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**DIVISION OF PUBLIC DEFENDER SERVICES**

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**Testimony of Michael Alevy, Senior Assistant Public Defender**  
**Office of Chief Public Defender**  
**Judiciary Committee Public Hearing – March 31, 2014**

***Raised Bill No. 5593, An Act Concerning Domestic Violence and Sexual Assault***

The Office of Chief Public Defender has concerns with ***Raised Bill Number 5593, An Act Concerning Domestic Violence and Sexual Assault***. This bill makes significant changes to the substance of civil restraining orders, the criminal penalties associated with violations of both civil and criminal orders of protection and mandatory minimum sentences for certain offenses.

**Section 1** of the bill significantly expands the type of conditions that may be imposed upon a person who is the subject of a civil restraining order issued pursuant to ***C.G.S. §46b-15 Relief from physical abuse, stalking or pattern of threatening by family or household member***. The expansion takes the form of the potential imposition of certain financial conditions. Such conditions could prohibit the person subject to the order from terminating household utility services, making changes to home, health or automobile insurance policies or encumbering or concealing other types of property owned by the applicant or the respondent.

Generally, the issuance of civil restraining orders is within the purview of the civil or family court and does not directly impact the function of this agency. However, the Office of Chief Public Defender is concerned that the current bill does not make clear whether a violation of the financial conditions of the civil order is criminal or civil in nature. If the violation of the financial conditions is a criminal offense, there could be a significant increase in this agency's caseloads which could result in increased financial costs to this agency. Any criminal violation of a restraining order is punishable as class D felonies pursuant to ***C.G.S. §53a-223b***, and indigent defendants will a right to have appointed counsel in those cases. The Office of Chief Public Defender respectfully requests that the committee to take no action with respect to this section until the ambiguities relating to the penalty are resolved.

**Sections 4, 5, and 6** of the bill all function similarly to increase the criminal penalties for certain violations of various orders of protection. The new proposed language increases the penalty for a violation of a restraining order, protective order and standing criminal protective order from a class D felony to a class C felony when the violation of the order involves (1) the imposition of restraint upon a person or liberty of a person, or (2) threatening, stalking, assaultive or other unlawful conduct. These types of violations are distinguishable from those that might involve only prohibited contact, which remain class D felonies. As a result, given the current

status of the law as it relates to violations of orders of protection, this office believes that increasing criminal penalties associated with these violations is unwarranted and unnecessary.

The table below shows existing statutes that provide for sentencing enhancements in a variety of factual contexts.

Such contexts include:

1) Violations of conditions of release. An accused may face additional prosecution under the separate crime for violation of these court set conditions. In all cases an arrest on a new charge may constitute a violation. A conviction under either of these statutes could lead to an additional 1 to 5 years of incarceration depending upon the degree of the new charge.

2) Connecticut’s persistent offender statutes also provide enhanced penalties for a person who is convicted for a second time of violation of orders of protection. Additionally, these statutes provide courts the ability to enhance penalties for repeated violations of the crimes that generally give rise to the actual order of protection in the first place.

3) Finally, in the case of a violation of an order that this bill contemplates - those based on new criminal conduct - the court always has authority to impose consecutive sentences on each charge and conviction to arrive at an appropriate sentence given the facts and circumstances of a particular case.

<b>53a-222a. Violation of conditions of release in the second degree: Class A misdemeanor</b>	A person is guilty of a violation when, while charged with the commission of a misdemeanor, he intentionally violates one or more of the imposed conditions of release.
<b>53a-222. Violation of conditions of release in the first degree: Class D felony</b>	A person is guilty of a violation when, while charged with the commission of a felony, he intentionally violates one or more of the imposed conditions of release.
<b>53a-40b. Additional term of imprisonment authorized for offense committed while on release.</b>	A person convicted of an offense committed while released on bond or a promise to appear may be sentenced, in addition to the sentence prescribed for the offense to (1) a term of imprisonment of not more than ten years if the offense is a felony, or (2) a term of imprisonment of not more than one year if the offense is a misdemeanor.
<b>53a-40d. Persistent offenders of crimes involving assault, stalking, trespass, threatening, harassment, criminal violation of a protective order or criminal violation of a restraining order.</b>	A persistent offender of crimes involving assault, stalking, trespass, threatening, harassment, criminal violation of a protective order or criminal violation of a restraining order is a person who (1) stands convicted of one of those crimes and has been previously convicted of certain other enumerated crimes including criminal violation of a protective order or criminal violation of a restraining order. When any person has been found to be a persistent offender of such crimes, the court shall, in lieu of imposing the sentence authorized for the crime impose the sentence of imprisonment for the next more serious degree of misdemeanor or felony.

**Section 3** of the bill creates a task force to broadly study the service of restraining orders issued pursuant to *C.G.S. §46b-15*. The bill requires only that a representative of this office be appointed to the task force by the minority leader of the Senate. The Office of the Chief Public Defender respectfully requests that the bill permit the Chief Public Defender or *her* designee to represent this agency on the task force.

**Section 30** of the bill amends *C.G.S. §53a-70b, Sexual assault in spousal or cohabiting relationship: Class B felony*. The amending language creates a new 2 year mandatory minimum sentence for a violation. The Office of Chief Public Defender opposes the creation of the new mandatory minimum and believes that court should have the discretion to sentence the person pursuant to the statutory scheme currently in effect based upon the evidence and the circumstances in the case. Mandatory minimum sentences tie the hands of the judge when determining the appropriateness of the sentence. Prosecutors have, not only the power to charge a person with the commission of an offense but also, the discretion to charge a person with a crime for which mandatory sentence of incarceration would be required. The court, as the neutral arbiter, should be able to exercise its discretion after consideration of all the facts and circumstances when sentencing a person.

The threat of the imposition of a mandatory minimum sentence can act coercively to induce a person to plead to the crime, even if a person pleads to a crime of a lesser degree. A person might even plead guilty to a lesser offense even if not guilty just to avoid a mandatory sentence. This coercive power actually reduces the number of cases that ultimately go to trial and increases the number of plea bargains. It also creates “assembly line” justice rather than focusing on a person’s individual frailties and vulnerabilities. For these reasons, this office urges this Committee to reject this section of the proposed bill.

**Section 34** of the bill creates a new crime, a class A misdemeanor, when a person knowingly publishes, disseminates or discloses the confidential location of an emergency shelter operated by a domestic violence agency, without written authorization from agency that operates the shelter. While the Office of Chief Public Defender understands the impetus for the creation of this new offense which clearly intends to protect victims of domestic abuse, it is concerned that the present proposed language is overly broad. As written, this office believes that the new statute would criminalize conduct in a way not intended by the proponents. We respectfully request that the Committee take no action on this section of the bill.

The Office of Chief Public Defender thanks the Committee for its consideration.