

**Judiciary Committee
Public Hearing**

March 17, 2008

Testimony of Theresa C. Lantz, Commissioner, Department of Correction

Raised Bill 5922, An Act Concerning the Department of Correction

Good afternoon, Senator McDonald, Representative Lawlor and distinguished members of the Judiciary Committee. I am Theresa Lantz, Commissioner for the Department of Correction. I come before you today to speak on behalf of **Raised Bill 5922, An Act Concerning the Department of Correction**.

Raised Bill 5922 is the Department's legislative package and contains provisions that address inmate access to and the cost of documents under Freedom of Information, the taking of DNA samples, changes to the discharge savings account legislation enacted last year, and residential stays at correctional facilities.

About 2 weeks ago, I testified against a bill forwarded by the Freedom of Information Commission that would have taken away current statutory protections for my staff related to disclosure of personal information to include home addresses and financial information. Today, I am asking that you provide essential statutory protection that would protect my staff from disclosure of other personal information to inmates.

Section one of the proposed bill gives explicit statutory authority to deny disclosing the files of any current or former DOC employee to an inmate unless required to do so by a court order. The majority of the DOC's employees are classified as hazardous duty and have regular contact with the inmate population. They work with accused and sentenced offenders in correctional facilities and in the community. Even those employees who do not work directly with the offender population have exposure to and can be affected by those who are incarcerated through their work in facilities and by decisions they may make in the course of their employment.

The safety and security of staff and the facility are severely compromised when inmates have access to an employee's personnel file, and files of a similar nature. Such files and reports include employee personnel files, discipline files, security division investigations and affirmative action investigations that include employees. Allowing access to any information about an employee or former employee to an inmate undermines current policy, and is contrary to the training that the DOC provides for all employees that they are not to divulge information about themselves or another employee to an inmate. Personal information that I

have described about staff can and is used to harass, manipulate and extort staff.

The Department is currently appealing three FOIC decisions in which the agency was ordered to release such documents to inmates. In one case, *David P. Taylor v. Commissioner, Department of Correction*, (Docket #2006-502), the hearing officer, in a proposed final decision, found that the DOC "...has reasonable grounds to believe that disclosure of a correction officer's disciplinary record to an inmate may result in a risk of harm, including a risk of disorder in a correctional institution, and thus that the requested records are exempt under §1-210(b)(18), G.S." The hearing officer's decision was based on the testimony presented by Deputy Commissioner Brian Murphy, a 26-year correctional professional.

Among the hearing officer findings were the following: (1) that inmates constantly seek to acquire personal information about correction officers; (2) that the purpose of the policy against undue familiarity is to prevent information about correction officers being used by inmates to manipulate or coerce correction officers; (3) that an inmate may use information about a correction officer to ingratiate himself with the correction officer by expressing sympathy, with the intention of later interfering with the officer's discipline or control of the inmate, or with the intention of seeking escalating favors from the officer; and, (4) that inmates may barter personal information about correction officers to obtain power, weapons or drugs. Despite the hearing officer's findings, the full Commission, at its September 2007 monthly meeting, stripped the decision of these findings, did not acknowledge the Deputy Commissioner's testimony, stated no evidence was presented to support the Department's position and ordered the release of the requested records.

The FOI Commission's order in the *Taylor* decision undermines Department policy and compromises safety and security within our state's correctional facilities. Further, it ignores a prior 2007 Superior Court decision* that recognized the legislative intent of C.G.S. Section 1-210(b)(18), which gives the Commissioner of Correction the authority to deny disclosure of records that she has "...reasonable grounds to believe may result in a safety risk, including the risk of harm to any person or the risk of an escape from, or a disorder in, a correctional institution or facility..."

In that case, the court found that implicit in the FOIC's finding is the presumption that the commissioner can invoke this exemption only if she has reasonable grounds to believe harm "would" (i.e., with a certainty) result from disclosure. The law, however, says "may," not "would." The court further stated, "While the legislature could have substituted 'will result' for 'may result' in Sec. 1-210(b)(18), it elected otherwise."

The Department of Correction would not have a policy prohibiting the divulging of personal information by staff to the inmate population if we did not recognize the safety and security risk of that action. Administrative Directive 2.17, Employee Conduct strictly forbids engaging in undue familiarity with inmates.

[* *State of Connecticut Department of Correction v. Freedom of Information Commission et al.*, CVC064012025S, 2007 Conn Super. LEXIS 1742, July 3, 2007.]

Section 2 of the bill supports the safety and security of facility operations by requiring that a state agency notify the Department of Correction when any person requests information under FOIA concerning a correctional facility. An example of why this is critical recently attracted the attention of the Department of Emergency Management and Homeland Security. The Department of Environmental Protection has aerial views of much of Connecticut land and structures, including explicit views of the grounds and structures of our state correctional facilities. Recently, an individual requested copies of these records from the DEP under FOIA in order to offer them for sale over the Internet. Ensuring that we have an opportunity to review the request and determine its impact on public safety and agency operations safety and security is critical.

Section 3 addresses the costs of documents provided to inmates under the Freedom of Information Act. Almost 60 percent of all FOI requests for documents received annually are from inmates. Department of Correction staff complete diligent searches and gather documents – sometimes hundreds of pages – requested by inmates. State law provides that agencies may charge up to \$.25 per page, except that the public agency shall waive fees when the person requesting the records is an indigent individual.

The FOIC ruled in August 2007, *Richard R. Quint V. State of Connecticut, Department of Correction* (Docket #2006-683), that the Department of Correction's policy made it impossible for an inmate to be deemed indigent and, therefore, exempt from copying fees. It ordered the department to apply the same standard of indigence to inmates as it does to the general public.

The DOC uses the federal poverty guideline to determine indigence for the public. The federal poverty level for one individual is currently \$10,200 a year. The average cost of incarceration for an inmate in a Connecticut correctional facility falls between \$21,000 and \$66,800 a year, depending upon facility level and inmate needs. This cost covers basic needs such as housing, food, clothing, medical care, education and treatment. The Department is not allowed to consider these costs as income when considering whether or not an inmate is indigent. Thus an individual in the community earning slightly above poverty level, would be required to pay for his or her FOI requested documents while an inmate who does not pay for rent, heat, electricity, food, etc. would be entitled to

receive any requested documents free. If inmates are to be treated the same as the general public, based on FOI's ruling in the *Quint* case, all inmates would be considered indigent and we would have to waive all fees for all inmates.

This standard allows for frivolous and harassing requests. Our proposed language (lines 121 to 128) guarantees access to documents by the inmate population and at the same time deters frivolous and harassing requests. In a recent request, for example, an inmate asked for copies of "...all investigations conducted by the Department of Correction pertaining to staff and inmates from January 1, 2001, each and every day, to December 31, 2005." Based on the average number of reports a month from four facilities alone, the total number of documents would equal 1,002,000 pages at the cost of \$250,000 to the state of Connecticut. For this one case, extrapolating the numbers to estimate the figures for all 18 DOC facilities, the number of pages requested by this inmate would equal more than 4 million at a cost of over \$1,000,000. Additionally, inmates, this one included, frequently ask for previously supplied documents more than once.

Moving away from FOI issues, section four of Raised Bill 5922 addresses the taking of DNA samples of offenders. The proposed revision supports our efforts to take DNA samples at the front end of an offender's incarceration, rather than at the back end, to assist the Department of Public Safety and other law enforcement agencies in solving criminal cases in a timely manner. The language in section four would make it a class D felony rather than a class A misdemeanor when someone who is required to have a DNA sample taken is found guilty of refusing to submit to the taking of a sample. It gives the Commissioner of Correction the authority to use reasonable force to collect a sample when an inmate continues to refuse to submit to the taking of a sample. While we have had about a 98 percent voluntary compliance rate when we take samples just prior to discharge of the inmate, we do anticipate a high number of inmate refusals if samples are taken at the front end of incarceration. Currently, there is no real incentive to cooperate if an inmate comes in with a long sentence and has concerns about being identified for another crime. This section allows us to support public safety and the efforts of our law enforcement partners.

Sections 5 through 11 of the bill make changes that are needed to effectively implement the inmate discharge savings legislation passed last session. I want to thank you again for passing the legislation that allows the DOC to set aside up to 10 percent of all money credited to an inmate's account to establish a savings fund that would be available to the inmate upon release to aid in reentry to the community. Once the legislation passed and we began to work towards implementing its provisions, we recognized the need for some technical revisions and clarification. Our proposed changes generally keep the implementation of Discharge Savings consistent with the Cost of Incarceration provisions. For example, under the Department's regulations, costs of incarceration apply only to those inmates who are serving a sentence imposed by a Connecticut State court.

Section 12 of the bill allows an inmate, at his or her request, to stay at a correctional facility beyond the inmate's end of sentence discharge date if a treatment program or healthcare institution to which the inmate is scheduled to be released to is not able to accept the inmate on the inmate's discharge date. I do not anticipate that this provision would be used frequently but it would be beneficial to have the statutory authority should there be a need. As you know, I must discharge an inmate by the effective maximum term date of sentence, regardless of the inmate needs. There is current legislation that allows the inmate to request to remain confined for up to 90 days beyond this end of sentence date for continued participation in a department program for drug dependency, in a work or education release program or in a program operated by a state agency other than the DOC. I would like to expand this authority to allow an inmate to request to remain in a correctional facility while awaiting entry into a treatment program, healthcare institution or for a compelling reason related to rehabilitation or treatment.

I thank you for your consideration of our agency bill, and my staff and I are happy to respond to any questions that you may have.

