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**TESTIMONY OF
ATTORNEY GENERAL GEORGE JEPSEN
BEFORE THE JUDICIARY LAW COMMITTEE
MARCH 20, 2012**

Good morning Senator Coleman, Representative Fox and members of the committee. I appreciate the opportunity to support two important bills being heard by the committee today. The first bill I would like to support today is SB 423, *An Act Concerning Court Fees Paid by the State and Service of Process Requirements in Civil Actions Commenced Against the State by Persons Who Are Incarcerated*. I strongly support this proposal and urge the committee to report favorably upon it.

This bill will incentivize state marshals to effect in-hand service when serving restraining orders in domestic violence cases. Under current law, state marshals have little incentive to effect in-hand service of such orders because state law only permits the Judicial Branch to pay state marshals a prescribed fee upon successful service, regardless of how the orders get served or how many times service is attempted. Marshals, therefore, oftentimes do not attempt in-hand service of restraining orders and, instead, only effect abode service at the last known address of one who is accused of domestic violence. While abode service is legally sufficient service, there is no guarantee that the subject of the restraining order is put on actual notice that a restraining order has issued against him or her. In addition, many courts are unwilling to go forward with applications for restraining orders when in-hand service has not been made and the accused has not appeared in court pursuant to the terms of a show cause order.

This is not merely inefficient and costly for our courts. It also jeopardizes the health and safety of victims of domestic violence. In some instances, perpetrators of domestic violence are not put on notice that an *ex parte* restraining order has issued against him or her. In other instances, restraining orders may not be effectively enforced due to a court's reluctance to go forward with a restraining order proceeding as a result of concerns about whether the accused is aware that a hearing has been scheduled on an application. Meanwhile, violent offenders remain free to terrorize and abuse innocent victims even though there is ample evidence that restraining orders are justified due to the imminent threat such offenders pose.

It is my hope that SB 423 will go a long way toward preventing such tragedies by encouraging state marshals to effect in-hand service of restraining orders. Under this proposal, a marshal will not be entitled to any fees unless he or she first attempts in-hand service and details those efforts in his or her return of service. In addition, marshals will be paid \$60.00 for in-hand service and, if in-hand service is attempted but not accomplished, just \$30.00 for abode service. This will provide marshals with a strong incentive to both attempt and accomplish in-hand service of restraining orders.

The second thing that SB 423 would do is clarify the manner in which process may be served in civil actions against the State by expressly requiring such service be made at the Hartford office of the Attorney General. Current law merely requires service be made at the Attorney General's office. Because we have many offices throughout the State, civil actions sometimes get served at offices other than our main, administrative office. In such circumstances, the appropriate staff members may not become aware of a lawsuit for a period of time, which can prejudice our ability to defend the suit. In the same vein, this bill also would clarify the manner in which incarcerated persons may file civil actions against the state. Specifically, it permits such persons to send a summons and complaint to my Hartford office by certified mail, return receipt requested. Alternatively, service may be accomplished by an incarcerated person by utilizing Department of Corrections staff designated for that purpose. The staff designated by the Department of Corrections, in turn, may use the state's interagency mail system to deliver the summons and complaint to my Hartford office. These procedures will clarify the manner in which incarcerated persons may serve the state in civil actions and ensure that my office gets timely notice of such suits.

The last thing SB 423 would do is give courts the discretion to refuse to waive court fees and costs of service for indigent parties when the court finds that a lawsuit is frivolous. Access to courts is a cornerstone value of our system of government, and courthouse doors should never be closed to a litigant because of an inability to pay court fees and costs. However, the public need not incentivize or facilitate frivolous litigation by waiving court costs and fees for patently meritless lawsuits. Under present law, filing fees and service of process costs are waived for any indigent litigant's lawsuit, no matter how obviously frivolous. Frivolous lawsuits not only vex public officials and others who are named in them, they place substantial stress on judicial and other public and private resources. Our office handles hundreds of such cases each year filed by prison inmates and others.

The federal judiciary has for many years employed a process for inmate litigation that fairly and effectively balances the right of access to courts with the public's legitimate interest in not funding frivolous lawsuits. The Prison Litigation Reform Act (PLRA), 28 U.S.C. 1915, requires courts to review inmate lawsuits at the time of filing and dismiss them if frivolous or malicious. Two features of this system are commendable. First, as with the present proposal, the screening requirement only applies if a fee waiver is sought – that is, a litigant may file even the most frivolous lawsuit if he or she is willing to pay court costs at the time he or she files a lawsuit. Second, the standard for dismissing a lawsuit as frivolous is substantially higher than merely failing to state a viable claim for relief. Rather, as interpreted by the United States Supreme Court, the PLRA permits dismissal of only those cases that are based on clearly baseless factual contentions or assert indisputably meritless legal theories. I trust that our courts would similarly construe and apply the present proposal if it is enacted.

The second bill I would like to support today is support HB-5548, *An Act Concerning Domestic Violence*. This bill will strengthen the existing protections for victims of domestic violence. Specifically, HB-5548 will lengthen the duration of civil protective orders to one year from the current duration of six months and allow, at the option of a victim of domestic violence, for the distribution of the protective order to public and private institutions of basic, vocational, and higher education. Additionally, the bill adds stalking to its definition of "Family Violence," and expands the definition of "threatening," both of which reduce ambiguity within the current statutory scheme. Finally, the bill includes provisions to include computer or phone-based stalking and threatening as grounds for both obtaining a protective order, as well as for violating

a protective order. Taken together, these provisions will strengthen the existing protective order scheme and help reduce domestic violence.

Our communities are not strangers to domestic violence. Annual reports from the State Police indicate that between 2008 and 2010 the arrest rates for domestic violence instances in Connecticut have risen 5% from 20,000 in 2008 to 21,000 in 2010.¹ Worse, over 10% of the incidents involved minor children, roughly three-quarters of which were “dating age” minors between the ages of 12 and 18.² These figures represent an alarming rate of domestic violence incidents, but they merely scratch the surface. These figures do not, and cannot, include the myriad cases that go unreported every year. The statistics are alarming: eighty-five percent of domestic violence victims are female; one in four women will experience domestic violence in her lifetime; and 1.3 million women are victims of physical assault by intimate partners. HB 5548 will help address this epidemic by strengthening our existing domestic violence laws and encouraging victims to come forward and seek protection.

Thank you once again for all of your efforts. I look forward to working with the committee on these important matters.

¹ 2010 is the last year a full report is available.

² Total incidents involving minors topped 2,100, with dating age making up roughly 1,500.