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TO: Judiciary Committee

FROM: Attorney Aaron P. Wenzloff

ON BEHALF OF: New Haven Legal Assistance Association, Inc. and other legal services programs in Connecticut

RE: H.B. 7004

Members of the Judiciary Committee:

My name is Aaron Wenzloff, and I am a staff attorney at New Haven Legal Assistance Association. **I am testifying in support of House Bill 7004** regarding the service of temporary restraining orders. I served on the Task Force to Study the Service of Temporary Restraining Orders, which made recommendations in a report to this committee, and this bill is designed to implement those recommendations.

The legal services programs are very supportive of HB 7004. We think it is an important bill to fix a critical system in protecting victims of domestic violence. When TROs do not get served, victims lose valuable protections.

We also believe that 7004 could be improved. First, it does not include several recommendations that were part of the Task Force's report to this committee.

- Explicit authority for the court to postpone a TRO hearing and extend an ex parte order if needed to give more time to achieve service
- A requirement that the applicant is promptly informed when service is made
- A requirement that after service is made, the date and time of such service is required to be entered into the protective order registry, and
- Authorization for law enforcement to serve TROs where guns or ammunition are indicated on the application

These were recommendations made by the Task Force that did not make it into HB 7004. I have included with my testimony a marked up version of HB 7004 with some proposed statutory language to incorporate these changes. See Appendix 1, attached.

But, the legal services programs believe that HB 7004 should include additional provisions

beyond the Task Force recommendations, principally that law enforcement, correctional officers, probations officers, and judicial marshals be permitted to serve TROs in all cases, not just those with firearms, at the applicant's choice.

Second, we have some concerns about the proposal that service be accomplished by law enforcement verbally, as is done in Massachusetts, Delaware, Michigan, and California. We represent both applicants and respondents in TRO cases, and we feel that verbal notice is insufficient to ensure that TROs are enforceable orders. We recommend that Connecticut adopt short form notification, as is used in Minnesota, Illinois, and Iowa, as a method of service to provide a fast, efficient tool for law enforcement to serve TROs. I have included a copy of Minnesota's and Illinois's statute for your reference. See Appendix 2, attached.

These states allow law enforcement to effectuate service of a TRO on a respondent using a short form that tells the respondent about the most pertinent details in the TRO, without using a physical copy of the TRO. The short form does not include the affidavit or full application.

The information on the short form notice satisfies due process concerns about the respondent having sufficient notice about the upcoming hearing and knowing the terms of the restrictions upon him/her, as well as creating conditions to establish criminal intent if the order is subsequently violated, so that the order may be enforced. .

In sum, the legal services programs in Connecticut are highly supportive of this bill. Our current system is plagued with problems that leave victims of domestic violence unprotected. HB 7004 is critically needed to provide systemic changes to better protect victims.

Thank you for your time and consideration.

Aaron P. Wenzloff
Staff Attorney

APPENDIX 1

Proposed Revisions to H.B. 7004 to Reflect Additional Recommendaitons of the Task Force to Study Service of Temporary Restraining Orders

AN ACT CONCERNING IMPLEMENTATION OF THE RECOMMENDATIONS OF THE TASK FORCE TO STUDY SERVICE OF RESTRAINING ORDERS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 6-32 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2015*):

(a) Each state marshal shall receive each process directed to such marshal when tendered, execute it promptly and make true return thereof; and shall, without any fee, give receipts when demanded for all civil process delivered to such marshal to be served, specifying the names of the parties, the date of the writ, the time of delivery and the sum or thing in demand. If any state marshal does not duly and promptly execute and return any such process or makes a false or illegal return thereof, such marshal shall be liable to pay double the amount of all damages to the party aggrieved.

(b) Each state marshal shall have access to, and use of, the automated registry of protective orders maintained by the Judicial Department pursuant to section 51-5c.

[(b)] (c) A civil protective order constitutes civil process for purposes of the powers and duties of a state marshal. The cost of serving a civil protective order shall be paid by the Judicial Branch in the same manner as the cost of serving a restraining order issued pursuant to section 46b-15, and fees and expenses associated with the serving of a civil protective order shall be calculated in accordance with subsection (a) of section 52-261.

Sec. 2. Subsection (j) of section 6-38b of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2015*):

(j) The commission may adopt such rules as it deems necessary for conduct of its internal affairs. [and] The commission shall adopt regulations in accordance with the provisions of chapter 54 for: (1) the application and investigation requirements for filling vacancies in the position of state marshal; (2) the provision of consistent and reliable access to a state marshal for persons applying for a restraining order under section 46b-15, as amended by this act; (3) the provision of services to persons with limited English proficiency; and (4) service of process that is a photographic copy, micrographic copy or other electronic image of an original document that clearly and accurately copies such original document.

Subsection (b) of section 46b-15 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2015*):

(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 the court shall order that a hearing on the application be held not later than fourteen days from the date of the order. 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 <u>for the following: (1) upon agreement of the parties; (2) where the applicant is present for the hearing but the application has not yet been served; or</u> (3) by order of the court for good cause shown. <u>If service has not been made on the respondent at the time of the hearing on the application, the court shall, at the request of the applicant, continue the hearing to such date as is necessary to achieve service on the respondent and shall extend any temporary orders until that date. Failure to serve the respondent shall not be grounds for dismissal of an application or an ex parte order unless the applicant requests dismissal or fails to appear for the hearing thereon.</u> 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.

Sec. 3. Subsection (g) of section 46b-15 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2015*):

(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, except that, when a court has issued an ex parte order, notice of such hearing and ex parte order may be verbally provided to the respondent by a police officer, as defined in section 54-1t, in lieu of service by a proper officer, if such verbal notice is provided to the respondent not less than five days before the hearing.

A photographic copy, a micrographic copy or other electronic image that clearly and accurately copies the application and any ex parte order shall be permitted when effectuating service. Where the application indicates that the respondent holds a permit to carry a pistol or revolver or possesses one or more firearms or ammunition, the applicant may elect to have service under this subsection (g) effectuated by a police officer, as defined in section 54-1t. If the applicant elects to have a police officer effectuate service, the information contained in the applicant's application or affidavit shall not alone constitute grounds for arrest under C.G.S. § 46b-38b(a). 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 or, if applicable, verbally notifying the respondent of an ex parte order, the proper officer or police officer, as defined in section 54-1t, shall promptly inform the applicant of such successful service, and 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.] enter, or cause to be entered, the date and time the respondent was served into the automated registry of protective orders maintained by the Judicial Department pursuant to section 51-5c. 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-156b, if any, at the institution of higher education at which the victim is enrolled.

Sec. 4. Subsection (b) of section 51-5c of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2015*):

(b) (1) The following information contained in the registry of protective orders shall not be subject to disclosure and may be accessed only in accordance with this section, unless otherwise ordered by the court: (A) Any information that would identify a person protected by an order contained in the registry; (B) any information that is confidential pursuant to state or federal law, including, but not limited to, any information that is confidential pursuant to a court order; and (C) any information entered in the registry pursuant to an ex parte order prior to a hearing by a court having jurisdiction over the parties and the subject matter.

(2) Any judge of the Superior Court or any employee of the Judicial Department who is authorized by policies and procedures adopted by the Chief Court Administrator pursuant to subsection (a) of this section shall have access to such information. The Chief Court Administrator may grant access to such information to <u>state marshals and</u> personnel of the Department of Emergency Services and Public Protection, the Department of Correction, the Board of Pardons and Paroles, the Psychiatric Security Review Board, the Division of Criminal Justice, any municipal or tribal police department within this state or any other agency, organization or person determined by the Chief Court Administrator, pursuant to policies and procedures adopted by the Chief Court Administrator, to have a legitimate interest in the information contained in the registry. Any person who obtains such information pursuant to this subdivision may use and disclose the information only in the performance of such person's duties.

(3) Except as provided in subsection (c) of this section, the information contained in the registry shall be provided to and may be accessed through the Connecticut on-line law enforcement communications teleprocessing system maintained by the Department of Emergency Services and Public Protection. Nothing in this section shall be construed to permit public access to the Connecticut on-line law enforcement communications teleprocessing system.

Sec. 5. Section 52-261 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2015*):

(a) Except as provided in [subsection (b)] <u>subsections (b) and (c)</u> of this section and section 52-261a, each officer or person who serves process, summons or attachments on behalf of: (1) An official of the state or any of its agencies, boards or commissions, or any municipal official acting in his or her official capacity, shall receive a fee of not more than thirty dollars for each process served and an additional fee of thirty dollars for the second and each subsequent service of such process, except that such officer or person shall receive an additional fee of ten dollars for each subsequent service of such process at the same address or for notification of the office of the Attorney General in

dissolution and postjudgment proceedings if a party or child is receiving public assistance; and (2) any person, except a person described in subdivision (1) of this subsection, shall receive a fee of not more than forty dollars for each process served and an additional fee of forty dollars for the second and each subsequent service of such process, except that such officer or person shall receive an additional fee of twenty dollars for each subsequent service of such process at the same address or for notification of the office of the Attorney General in dissolution and postjudgment proceedings if a party or child is receiving public assistance. Each such officer or person shall also receive the fee set by the Department of Administrative Services for state employees for each mile of travel, to be computed from the place where such officer or person received the process to the place of service, and thence in the case of civil process to the place of return. If more than one process is served on one person at one time by any such officer or person, the total cost of travel for the service shall be the same as for the service of one process only. Each officer or person who serves process shall also receive the moneys actually paid for town clerk's fees on the service of process. Any officer or person required to summon jurors by personal service of a warrant to attend court shall receive for the first ten miles of travel while so engaged, such mileage to be computed from the place where such officer or person receives the process to the place of service, twenty-five cents for each mile, and for each additional mile, ten cents. For summoning any juror to attend court otherwise than by personal service of the warrant, such officer or person shall receive only the sum of fifty cents and actual disbursements necessarily expended by such officer or person in making service thereof as directed. Notwithstanding the provisions of this section, for summoning grand jurors, such officer or person shall receive only such officer's or person's actual expenses and such reasonable sum for services as are taxed by the court. The following fees shall be allowed and paid: (A) For taking bail or bail bond, one dollar; (B) for copies of writs and complaints, exclusive of endorsements, one dollar per page, not to exceed a total amount of nine hundred dollars in any particular matter; (C) for endorsements, forty cents per page or fraction thereof; (D) for service of a warrant for the seizure of intoxicating liquors, or for posting and leaving notices after the seizure, or for the destruction or delivery of any such liquors under order of court, twenty dollars; (E) for the removal and custody of such liquors so seized, reasonable expenses, and twenty dollars; (F) for the levy of an execution, when the money is actually collected and paid over, or the debt or a portion of the debt is secured by the officer, fifteen per cent on the amount of the execution, provided the minimum fee for such execution shall be thirty dollars; (G) on the levy of an execution on real property and on application for sale of personal property attached, to each appraiser, for each half day of actual service, reasonable and customary expenses; (H) for causing an execution levied on real property to be recorded, fees for travel, twenty dollars and costs; (I) for services on an application for the sale of personal property attached, or in selling mortgaged property foreclosed under a decree of court, the same fees as for similar services on executions; (J) for committing any person to a community correctional center, in civil actions, twenty-one cents a mile for travel, from the place of

the court to the community correctional center, in lieu of all other expenses; and (K) for summoning and attending a jury for reassessing damages or benefits on a highway, three dollars a day. The court shall tax as costs a reasonable amount for the care of property held by any officer under attachment or execution. The officer serving any attachment or execution may claim compensation for time and expenses of any person, in keeping, securing or removing property taken thereon, provided such officer shall make out a bill. The bill shall specify the labor done, and by whom, the time spent, the travel, the money paid, if any, and to whom and for what. The compensation for the services shall be reasonable and customary and the amount of expenses and shall be taxed by the court with the costs.

(b) Each officer or person shall receive the following fees: (1) For service of an execution on a summary process judgment, not more than fifty dollars; and (2) for removal under section 47a-42 of a defendant or other occupant bound by a summary process judgment, and the possessions and personal effects of such defendant or other occupant, not more than one hundred dollars per hour.

(c) The cost of service or attempted service of a restraining order, issued pursuant to section 46b-15, as amended by this act, and fees and expenses associated with the service or attempted service of such restraining order shall be calculated in accordance with subsection (a) of this section, except that mileage for in hand service of such restraining order may be calculated for up to three round trips, as may reasonably be necessary to effectuate such service on the respondent, with any additional fees authorized only by a court order for good cause shown.

Sec. 6. (NEW) (*Effective October 1, 2015*) In each Superior Court where a restraining order issued under section 46b-15 of the general statutes, as amended by this act, may be made returnable, the Chief Court Administrator shall ensure that there is sufficient office space within such court so as to permit a meeting between a person seeking service of the notice of hearing and any order issued under section 46b-15 of the general statutes, as amended by this act, and a state marshal.

Sec. 7. (NEW) (*Effective October 1, 2015*) (a) The Chief Court Administrator shall revise and simplify the process for filing an application for relief from abuse under section 46b-15 of the general statutes, as amended by this act. The Chief Court Administrator shall ensure that any person seeking to file an application for relief from abuse is provided with a one-page, plain language explanation on how to apply for relief from abuse under section 46b-15 of the general statutes, as amended by this act.

(b) The Chief Court Administrator shall annually collect data on the (1) number of restraining or protective orders issued under sections 46b-15, as amended by this act, 46b-16a or 46b-38c of the general statutes; (2) the method of service of such orders in cases in which a respondent is successfully served with the order; and (3) the number of

such orders issued that are subsequently vacated because the respondent could not be served with the order.

Sec. 8. (*Effective from passage*) The State Marshal Commission shall study the Judicial Branch's "marshal of the day" practice, which is used for the collection, dissemination and service of restraining and protective orders. Such study shall include, but not be limited to, an examination of the wait times for applicants as a result of such practice and whether such practice promotes efficient and timely service of restraining and protective orders. On or before February 1, 2016, the State Marshal Commission shall report, in accordance with the provisions of section 11-4a of the general statutes, on the results of such study to the joint standing committee of the General Assembly having cognizance of matters relating to the judiciary.

APPENDIX 2

Excerpts From State Laws Regarding Short Form Notification

Minnesota

Minn. Stat. Ann. § 518B.01

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Subd. 8a. Short form notification. (a) **In lieu of personal service of an order for protection under subdivision 8, a law enforcement officer may serve a person with a short form notification. The short form notification must include the following clauses: the respondent's name; the respondent's date of birth, if known; the petitioner's name; the names of other protected parties; the date and county in which the ex parte order for protection or order for protection was filed; the court file number; the hearing date and time, if known; the conditions that apply to the respondent, either in checklist form or handwritten; and the name of the judge who signed the order.**

The short form notification must be in bold print in the following form:
The order for protection is now enforceable. You must report to your nearest sheriff office or county court to obtain a copy of the order for protection. You are subject to arrest and may be charged with a misdemeanor, gross misdemeanor, or felony if you violate any of the terms of the order for protection or this short form notification.
(b) Upon verification of the identity of the respondent and the existence of an unserved order for protection against the respondent, a law enforcement officer may detain the respondent for a reasonable time necessary to complete and serve the short form notification.
(c) When service is made by short form notification, it may be proved by the affidavit of the law enforcement officer making the service.
(d) For service under this section only, service upon an individual may occur at any time, including Sundays, and legal holidays.
(e) The superintendent of the Bureau of Criminal Apprehension shall provide the short form to law enforcement agencies.

Illinois

750 ILCS 60/222.10

(a) **Instead of personal service of an order of protection under Section 222, a sheriff, other law enforcement official, special process server, or personnel assigned by the Department of Corrections to investigate the alleged misconduct of committed persons or alleged violations of a parolee's or releasee's conditions of parole or mandatory supervised release may serve a respondent with a short form notification.** The short form notification must include the following items:

(1) The respondent's name.
(2) The respondent's date of birth, if known.
(3) The petitioner's name.

(4) The names of other protected parties.
(5) The date and county in which the order of protection was filed.
(6) The court file number.
(7) The hearing date and time, if known.
(8) The conditions that apply to the respondent, either in checklist form or handwritten.
(b) The short form notification must contain the following notice in bold print:

"The order is now enforceable. You must report to the office of the sheriff or the office of the circuit court in (name of county) County to obtain a copy of the order. You are subject to arrest and may be charged with a misdemeanor or felony if you violate any of the terms of the order."
(c) Upon verification of the identity of the respondent and the existence of an unserved order against the respondent, a sheriff or other law enforcement official may detain the respondent for a reasonable time necessary to complete and serve the short form notification.
(d) When service is made by short form notification under this Section, it may be proved by the affidavit of the person making the service.
(e) The Attorney General shall make the short form notification form available to law enforcement agencies in this State.