

Task Force on the Expansion of Civil Restraining Orders
Draft Minutes
November 7, 2013 Meeting

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

I. Opening Remarks

Judge Solomon opened the meeting and discussed the draft language that had been circulated.

II. Victim and Survivor Perspectives

Laura Cordes introduced six invited guests, each of whom presented their perspective on the need to broaden the scope of civil restraining orders to cover persons who do not qualify under C.G.S. sec. 46b-15.

III. Discussion of Draft Language

Judge Solomon identified the major issues with the draft language, including the possibility of a reporting requirement and timeframe, where the matters should be heard, and elements/ burden of proof. Discussion ensued.

Atty. Elizabeth Collins of the State Marshal Commission briefly described the Restraining Order service process and stated that the Commission is open to work with the Task Force to make this new process work.

In response to a question, Larry D'Orsi estimated that there would be 4000 additional applications per year. Atty. Collins stated that the marshals might have to restructure, but the Commission knows this is important and would do what it had to. Judge Bozzuto asked if we have numbers for the crimes listed in the draft, which would provide a basis to estimate the impact.

Issue 1: Reporting Requirement and Timeframe:

Ms. Cordes identified the issue of the 60 day time period by which the victim would have to report the matter.

Judge Bozzuto presented an alternative proposal -- a pre-arrest restraining order. This alternative would not carve the police out of a process that they should be involved in, since sexual assault is a crime.

Atty. Turcotte pointed out that a Standing Criminal Restraining Order can't apply to non-family members, per the Appellate Court case, and that is a gap.

Rep. Flexer pointed out that under C.G.S. sec. 46b-15, domestic violence victims are not required to report to the police in order to obtain a restraining order, and that victims in this instance shouldn't be held to a higher standard.

Judge Sheridan stated that the reason the judges were having an issue with the proposal is that the language would make normal conduct criminal, so the victim would need to allege some kind of immediate harm and the respondent would have to be afforded procedural safeguards. Judge Solomon pointed out that the process contemplated by the language would be a public matter.

Ms. Cordes asked if we could we hear from other states that have this type of process in place about how it works for them.

Judge Sheridan opined that the standards should be the same for Domestic Violence and Sexual Assault Restraining Orders, but that the victims/survivors must realize that they will have to make their case to the court. He thinks tying it to criminal statute may be heavy-handed.

Atty. Turcotte stated that these are difficult cases to deal with – difficult to prove, fragile victims. The state has recognized this by instituting a 35-year statute of limitations on sexual assault for all types of relationships. Restraining Orders can provide a respite so victims can take the time to make a decision about reporting to the police.

Rep. Flexer asked if we could get numbers of motions to extend Domestic Violence Restraining Orders.

Laura Cordes indicated that Massachusetts does not impose a time limit. Rep. Flexer asked what the purpose of the timeframe is. She advocated for additional judicial discretion. Judge Solomon pointed out that the “good cause shown” exception provides additional time where necessary.

Issue 2 – Which court should hear these matters?

In response to a poll by Judge Solomon, no member advocated that these matters should be heard on the civil side of court.

Judge Sheridan suggested that it should be criminal court, as the expertise needed would lie there.

Atty. Collins indicated that the state marshals currently handle only applications that come through family court, and stated that she is not sure how service would be handled if the venue for these matters is criminal court.

Atty. Turcotte pointed out that if the matter goes to a hearing, both parties will be there just like in a protective order proceeding.

Issue – Elements/BP:

Atty. Turcotte questioned whether the statutory cites be included, since the victims will not know the elements of these crimes. Judge Mullins pointed out that the reference to the risk of injury statute should be only to subsection (b). He also suggested that the specific statutory references be deleted and replaced by a general reference to “sexual assault.”

A brief discussion of the need for resources ensued.

IV. Next Steps:

A meeting was scheduled for 11/15/13 at 1:00. Revised draft language will be provided prior to that meeting.

V. The meeting adjourned.