

Testimony before the Judiciary Committee on Senate Bill 1239: An Act Concerning Investigative Subpoenas.

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The American Civil Liberties Union of Connecticut is over 50 years old and has over 10,000 members statewide. We are dedicated to preserving the freedoms and protections guaranteed in the United States and Connecticut Constitutions. Of those rights, we believe Senate Bill 1239, if passed, would infringe upon the right to be free from unreasonable searches and seizures, the right to equal protection under the law, the right to privacy and protection against self-incrimination. Therefore, **we strongly oppose Senate Bill 1239: An Act Concerning Investigative Subpoenas.** This bill is unacceptable, unnecessary and grants enormous power to the state.

- Senate Bill 1239 lends itself to overly broad and unreasonable documentary subpoenas violating the Connecticut and United States constitutional right to be free of unreasonable searches and seizures. Language in this bill is consistent with that in the USA PATRIOT Act, which includes language for “other tangible things”. These other tangible things could include personal journals or computers, medical/psychiatric records and lists of people who worship at particular churches, mosque or temple, borrowed books from libraries or subscriptions to certain periodicals. A subpoena directed at personal belongings or private papers raises significant and important privacy issues under Article I, Section 7 of the Connecticut Constitution:

“The people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures; and no warrant to search any place or to seize any person or things, shall issue without describing them as nearly as may be, nor without probable cause supported by oath or affirmation.” Conn. Const. Article I, Section 7.

- Senate Bill 1239 would drastically expand the coercive powers of prosecutors over individual citizens prior to filing of any criminal charges. The bill fails to fully protect the Fifth Amendment privilege against self-incrimination and is inconsistent with the current statutory provision for the granting of immunity to witnesses in criminal prosecutions and grand jury proceedings.
- Senate Bill 1239 is unnecessary. In 2003, changes were made to the grand jury system that made it easier for the Chief State’s Attorney to impanel a grand jury. This goes one step further and allows the state to go on a fishing expedition as it relates to white-collar crimes.

- The current system of judicial involvement in the issuance of subpoenas provides for an essential legal mechanism for protecting individual freedoms against unwarranted, unreasonable and unrestricted exercise of state power. Unfortunately, this bill offers no restrictions as to when this investigative subpoena could be used. It leaves open the opportunity for use after the individual has already been arrested, during proceedings and even during the trial. Investigative subpoenas should be restricted to obtaining information necessary to establish probable cause leading to an arrest.
- This bill would include the authority to subpoena non-profit and social organizations, advocacy organizations, churches, libraries, entire households, apartment buildings, neighborhoods, governmental agencies and offices for information without the existence of probable cause that a crime was committed.
- This legislation would impact upon innocent persons, not suspected of criminal behavior, to incur legal costs and force them to appear and testify as witnesses, significantly disrupt their personal lives and could result in incarceration of innocent persons, including children, if they do not answer the prosecutor's questions.
- Senate Bill 1239 could subpoena a child without their parents and without the appointment of a guardian ad litem to answer questions. It extends so far as to preclude parents from the courtroom during the questioning of their child.
- Senate Bill 1239 clearly creates a "we know what's best atmosphere" by closing the doors of all proceedings. The idea of operating in secret is without public (including the media) disclosure of the identity of the judge or prosecutor or the existence of the proceeding is quite contrary to a democratic society and open government and runs afoul of the freedom of the press, freedom of association and freedom of religion as guaranteed by the state and federal constitution.
- The bill does not automatically provide an indigent person adequate time to consult with a court appointed lawyer or to file a motion to quash thereby violating that person's right to equal protection of the law.

For the reasons I have mentioned, the **ACLU of Connecticut strongly urges you to vote against Senate Bill 1239**, it does nothing more than walk all over the rights of Connecticut's citizens. Any actions needed by the state to investigate the activities of an individual should be done with complete judicial oversight, truly identifiable checks and balances and not at the expense of rights of the people of the state.