

Task Force on the Expansion of Civil Restraining Orders
Draft Minutes
December 5, 2013 Meeting

Members Present: Judge Elliot Solomon, Chairman, Judge Elizabeth Bozzuto, Judge David Sheridan, Rep. Mae Flexer, Exec. Dir. Laura Cordes, Assistant State's Attorney James Turcotte, Ivonne Zucco and Atty. Jennifer Celantano

I. Opening Remarks

Judge Solomon opened the meeting. He noted that Task Force members were of similar mind that the ability to obtain a civil protection order needs to be expanded beyond familial relationships, and that the discussion is really about the contours of the expansion.

II. Discussion of Draft Language

Judge Solomon indicated issues to discuss included: (1) the issue of having a reporting requirement; (2) the 60 day time limit on reporting; and (3) whether a continuous threat requirement or option should be included.

The draft language distributed to members was discussed.

Section 1 (c) and (e):

Atty. Turcotte expressed his concern about section 1(e), which states that the issuance of a criminal protective order would terminate any civil protective order in place involving the same parties based on the same facts and circumstances. His concern is that a criminal protective order can last for just one court appearance, and that many criminal cases do not result in a protective order being issued at the conclusion of the case. Therefore this, this requirement would put an additional burden on victims, who would have to go back to court to apply for a new civil protection order.

It was explained that the reason this language was included was to prevent the issuance of inconsistent orders, and not to impose an additional burden on victims.

Section 4:

Discussion of the necessity of section 4, which would add this new order to the criminal trespass statute. Since violation of this order would constitute a more serious crime (sec. 3 of the language), there was a question of whether the less serious crime of criminal trespass was still needed. Atty. Turcotte explained that it give the state's attorneys the option to reduce the charge to a misdemeanor in appropriate cases. The group's consensus was that this provision should remain.

Section 1(b):

Rep. Flexer expressed concern about the requirement of imminent harm for an ex parte order (lines 31 et seq).

Rep. Flexer expressed concern about the standard of proof – preponderance of the evidence. For an ex parte application, how could a judge determine a fair preponderance of the evidence on the basis of an affidavit? Would the victims have to present evidence beyond the affidavit? Atty. Turcotte stated that it seems like that language would require the applicant to meet a higher burden in order to get a hearing. Judge Solomon disagreed with this interpretation.

Ms. Cordes stated that she may have a concern with the phrase “unless restrained” in line 28.

Section 1 in general:

Ms. Cordes set out the reasons CONNSACS is seeking this legislative changes – anyone who qualifies under the relationship test of 46bg-15 can get a sexual assault restraining order; those who do not meet the relationship test cannot. This creates a gap that needs to be closed.

Judge Bozzuto suggested combining the requirements of sections 1(a) and (1)(e), to require both, and asked how people felt about that. She then suggested a compromise - keeping a time limit but eliminating the reporting requirement.

Judge Solomon pointed out that the time frame is already expanded by the “good cause” exception. Ms. Cordes gave an example that a victim applying for an order after 60 days. Judge Solomon pointed out that her example would fall under the “good cause” exception.

Judge Solomon brought up the issue of the workload impact this new process would have on the Judicial Branch – it would most likely require additional judges, Family Relations Officers and Victim Advocates to accommodate the additional applications.

Atty. Celentano asked what court would hear these cases. Judge Solomon stated that the Chief Court Administrator would decide that issue, but that he favors criminal. Atty. Celentano agreed.

Judge Bozzuto suggested eliminating the time limit but keeping the reporting requirement. Ms. Cordes stated that the victims should not be required to report. She pointed out that most sexual assailants are acquaintances. Atty. Turcotte pointed out that some victims or their family members are extorted or threatened by the perpetrator, and are therefore afraid to report the assault. He states that the reasons that sexual assault victims might not want to report are widely recognized.

Judge Solomon stated that the group must recognize that we are trying to make this new process workable. If it is too broad, the courts will not be able to implement it.

III. Discussion of Next Steps:

The report is due on February 5, 2014.

In order to meet this deadline, two further meetings were scheduled:

January 15, 2014

January 29, 2014

Revised language will be distributed prior to the 1/15/14 meeting.

IV. The meeting adjourned.