



*Office of Chief Public Defender  
State of Connecticut*

30 TRINITY STREET, 4<sup>TH</sup> FLOOR  
HARTFORD, CONNECTICUT 06106  
TEL (860)509-6429  
FAX (860)509-6499  
[susan.storey@jud.ct.gov](mailto:susan.storey@jud.ct.gov)

ATTORNEY SUSAN O. STOREY  
CHIEF PUBLIC DEFENDER

**TESTIMONY OF SUSAN O. STOREY, CHIEF PUBLIC DEFENDER  
OFFICE OF CHIEF PUBLIC DEFENDER**

**RAISED BILL 364**

***AN ACT CONCERNING ACCESS TO LEGAL COUNSEL FOR INDIGENT INDIVIDUALS  
IN CERTAIN CIVIL MATTERS INVOLVING ALLEGATIONS OF ABUSE***

*Raised Bill 364, An Act Concerning Access to Legal Counsel for Indigent Individuals in Certain Civil Matters Involving Allegations of Abuse*, would require that the Office of Chief Public Defender participate in a pilot program, with at least three different sites, to provide counsel to parties in applications for relief from abuse, also known as temporary restraining orders. While the pilot's intentions are laudable, the Office of Chief Public Defender has concerns regarding the level of funding authorized by the bill for this purpose.

In a 2014 speech, Chief Justice Chase Rogers indicated that 85% of family cases have at least one unrepresented party. Litigants in civil restraining orders come to the court system at a precarious time. Both the applicant for relief and the respondent have critical interests that must be fairly and expeditiously considered by the court. Much of the time both parties are unrepresented and must navigate the legal process without any expertise in the language or customs of the courts. Assisting parties with emergency orders was a goal of the Task Force to Improve Access to Legal Counsel in Civil Matters convened by this legislature last year. The Chief Public Defender was a member of that Task Force and this Agency provided information and technical assistance as the group formulated recommendations.

Unfortunately, the Office of Chief Public Defender was not consulted or afforded the opportunity to participate in drafting this bill and has concerns about the scope, manner, and level of funding that has been proposed to implement all that would be required of the Division of Public Defender Services (DPDS). In order to incorporate this work into our practice, this Agency must

be able to hire lawyers with expertise and services necessary to adequately represent the clients and also provide training and develop practice standards. This Office is concerned that the proposal as currently drafted as a pilot for at least three sites will not allow this Office to effectively participate. We would therefore propose limiting the project to two sites, preferably Hartford and Middletown, as long as adequate funding is provided and control over such funding is within DPDS. Furthermore, pursuant to C.G.S. 51- 289 (j), DPDS must be assured that the Judicial Department will provide adequate facilities for additional staff in courthouses selected as pilot sites.

Section 1 (b) of the bill is both confusing and concerning as it gives authority to the Judicial Department to allocate the funds “within available appropriations” and “**up to \$500,000,**” to DPDS rather than funding the DPDS directly with a specific amount. Currently, DPDS has lost 43 staff, including 21 attorneys, due to retirements, layoffs, and attrition. DPDS also has requested funding from OPM and the Appropriations Committee for substantial deficiencies in our Personal Services and Assigned Counsel Accounts. While DPDS is an agency within the Judicial Branch, the DPDS budget is entirely independent from the Judicial Department’s budget, and this Agency needs to rely on and have total control of administering our appropriation. This Agency must be assured that we will have the financial and staff capacity to participate in the implementation of this pilot project without incurring a deficiency in any DPDS account.

Section 1 (c) of Raised Bill 364 would mandate a pilot project in three judicial districts where the Judicial Branch would fund an unnamed legal services provider to represent applicants for temporary restraining orders under C.G.S Sec. 46b-15 and OCPD to represent the respondents. The proposal also mandates that OCPD provide oversight and training, establish practice and caseload guidelines, and create a structure to ensure there are no conflicts of interest. Although the proposal purportedly allocates up to \$500,000 to DPDS, this would not cover the representation or all the structural changes that would be needed for OCPD to effectively represent respondents in restraining order hearings in three locations.

In order to take part in this project, OCPD would need to hire lawyers with expertise in family matters, as our current structure would not accommodate providing public defenders or assigned counsel in this type of family court case. There are not public defender offices in many of the buildings where family court is heard. Public Defender attorneys have no experience in family law and would not be able to add these intensive cases to their already heavy caseloads. Our current process for assigned counsel coverage would also not be compatible with this pilot. Hearings on applications brought pursuant to C.G.S. Sec. 46b-15 are, by definition, held on an emergency basis. There would be no way to guarantee that contracted lawyers could be secured for the dates the court would need them.

This Agency has experienced some difficulty with administering emergency attorney coverage for the court system. OCPD struggles to provide counsel for emergency capias hearings in family magistrate matters. Legislative and policy efforts to increase child support collections have increased the numbers of these hearings. Much of this work has had to be reorganized into our field offices, as we have been unable to consistently find assigned counsel available on short notice. This leaves no capacity to add restraining order hearings to existing public defender staff

caseloads. The individuals who are contracted to be AMC/GALS also cannot do this work, as they appear on behalf of the children and would have a conflict of interest, which is also precluded by Section 1 (d) of the bill.

Hiring staff with expertise in family matters is the only way this project can be incorporated into our agency. To truly provide effective assistance of counsel in these cases, there need to be lawyers on site, available to meet with the clients and prepare the cases for court. While some of the matters would be resolved with one hearing, there is the potential for these cases to involve ongoing court action. Below is a description of the process, taken from the Judicial Branch website:

- Restraining Order Application (section 46b-15 of the Connecticut General Statutes) is an application for a restraining order ex parte (immediate). It is given out at the clerk's office to people who come in for relief from abuse in family cases. A Judge reviews the application and affidavit, and decides whether or not to issue a restraining order relief from abuse. If one is issued, the application is then updated to an ex parte restraining order. The Judge can also deny the ex parte relief and issue an Order for Hearing and Notice Summons.
- Ex Parte Restraining Order (section 46b-15 of the Connecticut General Statutes) is an order issued by the family court when someone has completed the restraining order application. The Judge has reviewed the application and affidavit, and issues a temporary ex parte restraining order. A hearing date is scheduled, and the respondent must be notified. Generally speaking, this order is good for 14 days, or until the date of the hearing. (Hearings can be scheduled before the 14-day time limit).
- Restraining Order After Hearing (section 46b-15 of the Connecticut General Statutes) is issued after a hearing on an ex parte restraining order, or an Order for Hearing and Notice Summons. Again, this order type is issued out of the family court. Generally speaking, it is effective for 6 months from the date of the hearing. A victim/applicant can request that the restraining order after the hearing be extended when the 6 months is about to run out. They must file a motion to extend and the respondent must again get notice.

The proposal does not specify where in the process counsel would become involved. These are emotional, complicated matters that have the potential to incur many hours of legal work. As the descriptions indicate, there is the potential for multiple hearings requiring ongoing representation and expenses related to preparation and litigation. Even if the initial order is made ex parte, counsel should be appointed as soon as possible in order to prepare for the required hearing which would take place within fourteen days of the ex parte order. In this proposed pilot, the lawyer would have an ethical duty to investigate, obtain transcripts and use experts where appropriate. As the agency mandated to provide the representation, OCPD would be obligated to pay for these services when necessary. This Office provided the Task Force with information regarding the potentially substantial costs associated with these types of services. Utilization of

staff lawyers would allow for some limited use of public defender investigators and social workers and would also keep the representation cost more fixed. Using Assigned Counsel contract lawyers would be much less cost effective as they would need to be paid by the case and would employ outside experts.

The Judicial Branch publishes quarterly statistics on the number of restraining order applications. Since January 2014, the quarterly filings for restraining orders have ranged from a low of 1831 to a high of 2504. This represents a significant number of cases, even if the pilot is restricted to three courts. The proposed funding would not be sufficient to pay for the coverage necessary to properly handle these cases in three sites.

The Office of Chief Public Defender has a long history of representing poor and underserved litigants in our judicial system. We are willing to assist but should be provided with adequate funding to provide the same high quality representation that our clients should expect. We believe that limiting the project to two sites with adequate funding and control over the budget by DPDS will give the best chance for success and propose Hartford and Middletown as the pilot sites. This Office would be happy to work with this Committee and the Task Force to Improve Access to Legal Counsel in Civil Matters to develop other alternatives.