



State of Connecticut

DIVISION OF PUBLIC DEFENDER SERVICES

OFFICE OF CHIEF PUBLIC DEFENDER
30 TRINITY STREET-4th Floor
HARTFORD, CONNECTICUT 06106

DEBORAH DEL PRETE SULLIVAN
LEGAL COUNSEL/EXECUTIVE ASSISTANT PUBLIC DEFENDER
(860) 509-6405 Telephone
(860) 509-6495 Fax
deborah.d.sullivan@jud.ct.gov

**Testimony of Deborah Del Prete Sullivan,
Legal Counsel
Office of Chief Public Defender**

***Raised Bill No. 126
An Act Adopting Certain Recommendations of the Judicial Branch Public
Access Task Force***

Public Hearing - January 17, 2007

While not opposed to *Raised Bill No. 126, An Act Adopting Certain Recommendations of the Judicial Branch Public Access Task Force* in its entirety, the Office of Chief Public Defender has concerns in regard to certain sections as proposed and shall articulate such as it relates to each section of the Raised Bill. As the Office of Chief Public Defender was not a member of the Task Force, it provided testimony at the public hearing held on September 7, 2006 in regard to Recommendations as proposed. This testimony shall not deviate from that testimony as previously provided.

The majority of the Recommendations from the Task Force impact upon the records and proceedings of persons who have been arrested for the commission of a crime for

whom an attorney, employed by the Division of Public Defender Services, has been appointed to represent them. The mission of the Division of Public Defender Services, a state agency, is to provide legal representation in criminal matters, post-conviction proceedings including habeas corpus proceedings arising from criminal matters, extradition proceedings and juvenile delinquency matters. The provision of legal representation is guaranteed by the state and federal constitutions to indigent persons accused of committing a criminal offense where there is a risk of conviction, loss of liberty through incarceration and in certain cases, death through the imposition of the death penalty. The Annual Report of the Chief Public Defender for 2005 reported that during the fiscal year 2004-05 fiscal year, the Division of Public Defender Services was responsible for a total of 88,000 cases. The Annual Report for fiscal year 2005-06 estimates that the Division was responsible for approximately 89,244 cases.

Section Six. The Office of Chief Public Defender does not support a general presumption "that all court records are presumptively open". One concern is that by authorizing the Judicial Branch to create and adopt a policy, there will be no opportunity to provide input or objection to such a policy once promulgated. The Office of Chief Public Defender is concerned that the language as proposed would permit the invasion by the public into proceedings and records which have long been confidential and which include youthful offender proceedings, juvenile delinquency proceedings, requests to sequester witnesses, in camera review, pre-trial negotiations between the parties and in chamber discussions and side bar discussions.

The Office of Chief Public Defender is particularly concerned that this proposed language would also authorize the opening of files to the public in those cases in which a person has made an application for the Alcohol Education (C.G.S. §54-56g), Drug Education (C.G.S. §54-56i) and School Violence Prevention (C.G.S. §54-56j) pretrial diversion programs. Opening these files would be contrary to the perceived original legislative intent to provide a person with a second chance. For example, this proposal would provide public access to information in School Violence Prevention cases where a juvenile is involved. In regard to the Alcohol Education and Drug Education programs, any information pertaining to the medical, psychological and psychiatric history of a defendant or the substance abuse and mental health records pertaining to counseling and treatment is confidential and may be privileged. Opening the files in cases in which applications and other documents are filed for certain pretrial diversionary proceedings, competency examinations pursuant to C.G.S. §54-56d and pre-sentence investigation reports will result in the dissemination of confidential and/or privileged information. (Attached to this testimony and made a part hereof is a letter written to Justice Richard Palmer which details the concerns with providing public access to Pre-Sentence Investigation Reports.) It is difficult to perceive that assurances could be made that information which is confidential and/or privileged pursuant to state and/or federal law would not be inadvertently filed and or disclosed should this recommendation be approved.

Lastly, the Office of Chief Public Defender is concerned that greater access to court records which may subsequently become erased records as such pertain to

dismissals, nolle, pardons and not guilty verdicts will impact upon persons who have been wrongly accused, been found not guilty or been exonerated. Cases exist in which there a defendant has been misidentified by a victim or witness, exonerated by DNA, or acquitted after a jury trial. There are also cases in which a person may have been pardoned for a crime that occurred many years ago. There is no good reason for the information to continue to exist and many reasons for it not to be disseminated further.

Where a disposition in a criminal case is not in the form of a conviction, public access to arrest information could be prejudicial to the defendant and impact upon his/her family, employment and housing. The mere existence of an arrest, especially in those cases where it has been determined in a court of law that a person did not commit the crime for which s/he was arrested for can result in the termination or removal of the accused from his/her employment and public housing. A case may be nolle, dismissed, not prosecuted, found not guilty after trial or exonerated.

Lastly, there is a concern that the greater access by the public to the court records augments the risk of identity theft, especially if filed documents contain identifiable information, such as a person's birth date, social security number or driver license number.

Section Seven. The proposed language would require that information pertaining to the criminal docket be publicly accessible online. The posting of the information would include not only the name of the defendant, docket number, the date of birth of the accused, and the charges.

The Office of Chief Public Defender *does not support* this recommendation because of the negative impact the posting may have on the accused in his/her employment, public housing and education. Any person accused of a criminal offense has a state and federal constitutional right to the presumption of innocence and due process. The posting of the information on the Internet would exist in perpetuity long after the case is disposed. The posting of the original charges would continue to be public even if the charges were subsequently reduced. This is so because the pretrial criminal docket information pertaining to any person who is subsequently convicted could be printed out or downloaded and kept forever. In addition, allowing the birth date of an accused to be posted on the Internet may increase the risk of identity theft, especially in those cases where the accused is sentenced to a substantial period of incarceration.

Most importantly, however, a disposition in a criminal case is not always in the form of a conviction. The mere existence of an arrest, especially in those cases where it has been determined in a court of law that a person did not commit the crime for which s/he was arrested for can result in the termination or removal of the accused from his/her employment and public housing. A case may be nolle, dismissed, not prosecuted, found not guilty after trial or exonerated. Pursuant to this recommendation, such information could continue to exist. This would be contrary to the existing erasure law. Once the information is on the Internet, there is no way to take back or erase the information.

Section Eight. The Office of Chief Public Defender does not support this section for the reasons as stated in response to the language contained in Section Seven. In addition, in those cases where a conviction is the result of reduced or substituted charges, the original charges should never be listed at all. Based upon anecdotal information, it is believed that overcharging by law enforcement occurs. The fact that this information as it pertains to misdemeanors shall not be available after 5 years does not diminish the reasons to oppose this language. Once posted on the Internet, there is no way to redact information.

Section Nine. The Office of Chief Public Defender supports that portion of this section which requires that a motion seeking an extension of an order to seal or limit disclosure be heard by the court on the record. Although not opposed to requiring a date certain for the termination of a sealing order, the Office of Chief Public Defender *does not support* the 90 day time period for which an extension of a sealing order may enter because this time period is excessive. Instead it is suggested that the period of time be no more than 14 days. In addition, the state should be required *to articulate* on the record why the sealing of the search warrant or limited disclosure is warranted. Anecdotal information indicates that "continuing investigation" is usually the reason cited when seeking an extension of a sealing order. However, this phrase offered without further information is insufficient. Language should be added to this section which requires the prosecution to continue to demonstrate why it is necessary to continue a sealing order or limit disclosure whenever such a motion is made. In the interest of fairness to the accused, who is presumed innocent during this pre-trial

period, permitting a continued sealing for lengthy periods of time without articulation of a legal basis or demonstration of a real need is not acceptable. As it is believed that the majority of warrant affidavits are not sealed, the state would not be subject to an unwarranted burden.

Section Ten. The Office of Chief Public Defender supports that portion of the language of this section which would make such police reports accessible to the public if probable cause is found. However, the Office of Chief Public Defender does not support this section in those instances where probable cause has not been found.

Section Eleven. The Office of Chief Public Defender supports the language as proposed in this section which requires that competency evaluations completed pursuant to C.G.S. §54-56d be filed under seal. A competency evaluation contains much information which is confidential and/or privileged pursuant to state and/or federal law. The *entire* medical, psychological and psychiatric history of a defendant is typically included. Information provided by the defendant to the psychiatrist is protected by a privilege. Pursuant to current law, such privileged and/or confidential information is not accessible by anyone except with the authorization of the defendant.

Since the privilege belongs to the defendant, it is solely his/hers to waive. A motion for a 54-56d evaluation may be made not only by defense counsel, but also by the state or the court on its own motion. Since the defendant is the subject of the competency inquiry, it is impossible to conceive how a waiver occurs when others have sought the evaluation. Therefore, the evaluation should always be filed under seal with the court clerk.

However, the Office of Chief Public Defender does not support the language of the proposal which would allow for public disclosure of the evaluation if admitted as an exhibit, relied upon by a participant in his/her testimony or arguments to the court or used as a basis for the finding of the court. For these same reasons as aforesaid, the competency evaluation should remain sealed even if admitted as an exhibit in a competency hearing or considered by the court in any way.

Section Twelve. The Office of Chief Public Defender supports that portion of the section which requires that the "alternate incarceration assessment report" be sealed. However, it does not support providing access to the public in the event that the court orders a person to participate in such an alternate incarceration program. Currently the "alternate incarceration assessment report" is part of the Presentence Investigation Report (PSI) in which it is added at the end of such. A court has the discretion to order some or all of the plan as conditions of probation. When this occurs, the court has the ability to, and usually does, articulate on the record those portions of the plan which shall be conditions of probation. Because this is done on the record at sentencing, there is a transcript which is available to the public. The concern is that if the court orders only some of the plan or a different plan as a condition of probation, this proposed legislation would allow for the disclosure of information that was not ordered by the court. There is no need for the disclosure of proposed conditions.

The Office of Chief Public Defender has advocated against the public disclosure of the PSI through its letter dated July 11, 2006 to Justice Richard Palmer, a copy of which is attached and made a part of this testimony. In that letter, this office stated that

“[a]ny attempt to develop a system wherein only certain information from the PSI would be disclosed is fraught with problems. Such a system may necessitate hearings, which may need to be closed from the public, to decide what information may be made public. This could be costly and lead to inconsistent results.” There is so much information which is personal in nature not only in regard to the defendant, but in regard to family members and the victim. Consistent with the opinion that any information in the PSI should remain confidential, the Office of Chief Public Defender cannot support this proposed language.

Section Fourteen. The Office of Chief Public Defender does not object to the concept of permitting cameras in the Supreme Court and Appellate Court. However, consent of the defendant should be obtained prior to permitting cameras to broadcast, record, televise and photograph such proceedings. Without the consent of the defendant, such should not occur. There should be no burden imposed upon the defendant to object to such especially in light of the practice wherein the defendant is not permitted to be present during oral argument before the Appellate or Supreme Courts despite being a party and the subject of the litigation.

Especially in cases involving juveniles in delinquency matters, the Office of Chief Public Defender respectfully submits that the consent of the juvenile and his/her counsel should be obtained prior to permitting cameras to record. The identities of juveniles and any identifiable information pertaining to the juvenile should remain confidential. In a time when re-entry of offenders is the subject of serious discussions, it is important that the individuals and facts pertaining to juvenile cases which are

confidential not become an obstacle to the juvenile as he/she becomes an adult because the recording was accessible to the public long after the disposition of the case.

Section Fifteen. While not opposed to the concept of creating a pilot program, the Office of Chief Public Defender respectfully submits that at a minimum, the consent of the defendant should always be required prior to the allowance of cameras in the courtroom during any pre-trial proceeding. The Judge or the parties in the matter, which includes the defendant, should have veto-power over whether the proceedings are recorded or broadcast. The Office of Chief Public Defender requests that it be a part of any group that examines the creation of a pilot program for broadcasting the proceedings in criminal court proceedings. The following examples illustrate several of the concerns of this office should cameras be allowed in the courtroom:

- Cameras could impact individual voir dire as it exists pursuant to state statute and the Connecticut constitution. Having cameras in the courtroom during voir dire in a criminal matter could hinder potential jurors from being honest and forthright in their responses. Potential jurors could fear being identified and having their responses broadcast later in the day on the 6 o'clock news.
- Cameras may impact on persons (including their families) employed in the court system, public defenders, prosecutors, judges, court clerks, court reporters and others including spectators and law enforcement officials who are doing their job.

- Cameras may impact on the person arrested who is presumed innocent until proven guilty under both the state and federal constitutions as prejudice can arise from the mere fact that the person has been arrested.
- Cameras may impact on the family and friends of the person who has been arrested.
- Cameras may on the victim, and/or the family and friends of the victim.
- Cameras may impact on the victim and his/her family by having exhibits, which may at times be graphic and gruesome in detail, broadcast and replayed forever.
- Cameras may impact on the decision of a witness or an expert witness, regardless of whether for the defense or the state, as to whether to come forward and testify in court.
- Cameras may impact upon innocent bystanders who may be in the courtroom for the proceedings.
- Cameras could impact on an order entered by the court to sequester witnesses.
- Cameras could impact on how in camera proceedings, offers of proof and bench conferences are handled.
- Cameras could impact on the proceedings if broadcast later that day in a condensed format so as to present only a snapshot of the proceedings thereby presenting the risk of testimony being taken out of context.

Section Sixteen. For many of the same reasons, as aforesaid, the Office of Chief Public Defender does not support cameras in the courtroom as it pertains to habeas

corpus matters and proposes that such proceedings be exempted from this proposed section.

Thank you for the opportunity to be heard in regard to this Raised Bill.



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July 11, 2006

Hon. Richard N. Palmer
Connecticut Supreme Court
Drawer N, Station A
Hartford, CT 06106

**Re: Connecticut Judicial Branch – Public Access Task Force –
Committee on Access to Court Records**

Dear Justice Palmer:

This letter is in regard to the recent discussions pertaining to whether the Presentence Investigation Report (PSI) of a defendant should be disclosed to the public and the media. Please be advised that the Office of Chief Public Defender would not be in support of such disclosure due to the nature of the content of the information contained within such reports. The PSI contains much information which is confidential and/or privileged pursuant to state and/or federal law. In addition, this office has concerns that if such reports were disclosable to the public and the press it would inhibit the information currently exchanged between the persons providing such to the probation officer conducting the investigation. The result would diminish, if not eliminate, the types and amount of information currently available to the sentencing judge.

The PSI contains the social history of the defendant which can detail personal information which pertains not only to the defendant, but his/her family members, friends, employment, education and military background. Family members, employers, employees, teachers and others may decide not to provide information if they know the information will be made public. In matters which involve family members, this may be especially true. On occasion, the PSI contains personal and confidential information pertaining to counseling and treatment sessions in which persons other than the defendant participated.

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**Re: Connecticut Judicial Branch – Public Access Task Force –
Committee on Access to Court Records**

The PSI can be a source of the identity and much personal information pertaining to the victim in the matter. Especially in a case where the victim is a child, such information can be extremely sensitive in nature. Disclosure of such information and/or the identity of the child could substantially impact upon the child to his/her detriment.

The PSI may contain information pertaining to juvenile and youthful offender court involvement. It may also contain information pertaining to the family of the juvenile or youthful offender which details their involvement with or investigations by the Department of Children and Families, all which is currently confidential by law. As many of the PSIs contain information obtained from the family and any other support system of the juvenile or youthful offender, public disclosure of such could inhibit involvement and/or information normally provided freely.

A PSI usually contains information which is confidential and/or privileged pursuant to state and/or federal law. The medical, psychological and psychiatric history of a defendant is typically included. In addition, substance abuse and mental health records pertaining to counseling and treatment that the defendant has undergone may be contained within the PSI. Pursuant to current law, such privileged and/or confidential information is not accessible by the probation officer except with the authorization of the defendant.

In addition, a PSI may contain hearsay or inaccurate information. The current system provides time for review of the PSI by counsel for the defendant and the ability to correct any inaccuracies. If the PSI were made public, such information may be prejudicial not only to the defendant and his/her family, but to the victim and his/her family and other individuals. Further, if the PSI was made public, there would be no process for anyone who has provided information to object to the release of such to the public. This office is concerned that disclosure of the PSI could result in a “chilling effect” on voluntary disclosure from persons and a lack of cooperation from the defendant in the gathering of information. This “chilling effect” could decrease, or even eliminate, the amount of information that is currently provided to the court for its consideration at sentencing.

Any attempt to develop a system wherein only certain information from the PSI would be disclosed is fraught with problems. Such a system may necessitate hearings, which may need to be closed from the public, to decide what information may be made public. This could be costly and lead to inconsistent results.

Lastly, this office is concerned about those cases in which a conviction is overturned or an innocent person is convicted and subsequently exonerated. There is no way to take back or erase the information contained in a PSI once it has been released to the public.

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Re: Connecticut Judicial Branch – Public Access Task Force –
Committee on Access to Court Records

For these reasons, it is believed that the current process is preferable. Therefore, the Office of Chief Public Defender respectfully requests that the Public Access Task Force permit the current process to continue in which the confidentiality of the PSI is maintained.

Very truly yours,



Deborah Del Prete Sullivan

Legal Counsel/

Executive Assistant Public Defender

cc: Gerard A. Smyth, Chief Public Defender
Susan O. Storey, Deputy Chief Public Defender



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Testimony of Deborah Del Prete Sullivan, Legal Counsel Office of Chief Public Defender

Raised Bill No. 5258 *An Act Adopting Certain Recommendations of the Governor's Commission on Judicial Reform*

Public Hearing - January 17, 2007

While not opposed to Raised Bill No. 5258, An Act Adopting Certain Recommendations of the Governor's Commission on Judicial Reform in its entirety, the Office of Chief Public Defender has concerns in regard to certain sections as proposed and shall articulate each as it relates to each section of the Raised Bill. The Office of Chief Public Defender was not a member of the Governor's Commission. However it did submit written testimony at the public hearing held on September 26, 2006 in regard to the Recommendations of the Commission. This testimony does not deviate from the position taken on that date.

A number of the Recommendations impact upon the records and proceedings of persons for whom an attorney, employed by the Division of Public Defender Services, has been appointed to represent in a criminal proceeding. The mission of the Division of Public Defender Services, a state agency, is to provide legal representation in criminal matters, post-conviction proceedings including habeas corpus proceedings arising from criminal matters, extradition proceedings and juvenile delinquency matters. The provision of legal representation is guaranteed by the state and federal constitutions to indigent persons accused of committing a criminal offense where there is a risk of conviction, loss of liberty through incarceration and in certain cases, death through the imposition of the death penalty. The Annual Report of the Chief Public Defender for 2005 reported that during the fiscal year 2004-05 fiscal year, the Division of Public Defender Services was responsible for a total of 88,000 cases. The Annual Report for fiscal year 2005-06 estimates that the Division was responsible for approximately 89,244 cases.

Section 2. The Office of Chief Public Defender does not object to the concept of permitting cameras in the Supreme Court and Appellate Court. However, consent of the defendant should be obtained prior to permitting cameras to broadcast, record, televise and photograph such proceedings. Without the consent of the defendant, such should not occur. There should be no burden imposed upon the defendant to object to such. This is especially so in light of the practice wherein the defendant is not permitted to be present during oral argument before the Appellate or Supreme Courts despite being a party and the subject of the litigation.

Especially in cases involving juveniles in delinquency matters, the Office of Chief Public Defender respectfully submits that the consent of the juvenile and his/her counsel should be obtained prior to permitting cameras to record. The identities of juveniles and any identifiable information pertaining to the juvenile should remain confidential. In a time when re-entry of offenders is the subject of serious discussions, it is important that the individuals and facts pertaining to juvenile cases which are confidential not become an obstacle to the juvenile as he/she becomes an adult because the recording was accessible to the public long after the disposition of the case.

The Office of Chief Public Defender requests that it be a part of any group that examines the creation of a pilot program for broadcasting the proceedings in the Supreme and Appellate courts.

Section 3. While not opposed to the concept of creating a pilot program, the Office of Chief Public Defender opposes that portion of subsection (b) which would place a burden on the defendant to prove "that such broadcasting, televising, recording or photographing will unduly prejudice" his/her interest. (Lines 30-33) The Office submits that the defendant, who stands arrested, enjoys the constitutional protections that include, due process, the right to counsel, the presumption of innocence and the right against self-incrimination. To require that the defendant sustain such a burden places the defendant in a position in which his/her constitutional rights are at risk to be violated. The Judge or the parties in the matter, which includes the defendant, should have veto-power over whether the proceedings are broadcast. At a minimum, the

consent of the defendant should always be required prior to the allowance of cameras in the courtroom during any pre-trial proceeding.

The Office of Chief Public Defender requests that it be a part of any group that examines the creation of a pilot program for broadcasting the proceedings in criminal court proceedings.

Section 4. The Office of Chief Public Defender supports the proposed language in this section which clearly requires that “juvenile delinquency” and “families with service needs” matters continue to remain confidential. However, this Office is opposed to opening up neglect proceedings to the public. The reason for this position is because many of the children that are represented by public defenders in juvenile delinquency matters are also the subject of a neglect petition pending simultaneously. As a result, there is much information that would become public and possibly impact upon the delinquency proceedings for which confidentiality exists.

Section 5. The Office of the Chief Public Defender submits that language should be added to make clear that this statute is not applicable to “juvenile delinquency” matters as such impacts upon the constitutional rights of the juvenile. A child in a juvenile delinquency matter should never be interviewed by the court, its agents who include Guardian ad Litem and probation officers, or law enforcement in regard to the pending matter without the knowledge and consent of the attorney for the juvenile.

Section 6. The Office of Chief Public Defender is concerned that the language as proposed would permit the invasion by the public into proceedings which have long been confidential and include youthful offender proceedings, juvenile delinquency

proceedings, requests to sequester witnesses, in camera review, pre-trial negotiations between the parties and in chamber discussions and side bar discussions. The Office of Chief Public Defender does not support the changes as proposed.

The language provides that merely “upon the motion of any party, or upon its own motion, the court may order that the public be excluded . . .”. It is not clear what type of hearing is to take place, if any, or whether an evidentiary hearing will take place. An evidentiary hearing is preferable. However, such could place a defendant in an untenable position which requires sustaining a burden to show why the public should be excluded while maintaining the constitutional rights and privileges to which a defendant is entitled. Would the hearing be public? This language appears to provide for such. It may not be difficult to know that such a motion needs to be filed within the 14 day time period articulated in 6(e). A person may not know 14 days in advance of a proceeding whether an issue exists and is the basis for such a motion. Also, the proposed language does not articulate what type of notice is to be given.

Lastly, it is believed that the proposed process will not only create lengthy delay in the courts but also an increase in cost for the various state agencies, including the public defenders who must now argue such on behalf of their clients.

Section 7. The Office of Chief Public Defender does not support a general presumption “that documents filed with the court shall be available to the public”. This proposal would impact upon certain pre-trial diversionary program applications, competency evaluations filed in response to an order granting a motion for an examination pursuant to C.G.S. §54-56d examination and pre-sentence investigation

reports (PSI). As in Section Six, the proposed language does not provide for an evidentiary hearing to take place but merely that “upon the motion of any party, or upon its own motion, the court may order that the public be excluded . . .”.

In addition, the presumption of openness places a burden on the defendant to move to seal certain documents even in circumstances where the defense and the prosecution agree. The Office of Chief Public Defender is particularly concerned that this proposed language would authorize the opening of files to the public in those cases in which a person has made an application for the Alcohol Education (C.G.S. §54-56g), Drug Education (C.G.S. §54-56i) and School Violence Prevention (C.G.S. §54-56j) pretrial diversion programs. Opening these files would be contrary to the perceived original legislative intent to provide a person with a second chance.

This proposal would provide public access to information in School Violence Prevention cases where a juvenile is involved. In regard to the Alcohol Education and Drug Education programs, any information pertaining to the medical, psychological and psychiatric history of a defendant or the substance abuse and mental health records pertaining to counseling and treatment is confidential and may be privileged. Opening the files in cases in which applications and other documents are filed for certain pretrial diversionary proceedings, competency examinations pursuant to C.G.S. §54-56d and pre-sentence investigation reports will result in the dissemination of confidential and/or privileged information. (Attached to this testimony is a letter written to Justice Richard Palmer is attached which details the concerns with providing public access to Pre-Sentence Investigation Reports.) It is difficult to perceive that assurances could be

made that information which is confidential and/or privileged pursuant to state and/or federal law would not be inadvertently filed and or disclosed should this recommendation be approved.

Lastly, the Office of Chief Public Defender is concerned that greater access to court records which may subsequently become erased records as such pertain to dismissals, nolle, pardons and not guilty verdicts will impact upon persons who have been wrongly accused, been found not guilty or been exonerated. Cases exist in which there a defendant has been misidentified by a victim or witness, exonerated by DNA, or acquitted after a jury trial. There are also cases in which a person may have been pardoned for a crime that occurred many years ago. There is no good reason for the information to continue to exist and many reasons for it not to be disseminated further.

Where a disposition in a criminal case is not in the form of a conviction, public access to arrest information could be prejudicial to the defendant and impact upon his/her family, employment and housing. The mere existence of an arrest, especially in those cases where it has been determined in a court of law that a person did not commit the crime for which s/he was arrested for can result in the termination or removal of the accused from his/her employment and public housing. A case may be nolle, dismissed, not prosecuted, found not guilty after trial or exonerated.

Lastly, there is a concern that the greater access by the public to the court records augments the risk of identity theft, especially if filed documents contain identifiable information, such as a person's birth date, social security number or driver license number.

Thank you for the opportunity to testify in regard to this Raised Bill.



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July 11, 2006

Hon. Richard N. Palmer
Connecticut Supreme Court
Drawer N, Station A
Hartford, CT 06106

**Re: Connecticut Judicial Branch – Public Access Task Force –
Committee on Access to Court Records**

Dear Justice Palmer:

This letter is in regard to the recent discussions pertaining to whether the Presentence Investigation Report (PSI) of a defendant should be disclosed to the public and the media. Please be advised that the Office of Chief Public Defender would not be in support of such disclosure due to the nature of the content of the information contained within such reports. The PSI contains much information which is confidential and/or privileged pursuant to state and/or federal law. In addition, this office has concerns that if such reports were disclosable to the public and the press it would inhibit the information currently exchanged between the persons providing such to the probation officer conducting the investigation. The result would diminish, if not eliminate, the types and amount of information currently available to the sentencing judge.

The PSI contains the social history of the defendant which can detail personal information which pertains not only to the defendant, but his/her family members, friends, employment, education and military background. Family members, employers, employees, teachers and others may decide not to provide information if they know the information will be made public. In matters which involve family members, this may be especially true. On occasion, the PSI contains personal and confidential information pertaining to counseling and treatment sessions in which persons other than the defendant participated.

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**Re: Connecticut Judicial Branch – Public Access Task Force –
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The PSI can be a source of the identity and much personal information pertaining to the victim in the matter. Especially in a case where the victim is a child, such information can be extremely sensitive in nature. Disclosure of such information and/or the identity of the child could substantially impact upon the child to his/her detriment.

The PSI may contain information pertaining to juvenile and youthful offender court involvement. It may also contain information pertaining to the family of the juvenile or youthful offender which details their involvement with or investigations by the Department of Children and Families, all which is currently confidential by law. As many of the PSIs contain information obtained from the family and any other support system of the juvenile or youthful offender, public disclosure of such could inhibit involvement and/or information normally provided freely.

A PSI usually contains information which is confidential and/or privileged pursuant to state and/or federal law. The medical, psychological and psychiatric history of a defendant is typically included. In addition, substance abuse and mental health records pertaining to counseling and treatment that the defendant has undergone may be contained within the PSI. Pursuant to current law, such privileged and/or confidential information is not accessible by the probation officer except with the authorization of the defendant.

In addition, a PSI may contain hearsay or inaccurate information. The current system provides time for review of the PSI by counsel for the defendant and the ability to correct any inaccuracies. If the PSI were made public, such information may be prejudicial not only to the defendant and his/her family, but to the victim and his/her family and other individuals. Further, if the PSI was made public, there would be no process for anyone who has provided information to object to the release of such to the public. This office is concerned that disclosure of the PSI could result in a "chilling effect" on voluntary disclosure from persons and a lack of cooperation from the defendant in the gathering of information. This "chilling effect" could decrease, or even eliminate, the amount of information that is currently provided to the court for its consideration at sentencing.

Any attempt to develop a system wherein only certain information from the PSI would be disclosed is fraught with problems. Such a system may necessitate hearings, which may need to be closed from the public, to decide what information may be made public. This could be costly and lead to inconsistent results.

Lastly, this office is concerned about those cases in which a conviction is overturned or an innocent person is convicted and subsequently exonerated. There is no way to take back or erase the information contained in a PSI once it has been released to the public.

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Re: Connecticut Judicial Branch – Public Access Task Force –
Committee on Access to Court Records

For these reasons, it is believed that the current process is preferable. Therefore, the Office of Chief Public Defender respectfully requests that the Public Access Task Force permit the current process to continue in which the confidentiality of the PSI is maintained.

Very truly yours,



Deborah Del Prete Sullivan

Legal Counsel/

Executive Assistant Public Defender

cc: Gerard A. Smyth, Chief Public Defender
Susan O. Storey, Deputy Chief Public Defender