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MIHALAKOS, J., concurring. I agree with the majority that the defendant, Martha Sligh, cannot prevail on her claim that there was insufficient evidence from which the court could find that she had violated her probation. I respectfully write separately because I am not persuaded by the majority's conclusion that the issue of who bears the burden of proving self-defense need not be reached.

In *State v. Davis*, 229 Conn. 285, 295, 641 A.2d 370 (1994), our Supreme Court defined the standard of proof required with respect to probation revocation proceedings, holding that the state must prove by a fair preponderance of the evidence that the defendant had violated probation. The court explained that “[t]he function of the burden of proof employed by the court is to allocat[e] the risk of error between the litigants and indicat[e] the relative importance of the ultimate decision. . . . For example, the proof beyond a reasonable doubt standard implies that the party on whom that burden is imposed should bear almost the entire risk of error. . . . The preponderance of the evidence standard indicates that the litigants should share equally the risk of error . . . because the interests at stake have roughly equal societal importance.” (Citations omitted; internal quotation marks omitted.) *Id.*, 293–94.

Our Supreme Court determined that a violation of probation hearing is akin to a civil proceeding, which mirrors federal law that “[a]lthough a [probation] revocation proceeding must comport with the requirements of due process, it is not a criminal proceeding. *Minnesota v. Murphy*, 465 U.S. 420, 435 n.7, 104 S. Ct. 1136, 79 L. Ed. 2d 409, reh. denied, 466 U.S. 945, 104 S. Ct. 1932, 80 L. Ed. 2d 477 (1984).” (Internal quotation marks omitted.) *State v. Davis*, *supra*, 229 Conn. 295. The court fully agreed with those authorities that hold that the probation revocation proceeding established by General Statutes § 53a-32 is akin to a civil proceeding. See *Turner v. State*, 784 S.W.2d 342, 344 (Mo. App. 1990) (“[d]ifferent levels of proof are required in the probation revocation proceeding, a civil matter, and in the criminal trial”); *State v. Hodges*, 798 P.2d 270, 278 (Utah App. 1990) (“the proceeding for revocation of probation is not a criminal prosecution” [internal quotation marks omitted]). Having thus established that the nature of the probation proceeding is akin to a civil proceeding, it follows that the burden of proving a claim of self-defense in a probation proceeding is upon the defendant. See *Manning v. Michael*, 188 Conn. 607, 618, 452 A.2d 1157 (1982) (affirming trial court conclusion that defendant failed to meet burden of establishing he acted in self-defense). Accordingly, I would conclude that in a violation of probation proceeding, the defendant bears

the burden of proving self-defense.

The majority opinion references *State v. Pauling*, 102 Conn. App. 556, 571, 925 A.2d 1200, cert. denied, 284 Conn. 924, 933 A.2d 727 (2007), for the proposition that a defendant has only a burden of production, not a burden of persuasion, for a claim of self-defense and accordingly, that the state must disprove a claim of self-defense beyond a reasonable doubt. *Pauling*, however, refers to the state's burden of disproving a defendant's affirmative defense of self-defense *in a criminal proceeding*. Id. Our Supreme Court has held that a violation of probation proceeding is not a criminal proceeding but, rather, is akin to a civil proceeding. See *State v. Davis*, supra, 229 Conn. 295. Therefore, I would conclude that regardless of whether the underlying offense that the defendant is charged with is criminal, the violation of probation proceeding itself is a civil proceeding, and, accordingly, it should be governed by civil standards.

Accordingly, in the present matter, I would conclude that the court properly determined that the defendant failed to meet her burden of establishing that she was acting in self-defense and, further, that the state met its burden of proving a violation of probation by a preponderance of the evidence.

I respectfully concur in affirming the judgment of the trial court.
