



State of Connecticut

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

Raised Bill No. 6340

An Act Concerning Judicial Branch Openness

Judiciary Committee Public Hearing - March 26, 2009

While not opposed to *Raised Bill No. 6340, An Act Concerning Judicial Branch Openness* 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.

Section 15 - The Office of Chief Public Defender does not support this section which would allow for the disclosure of arrest information. Disclosure of such could be prejudicial to the defendant and impact upon his/her family, employment and housing. Although this information is currently online and accessible via the Judicial Branch website, the mere existence of an arrest, can result in the termination or removal of a defendant from his/her public housing and/or employment.

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 original charges on the internet would exist in perpetuity while pending and long after the case is disposed as copying and downloading of the information is not prohibited.

In addition, the original charges would continue to be public even if the defendant pled to charges which were subsequently reduced. Especially 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 16 - Although this information is already available online via the Judicial website, the Office of Chief Public Defender still has concerns that this greater access to conviction information impacts upon reentry efforts by a person convicted of a crime and makes it more difficult to obtain employment, housing and education.

In addition, conviction information records can subsequently become subject to the erasure statutes whenever a charge has been dismissed or nolle, a person has been exonerated, found not guilty or pardoned. As a result, the disclosure of this information via the internet can impact these persons. Cases exist in which people have been convicted due to being misidentified by a victim or witness, only later to be exonerated by new evidence including DNA. There are also cases in which a person may have been pardoned for a crime that occurred many years ago. Due to these types of cases, there is really no good reason for this conviction information to continue to exist on the internet and many reasons for it not to be posted on the internet. The fact that Judicial may continue to update its information does not eliminate those situations where the information has been downloaded or copied as initially posted.

Section 18 - The Office of Chief Public Defender supports this section which would make the police report upon which a determination that probable cause exists accessible to the public regardless of whether probable cause exists.

However, this office suggests that the language "after a hearing by the court" be inserted at line 852 after the word "shown" to ensure that there is a hearing on the motion to seal the police report prior to its sealing. This office also suggests that the word "motion" be inserted in lieu of the word "recommendation" in lines 854 and 856 as this office is opposed to allowing the moving party to merely "recommend" that the sealing continue. A motion should be made by the party seeking to keep the report sealed and a hearing should be conducted by the court before any such extension of a sealing order is granted.

Section 22 - The Office of Chief Public Defender supports that portion of this section which requires that any request by a prosecutor seeking an extension of an order to seal or limit disclosure be heard by the court and be a matter of public record.

However, any such request should be in the form of a written motion which shall include the basis for the motion. The state should be required to *articulate* in the written motion and/or on the record, not merely provide an "oral representation", 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 orally without further information is insufficient.

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The prosecution should be required 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 up to 90 days each, without articulation of a legal basis or demonstration of a real need in writing is not acceptable. As it is believed that the majority of warrant affidavits are not sealed, the state would not be subject to any unwarranted burden.

While 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 this office suggests that the period of time be no more than 14 days.

Section 23 - 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 can 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 relied upon by a participant in his/her testimony, examination of witnesses, arguments to the court or used as a basis for the finding of competency or the lack thereof by 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 24 - The Office of Chief Public Defender is concerned by this proposed language as it could allow for the disclosure of the contents and rationale of the 54-56d evaluation by requiring the court to articulate on the record its reasons for determining a

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defendant competent or not competent. For the reasons articulated above in regard to **Section 23** such information should be sealed and not open to the public unless the defendant has provided a waiver for disclosure.

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