in . .". See also §53a-60, §53a-61, Assault 2nd degree and Assault 3rd degree, using the word "**causes**".