TESTIMONY FOR JUDICIARY COMMITTEE PUBLIC HEARING

Joint Committee on Judiciary
Room 2500, Legislative Office Building
Hartford, CT 06106
Monday February 8, 2016

Dear Judiciary Committee Members:

Good morning and thank you for affording me the opportunity to speak before you today. I am here to speak in opposition to the portions of proposed Bill HB-5366 which would allow the Judicial Branch to use certain information as part of a CGS 46b-15 order of protection. Specifically I oppose the introduction as written of the following language to CGS 46b-15 (b):

> *" In addition, at the time of the hearing, the court, in its discretion, may also consider a report prepared by the Family Services Unit of the Court Support Services Division that may include, as available: Any existing or prior orders of protection obtained from the protection order registry; information on any pending or past criminal case in which the respondent was charged with or convicted of a violent crime; any outstanding arrest warrant for the respondent and the respondent's level of risk based on a risk assessment tool utilized by the Court Support Services Division. The report may also include information pertaining to any pending or disposed family matters case involving the applicant and respondent. Any report provided by the Court Support Services Division to the court shall also be provided to the applicant and respondent."*

Before I express my specific concerns with this language, I would like to point out the following:

1. The description summary to this bill describes the changes to CGS 46b-15 as follows:

   (2) amend sections 46b-15 and 46b-16a of the general statutes to permit minors to apply for certain orders of protection;

   I am not sure what the proposed language above has to do with allowing adults to file for restraining orders (RO's) for minors. I hope this isn't an attempt to mislead the public and/or your colleagues about the full intent of this Bill.

2. This also appears to be an attempt to protect the judicial branch after the error was made in the Aaden Moreno case. I understand that incident was horrific and steps MUST be taken to mitigate another incident like that from occurring but this language (somewhat of a knee jerk reaction) alone may not have stopped that incident from occurring. A formal Task force should be convened to allow all aspects surrounding this incident to be studied and allow the public opportunity to weigh in on what is and isn't working with regards to RO hearings. Time again, public testimony has confirmed that relying solely on the Judicial Branch's input alone is not adequate to properly serve the public.

This language appears similar (with some modifications) to the Judicial Branch's recommendations included in the final report prepared by the Task Force to Study the Statewide Response to Minors Exposed to Domestic Violence in January of this year. I provided testimony against these recommendations and my testimony was included as Appendix L of the Final Report presented to the Legislature. A copy of that report and my testimony can be found at the following link:

https://www.cga.ct.gov/hs/tfs/20150730_Task%20Force%20to%20Study%20the%20Statewide%20Response%20to%20Minors%20Exposed%20to%20Domestic%20Violence/FinalReport.pdf

Essentially these are the issues I see with this language in its current form:

1. No reference to CGS 54-142 (Chapter 961a Criminal Records) is included in the language. Although the Bill language allows less than what the Judicial Branch originally requested in their recommendations, it's a very slippery slope with the potential for the misuse of past records, especially with self represented litigants who may or may not be aware of their rights, or for that matter, the Family Relations employee who is NOT familiar with CGS 54-142. As such, the language **should be modified to state that the data included in the FR Report should comply with all provisions of CGS 54-142**.

2. Similar to Item 1 above, there is a very real risk that the FR report will contain information that violates the Code of Evidence, especially with regards to Hearsay and Relevancy. Excluding any biases which I feel certain FR employees have towards certain parties, most FR employees are not lawyers and they are being asked to prepare a report that may include hearsay or legally irrelevant data and the party (most likely a self represented party) will have to defend themselves against these statements. During a hearing on February 8, 2016, Senator Coleman was trying to assist a speaker who was complaining about a judge. Sen. Coleman appeared to be attempting to address the speaker's concerns by pointing out the possibility that the judge deemed a report entirely inadmissible because it contained hearsay from a police report. However, in that case it was lawyer who pursued having the report deemed inadmissible and it was a self represented party who was attempting to have the report admitted. In most RO cases, it will be a self represented party who will have to defend themselves against the report, not the other way around as was in the case discussed on February 8 hearing. As such, the language should be **modified to state that the data included in the FR Report should comply with all provisions of the Code of Evidence**.

3. Unintended consequences are possible. After speaking with Karen Jarmoc of CCADV, there is a concern that women (or men) may be hesitant to pursue RO's if mistakes from their past (which were subsequently corrected) may be used against them detrimentally. I outline an example in my testimony to the Task Force where an outdated statement was misused against a party. Please refer to my testimony attached to that report.

4. No information is provided regarding how the Risk Based assessment is conducted and whether it is grounded in any scientific research that supports the formula for computing the Risk Hazard? As an engineer, I have done Risk Assessments for structures and know well how much statistical data is required for an accurate risk assessment to be performed. There must be complete transparency in the preparation of this Risk Assessment. As such, the language should be **modified to state that the parties must be provided with copies of all relevant data that was used along with the methodology employed to perform the Risk Assessment**.

5. Providing the parties a copy of the report may not suffice. As I stated above, many times those reports contain secondary sources of information that may otherwise be considered hearsay unless the source of the information is subpoenaed/verified. All parties must be allowed to obtain subpoenas for all the sources of the information used to prepare the report.

As such the language should be **modified to state that the parties be allowed to subpoena all sources of data used to prepare the report**. Anything less is an open invitation to the misuse of information and inappropriate use of otherwise inadmissible evidence in fashioning ruling by the court. Appealing the misuse of this evidence is not a viable option for typical litigant.

I am very concerned about FR preparing reports that may contain inappropriate information that otherwise would not be admissible as evidence under the rules of the court. Although the Bill language appears to address some concerns which were raised during the last DV Task Force public hearing about the Judicial Branch's original recommendations, the language as written still leaves open the possibility of misuse of data and I feel does not provide sufficient safeguards against the misuse of that data..

Thank you for your time.

Hector Morera
119B House St.
Glastonbury, CT