

Legislative History for Connecticut Act

Act Number: 07-123
Bill Number: 7313
Senate Pages: 3389-3395, 3416-3418 **10**
House Pages: 3874-3912, 5236-5240 **44**
Committee: Judiciary: 3676-3688 **13**

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Senate

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Thank you, Mr. President. Mr. President, if there's no objection, might this item be placed on the Consent Calendar?

THE CHAIR:

Hearing and seeing none, so ordered. Mr. clerk.

THE CLERK:

Calendar Page 7, Calendar 618, File 650 and 852, Substitute for House Bill 7313, An Act Concerning Domestic Violence, as amended by House Amendment Schedules "A" and "B", Favorable Report of the Committee on Judiciary and Public Safety.

THE CHAIR:

Senator McDonald.

SEN. MCDONALD:

Thank you, Mr. President. Mr. President, I move acceptance of the Joint Committee's Favorable Report and passage of the bill in concurrence with the House.

THE CHAIR:

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Acting on approval of the bill, will you remark further, Sir?

SEN. MCDONALD:

I will, Mr. President. Mr. President, there is a problem in our domestic violence laws and domestic family relations laws with the setting of bail conditions when an individual is arrested, most normally, over the weekend.

And, Mr. President, under current law, police officers are not permitted to issue non-financial conditions of release.

Mr. President, this bill would allow police officers to issue those non-financial conditions of release for a short period of time until the defendant can be arraigned in court, and the terms of the non-financial conditions of release are reviewed by a judge.

Mr. President, oftentimes, it is the case that bail commissioners are not readily available for this

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activity, and yet, the restraining orders need to be issued.

And, Mr. President, this bill also creates three separate categories of a new crime, called strangulation, and it establishes three degrees of strangulation when it involves individuals who are victims of assault.

THE CHAIR:

Thank you, Senator McDonald. Will you remark further on the bill? Will you remark? Senator Roraback.

SEN. RORABACK:

Thank you, Mr. President. I rise in strong support of the bill and want to credit the many different constituencies who have labored long and hard over the past two years to put together a new degree of protection, which has previously been unavailable, namely, the ability of the police, over the weekend, to issue a protective order so that when

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someone makes bond, they can be released on a condition that they not return and inflict further harm on the victim.

Mr. President, there were, and the constituencies I'd like to credit are, most importantly, the advocacy organizations who work on behalf of victims of domestic violence but also the Connecticut Police Chiefs Association, prosecutors, the public defenders, everyone who has a stake, the Judicial Branch, everyone who has a stake in keeping people safe.

Mr. President, the Clerk has an amendment, which is LOC 7807. If the Clerk could please call the amendment and if I might be permitted to summarize.

THE CHAIR:

Mr. Clerk.

THE CLERK:

LCO 7807, which will be designated as Senate Amendment Schedule "A". It is offered by Senator Roraback of the 30th District, et al.

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THE CHAIR:

Senator Roraback.

SEN. RORABACK:

I move adoption.

THE CHAIR:

Please proceed, Sir.

SEN. RORABACK:

Mr. President, this amendment clarifies an amendment which was passed in the House the other night. It is largely technical, and I would urge my colleagues to join me in supporting it. Thank you.

THE CHAIR:

Will you remark further on Senate Amendment "A"?
Senator McDonald.

SEN. MCDONALD:

Mr. President, I rise in support of the amendment and would like to thank Senator Roraback for his efforts in cleaning up after the House.

THE CHAIR:

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Easy on the House, Guys. We need them, you know. Will you remark further on Senate Amendment "A"? Will you remark further? Senator Roraback.

SEN. RORABACK:

Thank you. Only to say our work is never done, Mr. President. Thank you.

THE CHAIR:

I understand. Will you remark further on Senate Amendment "A"? Will you remark further? If not, I will try your minds. All those in favor, signify by saying "aye".

SENATE ASSEMBLY:

Aye.

THE CHAIR:

Opposed, "nay". The ayes have it. Senate Amendment "A" is adopted. Senator McDonald.

SEN. MCDONALD:

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Thank you, Mr. President. Mr. President, if
there's no objection, might this item be placed on the
Consent Calendar?

THE CHAIR:

Hearing and seeing none, so ordered.

THE CLERK:

Calendar Page 8, Calendar 623, Files 120, 539,
861, Substitute for House Bill 7270, An Act Concerning
the Emergency 9-1-1 Surcharge, the Misuse of the
E 9-1-1 System and the Emergency Management and
Homeland Security Coordinating Council, as amended by
House Amendment Schedules "A" and "B", Favorable
Report of the Committees on Public Safety, Energy and
Technology, Finance, Revenue and Bonding, and
Judiciary.

THE CHAIR:

Senator Stillman.

SEN. STILLMAN:

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THE CHAIR:

Mr. Clerk.

THE CLERK:

An immediate roll call has been ordered in the Senate on the Consent Calendar. Will all Senators please return to the Chamber.

An immediate roll call has been ordered in the Senate on the Consent Calendar. Will all Senators please return to the Chamber.

Mr. President, the first Consent Calendar begins on Calendar Page 1, Calendar 624, Senate Resolution 65.

Calendar Page 4, Calendar 488, House Bill 7273.

Calendar Page 5, Calendar 535, Senate Bill 1412.

Calendar Page 6, Calendar 603, House Bill 7239.

Calendar Page 7, Calendar 618, Substitute for House Bill 7313.

Calendar Page 8, Calendar 623, Substitute for House Bill 7270.

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Calendar Page 12, Calendar 311, Substitute for
Senate Bill 1341.

Calendar Page 13, Calendar 346, Senate Bill 1293.

And Calendar Page 17, Calendar 413, Substitute
for Senate Bill 1270.

Calendar page 18, Calendar 509, Substitute for
Senate Bill 1106. Mr. President, that completes those
items previously placed on the first Consent Calendar.

THE CHAIR:

Please call the second call. The machine will be
open.

THE CLERK:

The Senate is now voting by roll call on the
Consent Calendar. Will all Senators please return to
the Chamber.

The Senate is now voting by roll call on the
Consent Calendar. Will all Senators please return to
the Chamber.

THE CHAIR:

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Have all Senators voted? If all Senators have voted, the machine will be closed. The Clerk will call the tally.

THE CLERK:

Motion is on adoption of Consent Calendar No. 1.

Total number voting, 36; those necessary for adoption, 19. Those voting "yea", 36; those voting "nay", 0. Those absent and not voting, 0.

THE CHAIR:

Consent Calendar No. 1 passes. Senator Freedman.

SEN. FREEDMAN:

Thank you, Mr. President. For a Journal notation?

THE CHAIR:

Please proceed.

SEN. FREEDMAN:

I was out of the Chamber yesterday because we took my husband back to the hospital to be rechecked since his surgery, and I just want to share with my

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Necessary for Passage	75
Those voting Yea	148
Those voting Nay	0
Those absent and not voting	3

DEPUTY SPEAKER GODFREY:

The Bill as amended is passed. Will the Clerk please call Calendar Number 523.

CLERK:

On Page 34, Calendar Number 523, Substitute for House Bill Number 7313, AN ACT CONCERNING DOMESTIC VIOLENCE, Favorable Report of the Committee on Public Safety.

DEPUTY SPEAKER GODFREY:

The distinguished Chairman of the Judiciary Committee, Representative Michael P. Lawlor.

REP. LAWLOR: (99th)

Thank you, Mr. Speaker. I move acceptance of the Joint Committee's Favorable Report and passage of the Bill.

DEPUTY SPEAKER GODFREY:

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The question is on acceptance and passage. Will you explain the Bill, please Sir?

REP. LAWLOR: (99th)

Thank you, Mr. Speaker. This Bill has been before us in a different form in earlier Sessions. It is intended to deal with several discreet problems, which more and more frequently confront police officers as they respond to incidents of domestic violence.

And I'll mention briefly those three things. First of all, it authorizes police officers under limited circumstances, to impose what are known as non-financial conditions of release on persons who have been arrested and charged in domestic violence crimes.

Non-financial conditions of release for example would be, stay away from a particular person, or don't engage in a particular activity, or show up, maintain employment, go to work, that type of thing.

The limitations in this Bill are significant on that authority for police. This would give police the

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authority only under certain circumstances. First of all, only between the time the person is actually arrested and released, and the time the courts actually open, which would typically be the next day, or in the case of a Friday night or Saturday arrest, on Monday morning.

In addition, it would require police to first seek to obtain the assistance of a bail commissioner who is a state employee working for the Judicial Branch, to see if they would be able to intervene and establish conditions of release instead of the police officer doing it.

From time to time that's not possible, so this gives that limited authority to police officers under those circumstances.

The second thing it would do, Mr. Speaker, it would give police the authority when they are seizing weapons in the aftermath of a domestic violence arrest, usually firearms, knives, other types of weapons, to also seize electronic defense weapons, which include stun guns and the infamous Taser.

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And third, Mr. Speaker, it would establish a new crime of strangulation. It would have first, second and third degree, third degree being a misdemeanor, first degree being a Class C felony, and second degree being a Class D felony.

The reason for this is that under our current law, the assault statutes don't appear to cover what is commonly known as strangulation because for the most part, strangulation will not leave, will not cause a serious physical injury.

In other words, it won't permanently disfigure a person. It is not likely to impair the functioning of a bodily organ, and it's not necessarily likely to cause death.

So to cover that discreet type of conduct, which apparently is relatively frequent in the domestic violence world, we've established a new crime that a police officer can charge and a prosecutor can proceed on, which would cover what I think we'd all agree is very serious conduct, which without this statute would appear to be relatively minor conduct, like for

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example a misdemeanor assault, even if it were to be intentional.

Mr. Speaker, there's an Amendment, which I'd like to call. The Clerk has LCO Number 7326. I'd ask the Clerk call and I be allowed to summarize.

DEPUTY SPEAKER GODFREY:

The Clerk is in possession of LCO Number 7326, which will be designated House Amendment Schedule "A". Will the Clerk please call.

CLERK:

LCO Number 7326, House "A" offered by Representative Lawlor and Senator Roraback.

DEPUTY SPEAKER GODFREY:

The gentleman has asked leave of the Chamber to summarize. Is there objection? Hearing none, please proceed, Sir.

REP. LAWLOR: (99th)

Thank you, Mr. Speaker. This clarifies three specific portions of the Bill, and I should point out the language in this Amendment is the result of extensive negotiations among attorneys who typically

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represent defendants in these cases, people concerned about the civil liberties implications of this Bill, and prosecutors and Members of the Legislature.

The modification this makes, it would require when a police officer is going to impose non-financial conditions of release, in other words, the person's not going to be held in custody, they're actually going to be released with some conditions.

For example, stay away from the victim in the case, it would require that the officer in those situations make a reasonable effort to immediately contact the bail commissioner.

Now, in some jurisdictions at some times of the day, it is easy to get a hold of the bail commissioner and get them to intervene quickly. Other times, middle of the night, relatively rural towns, that type of thing, it's virtually impossible to get the immediate assistance of a bail commissioner.

This simply requires the police officer involved to make a reasonable effort to contact them, and if after a reasonable effort they're unable to either

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contact the bail commissioner, or get them to the scene, then the police officer would be able to impose these non-financial conditions of release.

Also, it changes the reference of dangerous instrument to specify dangerous weapon, and it specifies that the violations, which would result in a potential charge of violation of non-financial conditions of release have to, it couldn't be triggered by a charge, which did not carry a potential imprisonment. For example, a speeding ticket.

So I think with those modifications it meets the concerns that were raised about this Bill, and I would urge adoption of the Amendment.

DEPUTY SPEAKER GODFREY:

The question is on the adoption of House Amendment Schedule "A". Will you remark on House Amendment Schedule "A"? Will you remark on House Amendment Schedule "A"? If not, let me try your minds. All those in favor signify by saying Aye.

REPRESENTATIVES:

Aye.

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DEPUTY SPEAKER GODFREY:

Opposed, Nay. The Ayes have it. The Amendment
is adopted. Will you remark further on the Bill as
amended? Representative Kirkley-Bey.

REP. KIRKLEY-BEY: (5th)

Thank you, Mr. Speaker. Through you to the, to
Representative Lawlor, I have a couple of questions
with regard to the Bill as amended.

DEPUTY SPEAKER GODFREY:

Please frame your question, Madam.

REP. KIRKLEY-BEY: (5th)

Representative Lawlor, I'm trying to understand
something. I thought in domestic violence cases, both
the husband and the wife were usually taken off to
jail or somewhere, and they have the, the police are
required to arrest them both. I'm trying to
understand this Bill.

DEPUTY SPEAKER GODFREY:

Representative Lawlor.

REP. LAWLOR: (99th)

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Thank you, Mr. Speaker. Through you, no, that's not the case. The current law in Connecticut requires that an arrest be made whenever there's probable cause to believe a crime was committed in the context of a family situation, which could be husband and wife.

Now that we have civil unions, it could be two partners in a civil union. It could be, actually, it applies to any persons living in the same households, so it could be college roommates, it could be tenants if it's a roommate type situation.

But if you live in the same household, it's considered a family for the purpose of the family violence law, and if the police are called, they're obligated to make an arrest if there is probably cause regardless of the wishes of the apparent victim of the crime.

Now, in some cases it's obvious that both individuals, or maybe more than two individuals have committed a crime in the case of a fight that's going back and forth.

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In other cases there could be allegations, you know. If it's, let take the husband and wife situation. If the wife has been assaulted, and when the police arrive the wife has bruises and accuses the husband of it.

If the husband says well, she started it by doing whatever, but the husband has no bruises, it's within the discretion of the police officer to either make an arrest or not make an arrest.

There was a time before the Legislature modified the law, that the police believed they were obligated to make an arrest regardless of their own evaluation of the merits of a particular allegation, and so many times they arrested both parties to the dispute.

But we clarified that that's not required, and I forget the exact language. If the police officer concludes that the principal aggressor is one but not the other, then they're not obligated to arrest both people, so it's really at the discretion of the police officer, Mr. Speaker, but not required. Through you.

DEPUTY SPEAKER GODFREY:

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Representative Kirkley-Bey.

REP. KIRKLEY-BEY: (5th)

Thank you. Another question to Representative Lawlor pertaining to the Amendment that has been drawn.

It appears to me, and tell me if I'm wrong, that what you're trying to do is to get the person that has been arrested in a domestic violence incident, a bondsman as quickly as possible so that they can get out? Is that true? Through you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Lawlor.

REP. LAWLOR: (99th)

Thank you, Mr. Speaker. No. First of all, we're not talking about bail bondsmen, we're talking about bail commissioners who are state employees working for the Judicial Branch.

The procedure when an arrest is made is, the police make the arrest. They have two options at the time of arrest, either a) to take the person into custody and bring them back to the police station, or

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b) release them at the scene with a written promise to appear.

If they're released at the scene with a written promise to appear, there's never an issue of bail at all. In that situation, this Bill would allow the police officer in addition to the promise to appear, to impose what are known as non-financial conditions of release.

For example, say I give you a written promise to appear, I'm not going to take you to the police station. But, you have to stay away from let's say your wife or your girlfriend, or whatever it happens to be, and this would allow the police officer to impose such a condition.

Currently, judges of the Superior Court and bail commissioners have that authority. This gives that authority to the police officer, and a violation of that condition could result in additional charges. But that would only last until the next court day, which is typically the next day, or in the case of a weekend, Monday morning.

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The other alternative a police officer has is to take the person into custody, and bring them back to the police station and process them.

Now, at that point, the police officer could still release them on a promise to appear, and when I say process them, I mean photographs, fingerprints and the like, potentially an interrogation.

After that, the police officer could release the person on a promise to appear or set a bond, and that's completely within the discretion of the police at the moment.

This Bill would allow them to do the same thing. However, it would give them the option of saying, if we're going to release you, or if you post the bond we're setting, we're going to impose certain non-financial conditions of release. So that's what the Bill says.

The Amendment clarifies the intent of the Bill to require that if a police officer contemplates imposing non-financial conditions of release, in other words,

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if you post a bond or if I let you out right now, you can't go back home.

You can't go near your wife, whatever it is, that a police officer could only do that after they've made an attempt to contact a bail commissioner and have them show up and do it themselves because that's what would normally happen.

The problem is, this Bill seeks to solve is, police don't actually have the independent authority to set non-financial conditions of release, and we're usually talking about a period of hours between the time of the arrest, and the time of the first court appearance.

So, and you can imagine in a domestic violence situation, the importance of saying, okay, you're going to get out, but don't go back and hassle the other person. Stay away. Get a motel room, whatever it happens to be, but don't go back to the scene of the crime, stay away from this individual. That's what this would allow police officers to do.

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The language in the Amendment simply says, before the police officer can do it on their own, they have to attempt to get a bail commissioner involved, and if the bail commissioner gets involved, that solves the problem.

But if not, it gives the police the authority to impose the non-financial condition of release. I hope that answers the question, through you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Kirkley-Bey.

REP. KIRKLEY-BEY: (5th)

Thank you, Mr. Speaker. I'm just having difficulty with understanding this, because if an individual has been removed from the household because of a very angry situation and potentially violent argument between partners, so many individuals are being hurt, maimed and killed, even though they have restraining orders out against the other person.

And it seems like the lapse of time in the Bill that is before us is only a matter of a few hours, and I don't know how that promise not to do anything would

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help that person to cool off enough that they might not try to do something that would be hurtful to the individual, and/or if they have children.

I mean, I've seen too many horrifying stories, as I'm sure the rest of the Members of this House have, with regard to people who come back later on and not only hurt themselves, their wives, and the children are all punished because of something that's going on.

The other part of this that bothers me is the fact that if you come into my house and maybe Representative Lawlor can help clarify this for me.

If you come into my house on a domestic violence issue, you then have the right to look for, and I think you said guns or stun stuff, or other things that could be used by an individual in a manner to protect themselves, and I just wanted to see if that is in contradiction to any other kind of law, your Miranda rights or whatever, I don't know, the right to search and seize.

Is there something here that is contradictory?
It seems to be in my mind, so I need to help to

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elaborate whether or not I've watched too much CSI
Special Victims Unit.

DEPUTY SPEAKER GODFREY:

Representative Lawlor.

REP. LAWLOR: (99th)

Thank you, Mr. Speaker. Well, first of all,
there's no power in this Bill that's new, apart from
the allowing police officers to set non-financial
conditions of release.

The section that the Representative is referring
to simply amends an existing authority that police
have. When making a domestic violence arrest police
currently have the authority to seize any weapons that
are at the residence.

Now, their ability to search for them is quite
another issue. This doesn't give them any special
ability to search for them. It just authorizes them
to seize them if they happen to be aware that they're
there.

So, for example, if, well, to complete that
thought, it's the Fourth Amendment of the United

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States Constitution that governs this, and if, assuming it's a lawful arrest, and assuming the police are in the home making a lawful arrest, they have a right to be there to do so, they also have the right to conduct a search incident to arrest, which generally speaking does not include the entire house.

It's just the immediate vicinity of the person being arrested, which is typically the room they're in. So police officers already have the authority to conduct a full search of the room where the person is actually being arrested.

Apart from the ability to search, this gives them the authority to seize a particular weapon. So in a typical domestic violence situation, a well-trained police officer will inquire of the victim, are there any guns in the house, and if the victim says yes, it gives the authority to the police to seize them.

And typically the police, if they're well-trained, would ask the victim, okay, do you mind if we, would you show us where the guns are, can we look at them, can we seize them, and that would then be a

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consensual search, and with the cooperation of the victim.

And so, all the existing law does is authorize the police to actually seize a weapon, even if it wasn't necessarily used in the actual incident. If it was used in the incident, it's evidence and will be seized anyway.

Now, what the Bill does is expand the list of things that could be seized to include electronic defense weapons, which are currently defined in our statute, and they do include Tasers and stun guns, and increase, they're legally, you can purchase these things legally on the Internet.

Unfortunately, more and more people seem to be acquiring them, and they seem to be used with more frequency, and one can imagine in the context of a domestic violence situation, potentially could be as problematic as most other weapons.

So, through you, Mr. Speaker, that's all the Bill does. No special authority to search, and no new authority to seize, just adding something else to the

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list of things that could be seized under current law.

Through you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Kirkley-Bey.

REP. KIRKLEY-BEY: (5th)

Thank you. Mr. Speaker, one more question to Representative Lawlor. If, in fact, the individual says, and now we're both in an angry state, yes, you have the right to search for a gun, and I believe it's over here, and John Jones doesn't happen to have a permit for that gun, now what charges does John Jones face, other than the domestic violence?

DEPUTY SPEAKER GODFREY:

Representative Lawlor.

REP. LAWLOR: (99th)

Thank you, Mr. Speaker. Under our current law, one does not need a permit to have a pistol in their home. You need a permit to buy a pistol, but if you acquired it prior to October 1, 1994, you didn't need to have a permit at that time.

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So you don't need a permit to have a gun in your house. You don't need a permit to have a shotgun anywhere, and you don't need a permit to buy a shotgun, so depending upon the actual type of firearm involved, it would depend.

But the presence of a firearm in the house by itself is not a crime unless it was illegally acquired or unless the person possessing it is a convicted felon or otherwise covered by one of the laws that prohibits possession of firearms.

So if it's illegal, they'd be arrested. If it's not, they wouldn't be arrested. Through you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Kirkley-Bey.

REP. KIRKLEY-BEY: (5th)

Very nice. It's a very nice little way to get to something that I don't, well, not to go on and belabor the point any more.

I don't think based on the explanations that were given to me by my illustrious friend, Representative

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Lawlor, that I can support this, because I can see this leading to all kinds of trouble in places where we don't want to have it. Thank you very much.

DEPUTY SPEAKER GODFREY:

Thank you, Ma'am. Will you remark further on the Bill as amended? The gentleman from Canton, Representative Witkos.

REP. WITKOS: (17th)

Thank you, Mr. Speaker. I rise in strong support of the Bill that's here before us today. It's been a long time since the Tracy Thurman case brought us some legislation dealing with domestic violence. This goes to afford greater protection for the victims of domestic violence.

Oftentimes prior to this, the party was taken out of the home, brought down to the police station and the victim remained at home unknowing whether that person would return home to cause greater harm. With that, Mr. Speaker, I do have a question, through you, to the proponent of the Bill.

DEPUTY SPEAKER GODFREY:

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Please frame your question, Sir.

REP. WITKOS: (17th)

Thank you. Through you, Mr. Speaker, in Sections 19, or Lines 19 through 23, there is new language, which is added that if the person is arrested and in the process of conducting the bail interview, any statements that they may make cannot be held against them in further, admissible as evidence in the further court case.

And Mr. Speaker, through you, if I could provide an example to Representative Lawlor just for clarification purposes.

Through you, Mr. Speaker, if I was conducting a bail interview with an individual, and I asked him, does he have a place to live, or stay this evening if he doesn't return home, and he says, yes, I do, and says, but once you release me I'm going to go over there and beat her up again, would that be an admissible in further court proceedings? Through you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

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Representative Lawlor, do you care to respond?

REP. LAWLOR: (99th)

Thank you, Mr. Speaker, through you. My interpretation of the language is that that statement would not be admissible in a trial resulting from any criminal charges.

However, it's worth noting that that statement would be, one could consider that statement for a variety of purposes.

For example, in setting the conditions of bail, you know, that could certainly cause a police officer to say right off the bat, okay, then I'm going to post a \$100,000 bond in the situation Representative Kirkley-Bey mentioned a moment ago.

So this would simply make it inadmissible at a trial on the charges, but as is the case with other types of statements made, which are not admissible in court during the trial, they can be used in a variety of other situations.

For example, at the sentencing, if the person testified at the trial, and contradicted that

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statement it would be admissible as impeachment testimony, but it would not be admissible to help prove the charges against the defendant in the state's case in chief. I believe that's what the language of this Amendment says.

Now, it's important to point out that this is relating only to questions put to the defendant, to the arrestee, for the purpose of determining conditions of release.

It would not relate to other times when the police may be questioning the person. For example, during a consensual interrogation, that type of thing.

So it's a very narrow exception, and it is similar to the protection afforded statements made by defendants when they're actually being interviewed by a bail commissioner. Through you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Witkos.

REP. WITKOS: (17th)

Thank you, and I thank the gentleman, and Mr. Speaker, for legislative intent, so any questions or

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statements that the defendant may make after they've waived their rights while being questioned, to the police officer prior to being asked for the bail conditions of release, those would be used or admissible? Through you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Lawlor.

REP. LAWLOR: (99th)

I think I heard the question. I think the question was, if it's other than during the actual interview, would other statements be admissible?

Their admissibility would be determined by other rules, but this wouldn't prohibit their admissibility, as long as it wasn't a statement made during the actual questioning pursuant to the determination of conditions of release.

DEPUTY SPEAKER GODFREY:

Representative Witkos.

REP. WITKOS: (17th)

Thank you, Mr. Speaker, and I thank the gentleman for his answers. That clarifies it for me. There was

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a concern I had with the Bill in that as most of the Members of the Chamber know that I am a police officer.

And one of the dangerous cases that we ever, calls we ever respond to is a domestic violence case. That's where most police officers are killed in the line of duty going to these types of incidents, and often it's the type of incident, or the type of case that tears families apart, because it is family related, hence the name of the title of the Bill.

And one of the problems that I have with the Bill, and I'm going to be offering an Amendment in just a moment, which will clarify that, is that if we respond to a home, and it's a domestic, say between a husband and a wife and they both committed the crime of assault or threatening, or breach of peace, as Representative Lawlor stated, if there is probable cause to make the arrest, then they both will be arrested.

And as a police officer, it's very difficult if you get to a home and there's small children in the

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home. Well, what do you do with the children in the home?

And our past practice has been, at least in my Department, what we've done was, if there was a non-intoxicated adult, we would issue them a misdemeanor summons, which is a written promise to appear that says you have to go tomorrow, and that individual can stay in the home and care for the kids while the other person has to go with us to the police department.

And with that, Mr. Speaker, I would ask, the Clerk has in his possession, LCO Number 7448. I ask that it be called and I be allowed to summarize.

DEPUTY SPEAKER GODFREY:

The Clerk is in possession of LCO Number 7448, which will be designated House Amendment Schedule "B". Would the Clerk please call.

CLERK:

LCO Number 7448, House "B", offered by
Representative Witkos.

DEPUTY SPEAKER GODFREY:

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The gentleman has asked leave of the Chamber to summarize. Is there any objection? Hearing none, please proceed, Sir.

REP. WITKOS: (17th)

I move adoption, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

The question is on adoption. Will you remark, Sir?

REP. WITKOS: (17th)

Thank you, Mr. Speaker. As I stated a few moments ago, what this does, it says that if a police officer goes and determines that they don't need to set conditions for release for a bail enforcement, they can release that individual on a written promise to appear so they can stay right there at the home.

If they do believe that the person may be violent or they may need to have some type of condition imposed upon them, then the language that was in the underlying Bill will apply.

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The police officer shall immediately contact the bail commissioner. If one is not available, then the other situations become applicable.

What this does is, it allows the police officer that's on the scene, sometimes often 11:00 o'clock p.m., 12:00 o'clock p.m., 1:00 o'clock a.m., 2:00 o'clock a.m. in the morning, well you're not going to get anybody by the telephone immediately.

It gives them the ability to issue a written promise to appear, basically a ticket telling the person, this is when you have to go to court, and as you may or may not know, domestic violence requires an appearance the next day in court.

And with that, Mr. Speaker, I ask the Chamber's indulgence on passing this Amendment. Thank you.

DEPUTY SPEAKER GODFREY:

Thank you, Sir. Will you remark further on the Amendment? Representative Lawlor.

REP. LAWLOR: (99th)

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Thank you, Mr. Speaker. I rise to support the Amendment. It just clarifies the original intent of the Bill.

I believe, you know, it's important to point out that we're trying to strike a very delicate balance here between the legitimate interests of law enforcement, and the important constitutional and civil liberty concerns that we would have about citizens, and I think this helps us establish that balance, and I would urge adoption.

DEPUTY SPEAKER GODFREY:

Thank you, Sir. Will you remark further on House Amendment Schedule "B"? Representative Kirkley-Bey.

REP. KIRKLEY-BEY: (5th)

Thank you, Mr. Speaker. I would also like to rise in support of the Amendment, and Representative Witkos alluded to something that in my questioning of Representative Lawlor I forgot to mention, and that's the fact that in domestic violence cases there are children many times involved.

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And my concern was, I didn't want these children, if it was at an inappropriate time of the day or night, night especially, to end up in the clutches of DCF.

I wanted to be able to have one of the parents there and that's why I asked Representative Lawlor if both of them would be arrested at that time because I was very concerned about that.

And so I'm happy to see this here, and I'm happy to know that we're trying to do that as best we can, and maybe I'll change my mind.

DEPUTY SPEAKER GODFREY:

Thank you, Madam. Representative Walker.

REP. WALKER: (93rd)

Thank you, Mr. Speaker. Through you to the proponent of the Amendment.

DEPUTY SPEAKER GODFREY:

Please frame your question, Madam.

REP. WALKER: (93rd)

Representative Witkos, in your Amendment, are you stating that if there are two people fighting in the

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home, and the police feel that the circumstances arise that they don't necessarily have to take either one of them down, they give them a promise to appear and then they leave?

DEPUTY SPEAKER GODFREY:

Representative Witkos.

REP. WITKOS: (17th)

Yes, thank you, Mr. Speaker. Through you, Mr. Speaker, that is correct. The police officer arrives on the scene and believes that, under the statutes they are currently required to stay on scene until the situation is, doesn't believe it's going to be heightened or continue, then they can leave and make sure there will not be a continued action on the part of the reason why they were called there.

So if, your example, if you were called to the scene and there were two individuals you thought that they would not continue on in their fight, they could issue a written promise to appear to both individuals, and then they would clear from the scene. Through you, Mr. Speaker.

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DEPUTY SPEAKER GODFREY:

Representative Walker.

REP. WALKER: (93rd)

Thank you, Mr. Speaker. I'm concerned about that because when you go to a domestic violence situation, nine times, a lot of times, the female feels extremely intimidated and she sometimes is going to say to the officer, everything is fine because she feels she's obligated.

That's the whole problem with domestic violence. It's being overpowered and controlled, and if the officer does not separate them for at least 24 hours, then I have a problem with that because you're still leaving whomever is being abused in jeopardy of being attacked later on once the policeman leaves.

So I guess I'm confused, if this Amendment goes through, the police officer is going to leave a situation that is not diffused. It's just temporarily put down for a while.

So, I guess, through you, to the proponent again, Mr. Speaker, if the officer walks away from the

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circumstance, both parties are still going to be left there in the home, and the responsibility falls back in the home. Am I not correct?

I guess I need to have it clarified again, because to me, that's the whole problem, and we need to separate the two so that they can [inaudible], but through you, Mr. Speaker, I just want to make sure I'm clear.

DEPUTY SPEAKER GODFREY:

Representative Witkos.

REP. WITKOS: (17th)

Yes, thank you, and through you, Mr. Speaker, maybe I mis-communicated. The current policy is that you have to make an arrest. It's by law you must make an arrest. No individual or victim can say I don't to press charges against him. The state orders the police by law you must make an arrest.

There's nothing in statute that says it has to be a custodial arrest at the current time. But what often happens was, if the police had the person in custody down at the police station, they'd say, well,

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you're going to stay at a friend's house tonight. We can't legally tell you that, but we don't want you to go home.

The police had no powers to enforce that, and this Bill before us gives the police the powers to enforce, saying you either can't contact the person, you can't come within X amount of feet.

The current thing, no contact. You can't enter the residence unless it's under police escort, all the things that are currently provided for generally under a protective order, the police will be able to issue that evening, that minute, once an arrest is made.

And then when they appear in court the next day, the judge will either reaffirm that or change whatever the police officer issued.

A police officer is not going to leave somebody if they believe the violence is going to continue. This Bill allows or gives them, my Amendment gives them the opportunity if both parents are going to be arrested, to allow one parent to stay there to care

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for children in the home, and that was the intent
behind the Amendment. Through you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Walker.

REP. WALKER: (93rd)

I thank the gentleman for the answer. So,
through you, Mr. Speaker, just to make sure, again.
That means that one person, if both of them are there
and one of them is going to be taken out, no matter
what, and if that's the case then I'm perfectly fine
with the Amendment, and then I'm okay, so thank you.
Thank you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Thank you, Madam. Will you remark further on
House Amendment Schedule "B"? Will you remark further
on House Amendment Schedule "B"? If not, let me try
your minds. All those in favor signify by saying Aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER GODFREY:

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Opposed, Nay? The Ayes have it. The Amendment
is adopted. Will you remark further on the Bill as
amended? Will you remark further on the Bill as
amended?

If not, staff and guests please come to the Well
of the House. The Members take your seats, and the
machine will be opened.

CLERK:

The House of Representatives is voting by Roll
Call. Members to the Chamber. Members to the
Chamber. The House is voting by Roll Call.

DEPUTY SPEAKER GODFREY:

Have all the Members voted? Have all the Members
voted? If so, the machine will be locked. The Clerk
will take a tally, and the Clerk will announce the
tally.

CLERK:

House Bill Number 7313, as amended by House
Amendment Schedules "A" and "B".

Total Number Voting 146

Necessary for Passage 74

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Those voting Yea	145
Those voting Nay	1
Those absent and not voting	5

DEPUTY SPEAKER GODFREY:

The Bill as amended is passed. Mr. Clerk, would you please call Calendar Number 82. Oh, never mind. Representative O'Neill, for what purpose do you rise?

REP. O'NEILL: (69th)

Thank you, Mr. Speaker. I heard the Clerk recite the vote as I believe 144 to 1, but in looking at the board, I did not see a red vote.

DEPUTY SPEAKER GODFREY:

I believe Representative Kirkley-Bey voted no.

REP. O'NEILL: (69th)

It was my impression that she had changed her vote because I did not see the red light lit. I thought it was a green.

DEPUTY SPEAKER GODFREY:

It was red.

REP. O'NEILL: (69th)

It was red. Thank you, Mr. Speaker.

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CONNECTICUT
GEN. ASSEMBLY
HOUSE

PROCEEDINGS
2007

VOL. 50
PART 16
5012-5313

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May 29, 2007

On Page 44, Calendar Number 523, Substitute for House Bill Number 7313, AN ACT CONCERNING DOMESTIC VIOLENCE, as amended by House Amendment Schedules "A" and "B", Favorable Report of the Committee on Public Safety.

DEPUTY SPEAKER FRITZ:

Representative Michael Lawlor from East Haven.

REP. LAWLOR: (99th)

Thank you very much, Madam Speaker. Madam Speaker, I move acceptance of the Joint Committee's Favorable Report and passage of the Bill in concurrence with the Senate.

DEPUTY SPEAKER FRITZ:

The question is on acceptance and passage in concurrence with the Senate. Will you proceed, Sir.

REP. LAWLOR: (99th)

Thank you, Madam Speaker. Members of the House will recall that the House passed this Bill a week or so ago.

In effect, this Bill for the first time allows, on a very temporary basis, police officers to impose

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what are known as non-financial conditions of release on persons who have been arrested and charged with crimes involving family violence.

While the Bill was in the Senate, the Senate adopted an amendment, Madam Speaker. The Clerk has LCO Number 7807, pre-designated as Senate Amendment "A". I'd ask the Clerk to call and I be allowed to summarize.

DEPUTY SPEAKER FRITZ:

Will the Clerk please call LCO Number 7807, previously designated Senate "A", and the gentleman has asked leave to summarize.

CLERK:

LCO Number 7807, Senate "A", offered by Senators Roraback, McDonald, and Representative Lawlor.

DEPUTY SPEAKER FRITZ:

Representative Lawlor.

REP. LAWLOR: (99th)

Thank you, Madam Speaker. This Amendment does not add anything new to the language that was passed by the House. However, it clarifies the precise

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procedure police must follow when they make a family violence arrest.

It was arguably not 100% clear based on the House version whether or not a police officer would have to contact a bail commissioner if the officer had already made a decision to release the person on a promise to appear, which of course police have an absolute right to do following their own guidelines.

The Amendment, which was adopted in the Senate, made it clear that if that is a decision the police officer has already made, there is no need to immediately contact a bail commissioner. They can proceed right to the next step. So with that clarification, Madam Speaker, I urge adoption of the Amendment.

DEPUTY SPEAKER FRITZ:

The question is on adoption of the Amendment.
Will you remark further on the Amendment before us?
Will you remark further on the Amendment before us?
If not, let me try your minds. All those in favor,
please signify by saying Aye.

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REPRESENTATIVES:

Aye.

DEPUTY SPEAKER FRITZ:

Those opposed, Nay. The Ayes have it, the
Amendment is adopted. Will you remark further on the
Bill as amended? Will you remark further on the Bill
as amended? If not, will staff and guests please come
to the Well of the House, and the machine will be
opened.

CLERK:

The House of Representatives is voting by Roll
Call. Members to the Chamber. The House is voting by
Roll Call. Members to the Chamber.

DEPUTY SPEAKER FRITZ:

Have all the Members voted? Have all the Members
voted? Please check the board and make sure your vote
is accurately cast. If so, the machine will be locked
and the Clerk will take the tally. The Clerk will
announce the tally.

CLERK:

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House of Representatives

May 29, 2007

House Bill Number 7313, as amended by House
Amendment Schedules "A" and "B" and Senate
Amendment Schedule "A", in concurrence with the
Senate.

Total Number Voting	147
Necessary for Passage	74
Those voting Yea	147
Those voting Nay	0
Those absent and not voting	4

DEPUTY SPEAKER FRITZ:

The Bill as amended is passed. Will the Clerk
please call Calendar Number 515.

CLERK:

On Page 9, Calendar Number 515, Substitute for
House Bill Number 6897, AN ACT CONCERNING LIQUIDATED
DAMAGES PROVISIONS IN CONTRACTS, REQUESTS FOR MORTGAGE
PAYOFF STATEMENTS AND THE REPOSSESSION OF MOTOR
VEHICLES IN BANKRUPTCY CASES, Favorable Report of the
Committee on Judiciary.

DEPUTY SPEAKER FRITZ:

Representative Jerry Fox.

JOINT
STANDING
COMMITTEE
HEARINGS

JUDICIARY

PART 11
3347-3697

2007



State of Connecticut

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Testimony of
Deborah Del Prete Sullivan
Legal Counsel/Executive Assistant Public Defender
Office of Chief Public Defender

R.B. No. 7313-An Act Concerning Domestic Violence

Judiciary Public Hearing
March 12, 2007

The Office of Chief Public Defender is opposed to R.B. No. 7313-An Act Concerning Domestic Violence as drafted. However, this office has been meeting with the proponents in an effort to reach an agreement that would protect the victim of domestic violence without violating the constitutional rights of a person arrested for a domestic violence offense. The bill as drafted would permit police officers to set non-financial conditions of release for persons charged with domestic violence offenses. While it appears that more persons may be released after arrest, the Office of Chief Public Defender has concerns which have been expressed in previous testimony during the 2006 legislative session and during meetings with the proponents.

Current law provides a procedure for law enforcement to contact a bail commissioner to interview a person who is arrested. See, *C.G.S. §54-63d, Release by bail commissioner. Information, files and reports held by Court Support Services Division*. The bail commissioner is authorized to set non-financial conditions of release in appropriate cases. However, bail commissioners are not always available during certain overnight periods. The concern of this office is that, if the bill as drafted is adopted, there will be further discussion between the police and the defendant which may increase the risk that potentially incriminating information could be inadvertently disclosed by the defendant. This office believes that additional bail commissioners and increased availability of bail commissioners are needed. Further, this office believes that bail

commissioners, and not the police who arrested the person, are the most appropriate parties to interview a defendant and set such conditions. This office will continue discussions with the proponents and judicial to seek a resolution on this issue which is agreeable to all, if possible.

Lastly, it is important that the defendant understand whatever non-financial conditions of release are being set. This is so not only to provide notice to the defendant of any condition that is being set, but for public safety. Otherwise there is a strong likelihood that non-English speaking defendants who do not understand the conditions of release could violate such. Discussions with the proponents of the bill and the police chiefs have revealed that there is a translation service that is available which is utilized by the police in these circumstances. Utilization of such a service will assist in assuring that a defendant with a condition of release not to return to his/her home complies with such.

The Office of Chief Public Defender respectfully requests that this bill not receive a joint favorable vote as drafted at this time pending the result of efforts of this office and interested parties to reach an agreement, if possible.



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DIVISION OF CRIMINAL JUSTICE**

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Testimony of the Division of Criminal Justice

In Support of:

H.B. No. 7313 (RAISED) AN ACT CONCERNING DOMESTIC VIOLENCE

Joint Committee on Judiciary – March 12, 2007

The Division of Criminal Justice respectfully requests the Committee's Joint Favorable Report for H.B. No. 7313, An Act Concerning Domestic Violence, a major component of the Division's 2007 Legislative Recommendations. This bill represents many hours of hard work and effort on the part of public safety personnel, advocates for the victims of domestic violence and members of this General Assembly.

This bill represents a major initiative to strengthen our laws against domestic violence and to provide effective protection to the victims of domestic violence. Specifically:

- Sections 1 and 2 of the bill would allow the police to establish additional, non-financial conditions for the release of a defendant. This allows for immediate protections to be put in place without creating an entirely new system or process. The concept and language presented here represent a breakthrough after many years of discussing and debate as to how to deal with the question of providing protections during the times when the courts are closed and not available to issue protective orders. Victim advocates, police and prosecutors conducted extensive research and study of other states and other systems before agreeing to the concept presented here.
- Sections 3 and 4 represent a fine-tuning and strengthening of the existing law. Section 3 creates a felony level offense for Violation of Conditions of Release. This new offense of Violation of Conditions of Release in the First Degree would be a class D felony punishable by up to five years incarceration. We believe this change is necessary and the proposed penalty appropriate. Section 4 establishes the offense of Violation of Conditions of Release in the Second Degree, which carries the existing penalty of a class A misdemeanor.

- Section 5 expands the circumstances under which the court may issue a standing criminal restraining order. This provision is designed to strengthen the laws to protect not only those who are victims of specific offenses, but for those who are victims of any crime against a family or household member. It must be stressed that such a standing criminal restraining order could only be issued "*for good cause shown*" as required in line 126 of the bill.
- Section 6 of the bill is essentially technical. It expands the definition of "electronic defense weapon" to include stun guns and other such devices.
- Section 7 of the bill expands upon the longstanding provisions of the statutes that allow for the seizure of firearms in domestic violence cases. This section would allow for the confiscation of electronic defense weapons in addition to firearms. The logic behind this change is simple: these are dangerous weapons and can inflict serious injury or even death just as a firearm can.

The Division of Criminal Justice respectfully requests the Committee's Joint Favorable Report for this bill. We would be happy to provide any additional information or answer any questions that you might have.

Thank you.

State of Connecticut

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PERMANENT COMMISSION ON
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Written Testimony of
The Permanent Commission on the Status of Women
Before the
Judiciary Committee
Monday, March 12, 2007

In Support of:

H.B. 7313, AAC Domestic Violence

H.B. 7335 Persistent Offenders

Senator McDonald, Representative Lawlor and members of the committee, thank you for this opportunity to provide written testimony on the above referenced bills on behalf of the Permanent Commission on the Status of Women (PCSW).

We support H.B. 7313, AAC Domestic Violence, which would allow police officers to set nonfinancial conditions of release in domestic violence situations. This would provide additional protections to victims until the matter is addressed in court. This is critical because many domestic violence incidents occur on the weekends or during the holidays when access to courts are limited.

We also support H.B. 7335, AAC Persistent Offenders, which would provide that certain prior convictions for assault, stalking, trespass, threatening, harassment or criminal violation of a protective or restraining order are considered when classifying a person as a persistent offender of certain crimes. The listed offenses are often used to control and dominate victims of domestic violence and sexual assault. This bill would provide additional protection from sexual assault and domestic violence by enhancing penalties if a history of such behavior is evident.

We urge your support of these proposals.



Connecticut Sexual Assault Crisis Services, Inc.

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Testimony of Connecticut Sexual Assault Crisis Services, Inc.

Laura Cordes, Director of Policy & Advocacy

HB 7313 AN ACT CONCERNING DOMESTIC VIOLENCE

Submitted to the Judiciary Committee

Public Hearing, March 12, 2007

Senator McDonald, Representative Lawlor, and members of the Judiciary Committee, my name is Laura Cordes. I am the Director of Policy & Advocacy with the Connecticut Sexual Assault Crisis Services, Inc. (CONNSACS). CONNSACS is the statewide association of nine community-based rape crisis centers in Connecticut. Our mission is to end sexual violence and ensure high quality, comprehensive and culturally competent sexual assault victim services.

During fiscal year 2005-2006, CONNSACS' community-based program staff and volunteers provided services to 4,326 sexual assault victims and their families. Our member centers also provided risk reduction and prevention education to more than 46,000 children and youth and to over 8,000 members of the general public and training for nearly 3,400 professionals, including law enforcement personnel.

We submit this testimony in support of HB 731: *AN ACT CONCERNING DOMESTIC VIOLENCE*. This bill would expand the tools that police officers have when setting conditions of release for individuals charged with the commission of a family violence crime, to keep victims of domestic violence safe. Victims of domestic violence are often at great risk when separated from the offender. With a victim's input, non-financial conditions of release not only send a message to the offender that that the police understand the dynamics of abuse, but when applied, can add additional measures of safety for victims during an investigation.

Thank you for the opportunity to present our position and for your consideration. Should you have questions with regard to CONNSACS' position on this bill, please feel free to contact me.



James F. Papillo, J.D.
Victim Advocate

STATE OF CONNECTICUT

OFFICE OF VICTIM ADVOCATE
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Testimony of James Papillo, State Victim Advocate Submitted to the Judiciary Committee Monday, March 12, 2007

Good afternoon Senator McDonald, Representative Lawlor and distinguished members of the Judiciary Committee. For the record, my name is James Papillo and I am the Victim Advocate for the State of Connecticut. Thank you for the opportunity to provide testimony concerning:

Raised House Bill No. 7313, *An Act Concerning Domestic Violence* (PARTIAL SUPPORT)

Raised House Bill No. 7335, *An Act Concerning Persistent Offenders* (SUPPORT)

One of the most troubling problems that I hear often from victims of family and domestic violence, and from law enforcement officials as well, relates to the lack of protection that can be afforded to such victims when incidents occur after normal business hours or on weekends. In situations where someone is arrested for a domestic violence offense and is quickly released on bond, the victim can be "exposed" to further danger and harm because law enforcement officials do not have the authority to issue orders and/or conditions of release that would make it a crime or violation to have any further contact with the victim during the interim between the date and time of the incident and arraignment in court.

While law enforcement officials often will verbally admonish the accused to have no contact with the victim during this time period, if the accused "violates" such a verbal "order," there is no legal consequence for doing so—and many offenders know this all too well. This "gap" in protection for victims of domestic and family violence must be closed.

Raised House Bill No. 7313 will, in part, provide law enforcement officials with the authority to issue non-financial conditions of release to those accused of family or domestic violence crimes and, further, will allow law enforcement officials to arrest those accused of violating such orders as a condition of their release.

However, Sections 3 & 4 of Raised House Bill No. 7313 creates the crimes of violation of conditions of release in the *first degree* and *second degree*. This distinction is based solely on the nature of the underlying crime charged—i.e., misdemeanor vs. felony. The penalty assessed for violating an order to stay away from a victim issued by a law enforcement official should be the same as an order of protection issued by a Superior Court judge. Further, the penalty assessed for violating such an order issued by a law enforcement official should be the same regardless of the nature of the underlying offense—again, just as is the case for violating a restraining order or a protective order issued by a Superior Court judge.

Some of the most common, and serious, offenses committed in family violence incidents include assault 3rd, disorderly conduct, breach of peace 2nd, unlawful restraint 2nd, criminal trespass 1st, reckless endangerment 1st, threatening 2nd, stalking 2nd, harassment 2nd, interfering with a 911 call and resisting arrest—all *misdemeanor* crimes. Once arrested for one or more of the aforementioned crimes and released with the condition that such person have no contact with alleged victim, the penalty for violating that condition should be the same as the penalty for violating a protective order issued by a criminal court judge typically at arraignment. The charge of violating a protective order is a felony crime.

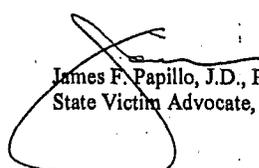
Further, in cases where a civil/family restraining order has been issued and there is no pending criminal prosecution, a violation of the restraining order is a felony crime (Public Act 05-147). The penalty is assessed for violating a court order, irrespective of the nature of the underlying criminal charges(s). The penalty for violating the same type of order issued by a law enforcement official, one intended to protect the victim, should be no less of a crime. Just as for a violation of a restraining or protective order issued by a Superior Court judge, a violation of a condition of "no contact with the victim" set by a law enforcement official should also be a felony crime.

Victims of family and domestic violence are often most vulnerable once an arrest has been made. I strongly urge the Committee to support Raised House Bill No. 7313 to give law enforcement the authority to issue non-financial conditions of release, including an order of no contact, for the benefit of the victim. However, I strongly urge the Committee to consider amending the language so that the penalty for a violation of such an "order" is not dependent upon the underlying crime. The violation of such an "order" should be a felony crime.

Additionally, I also urge the Committee to support the inclusion of a stun gun or other conductive energy device in the definition of electronic defense weapons for which law enforcement officials may seize in the course of an alleged domestic or family violence investigation.

Finally, Raised House Bill No. 7335 will provide for a more accurate picture of a person's criminal behavior and history when determining whether to consider a person to be a persistent offender. I urge the Committee to support this important proposal.

Thank you for considering my testimony.


James F. Papillo, J.D., Ph.D.
State Victim Advocate, State of Connecticut



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CONNECTICUT POLICE CHIEFS ASSOCIATION

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Testimony to the Judiciary Committee

March 2, 2007

Chiefs Anthony Salvatore & James Strillacci, Connecticut Police Chiefs Association

We support **RB #7313, AAC Domestic Violence**, which provides protection for victims of family violence where there is now a gap—the period between the offender's release from custody and his first court appearance.

As many domestic fights happen on nights and weekends, a victim must wait hours or even days for a protective order to be issued. There is nothing to prevent an offender from making bond, returning to the scene of the crime, and starting over.

The bill would allow police to set non-financial conditions of release when a domestic abuser posts bond. These conditions would serve as an interim protective order and would expire on the defendant's appearance in court.

The conditions would be selected from a limited list designed to prevent a repeat offense or worse before court opens; for example—avoid contact with the victim; don't go back the her home; do not possess alcohol, drugs, or a weapon. Police often give similar advice to offenders now, but their admonitions lack the force of law.

The proposed conditions are still less restrictive than the alternative, which is to lock the offender up until court.

We encourage you to help prevent family violence by passing this bill.

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CCDLA
 "Ready in the Defense of Liberty"
 Founded in 1988

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Raised House Bill No. 7313
An Act Concerning Domestic Violence
Judiciary Committee Public Hearing
March 12, 2007

**TESTIMONY OF JON L. SCHOENHORN, PRESIDENT OF THE CONNECTICUT
 CRIMINAL DEFENSE LAWYERS ASSOCIATION, IN OPPOSITION TO
HOUSE BILL NO. 7313, AN ACT CONCERNING DOMESTIC VIOLENCE**

Chairman McDonald, Chairman Lawlor, and distinguished committee members:

The Connecticut Criminal Defense Lawyers Association (CCDLA) is a statewide organization of approximately 300 lawyers, in both the public and private sectors, dedicated to defending persons accused of criminal offenses. Founded in 1988, CCDLA works to improve the criminal justice system by ensuring that the individual rights guaranteed by the Connecticut and United States constitutions are applied fairly and equally and that those rights are not diminished. At the same time, CCDLA strives to improve and suggest changes to the laws and procedures that apply to criminal justice.

CCDLA opposes Raised Bill No. 7313, an Act Concerning Domestic Violence.

This bill gives unprecedented authority to local and state police officers to issue protective orders that now requires the approval of a judge or bail commissioner. Violating such an order is, itself, a felony, which can result in imprisonment for five years. While setting conditions of release after arrest is ordinarily a judicial function that triggers the protection of absolute immunity when set by a judge, a police officer's authority pursuant to Conn. Gen. Stat. § 54-63c to set bail and other conditions of release is deliberately limited and should not be extended to give the same power as a judge.

In setting bail, a police officer, who is not neutral and involved in bringing criminal charges, never considers both sides of a dispute, and is not asked to weigh credibility. The officer has already concluded that the accused has committed a crime and therefore has an interest in the outcome of the case as it is. In contrast, in addition to having to adhere to statutory requirements not applicable to a law enforcement officer's setting of bail, a judge hears evidence and considers argument from interested parties, including the bail commissioner, the state's attorney, the

Testimony of Jon L. Schoenhorn, CCDLA President

Raised House Bill No. 7313

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defendant by and through his or her counsel, and the victim by and through his or her advocate. Often a family relations officer submits a report in domestic cases.

Consequently, a police officer is not performing an adjudicative function, but, rather, is performing an administrative function that now basically allows unfettered discretion. In contrast, a bail commissioner, an employee of the Judicial Department exercising limited judicial authority, presumably is making an independent judgment from the police, as is the judge. Current Connecticut law recognizes these distinctions in setting forth the procedures governing the release of those arrested for criminal offenses, including domestic violence crimes. *See* Conn. Gen. Stat. § 54-63a, *et. seq.* and § 54-64, *et. seq.* The current statutory scheme grants to three categories of officials the authority to set bail: law enforcement officers, bail commissioners, and judges, and sets forth specific requirements, conditions, and guidelines each actor must satisfy in setting bail. *See* Conn. Gen. Stat. § 54-63c, § 54-63d, and § 54-64a. Section § 54-64a enumerates specific factors to be considered by the judicial authority, specific options for release, and also grants the court the authority to impose non-financial conditions of release where appropriate. Moreover, the standard for the court's action and scope of its authority to impose conditions "sufficient to reasonably assure the appearance of the arrested person in court," is also expressly set forth in that statute. A judge, therefore, is required to engage in a fairly structured analysis, and if the defendant is unable to post the amount set by the court, "the court shall order him committed to the custody of the Commissioner of Correction until he is released or discharged in due course of law." *See* Conn. Gen. Stat. § 54-64a (d).

On the other hand, a police officer who currently sets bail pursuant to Conn. Gen. Stat. § 54-63c, is not required to engage in any particular analysis or consider any specific factors. A police officer must only "promptly interview the arrested person to obtain information relevant to the terms and conditions of the person's release from custody, and [to] seek independent verification of such information where necessary."¹ *See* Conn. Gen. Stat. § 54-63c. Additionally, a police officer may only release a person "upon the execution of a written promise to appear or the posting of such bond as may be set by [him];" *id.*; whereas a judicial authority may additionally impose "a written promise to appear with nonfinancial conditions [and] a bond without surety." Conn. Gen. Stat. § 54-64a (a)(1) and (b)(1).

Finally, the result of a police officer's action is either that the arrested person will be released – by written promise to appear or by posting the set amount of bond – or that the

¹ The function of a police officer also differs from that of a bail commissioner, who is required to engage in a determination substantially similar to the judicial authority. Moreover, the bail commissioner, unlike a police officer, must engage in an interview covering certain topics, pursuant to Conn. Gen. Stat. §§ 54-63d and 54-63b. Also, the Bail Commission is an arm of – and therefore must answer to – the Judicial Department. Conn. Gen. Stat. § 54-63b.

Testimony of Jon L. Schoenhorn, CCDLA President

Raised House Bill No. 7313

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officer must "immediately" notify the bail commissioner of the person's detention. Conn. Gen. Stat. § 54-63c(a). The bail commissioner must then "promptly" conduct another interview and then determine under what financial or nonfinancial conditions the arrested person may be released, if at all. Conn. Gen. Stat. § 54-63d. Thus, the officer's truncated and preliminary setting of bail need not involve the detail or analysis of the decisions of bail commissioners or judges and is, therefore, susceptible to arbitrary and improper considerations. If an officer quickly determines that the arrested person may be released, then court officers and/or judicial authorities conceivably never address the issue. If the officer cannot quickly determine that the person should be released, however, a bail commissioner and/or a judge must then make a prompt, independent, more probing and specific analysis to determine the propriety of the person's detention. The roles of the bail commissioner and judge serve to provide the due process required to detain the person and, generally, to safeguard the rights of the accused. There is no reason why police cannot contact a judge or bail commissioner, as they are already required to do, if they believe a need arises to issue a protective order. This is no difficult task since bail commissioners are available 24 hours a day.

From our experience in dealing with police, which is often in an adversarial setting, officers who set conditions of release are not engaged in an adversarial proceeding, listening to arguments on all sides. Rather, they engage in a brief interview of the accused, who has been placed under arrest based on their own determination – right or wrong – of probable cause. Their involvement in the arrest, itself, adversely affects their judgment in setting conditions of release, particularly where they have an interest in keeping an accused from going home to family. Deprivation of contact with one's family, or forcing someone from his or her home, even for a short period of time, have been held to be fundamental constitutional rights, the deprivation of which requires due process of law. It cannot reasonably be argued that a police officer setting bond under these circumstances is performing a role substantially similar to that of the judicial authority or bail commissioner. Such power, even if temporary, offers no process at all.

Finally, there are practical reasons why CCDLA opposes this unnecessary expansion of police powers. Violation of a domestic violence protective order is a felony, and neither the bill, nor our experience with police officers, suggests that non-native speakers will fully understand the consequences of ignoring such an order, resulting in a potential second arrest the same day. Furthermore, this bill won't ameliorate the fact that some domestic cases involving verbal arguments, for example, are not subject to protective orders, but that won't stop the police from issuing such orders anyway, thereby turning an alleged disorderly conduct into a Class D felony.

Respectfully submitted,

Jon L. Schoenhorn
CCDLA President

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Safe Haven
Waterbury, CT

United Services, Inc.
Domestic Violence Programs
Willimantic, CT

To: Members of the Judiciary Committee

From: Lisa Holden, Executive Director of CCADV

Date: March 12, 2007

Re: HB 7313 - AN ACT CONCERNING DOMESTIC VIOLENCE

Representative Lawlor, Senator McDonald and distinguished members of the Judiciary Committee. I am writing to you as the Executive Director of the Connecticut Coalition Against Domestic Violence (CCADV). HB 7313 - AAC Domestic Violence is important legislation that will provide additional safety options for victims of domestic violence. We support the portion of the bill (Section 6) that addresses electronic defense weapons; however, we do not support the other components of the bill because there is another bill soon to be up for your consideration that is more comprehensive, HB 837 - AN ACT ESTABLISHING THE CRIME OF STRANGULATION AND AUTHORIZING POLICE TO IMPOSE NONFINANCIAL CONDITIONS OF RELEASE FOR PERSONS CHARGED WITH DOMESTIC VIOLENCE.

We applaud the Office of the Chief State's Attorney (OCSA) for including HB 7313 in their legislative package. The OCSA, as well as the Connecticut Police Chiefs Association (CPCA), the Judicial Branch, the Office of the Chief Public Defender and CCADV are now currently in negotiation to modify HB 837 to ensure its passage.

In the end, this collaborative effort will bring a legal remedy that is beneficial to victims of domestic violence and manageable for the criminal justice system.

Thank you.