PRISON LEGAL NEWS

Dedicated to Protecting Human Rights

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March 6, 2010

Rep. Gayle S. Slossberg, Co-Chair
Rep. James F. Spallone, Co-Chair
Government Administration and Elections Committee
Room 2200, Legislative Office Building
Hartford, CT 06106

RE: Hearing on HB 5404

Dear Rep. Slossberg and Spallone:

As Editor and Associate Editor of *Prison Legal News* (PLN), a non-profit monthly publication that reports on corrections and criminal justice-related issues, we are contacting you to comment on HB 5404, which is the subject of a March 8 hearing before the Government Administration and Elections Committee.

PLN has extensive experience in regard to public records requests involving prison operations. We have utilized public records requests to obtain information about corrections-related issues nationwide during the past 19 years that PLN has been publishing, and based on our knowledge and experience we object to HB 5404 for the following reasons.

HB 5404 would restrict prisoners from obtaining through Freedom of Information Act (FOIA) requests specified records related to Department of Correction employees, including personnel or medical files, or records relating to departmental security and discrimination investigations, absent a court order.

We would initially note that there are already existing provisions in Connecticut's FOIA law to prohibit the release of employees' personnel and medical files and records that may jeopardize institutional security. For example, § 1-214(b) includes safeguards for requests for employee personnel or medical files that an agency reasonably believes would constitute an invasion of privacy. Those safeguards include notifying the employee who is the subject of the request and his or her union representative, and prohibiting disclosure of the records if the employee or the union representative objects to the disclosure, unless the agency is ordered by the Connecticut FOIA Commission to produce the requested documents.

Also, the residential addresses of Department of Correction employees are exempt from FOIA requests under § 1-217(3), as are records that the Commissioner of Correction "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," under § 1-210(b)(18). Furthermore, prisoners' FOIA requests must be reviewed by the Commissioner of Correction before any records are produced, pursuant to § 1-210(c). Therefore, HB 5404 is redundant and unnecessary, as Connecticut's FOIA statute currently includes exemptions and safeguards that largely restrict the records that HB 5404 seeks to make unavailable to prisoners.

Further, prison officials retain the ability to censor records produced through FOIA requests when they are mailed into correctional facilities. In *Livingston v. Cedeno,* 186 P.3d 1055 (Wash. 2008), Washington State's Supreme Court held that prison officials may censor public records released under the state FOIA law based on security concerns, independent of FOIA restrictions or exemptions. It is likely that Connecticut courts would reach the same conclusion.

We understand that the purported reason for HB 5404 is that a Connecticut prisoner requested arrest records for Connecticut prison employees. We would note that this type of information is regularly requested by newspapers, and articles on that topic by media in Florida and South Carolina revealed that 15% of prison employees in those states had criminal convictions. The Dept. of Correction is a law enforcement agency and its employees should be held to the highest standards. This begs the question of how many Connecticut prison employees have arrest and conviction records. Do you know? We think this is a question of legitimate public concern and we understand the *Hartford Advocate* has requested this information from corrections officials and it has yet to be provided. State agencies and employees who have nothing to hide and who meet the highest standards of professionalism, honesty and integrity should not fear public scrutiny; they should welcome it, whether it comes from within prison walls or without.

Additionally, a Democratic government should be more concerned with making public records more accessible to members of the public, thus increasing transparency, rather than restricting access to information about government employees and operations. This applies to prisoners as well as to non-incarcerated citizens, as prisoners do not lose their citizenship status when they are imprisoned. Limiting access to public records for prisoners – who have no political voice or constituency and thus cannot easily oppose such legislation – is the start of a slippery slope that threatens to restrict access to public records for non-incarcerated citizens.

For example, the most obvious way that prisoners could circumvent the restrictions proposed by HB 5404 would be to have their family members or friends request Department of Correction personnel files or security investigation records on their behalf. Will the Legislature then attempt to prohibit non-incarcerated citizens from obtaining such records, in case they are provided to prisoners? How will it be determined if citizens are requesting such records for themselves or for a prisoner? If the Legislature does not plan to restrict public access to Dept. of Correction records for non-incarcerated citizens, then HB 5404 serves no useful purpose as its proposed limitations could be easily circumvented.

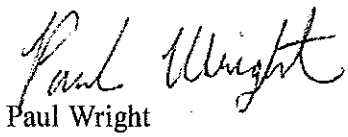
Lastly, it should be noted that prisoners have legitimate reasons to request records from the Dept. of Correction – including security and discrimination investigation reports. For instance, in the case of a prisoner who is physically or sexually assaulted by a prison employee, and such abuse is verified through an internal investigation, under HB 5404 the prisoner would not be able to obtain a copy of the investigative report that substantiates such abuse. Similarly, if a prisoner files a discrimination complaint against a prison employee due to racial, religious and/or gender discrimination, under HB 5404 the prisoner could not obtain a copy of the investigative report into his or her own discrimination complaint.

The Legislature should not ignore the fact that physical and sexual abuse of prisoners occurs in the state's prison system. For example, on May 25, 2009, state prison officer Megan Schnitzler was arrested and charged with sexually assaulting prisoners at the Osborn Correctional Center. Also, in August 2007, the Dept. of Correction paid $500,000 to settle a federal lawsuit filed by state prisoner Robert Joslyn, who alleged he was brutally assaulted by ten prison officers. The assault was recorded on surveillance video. A Department of Correction investigative report concluded that the officers had used "excessive force" and "failed to follow proper procedures and protocols," and that the use of force on Joslyn "was planned." The report also found that one officer, who had been previously disciplined for assaulting a prisoner, was "less than truthful" in the investigation. However, had HB 5404 been in effect at the time, Joslyn would not have been able to obtain – through a FOIA request – a copy of the Dept. of Correction investigative report concerning the assault that he suffered at the hands of prison employees.

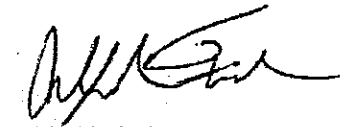
Based on the foregoing, we object to HB 5404 and ask the Committee members to vote against this legislation because it is redundant and unnecessary based on existing FOIA provisions; it unjustly restricts prisoners' access to otherwise public records; it serves no useful purpose as it is easily circumvented; and it prohibits prisoners from making legitimate requests for records related to investigative reports involving abuse and discrimination by prison staff.

Ordinarily we would be happy to testify in person before the Committee and respond to any questions from Committee members, but we are in the process of moving our office and unable to attend any legislative hearings in Connecticut over the next two to three weeks. Please accept our apologies and this written statement in lieu of our in-person testimony.

Sincerely,



Paul Wright
Editor, PLN



Alex Friedmann
Associate Editor, PLN

cc: Connecticut FOIA Commission