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*Testimony by Representative Laura Hoydick
Before the Judiciary Committee
House Bill 6678
April 5, 2013*

Good Morning Chairmen Coleman and Fox, Ranking Members Kissel and Rebimbas, and members of the Judiciary Committee. Thank you for allowing me the opportunity today to testify in favor of HB 6678, AN ACT CONCERNING THE SERVICE OF A CAPIAS MITTIMUS IN A CHILD SUPPORT ENFORCEMENT.

I thank you for drafting this concept as a committee bill and holding a public hearing on the service of capias warrants with regard to child support payments. The intent behind the original proposed bill 5271 was to increase the collection of past due child support by permitting a state or municipal police officer to serve a capias mittimus ordered by the court or a family support magistrate, and (2) require the Chief Court Administrator to collaborate with the Commissioners of Social Services and Emergency Services and Public Protection in devising a means by which a capias mittimus order is transmitted to and made accessible on the Connecticut online law enforcement communications teleprocessing system. As I became more aware of how our civil and criminal systems communicate I was surprised to learn that police officers are unable to view outstanding warrants issued through the civil court system. This inability would not allow an arresting officer to know that the suspect in custody for criminal violation might also be a deadbeat parent long overdue in their child support obligation(s). In this age of technology it is inexcusable that we could allow children to suffer a lack of support, possibly resulting in their having to be supported by the taxpayers, simply by failing to communicate information known to the Judicial branch to our law enforcement personnel. This restriction in the current law needs to be corrected for the good of our children, single parents and to enforce the burden for supporting children on the parent instead of the taxpayer.

The Office of Legislative Research provided additional information on this topic in report 2012-R-0480. A copy is attached for your convenience. It was never my intent to supplement the serving of warrants currently executed by marshals or constables with state or municipal police offers. In the report Rhode Island gives law enforcement officials the authority to arrest and bring to court child support obligors who have failed to appear in court in response to a witness

subpoena. In that state, the court issues a “writ of body attachment,” which immediately gets transmitted into the Rhode Island warrant system. Law enforcement has access to this information when responding to potential criminal offenses and officers will arrest these individuals on the basis of the writs.

With the continuous financial pressure on our social service system, it would behoove us to utilize technology to facilitate the collection of outstanding child support. Thank you for allowing me to testify in support of HB 6678.

Sincerely,

Rep. Laura Hoydick



OLR RESEARCH REPORT

November 16, 2012

2012-R-0480

CRIMINAL RECORD CHECKS AND CHILD SUPPORT DELINQUENCY

For: Honorable Laura R. Hoydick

By: Katherine Dwyer, Legislative Analyst II
Robin K. Cohen, Principal Analyst

You asked (1) why Connecticut law enforcement officials do not have the authority to arrest and bring to court delinquent child support obligors, (2) for policy options to address this issue, and (3) if surrounding states give law enforcement officials such authority.

SUMMARY

When a person fails to appear in court for a child support matter, the court often issues a *capias* warrant to compel the person to appear in court. The law does not explicitly prohibit law enforcement officers from serving a *capias* but it appears that a *capias* is considered civil process and law enforcement officers are only authorized to serve criminal process, such as criminal arrest warrants. Child support enforcement officials believe that it is the law enforcement community's interpretation of the law that they cannot serve *capias* warrants and in practice they do not do so.

The legislature could consider a number of options to address this situation. It could explicitly authorize law enforcement officers to serve a *capias* or allow them to detain someone until another authorized official arrives. To do so, officers would need *capias* information in their criminal database. It could also hire and authorize more officials to serve *capias* warrants. Each of these options has limitations, including budget constraints.

We contacted officials in Maine, Massachusetts, New Hampshire, New York, Pennsylvania, Rhode Island, and Vermont. Rhode Island appears to be the only state of those we contacted that gives law enforcement officials the authority to arrest and bring to court child support obligors who have failed to appear in court in response to a witness subpoena. In that state, the court issues a "writ of body attachment," which immediately gets transmitted into the Rhode Island warrant system. Law enforcement has access to this information when responding to potential criminal offenses and officers will arrest these individuals on the basis of the writs.

According to officials from Maine, Massachusetts, New Hampshire, and New York, law enforcement officers do not currently have the power to arrest someone on the basis of a *capias* arrest warrant. However, the Massachusetts Department of Revenue Services Child Support Enforcement Division has proposed legislation to authorize the child support agency and family courts to identify appropriate *capias* warrants for entry into the criminal database. Law enforcement officers would then know that the family court has ordered apprehension of the delinquent parent. It is unclear if officers would have the authority to arrest delinquent parents.

We are still awaiting responses from Pennsylvania and Vermont officials and will follow up once we hear back from them.

WHY LAW ENFORCEMENT OFFICERS DO NOT ARREST DELINQUENT OBLIGORS IN CONNECTICUT

It appears that a *capias* is considered civil process as opposed to a criminal arrest. A court issues a *capias* to compel a person to appear in court. An arrest is based on probable cause that a person committed an offense. The attorney general has stated that the law distinguishes between the two and it "seems clear" that "a *capias* is a civil process." (Attorney General Opinion, February 2, 2007).

State and local police officers are authorized to serve criminal process, such as arrest warrants (CGS §§ 7-281 and 29-7). They are not explicitly authorized to serve civil process. The law allows state marshals, constables, and other proper officers authorized by statute to serve civil process. In limited circumstances, an "indifferent person" can serve civil process. Department of Social Services (DSS) and Judicial Branch investigators and support enforcement officers may serve certain types of process in child support matters (CGS § 52-50). The emergency services and public protection commissioner can appoint up to six people nominated by the DSS commissioner to serve warrants or a *capias* in child support matters (CGS § 29-1g).

Because the law does not explicitly authorize police officers to serve civil process and a capias appears to be civil process, it appears that police are not authorized to serve a capias in a child support matter. One law does authorize a “proper officer or state police officer” to take someone into custody when the Superior Court issues a capias order. But this statute is part of the criminal procedure law, which suggests that it is limited to capias warrants in criminal cases as opposed to child support cases (CGS § 54-64d).

POLICY OPTIONS

There are a few things the state could consider doing, but each has limitations.

Capias Officers, Marshals, And Law Enforcement

Legislation could attempt to increase the number of capiases served by (1) hiring more capias officers, (2) requiring state marshals to serve more capias warrants, and (3) authorizing law enforcement officers to serve capias warrants. The first two options would require additional funding and the third option would require a statutory change.

If law enforcement officers had access to the Connecticut On-Line Law Enforcement Communications Teleprocessing System (COLLECT) but not the authority to serve the capias, they could be required to contact one of the capias officers or a state marshal. Without the ability to hold the individual, the child support officer might not be able to get to him or her before local or state law enforcement releases him or her.

Budget constraints are also an issue. Only four of the six capias officers have been hired and the marshal would charge a fee for this service. Additionally, law enforcement may be limited as to distances they might be allowed to transport the subject of the warrant, depending on where the court (or jail if the arrest is made on the weekend) is located.

COLLECT

When law enforcement officers respond to potential criminal activity (e.g., motor vehicle violation, domestic dispute), they typically run a background check via the COLLECT system. Connecticut law enforcement and criminal justice agencies have exclusive access to COLLECT. A COLLECT user can run a criminal background check on an individual that will include information from national and statewide databases.

COLLECT provides national criminal information from the National Crime Information Center (NCIC) and the International Justice and Public Safety Information Sharing Network (NLETS). These two databases also include criminal information from Canada.

COLLECT provides access to the following state systems and files from, among others, the:

1. Department of Motor Vehicles,
2. Sex Offender Registry,
3. Protective Order Registry,
4. Department of Correction,
5. State Police Criminal History,
6. Offender Based Tracking System, and
7. Paperless Re-Arrest Warrant Network.

One policy option would be to make the Connecticut Child Support Enforcement System (CCSES) information, which would include the capias arrest warrant, part of a law enforcement background check of COLLECT. According to DSS child support enforcement officials, additional programming might be required for such an interface.

Since it appears that local or state police do not have authority to make these arrests under a capias, having the CCSES information alone would not make a difference unless this authority was made explicit.

RHODE ISLAND

In Rhode Island, if a family court judge orders a child support obligor to appear based on unpaid child support and the obligor fails to appear, the judge issues a writ of body attachment. This is a court order to arrest a person, not for failure to pay child support but failure to appear. A copy is sent to the obligor, with a warning that he or she can be detained for a potential criminal offense. It is different from a capias warrant (Rhode Island General Laws, Chapter 9-5).

Once issued, the writ is entered into the state's automated warrant system. This means that if a defendant is stopped for a traffic violation or other offense, a sheriff, police officer, or constable can apprehend the individual based on his or her failure to appear and detain him or her. If this occurs during the week, the law enforcement officer will bring him or her to the family court. On weekends when the court is closed, the individual will be held at a correctional facility until the family court's next session.

KD:ts