



**STATE OF CONNECTICUT
JUDICIAL BRANCH**

EXTERNAL AFFAIRS DIVISION

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**Testimony of the Honorable Elizabeth A. Bozzuto
Chief Administrative Judge for Family Matters**

**Judiciary Committee Public Hearing
March 17, 2014**

Raised Bill 462, An Act Concerning Civil Restraining and Protective Orders

Senator Coleman, Representative Fox, Senator Kissel, Representative Rebimbas and members of the Judiciary Committee, my name is Elizabeth Bozzuto and I serve as the Judicial Branch's Chief Administrative Judge for Family Matters. Thank you for the opportunity to testify, on behalf of the Branch, on **S.B. 462, *AAC Civil Restraining and Protective Orders***. My testimony is limited to section 1 of the bill, which would greatly expand the types of issues that may be covered by civil restraining orders.

Legislation similar to this was proposed during the 2013 Legislative Session (section 1 of H.B. 6702), and at that time the Judicial Branch testified that we had concerns about the proposal. Ultimately legislation was passed that required the Judicial Branch to develop a plan to include temporary financial support as part of the relief available to an applicant for a restraining order, and to submit the plan to the Domestic Violence Task Force and the Judiciary Committee by January 15, 2014 (section 19 of P.A. 13-214). This past fall the Judicial Branch formed a working group to implement this requirement, which I chaired.

The act required the Branch to consult with "state agencies and private organizations and advocates with experience in filing restraining order applications or in providing advocacy or services to domestic violence victims," so early on in the process we identified a number of agencies and organizations with an interest in the topic and invited them to provide their input at a meeting of the working group. Based on the discussions that occurred at that meeting, the Working Group identified two critical needs: (1) helping applicants maintain their current household; and (2) providing immediate financial relief through temporary child support, while

assisting the applicant through the process of obtaining a permanent child support order. With this focus in mind, the Working Group set out to develop the Plan.

The Plan addresses the five specific items required by the legislation and includes the legislation that would be necessary in order to implement the recommendations as well as a cost estimate. Based on an analysis of the increased workload that would be required by the Plan, our Budget unit estimated an implementation cost of approximately \$350,000.00. We submitted the Plan to the General Assembly on January 30, 2014. For your information, I have attached a copy of the Plan, exclusive of the appendices, to my testimony.

The legislation before you today differs substantially from the language proposed by the Judicial Branch. However, I am hopeful that we can work with the proponents of this bill to arrive at a mutually agreeable plan of action.

The bill before you would significantly broaden the court's authority within a civil restraining order case, at both the ex parte application and hearing stages. I thought it might be helpful to briefly summarize its provisions:

At the time of application, the bill would authorize the Court to order that:

- The respondent refrain from terminating the utility services or other necessary services related to the family dwelling or the dwelling of the applicant;
- The respondent refrain from taking any action that could cause the cancellation of health, automobile or homeowners insurance;
- The respondent refrain from transferring/disposing/concealing specified property owned or leased by the applicant or respondent; and
- The applicant or respondent be provided with temporary possession of specified personal property and documents.

At the time of the hearing, the bill would authorize the Court to order the respondent to:

- Pay for the basic needs of the applicant or the dependent children of the applicant and respondent for a period not to exceed 120 days, if there is a duty and ability to pay;
- Make rent or mortgage payments on the family dwelling or the dwelling of the applicant;
- Maintain utility services or other necessary services for the family dwelling or the dwelling of the applicant;
- Maintain all existing health, automobile, or homeowners insurance; and

- Provide any other financial support to the applicant or dependent children of the applicant and respondent.

This would significantly broaden the number and range of issues that a judge handling a restraining order application must consider. The additional provisions requested by the applicant will significantly increase court time on both the ex parte and hearing dates in order for the judge to consider the additional terms of the order. This, in turn, will have a significant impact on our Clerk's Offices and CSSD-Family Services offices. Specifically:

At the application stage, it will require:

- Additional time for the judges to review the applications in order to address distribution/ownership of specified property;
- More time spent by Judicial staff in clerk's offices, family relations offices, and court service centers to assist applicants and respondents with preparing and responding to applications and orders;
- More time spend by Family Relations Counselors in assisting the Judge with these applications;
- More time spent by Clerk's Offices in explaining the conditions of ex parte orders to respondents.

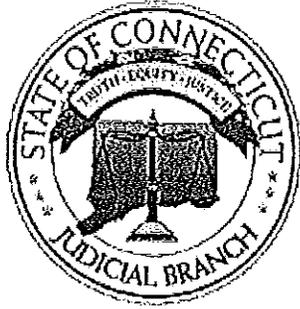
At the hearing stage, it will:

- Increase the number of hearings before the Court, resulting in the need for additional judge time and Branch personnel to staff the court rooms
- Increase the time that Family Services spends on these cases in order to discuss financial issues impacting the needs for both the applicant and the children. It is likely that the Family Relations Counselor will be asked to:
 - Assist the applicant and respondent in completing a financial affidavits;
 - Complete the child support guideline worksheets;
 - Identify bills needing to be paid;
 - Identify the parties' positions and find common ground to narrow the issues;
 - Attempt to resolve the disputed financial support issues for the applicant/respondent; and
 - Complete an agreement form if an agreement is reached

I would also point out that this section does not address enforcement of the new orders, does not limit the modifiability of the new orders, and does not prohibit a finding of contempt or criminal violation of a restraining order. It is likely that there will be a new volume of contempt and modification motions and hearings related to the new provisions of this bill. These issues are addressed in the proposal the Judicial Branch drafted.

Finally, there is one overarching concern that I am compelled to bring to your attention. This proposal would greatly expand the duty of one person to support another. Currently, there is no legal obligation for parties who are not and have never been married to provide financial support to each other. Furthermore, for parties who are married, if there is no current divorce or legal separation action pending, the grounds for spousal support does not exist. This proposal would create a duty to support that goes far beyond this well-established law and could have significant implications. The proposal that the Judicial Branch drafted, as part of the Plan submitted, carefully took this into account. While expansion beyond the current state of the law is a policy decision that the Legislature may choose to make, I would urge you to carefully consider the possible implications of such a change. The Judicial Branch's proposal would provide temporary relief when it is most needed, but does not intrude into issues that are more properly the subject of actions for support, divorce, legal separation, etc., where there are well-established processes and procedures.

In conclusion, I would like to again state my willingness to work with the proponents of this proposal to arrive at a mutually agreeable plan of action to address the concern that this proposal is meant to address. Thank you for your consideration.



Connecticut Judicial Branch

Plan to Include Temporary Financial Support as part of the Relief Available to an Applicant for a Restraining Order

Submitted pursuant to section 19 of P.A. 13-214,
An Act Concerning Domestic Violence and Sexual Assault

January 2014

Introduction

Section 19 of P.A. 13-214, *An Act Concerning Domestic Violence and Sexual Assault*, requires the Judicial Branch to develop a plan to include temporary financial support as part of the relief available to an applicant for a restraining order, and to submit the plan to the Domestic Violence Task Force and the Judiciary Committee. The following excerpt from the bill sets out this requirement in more detail:

(a) The Chief Court Administrator shall develop a plan to include temporary financial support as part of the relief available, when appropriate, to an applicant for a restraining order under section 46b-15 of the general statutes. The Chief Court Administrator shall develop such plan after consultation with state agencies and private organizations and advocates with experience in filing restraining order applications or in providing advocacy or services to domestic violence victims. The plan shall include: (1) An assessment of best practices established by other states, if any, with respect to such temporary financial support; (2) recommended procedures for determining (A) the assets available to an applicant and respondent pursuant to an application filed under section 46b-15 of the general statutes, (B) the respondent's ability to pay such temporary financial support, and (C) the amount of temporary financial support necessary to maintain the safety and basic needs of the applicant, if the respondent has a duty to support the applicant, or the respondent's dependent children; (3) recommended procedures for collecting the amount of any such temporary financial support owed by the respondent; (4) strategies for establishing the necessary court procedures to facilitate the inclusion of temporary financial support in court orders made under section 46b-15 of the general statutes; (5) an assessment of the feasibility of making such temporary financial support available to persons who are eligible to apply for restraining orders as family or household members, as defined in section 46b-38a of the general statutes, but for whom the respondent is not obligated to furnish support as provided in section 46b-215 of the general statutes; and (6) recommendations for legislation and other measures to implement the plan.

(b) Not later than January 15, 2014, the Chief Court Administrator shall submit the plan developed pursuant to subsection (a) of this section to the speaker of the House of Representatives' Task Force on Domestic Violence and the joint standing committee of the General Assembly having cognizance of matters relating to the judiciary, in accordance with the provisions of section 11-4a of the general statutes

This report is submitted pursuant to that requirement.

Section I: Process

Under the direction of the Honorable Elizabeth Bozzuto, Chief Administrative Judge for Family Matters, the Judicial Branch formed a Working Group to implement the requirement of section 19 of P.A. 13-214. The group consisted of Judicial Branch staff with expertise in family matters and child support. The following is a list of the Working Group members:

The Honorable Elizabeth A. Bozzuto
Chief Administrative Judge for Family Matters

Paul Bourdoulous, Deputy Director, Support Enforcement Services
Superior Court Operations Division

Phyllis Cummings-Teixeira, Regional Manager, Family Services
Court Support Services Division

Joseph J. DiTunno, Program Manager, Family Services
Court Support Services Division

Deborah J. Fuller, Director
External Affairs Division

Stephen R. Grant, Executive Director
Court Support Services Division

Johanna Greenfield, Caseflow Management Specialist
Superior Court Operations Division

David M. Iaccarino, Deputy Director, Family, Support and Juvenile Matters
Superior Court Operations Division

Debra Kulak, Regional Manager, Family Services
Court Support Services Division

Martin R. Libbin, Director, Legal Services
Superior Court Operations Division

Stephen N. Ment, Deputy Director
External Affairs Division

The Working Group began meeting in September 2013 and met regularly over the next few months. At the initial meeting, the group determined that, in order to fulfill the statutory requirement that the Judicial Branch consult "with state agencies and private organizations and advocates with experience in filing restraining order applications or in providing advocacy or services to domestic violence victims," it would invite representatives of such organizations to a meeting. The group identified a number of

agencies and organizations with an interest in the topic and invited them to provide their input at a Working Group meeting on October 7, 2013.

The following persons attended the meeting:

Liza Andrews, Communications and Public Policy Specialist
Connecticut Coalition Against Domestic Violence

Hakima Bey-Coon, Staff Attorney
Office of the Victim Advocate

Robert Clark, Executive Assistant Attorney General
Office of the Attorney General

Kara Hart, Attorney
Greater Hartford Legal Aid

Sean Kehoe, Attorney
Office of the Attorney General

Dorian Long
Department of Social Services

Lorraine Roblyer, Attorney
Connecticut Legal Services

Aaron Wenzloff, Attorney
New Haven Legal Assistance

The Permanent Commission on the Status of Women was also invited to send a representative but was unable to attend.

At the meeting, it was strongly noted that a lack of resources and potential financial harm often deters individuals in abusive relationships from applying for a restraining order. To address this concern, the Working Group determined that it should focus on two areas: (1) helping applicants maintain their current household; and (2) providing immediate financial relief through temporary child support, while assisting the applicant through the process of obtaining a permanent child support order.

The Working Group also discussed the current options that are available for parents and guardians to obtain permanent child support orders, including Title IV-D child support services. The Department of Social Services (DSS) and the Office of the Attorney General (OAG) partner with the Judicial Branch Support Enforcement Services Unit (SES) to provide IV-D child support services. There is no application fee for IV-D services, and applicants receive the assistance of DSS, OAG and SES in the expedited establishment and enforcement of permanent child support orders. IV-D information is specifically protected under C.G.S. sec. 17b-90 in family violence situations, and the

involvement of state agency personnel and services in these matters can be of great assistance to applicants seeking a restraining order.

Section II: Statutory Requirements

The legislation required the working group to address a list of several specific items. This section sets out the Working Group's response to each of those items.

(1) An assessment of best practices established by other states, if any, with respect to such temporary financial support;

The Working Group reviewed a 2011 survey entitled *Domestic Violence Civil Protection Orders by State* that was conducted by the ABA's Commission on Domestic and Sexual Violence. One of the survey fields addressed the issue of whether child or spousal support was available as part of a civil restraining order. The survey shows that 36 states do provide that option. The Working Group decided to look into this further by utilizing the services of the National Center for State Courts to send out a list of questions to every state. The following eleven states responded to the request for information:

Alaska
California
Delaware
Georgia
Indiana
Louisiana
Minnesota
Ohio
Oregon
South Carolina
West Virginia

Please see **Appendix A** for the list of questions and responses received.

(2) Recommended procedures for determining:

(A) The assets available to an applicant and respondent pursuant to an application filed under section 46b-15 of the general statutes:

All determinations regarding the assets available to the applicant and respondent will be completed at the time of the initial hearing on the restraining order. The method that will be utilized is the practice currently employed by the Family Division of the Superior Court for other financial considerations, including the submission of a sworn financial affidavit in the form prescribed by the Chief Court Administrator, which includes current

income, expenses, assets and liabilities (Judicial Branch Financial Affidavit, form JD-FM-6), as well as direct testimony of the parties, if necessary.

(B) The respondent's ability to pay such temporary financial support:

The respondent's sworn financial statement referenced above will provide the Court with the necessary information to determine the respondent's ability to pay. With regard to financial support for the respondent's dependent children, the determination will be made in a manner consistent with the requirements of the general statutes concerning the issuance of child support orders.

(C) The amount of temporary financial support necessary to maintain the safety and basic needs of the applicant, if the respondent has a duty to support the applicant, or the respondent's dependent children:

The amount of financial support for the benefit of the children of the respondent in the care of the applicant will be determined in accordance with the requirements of the general statutes and Practice Book rules concerning the issuance of child support orders. This includes, but is not limited to: the sworn financial affidavits of the applicant and respondent referenced in subsection (A) above; the completed child support guidelines worksheets (Worksheet for the Connecticut Child Support and Arrearage Guidelines (CCSG-1), form JD-FM-220); and necessary direct testimony of the parties. This information will provide the court with the information it requires to determine and establish orders for financial support.

(3) Recommended procedures for collecting the amount of any such temporary financial support owed by the respondent:

The payments shall be made by the respondent directly to the applicant, preferably by check or money order for recordkeeping purposes. The proposed legislation specifies that payments made to the applicant shall not constitute a violation of any 'no contact' portion of the restraining order. Any amounts not paid or collected shall be preserved and may be collectable in an action for dissolution of marriage, custody, paternity or support, provided an action is commenced within twelve months from the issuance of the order to pay temporary financial support.

(4) Strategies for establishing the necessary court procedures to facilitate the inclusion of temporary financial support in court orders made under section 46b-15 of the general statutes:

The proposed legislation will address the need for financial support for restraining order applicants in two ways.

The first is an automatic order that will go into effect at the time an ex parte restraining order is served upon the respondent. The order prohibits either party from taking any action that could lead to the termination of necessary utilities or services to

the applicant's and respondent's shared household. The preservation of these utilities and services will be further addressed by the court at the time of the hearing.

The second provision is the authority to issue orders for temporary financial support for the benefit of the respondent's dependent children who are in the care of the applicant. Temporary financial support pursuant to this section will be addressed at the time of the initial restraining order hearing, provided the applicant requested such support on the restraining order application. In order to issue an order of temporary financial support, the court must determine that: (1) the need for child support is urgent; (2) requiring the applicant to pursue other means for the collection of child support would jeopardize the safety and well-being of the applicant and the child or children for whom the support is requested; and (3) the respondent has the legal duty to support the children and the ability to pay. The orders will expire 90 days from issuance, upon dismissal of the case, or if financial orders are established in any other court matter regarding said children, whichever occurs first.

The 90-day window is intended to provide the applicant with an opportunity to acquire a permanent child support order. There is no application fee for IV-D services, and applicants receive the assistance of DSS, AGO, and SES in the expedited establishment and enforcement of permanent child support orders. Applicants will be provided with IV-D service information, brochures, and application information at the time they file an application for a restraining order. IV-D services are initiated with DSS, and this additional communication and coordination with DSS will assist applicants with initiating the permanent process to establish a child support order at the same time as the initial request for temporary relief.

The Judicial Branch will conduct an assessment of all related court forms to determine if revisions are appropriate and whether it is necessary to develop new forms. In addition, policies and procedures for the Judicial Branch staff will be reviewed to determine if modifications are necessary.

- (5) *An assessment of the feasibility of making such temporary financial support available to persons who are eligible to apply for restraining orders as family or household members, as defined in section 46b-38a of the general statutes, but for whom the respondent is not obligated to furnish support as provided in section 46b-215 of the general statutes:*

It does not appear feasible to propose strategies for making temporary financial support available to persons for whom the respondent is not obligated to furnish support. The potential variables, and family or household scenarios, are numerous and complex, making it difficult to establish criteria and standards that would be consistently applied.

Section III: Recommended Legislation

Implementation of this Plan will require an amendment to C.G.S. sec. 46b-15, as follows:

Section 46b-15, as amended by section 36 of Public Acts 13-3 and section 2 of section 13-194, is repealed and the following is substituted in lieu thereof:

(a) Any family or household member, as defined in section 46b-38a, who has been subjected to a continuous threat of present physical pain or physical injury, stalking or a pattern of threatening, including, but not limited to, a pattern of threatening, as described in section 53a-62, by another family or household member may make an application to the Superior Court for relief under this section.

(b) The application form shall allow the applicant, at the applicant's option, to indicate whether the respondent holds a permit to carry a pistol or revolver or possesses one or more firearms or ammunition. The application shall be accompanied by an affidavit made under oath which includes a brief statement of the conditions from which relief is sought. Upon receipt of the application, if the allegations set forth in the affidavit meet the requirements of subsection (a), the court shall [order that] schedule a hearing on the application be held not later than fourteen days from the date of the [order] application. The court, in its discretion, may make such orders as it deems appropriate for the protection of the applicant and such dependent children or other persons as the court sees fit. In making such orders, the court, in its discretion, may consider relevant court records if the records are available to the public from a clerk of the Superior Court or on the Judicial Branch's Internet web site. Such orders may include temporary child custody or visitation rights, and such relief may include, but is not limited to, an order enjoining the respondent from (1) imposing any restraint upon the person or liberty of the applicant; (2) threatening, harassing, assaulting, molesting, sexually assaulting or attacking the applicant; or (3) entering the family dwelling or the dwelling of the applicant. Such order may include provisions necessary to protect any animal owned or kept by the applicant including, but not limited to, an order enjoining the respondent from injuring or threatening to injure such animal. If an applicant alleges an immediate and present physical danger to the applicant, the court may issue an ex parte order granting such relief as it deems appropriate. If a postponement of a hearing on the application is requested by either party and granted, the ex parte order shall not be continued except upon agreement

of the parties or by order of the court for good cause shown. If a hearing on the application is scheduled or an ex parte order is granted and the court is closed on the scheduled hearing date, the hearing shall be held on the next day the court is open and any such ex parte order shall remain in effect until the date of such hearing.

(c) Upon the issuance of an ex parte restraining order under this section and service upon the respondent, until the hearing on the application, neither party may take any action that could lead to the termination of any necessary utilities or services related to the applicant's and respondent's currently shared household. At the hearing on the application, if the restraining order is continued, the court shall make a determination as to whether further orders regarding necessary utilities or services are appropriate.

(d) An applicant for a restraining order under this section may make a request for financial support for the benefit of any child or children alleged to be the child or children of the applicant and the respondent, provided no other order of child support for the benefit of said child or children is in effect. At the hearing on the application, if a restraining order is issued or continued, the court may make an order of temporary financial support for the benefit of said child or children provided the court finds that: (1) the need for child support is urgent; (2) requiring the applicant to pursue other means for the collection of child support would jeopardize the safety and well-being of the applicant and the child or children for whom the support is requested; and (3) the respondent has the legal duty to support said child or children and the ability to pay. The court shall not enter an order of support without sufficient evidence consistent with the requirements of the general statutes concerning the issuance of child support orders, including, but not limited to, sworn financial affidavits and child support guidelines worksheets. If a restraining order issued at the initial hearing does not include a financial support order, no financial support order may be entered pursuant to this section during the effective period of the restraining order. Any order of financial support entered pursuant to this section shall be non-modifiable and shall automatically expire ninety days from the date of issuance, upon issuance of a separate financial support order for the benefit of said child or children, or upon dismissal of the case, whichever occurs first. During the effective period of a restraining order and upon the expiration of the order for temporary financial support, the applicant may not file a subsequent application for financial support against the respondent pursuant to this section. Payment of financial support ordered

pursuant to this section by mail or through a third party shall not constitute a violation of the no contact provision of a restraining order issued pursuant to this section. Any amounts not paid or collected shall be preserved and may be collectable solely through an action for dissolution of marriage, custody, paternity or support, provided the action is commenced within twelve months of the issuance of the order.

[(c)] (e) Every order of the court made in accordance with this section shall contain the following language: "This order of protection may be extended by the court beyond one year. In accordance with section 53a-107, entering or remaining in a building or any other premises in violation of this order constitutes criminal trespass in the first degree. This is a criminal offense punishable by a term of imprisonment of not more than one year, a fine of not more than two thousand dollars or both."

[(d)] (f) No order issued by the court pursuant to this section shall exceed one year, except that an order of protection may be extended by the court upon motion of the applicant for such additional time as the court deems necessary. If the respondent has not appeared upon the initial application, service of a motion to extend an order may be made by first-class mail directed to the respondent at the respondent's last-known address.

[(e)] (g) The applicant shall cause notice of the hearing pursuant to subsection (b) of this section and a copy of the application and the applicant's affidavit and of any ex parte order issued pursuant to subsection (b) of this section to be served on the respondent not less than five days before the hearing. The cost of such service shall be paid for by the Judicial Branch. Upon the granting of an ex parte order, the clerk of the court shall provide two copies of the order to the applicant. Upon the granting of an order after notice and hearing, the clerk of the court shall provide two copies of the order to the applicant and a copy to the respondent. Every order of the court made in accordance with this section after notice and hearing shall be accompanied by a notification that is consistent with the full faith and credit provisions set forth in 18 USC 2265(a), as amended from time to time. Immediately after making service on the respondent, the proper officer shall send or cause to be sent, by facsimile or other means, a copy of the application, or the information contained in such application, stating the date and time the respondent was served, to the law enforcement agency or agencies for the town in which the applicant resides, the town in which the applicant is employed and the town in which the respondent resides. The clerk of the court shall send, by facsimile or other means, a

copy of any ex parte order and of any order after notice and hearing, or the information contained in any such order, to the law enforcement agency or agencies for the town in which the applicant resides, the town in which the applicant is employed and the town in which the respondent resides, within forty-eight hours of the issuance of such order. If the victim is enrolled in a public or private elementary or secondary school, including a technical high school, or an institution of higher education, as defined in section 10a-55, the clerk of the court shall, upon the request of the victim, send, by facsimile or other means, a copy of such ex parte order or of any order after notice and hearing, or the information contained in any such order, to such school or institution of higher education, the president of any institution of higher education at which the victim is enrolled and the special police force established pursuant to section 10a-142, if any, at the institution of higher education at which the victim is enrolled.

[(f)] (h) A caretaker who is providing shelter in his or her residence to a person sixty years or older shall not be enjoined from the full use and enjoyment of his or her home and property. The Superior Court may make any other appropriate order under the provisions of this section.

[(g)] (i) When a motion for contempt is filed for violation of a restraining order, there shall be an expedited hearing. Such hearing shall be held within five court days of service of the motion on the respondent, provided service on the respondent is made not less than twenty-four hours before the hearing. If the court finds the respondent in contempt for violation of an order, the court may impose such sanctions as the court deems appropriate. Failure to pay support ordered pursuant to subsections (c) and (d) of this section shall not be the basis for a motion for contempt.

[(h)] (j) An action under this section shall not preclude the applicant from seeking any other civil or criminal relief.

Section IV: Cost Estimate

The following cost estimate was developed by the Judicial Branch's Budget and Planning Unit, Fiscal Administration Division, in consultation with staff from the Superior Court Operations and Court Support Services Divisions.

The additional workload that will be associated with incorporating the need for financial orders as part of the Restraining Order Process includes the following: assistance with preparation of financial affidavits, calculation of recommended child support based on the Child Support Guidelines, extended conferences, immediate entry of orders into the Protective Order Registry, prolonged hearings and other associated miscellaneous tasks.

The additional workload is based on the 4,156 hearings that were held in Calendar Year 2013, and the estimate that 2,618 of those hearing would have likely involved financial support.

Additional Staff Required:

	FY 15
4 Family Services Counselors	267,507
<u>1 Court Planner I-Court Operations</u>	<u>65,480</u>
5	332,987
Other Expense @5 %	<u>16,649</u>
	349,636

Additional workload on Judges:

As of 1/23/14 there are 25 judge vacancies. Although it is unknown at this point when the next appointment of judges will occur, we do anticipate that appointments will be forthcoming. Therefore, we do not anticipate that additional judges will be needed to implement this Plan.

Any additional clerical work will be absorbed by the Clerk's Office and Court Service Centers.

No equipment will be needed to implement this initiative.