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Testimony of the Honorable Elizabeth A. Bozzuto
Judiciary Committee Public Hearing
March 16, 2015

House Bill 7004, An Act Concerning Implementation Of The
Recommendations Of The Task Force To Study
Service Of Restraining Orders

Good morning, Senator Coleman, Representative Tong, Senator Kissel, Representative Rebimbas, and other members of the Committee, I am Judge Elizabeth Bozzuto and I am the Chief Administrative Judge for Family Matters. Thank you for giving me an opportunity to comment, on behalf of the Judicial Branch, regarding *House Bill 7004, An Act Concerning Implementation Of The Recommendations of the Task Force to Study Service of Restraining Orders*. It was my pleasure to serve on this task force that was established pursuant to Public Act 14-217.

As members of the Committee may be aware, the task force was broadly charged with reviewing practices and procedures in place to ensure both timely service of court orders upon respondents, as well as timely notification to applicants that service has been effectuated. The bill before you today contains some of the recommendations made by the task force, "recommendations" that were not made or discussed by the task force, and alters or expands still other recommendations.

At the outset, let me say that a primary consideration of task force members has been omitted from the bill completely. I believe it would be fair to say that there was unanimous agreement that restraining order applicants are at a heightened risk after service has been effectuated. Yet applicants often don't know that this has occurred. The best way to ensure that an applicant is aware that the papers have been served would be to require state marshals – the individuals charged with serving the papers,

and the only individuals who know when service has been completed – to report this information as soon as possible. This is absent from the bill before you.

Additionally, timely entry – whether through the Judicial Branch’s existing call-in system, or our new internet-based system – is crucial because that in turn feeds the Protection Order Registry (POR). Once in the POR, the information is transmitted to the Statewide Victim Information Notification system, SAVIN. Registered victims are then quickly notified that the respondent has been served with the restraining order.

While the bill would provide direct access to the POR by state marshals, there is no concomitant requirement that marshals actually record service information into the registry. Although this should be corrected, we would also respectfully note that access to the POR by state marshals is truly unnecessary. Significant resources would be needed to grant all state marshals access, and in light of our new internet-based system, which transmits service information to the POR instantaneously, it is unnecessary.

We have a number of additional concerns with the bill as drafted, but I will highlight the sections of most concern. Section 3 of the bill provides that proper service will have occurred if a police officer “verbally” provides such notice on the respondent at least five days in advance. While this approach was discussed, and is generally based upon testimony of a Massachusetts state police officer that this is done in narrow circumstances when it is absolutely imperative to convey this information, the task force did not agree to such specificity. We are greatly concerned with the inclusion of this provision, and by the due process implications that it presents.

For example, the provision provides no guidance as to what the police are to tell the respondent about the order, such as the date and location of the hearing. While the marshals are directed as to what they should serve, the police are not directed as to what they should say.

Moreover, there is no requirement for the police officer to notify the court of how notice was given and what was said. Without a sufficient narrative of the exact details of notification – whether it be in writing or presented as testimony in court – it is unlikely that the case will go forward, as there will be no assurance that the respondent had actual notice of the hearing.

Finally, in regard to section 3, lines 40 and 41 delete the requirement that the applicant's affidavit be served along with a copy of his or her application. Although discussed very generally by members of the task force, it did not result in a recommendation, and presents a significant due process challenge in that the respondent is entitled to know of the allegations against him or her. We would respectfully suggest that it be stricken from the bill.

Section 6 of the bill mandates the Judicial Branch to allocate office space for applicants and state marshals to meet. I would note that this is not what the task force recommended, nor is it possible. While the Branch would like to be as helpful as possible in this area, space constraints are what they are, and we are not capable of implementing this section. By way of background, applicants and state marshals often meet in our Court Service Centers, which are available in virtually every pertinent courthouse. Should the legislature want to act in this area, we would respectfully request that it enact the task force recommendation – that “the Judicial Branch, where feasible, should work to allocate space in each court for applicants to consistently meet with the marshal.”

The Branch would also like to bring to the attention of the Committee concerns with the following three sections:

- Section 5, which provides for increased compensation for service or attempted service, will likely have a large fiscal impact on the Branch. Currently, payment of state marshals is guided by an Attorney General's Opinion issued in 2008. Should this Committee approve of this section, we would respectfully request that the bill be referred to the Appropriations Committee to gauge its full impact.
- Section 7(a) calls on the Branch to revise and simplify the process for filing an application for relief. While not objectionable, this was not discussed by the task force.
- Section 8 mandates the State Marshal Commission to study the Judicial Branch's “marshal of the day” practice. We would respectfully note that this “practice” is not a Judicial Branch practice. It is the State Marshal Commission's own practice, and we would ask that the bill be amended accordingly.

Thank you for the opportunity to testify on this bill.