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DIVISION OF CRIMINAL JUSTICE

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Testimony of the Division of Criminal Justice

In Opposition to:

H.B. No. 5675 (RAISED) AN ACT CONCERNING OVERSIGHT OF INTELLIGENCE GATHERING BY LAW ENFORCEMENT AGENCIES

Joint Committee on Judiciary – March 3, 2008

The Division of Criminal Justice opposes H.B. No. 5675, An Act Concerning Oversight of Intelligence Gathering By Law Enforcement Agencies, and would respectfully recommend that the Committee reject this bill. We oppose this bill for many of the same reasons we did so last year. While at least one of the most problematic areas of last years proposal (Section 2(c) of 1997 Raised Bill No. 7390) is not included in this years proposal, the present proposal remains problematic.

Section 1 of the act still appears to limit intelligence gathering to situations where it is necessary to ensure the protection of public officials and to prevent the disturbance of public business. As we previously pointed out, undoubtedly there is a need for intelligence gathering in this area. We still believe, however, that such activity represents a small fraction of overall intelligence gathering in law enforcement today. Traditionally, law enforcement has gathered intelligence in investigations involving drugs, organized crime, and violence (including terrorism). We remain convinced that the committee does not intend to limit intelligence gathering in these areas where it is necessary, but that would seem to be the inevitable consequence of the language used.

Section 2 of the bill identifies as a record of arrest, subject to disclosure any time after the arrest is made, the facts and circumstances constituting probable cause for the arrest. This section applies not only to arrests made for crimes involving threats to public officials, or arrests made as a result of "intelligence" gathered by law enforcement authorities, but to arrests made for all types of

crimes, including murders, sexual assaults, and robberies. In making this information subject to disclosure, this section removes it from the protection of section 1-210 of the general statutes which provides that records of law enforcement agencies which were compiled in the investigation of crime, may not be subject to disclosure if their release would disclose the identity of informants, signed statements of witnesses, and information that might be prejudicial to ongoing law enforcement activities. This is a potentially dangerous provision. Making the facts and circumstances constituting probable cause immediately available may put informants, whose information provided the basis for a finding of probable cause, and/or victims at risk. It may also require premature disclosure of a confession or other significant evidence which could impact an ongoing investigation or aid a potential co-defendant in evading detection. Finally, making this information subject to disclosure without the protection afforded under section 1-210 of our general statutes has the potential of impairing a defendant's right to a fair trial and conflicting with a prosecutor's ethical obligations. Recent amendments to Section 37-12 of the Connecticut Practice Book relate to findings of Probable Cause and provide for an orderly process to resolve these concerns in a court of law.

Section 3 of the Raised Bill likewise risks impinging on the Executive Branch role. Insofar as this section attempts to define the legislative oversight committee as a "...law enforcement authority performing a law enforcement activity," it intrudes on a clearly Executive Branch role. This provision would conflict with Federal Regulations and would cause other law enforcement agencies, federal, state and local to cease providing information to Connecticut.

This bill, if enacted, will result in profound and unintended consequences on the collection, dissemination, and use of intelligence and impact negatively on the ability of law enforcement to protect the public. These concerns were effectively expressed in the testimony of the Public Safety Commissioner, the Honorable John Dannaher, submitted in opposition to last years version of this proposed legislation on March 19, 2007 and the committees attention is called to that testimony.

For the foregoing reasons the **Division of Criminal Justice respectfully recommends the Committee reject this bill.** We stand ready to provide any additional information or to answer any questions the Committee might have. Thank you.