



## State of Connecticut

### DIVISION OF PUBLIC DEFENDER SERVICES

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### Testimony of Deborah Del Prete Sullivan, Legal Counsel, Director Office of Chief Public Defender

#### JUDICIARY COMMITTEE - MARCH 10, 2025

#### Raised Bill No. 6872

#### AN ACT REVISING AND CONSOLIDATING THE HATE CRIMES STATUTES

While not opposed to the inclusion of definitions and centralizing all intimidation and bias offenses into one Chapter of the General Statutes, the Office of Chief Public Defender (OCPD) *opposes* **Raised H.B. 6872, An Act Revising and Consolidating the Hate Crimes Statutes** as drafted as it has concerns regarding other proposed changes in the bill. This bill goes much further as it does not just take the current statute in its entirety and place it into a new chapter. It dissects the elements of the current statute as it divides them into two separate offences, adds mandatory minimum sentences and substantial enhanced sentences to the statutory schemes. In addition to First Amendment concerns, OCPD believes this bill will have unintended consequences with the changes, especially upon youth. And the current law regarding discrimination will now be a "Hate" crime impacting persons and entities alike.

The Chief Public Defender is a member of the *Hate Crimes Advisory Task Force*. Prior to the vote of the Task Force on the proposed legislation, this office met separately with certain of its members, including the bill's drafters, and raised concerns and suggested substitute language. As the issues raised by this office remained unaddressed, this office voted against it.

Subsequently, this office has discussed its concerns and opposition with members of the Governor's office in an attempt to reach consensus. OCPD is grateful for these discussions and available to continue them. This office supports the addition of definitions and placement of the offenses into one chapter. However, as drafted and as the offenses have been divided up into new offenses with the potential for substantial and increased penalties, including mandatory minimums, we remain opposed to the remainder of the bill<sup>1</sup> and ask that the Committee take *no action* on this bill at this time. However, we remain available to work on and discuss this bill if the Committee decides to move forward.

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<sup>1</sup> The Office of Chief Public Defender takes no position on the proposed sections pertaining to the Office of the Attorney General.

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There are 4 substantial areas of opposition as follows:

(1) In **Section 1**, except for “ethnicity<sup>2</sup>” and “domestic violence victim<sup>3</sup>” the bill provides a section containing definitions. As drafted, a violation of these new offenses, including the violation of the civil rights of another, can result in being charged with a Hate crime in cases involving victims of domestic violence. The concern is because in a case wherein a protective order has been entered, a defendant can now be charged also with a “hate crime” if he/she violates the protective order. Further, it is unclear whether the status of the victim is due to being the victim of the current offense charged, or a victim of domestic violence that could have occurred years or decades ago. Nor is it clear that the status as such a victim is the result of a conviction, an arrest, or the filing of a complaint with law enforcement or any other entity. Another concern is that this will have a disproportionate impact on communities of color, an unintended consequence of this legislation, the intent of which is to protect communities of color wherein conduct is motivated by the actor’s bias and intent to cause harm based on a person’s inclusion as a protected class because of the person’s race, ethnicity or religion.<sup>4</sup> The overbreadth and vagueness of this section will result in litigation. This office also believes that the “protected class” should be used in this definition section in lieu of “protected social category” to be consistent with the language used elsewhere including within the CHRO and other Connecticut statutes. **OCPD requests changes and further discussion on this Section and deletion of the domestic violence inclusion.**

(2) In **Sections 2 and 3** this office *strongly opposes* the deletion of the element of “**maliciously**” at lines 57 and 74 regarding *Intimidation Based On Bigotry Or Bias In The First and Second Degrees*. This term is present in other states with similar statutes. This office is not aware of any data to demonstrate the need for the deletion of this term. It is clear, however, that the deletion of this term will make it *easier* for the state to prosecute such cases by *reducing* and diluting the state’s burden of proof in offenses that carry with them serious consequences if convicted. In a jury trial, the jury instructions provided by the court are clear as to the meaning of this term as applied in not only these two statutes but other Connecticut statutes. The Connecticut Judicial Branch Criminal Jury Instructions (1995-2025) provide that “[T]o act ‘with malice’ means to act with some improper or unjustifiable or harmful motive including, but not limited to, the desire to cause pain, injury or distress to another.”<sup>5</sup> **As a result, OCPD requests that the term “maliciously” remains in Sections 2 and 3 and suggests that it be defined within Section 1 for clarity.**

(3) **Sections 24 and 25** are new and create *substantial enhanced penalties* for persons so convicted of committing these offenses and include not only the commission of these offenses, but

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<sup>2</sup> OCPD will share with the Committee a definition of “ethnicity” previously provided to the Task Force drafters.

<sup>3</sup> OCPD will share with the Committee a definition of a “victim of domestic violence” previously provided to the Task Force drafters.

<sup>4</sup> In the United States, intimate partner violence (IPV) against women disproportionately affects ethnic minorities. Further, disparities related to socioeconomic and foreign-born status impact the adverse physical and mental health outcomes as a result of IPV, further exacerbating these health consequences. See e.g., **Intimate Partner Violence and Its Health Impact on Disproportionately Affected Populations, Including Minorities and Impoverished Groups** <https://pmc.ncbi.nlm.nih.gov/articles/PMC4302952/#:~:text=In%20the%20United%20States%2C%20intimate,further%20exacerbating%20these%20health%20consequences.>

<sup>5</sup> See Connecticut Judicial Branch Jury Instructions, Section 6.10-1 Intimidation Based on Bigotry or Bias in the First Degree – 53a-181j, pages 563-567 (Revised to June 1, 2022).

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attempting to commit these offenses or further, being charged as engaging in a conspiracy to commit such offenses, even if the offense is not completed. These sections impose **mandatory minimum sentences** and further create a requirement that the court impose the next level classification of offense if the “finder of fact determines beyond a reasonable doubt that the defendant intentionally selected any person against whom the crime was committed and was motivated in whole or in substantial part by any protected social category of such person or another person. . . “. The language is ambiguous here as it is unclear whether this finding is after a jury or court trial or after acceptance of a plea offer. If it is contemplated to be applicable after a trial, this appears to be a **“trial tax”** to be imposed upon anyone who exercises their constitutional right to a trial and who has been found guilty by the fact finder. Similarly, the language can be interpreted for use after entering a plea of guilty. If so, is the court now required to hear further testimony and evidence to determine that the person is guilty beyond a reasonable doubt before imposing an enhancement?

Most importantly, these sections contemplate for not only consecutive sentences under the statutes, but mandatory minimum sentences. Consistent with previous testimony, this office is opposed to mandatory minimums. **OCPD requests that these sections be deleted in their entirety.**

(4) **Stacking of charges and penalties, which may be consecutive** now are not only possible, but probable with the dissecting and rewriting of these statutes for insertion into one chapter. The current statutes have not been placed in their entirety into the new chapter. Instead, certain elements of the current statutory scheme have been cut from the existing statute and placed separately into the new chapter to create a new and separate offense. For example, Threatening as provided in C.G.S. 53a-61aa currently has four subsections which detail the elements of the offense. Subsection (4)(A) in Section (a) pertains to threatening conduct involving a house of worship or its affiliated buildings. This bill cuts this out of the current Threatening statute to create a separate statute for this offense. With the changes in this bill, a person can now be charged not only with the current offense of threatening but also a separate offense which targets houses of worship or affiliated buildings. Language should be added as in other statutes to clearly articulate that certain offenses are a **Lesser Included Offense** of the other with the insertion into the statutes of language as provided for example in C.G.S. 53a-64bb, *Strangulation in the Second Degree*.<sup>i</sup> As a result, this office requests that language be added that no person shall be found guilty of one offense and also the other upon the same transaction even though the person may be charged and prosecuted for both, thereby making it clear that one is the lesser included offense of the other as in this example, Threatening.

**In conclusion**, because the changes contemplated by this bill present complex and substantial issues, OCPD asks that the Committee take no action on this bill beyond providing definitions and placing all of these offenses, as they currently exist, into one chapter of the general statutes. The Office of Chief Public Defender remains available to work with the Governor’s office and the drafters going forward if the Committee decides to go further. Thank you.

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<sup>i</sup> C.G.S. 53a-64bb Strangulation in the Second Degree. No person shall be found guilty of strangulation in the second degree and unlawful restraint or assault upon the same incident, but such person may be charged and prosecuted for all three offenses upon the same information. . . “.