State of Connecticut

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R.B. No. 1398-An Act Concerning Court Operations
Judiciary Public Hearing
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While not opposed to the bill as drafted in its entirety, the Office of Chief Public Defender is opposed to Sections Five, Six and Eight. Each of the sections will be addressed separately.

Section Five - Current law provides the court with the discretion to order a defendant to undergo an assessment for placement in an Alternate Incarceration Program (AIP) if convicted of certain offenses. See, ***C.G.S. §53a-39a, Alternate incarceration program.*** If an (AIP) is recommended by Court Support Services (CSSD), CSSD must submit a "proposed alternate incarceration plan" to the court. The court then has the discretion whether to place the defendant in the AIP and make participation in the AIP a condition of probation.

Numerous conditions, such as employment, alcohol or substance abuse

treatment and psychiatric and psychological evaluation and treatment may be included in the proposed AIP plan as submitted by CSSD. However, the court is not required to include the entire plan that has been proposed when imposing sentence on the defendant. The court has the discretion to order some, all, none of plan or additional conditions.

The Office of Chief Public Defender opposes this proposed section as it believes that the *proposed* AIP should be sealed from the public. Currently at sentencing, courts already articulate on the record those portions of the proposed AIP which it orders the defendant to comply with. Since the imposition of the sentence and any such conditions are on the record in open court usually, a transcript is available to the public.

The concern of the Office of Chief Public Defender is that if the court orders only some of the AIP plan or orders a variation of the AIP plan as a condition of probation, the proposed legislation would allow for the disclosure of those parts or conditions of the AIP plan which the court did not order in its discretion. Because making such public could impact upon the defendant, his/her family and support system, the Office of Chief Public Defender opposes this section as there is no need for the disclosure of proposed conditions which were never ordered by the court.

Section 6 - The Office of Chief Public Defender supports that portion of subsection (c) of Section 6 which provides that any request made by the state to extend a court order to seal the search warrant affidavit be public. However, this office is concerned that the use of the word "request" in line 184 of the proposed legislation means something less than the filing of a "motion" in writing by the state. Any such

request should be in the form of a written motion. In addition, 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 proposed for which an extension of a sealing order may enter. A 90 day time period is excessive. Instead, the Office of Chief Public Defender suggests 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 received indicates that "continuing investigation" is usually the reason given by the state, without further articulation, when the state seeks an extension of a sealing order. This 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. It is believed that the majority of warrant affidavits are not sealed. As a result, it is not expected that this would subject the state to an unwarranted burden.

Section 8 - The Office of Chief Public Defender does not support this section which would require the court to state on the record the basis of its determination of whether the defendant was competent. ***C.G.S. §54-56d, Competency to Stand Trial*** provides the procedure for an examination of the defendant and hearing on the issue of competency. 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. The defendant is the subject of the competency inquiry. The fact that the judge or the state may move for the examination does not result in a waiver of confidentiality or the privilege as to the information that is obtained during the examination.

The Office of Chief Public Defender has indicated that it believes that the competency report should always be filed under seal with the court clerk. The current practice by the defense in various courts is to move to seal the written report because of the confidential and/or privileged nature of the information contained within the report. As a result, if the report is sealed, it would be impossible for the court to articulate its basis for its decision. Such a disclosure could violate the defendant's right to privacy, confidentiality and the privilege.

The Office of Chief Public Defender respectfully requests that this Committee reject Sections 5, 6 and 8 of this bill.