



State of Connecticut

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Testimony of
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Raised Bill No. 7334
An Act Concerning Pen Registers and Trap and Trace Devices

Judiciary Committee
March 12, 2007 - Public Hearing

Consistent with its position taken in the past, the Office of Chief Public Defender is opposed to **Raised Bill No. 7334, *An Act Concerning Pen Registers and Trap and Trace Devices*** as it lacks the constitutional safeguards required pursuant to the federal and state constitutions. Except for the inclusion of a section which contains definitions, this proposal is almost identical to a previous proposal which was submitted to the legislature during the 2005 session. *See Raised Bill No. 6884 from the 2005 legislative session.* This bill, as drafted, would authorize law enforcement to ascertain telephone numbers a person calls and receives as the calls occur without a showing that probable cause exists that any crime has been committed. Here, the Chief State's Attorney, a deputy chief state's attorney, a state's attorney or an assistant state's attorney would be permitted to make an application to the court for an ex parte order that authorizes the installation and use of a pen register or trap and trace device for sixty days. All that law enforcement need do to obtain a court order for such is to "certify" that the "information likely to be obtained . . . is relevant to an ongoing criminal investigation" and disclose the identity of the applicant.

Pursuant to this proposal, the court is required to grant the application upon this minimal showing. Further, upon entering the ex parte order, the court would be required to specify more detailed information in the order regarding the investigation

than is contained in the application filed by the applicant. A question arises as to how the court would obtain this additional detailed information. Federal and state constitutional protections require that the government have probable cause to believe that a crime has been committed before it can seize a person's property or records. Here, however, records of a customer's telephone calls as the calls were made and received would be intercepted by law enforcement all without the knowledge of the customer.

Since a person would not know that who he/she calls or receives telephone calls from is being intercepted, a person could not seek any remedy by law. In fact, the proposal provides a complete defense in a civil or criminal action if there was a good faith reliance on a court order issued pursuant to this proposal or a legislative authorization. Again, this legislation, like other proposals that seek power to subpoena telecommunication records and *prior* telephone calls made and received permits an investigation to occur without compliance with constitutional requirements. In reality this legislation provides law enforcement with an investigative subpoena.

The proposal also grants to "any law enforcement officer, specially designated by the Chief State's Attorney or a state's attorney" to have installed and use a pen register or a trap and trace device without making an application and receiving an ex parte order for such for a period of forty eight hours in certain emergency situations as determined by the law enforcement officer. Although required to seek an order within the forty eight hour period, if an application is denied after the fact, this proposal provides no procedure for what happens to the information that has already been gathered during the forty eight hour period.

Further, if an emergency exists that involves "conspiratorial activities characteristic of a threat to life or property through terrorism", the Office of Chief Public Defender believes that there should be a requirement that the Governor and certain committees of the General Assembly be notified of such as contained in the statutes that govern the procedures for the issuance of a wiretap. *See C.G.S. 54-41c. Information in application.*

In conclusion for the reasons stated, the Office of Chief Public Defender urges this Committee not to adopt this proposal.