

NEW HAVEN LEGAL ASSISTANCE ASSOCIATION, INC.
426 STATE STREET
NEW HAVEN, CONNECTICUT 06510-2018
TELEPHONE: (203) 946-4811
FAX (203) 497-8357

March 11, 2015

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: S. B. 650

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 Senate Bill 650 regarding the service of temporary restraining orders. I served on the Task Force to Study the Service of Temporary Restraining Orders, which supplied a report to this Committee in January. As a legal services attorney, I also primarily represent clients who have been victims of domestic violence, frequently in temporary restraining order (TRO) cases.

I'd like to offer suggestions for specific provisions that should be part of the final version of SB 650, as well as suggest some necessary additional provisions that are currently not included in this proposed bill.

1. Police should be able to serve TROs in all cases, at the request of the applicant.

The legal services programs strongly feel that victims should be given the option to request law enforcement to serve a restraining order in all cases. The service of TROs is a public safety issue, and should not be handled by ordinary process servers in the same manner as a civil lawsuit. Rather, service should be accomplished by public safety officers. In addition, allowing law enforcement service in all cases minimizes the administrative burden on court staff of ascertaining which cases are appropriate for specific types of service.

It should be noted that Connecticut is an outlier in not using law enforcement to serve TROs compared to the rest of the country. My office researched every other state's civil protective order statute, and found that thirty-seven states specifically allow or require service by law

enforcement pursuant to statute. Every state except Connecticut and Tennessee allows law enforcement service of process for TROs.

- 2. If the applicant elects to have law enforcement effectuate service, the information contained in the applicant's application and/or affidavit should not, by itself, constitute grounds for arrest.**

Many applicants choose to apply for a TRO because they are seeking enhanced protection from the judicial system, but do not want their abuser to be arrested. Often they are relying on that abuser for financial support or for parenting support. If law enforcement is authorized to serve TROs, that should not lead to a mandatory arrest based solely on the information in the application or affidavit of the victim. Obviously, if additional information outside the TRO paperwork creates probable cause for an arrest, then law enforcement should act accordingly.

- 3. Other public safety officers should also be authorized to serve TROs, e.g. correctional officers, probation officers, and judicial marshals for any person who is in the custody of the judicial marshal or is in a courthouse where the judicial marshal provides courthouse security.**

Many states empower all types of public safety officers to serve TROs. In Connecticut, we should also authorize correctional officers, probation officers, and judicial marshals to serve TROs because that will ensure the timeliest and most efficient service of process in many cases.

- 4. The person who completes service of a TRO should be required to promptly notify the applicant that service was completed.**

Currently, there is no requirement that marshals notify the applicant upon successful service of a TRO. This is a significant problem. The time when a victim leaves his or her abuser is the most dangerous time; the victim needs to know when a TRO has been served so that they can plan for their safety. SB 650 should statutorily require the officer who effectuates service to promptly notify the applicant.

- 5. Where service is successful, officers should be required to ensure that that information is entered into the statewide COLLECT system / protective order registry, so that every law enforcement department in the state knows that the order has been successfully served.**

The current TRO statute requires marshals only to notify certain law enforcement agencies after service is completed. Since the statute was written, however, our statewide law enforcement databases have improved, and we have the ability to electronically coordinate statewide regarding the status of a pending restraining order. Therefore, the successful completion of service of a TRO should be immediately entered into the appropriate statewide databases so that all law enforcement agencies in Connecticut know that service was successful. The statute should make this clear, especially if the list of officials authorized to serve TROs is expanded, so as to prevent the possibility of more than person unnecessarily attempting service of process.

6. Judges should be given explicit statutory authority to extend a TRO and set a new date for a hearing to provide more time for service of the TRO.

Currently, TRO cases are routinely dismissed if service is not effectuated prior to the 14-day hearing, even if the applicant has done everything right. That makes no sense. Instead, the statute should allow the court to set a new date for the hearing and extend the temporary orders, if any, until that date. Twenty other states' statutes allow for extensions of TROs to give more time for service.

7. The statute should explicitly allow service of copies and faxes of TRO paperwork, i.e. a copy made by any photographic, micrographic, electronic imaging or other process, which clearly and accurately copies such original document.

Service of TROs is hampered by antiquated statutory requirements regarding the use of true, attested copies of documents for service in civil cases. In this digital age, copies, faxes, and scanned versions of TROs should be permissible to increase the speed and efficiency of service, particularly where the respondent is located out of the county where the application was made. The statute should make this clear to allow the fastest service of process possible.

8. Connecticut should allow short form notification as a method of service to provide a fast, efficient tool for law enforcement to serve TROs.

In several states, including Minnesota, Illinois, and Iowa, law enforcement agencies may serve a TRO by means of a "short order" or "short form notice." 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.

Typically, these short forms contain language informing the respondent of:

- a) the terms and restrictions of the order of protection issued against him/her, including restrictions on possession of firearms and ammunition,
- b) the consequences of violating the protective order,
- c) the date and time of the upcoming hearing,
- d) and language that instructs the respondent to pick up a copy of the order of protection from a specified law enforcement agency.

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 mens rea or civil knowledge if the order is subsequently violated, so that the order may be enforced. Connecticut should also adopt this practical policy solution to increase the ease and speed of TRO service.

In sum, the legal services programs in Connecticut are highly supportive of this proposed bill. Our current system is plagued with problems that leave victims of domestic violence unprotected. SB 650 is critically needed to provide systemic changes to better protect victims.

Thank you for your time and consideration.

Very truly yours,

Aaron P. Wenzloff
Staff Attorney