



Connecticut Coalition Against Domestic Violence

Testimony Regarding

SB 653, AAC Open File Disclosure in Criminal Cases

Member Organizations

SB 691, AAC Erasure of Criminal Records

Judiciary Committee
March 29, 2019

- The Umbrella Center for Traumatic Stressors Services
Ansonia, CT
- The Center for Family Justice
Bridgeport, CT
- Women's Center
Danbury, CT
- Domestic Violence Program
District Services
Dayville, CT
- Newark Against Domestic Abuse
Enfield, CT
- Domestic Violence Services
Greenwich, CT
- Regional Abuse
Hartford, CT
- City of Danville Women's Services
Meriden, CT
- Brook Parkways
Middletown, CT
- Shelton Connally Center
New Britain, CT
- The Umbrella Center for Domestic Violence Services
New Haven, CT
- Safe Harbor
New London, CT
- Connecticut Violence Crisis Center
Norwalk, CT
- Women's Support Services
Sharon, CT
- Domestic Violence Crisis Center
Stamford, CT
- Anna & Anthony Project
Torrington, CT
- Safe Haven
Waterbury, CT
- Domestic Violence Program
Willimantic, CT

Good afternoon Senator Winfield, Representative Stafstrom and members of the committee. CT Coalition Against Domestic Violence (CCADV) is the state's leading voice for victims of domestic violence and those who serve them. Our 18 member organizations provide essential services to nearly 40,000 victims of domestic violence each year. Services provided include 24-hour crisis response, emergency shelter, safety planning, counseling, support groups and court advocacy.

Senate Bill 653

We have serious concerns about Sections 1 and 2 of this bill, which may significantly impact victim safety.

Section 1 of the bill would require the prosecutor to make available to the defendant or the defendant's counsel certain information or materials "within the possession, custody, or control of the prosecutorial official, the state or any agent of the state, including a person under contract with the state." Domestic violence advocates in Connecticut are "agents of the state" as our services are under contract with several state agencies. While the information in the possession of a domestic violence advocate is privileged information protected by state law (CGS 52-146k), information currently shared between both the domestic violence advocate and the domestic violence victim with Judicial Branch Family Relations counselors may become the subject of disclosure under this bill.

Currently domestic violence advocates provide information to Family Relations that helps to inform recommendations made by Family Relations to the court at arraignment with respect case supervision and protective orders, as required in CGS 46b-38c. Two forms that a domestic violence advocate completes with the victim which are then provided, with the victim's consent, to Family Relations include the Individual Case Report (ICR) and Supplemental Risk Indicator (SRI). In completing both forms the victim reveals personally identifying information, specific statements about the relationship history and past abuse, information on the services they have received from a domestic violence organization, and the victim's specific request related to any restrictions that may be placed on the defendant via a protective order.

While both forms are currently utilized by Family Relations to inform their recommendations, they are not the only sources of information used. Family Relations also utilizes arrest records, information contained in the protective order registry, and a risk assessment completed with the defendant. The forms themselves are part of Family Relations files, but they are not currently shared with the defendant or the court. Instead a summary report is provided with Family Relations recommendations to the court, which therefore limits the attribution of any recommendation solely to information provided by the victim on the ICR or SRI. If Family Relations entire file were disclosed under this bill, victims may face substantially increased risk of violence, particularly given the sharing of the relationship history and past abuse.

The ICR form currently states that the information shared is protected as privileged information under CGS 52-14k, but the bill simply doesn't make clear how that privileged

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information, which becomes part of the file and records of a state agency, would be handled. As the language currently reads, it appears as though it could be subjected to disclosure. This is problematic and ultimately will serve to limit the victim's safe participation with the prosecution.

In *State of Connecticut v. Avery, et al*, in which the defendants sought to compel disclosure of the Family Relations report and ICR form, the judge notes that "disclosure to the defendant would completely subvert the intent of the statute." Further the judge states that "an agreement by the victim to share information with the state's attorney's office, the agency tasked with prosecuting the matter, does not permit the court to find that there is an implied waiver of the statutory privilege." For our part as domestic violence advocates, should Family Relations file be subject to disclosure, we will strongly caution victims against providing any information to Family Relations, which will restrict Family Relations' ability to make informed recommendations to the court.

Section 2 of the bill may erroneously result in the release of a victim address, but may also lead to witness intimidation. The language calls for the disclosure, at least 30 days before the trial, of the name and address of any person that may be used as a witness. It does provide, as required by law, the protection of the address of the victim. However, if a victim has moved in with a potential witness, such as a family member, then by sharing the address of the witness the prosecutor may release the address of the victim.

Again, we oppose the release of Family Relations file and any address that may reveal the location of a victim. We urge the Committee to clarify these issues should this measure move forward so that victims are able to safely participate in the prosecution of their abuser.

SB 691

We have concerns about this measure which seeks to automatically erase certain criminal records after a period of time. We don't disagree that the erasure of certain criminal records can be beneficial, particularly for families that have experienced domestic violence and choose to stay together as erasure can provide a measure of stability for the family, particularly as it relates to housing and employment. However, should this measure pass, we are concerned that it will impact the ability of courts to refer individuals who re-offend to appropriate diversionary programs, as well as to ensure that convicted offenders do not legally have access to firearms.

For the approximately 10,000 domestic violence offenders annually supervised by the Judicial Branch Court Support Services Division, there are three diversionary programs offered – the Family Violence Education Program (FVEP), Explore, and Evolve. FVEP is a purely educational program that is available one time. Individuals who re-offend may then be referred to Explore or Evolve, which are evidence-based behavior modification programs for domestic violence offenders. If someone who has previously utilized FVEP subsequently has their criminal record erased and then re-offends, will they get sent back to FVEP? Nobody, including the offender, the victim, nor potential future victims, are served if someone who re-offends is not sent to progressively intense programs designed to modify their behavior and help them make better choices.

It is also not clear how erasure of criminal records will impact access to firearms. In Connecticut, there is a prohibition against legal firearm possession for individuals convicted of a felony or some misdemeanors, including federal prohibitions for any misdemeanor involving the use, attempted use, or threat of force against a family or household member. If their criminal record is erased, will they legally be able to possess firearms? This would be extremely troublesome for survivors of domestic violence. While we do not necessarily oppose policies that give domestic violence offenders a chance to secure stable housing and employment to support their family, we do not feel that they should have access to firearms, nor do they need any such access to achieve success following the erasure of their criminal records.

We urge the Committee to clarify how access to diversionary programs and firearms will work if criminal records are erased, ensuring the safety and protection of victims. We suggest that the Committee consider Pennsylvania's Clean State law and strike a balance between publically sealing criminal records and automatic erasure that limits their availability to the criminal justice and public protection system.

Thank you for your consideration and please do not hesitate to contact me with questions.

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