



State of Connecticut
DIVISION OF CRIMINAL JUSTICE

Testimony of the Division of Criminal Justice

In Support of:

H.B. No. 5503 (RAISED) An Act Concerning Subpoenas for Property

Joint Committee on Judiciary
March 17, 2010

The Division of Criminal Justice respectfully recommends and requests the Committee's Joint Favorable Substitute Report for H.B. No. 5503, *An Act Concerning Subpoenas for Property*. This bill would at long last give the Division of Criminal Justice – the entity solely responsible for protecting Connecticut's citizens from economic crime – the ability to effectively investigate such matters.

The pain suffered by victims of economic crime – be they retirees who have lost their hard-earned savings in fraudulent investment schemes, struggling businesses that have been victimized by unscrupulous executives, or municipalities that have seen valuable investment portfolios decimated – is real and increasing. The historic economic collapse from which the State of Connecticut still suffers was partly caused by predatory, sometimes fraudulent investment practices. Its consequences have generated more of the same. Yet to this day the Division of Criminal Justice, which is charged with protecting Connecticut's citizens from such crimes, has been denied the single most effective tool in initiating investigations into these sophisticated matters: the ability to subpoena documents that could quickly corroborate a victim's allegation of criminality.

That the subpoena is such an effective tool is well-evidenced by the number of agencies that have been granted this authority. The Attorney General, the Department of Economic and Community Development, the Liquor Control Commission, the Connecticut Resources Recovery Authority, the Departments of Agriculture, Banking, Consumer Protection, Environmental Protection, Education, Insurance, Labor, Revenue Services, Motor Vehicles, Transportation, the Freedom of Information Commission, the Office of Policy and Management, the Office of Victim Services, the Real Estate Commission, and the State Elections Enforcement and Office of State Ethics, to name just a few, all have some sort of subpoena authority.¹ In many instances, the authority granted to those agencies is far broader and more intrusive than that which is provided by H.B. No. 5503. Yet the Division of Criminal Justice lacks even the ability to subpoena pre-existing records.

¹ In fact, more than sixty state agencies, departments, and offices have subpoena authority. A list of all such agencies is appended to this testimony.

In the federal criminal justice system, as in most states, prosecutors work with sitting grand juries to investigate allegations of criminal activity. Through the grand jury, subpoenas may issue in support of that investigative authority. Subpoenas for documents play a critical role in allowing investigators and prosecutors to quickly obtain evidence that may confirm or dispel suspicions of criminality. Federal authorities, such as United States Attorneys and the Federal Bureau of Investigation, as well as state and county law enforcement agencies make invaluable use of the document subpoena in these investigations. Indeed, the common query from investigators outside Connecticut upon learning that our prosecutors do not have subpoena authority is: "how can you possibly investigate economic crime?" The answer is: "slowly and not well."

In the absence of seeking the empanelment of an investigatory grand jury, pursuant to C.G.S. § 54-47b *et seq.*, Connecticut prosecutors can obtain documents only through consent or by obtaining a search warrant. While the search warrant can be an effective tool for obtaining evidence, it requires a showing of probable cause to believe that a crime has been committed before the warrant may issue. In certain types of criminal investigations this requirement poses fewer problems. In the investigation of an alleged robbery, for example, there often is physical and eyewitness evidence that establishes probable cause that a crime was committed. But in the investigation of economic crime, particularly sophisticated investment frauds, the need to show probable cause before the prosecutor can obtain the very documents that may establish that fact, often proves insurmountable.

Although economic crime takes many forms, investment scams provide a ready example of the limitations that our current laws place on the ability to protect citizens from economic predators. Law enforcement often learns of a potentially fraudulent investment scheme when a victim complains that he or she has entrusted monies to a third party for subsequent investment, but the promised profits never arrive. The victim can supply his or her own records, but other documents that would provide evidence of the fraud, such as checks, money transfers, deposits, stock certificates, invoices, etc., showing where, how, and if the "investor" invested the victim's money are not available to him or her. While such complaints raise reasonable suspicion, they do not establish probable cause that the "investor" either defrauded the victim in obtaining the funds or put the monies to an unlawful use. The possibility that the investment has simply not succeeded in the way that the "investor" promised stands as an impediment to a determination of probable cause. The physical evidence that might establish probable cause to believe that a fraud has been committed is the very documents that so many others can obtain through subpoena, but that remain unavailable to State's Attorneys. This bill would eliminate the catch-22 that currently hampers the investigation of economic crime.

The FBI estimates that white collar crime costs United States businesses several billion dollars per year. The financial loss to individuals is undoubtedly as great and the emotional toll that such persons suffer, particularly when retirement funds are involved,

is even greater. That pain is compounded when victims turn to law enforcement for help only to learn that our hands are tied by an inability to obtain the very documents that might prove the crime and assist in recovering the victim's losses.

Any expansion of law enforcement authority raises understandable concerns about civil liberties and privacy. But the limited authority being sought by this statute, when weighed against the significant impediment that currently exists in the Division of Criminal Justice's ability to investigate economic crime, clearly argues in favor of passing H.B. No. 5503. It is time that the State of Connecticut allows its criminal investigators the bare minimum authority that exists in other jurisdictions to protect our citizens and to investigate complex crimes in an efficient manner.

Respectfully submitted,

Leonard C. Boyle
Deputy Chief State's Attorney for Operations

Kevin T. Kane
Chief State's Attorney

Attachment

A Summary of the Subpoena Powers for Persons and/or Documents of Departments, Agencies and Commissions of the State of Connecticut, prepared by The Law Offices of Brian J. Woolf, LLC, as of March 2010

Person, Committee, Board, Officer, Council, or Agency with Authority to Issue Subpoena	Statutory Authority
Attorney General	4-13 19a-486c 35-42 42-182 53-392d
Board of Arbitration member conducting hearing on dispute over decedent's domicile	12-374
Board of Labor Relations	10-153e
Civil service boards (municipal) New Haven	7-409
Claims Commissioner	4-151
Commission of Economic and Community Development	8-43 8-278
Commission of Health Services	19a-486d 19a-498 19a-663 20-99 20-141
Commission on Human Rights and Opportunities and hearing examiners	46a-54 46a-57 46a-83
Commission of Liquor Control	30-8
Commission on the Status of Women	46a-5
Connecticut Resources Recovery Authority	22a-265
Department of Administrative Services	5-201(b)
Department of Agriculture Commissioner	22-228 26-207
Department of Banking Commissioner	36a-17 36a-4281 36-26 36-71 36b-71
Department of Consumer Protection	20-134x 20-280 20-377q 20-424(a) 20-455 20-575 20-576 21a-7(3) 21a-8(4) 21a-70 21a-190j 21a-190i 21a-275 21a-196(b) 21a-323 42-110d 42-110k
Department of Economic and Community Development	8-278
Department of Education	10-4b

	17b-238 17b-452 17b-454 17b-531
Department of Transportation Commissioner	8-278 13b-18 13b-231
Elections/Campaign Financing	9-625
Emergency Management Director	28-5
Employees Review Board	5-201
Employment Security Review Board Referees	31-245
Freedom of Information Commission	1-21j
Fair Rent Commissions Hartford and Stamford	7-148b
Gaming Policy Board	12-565
Grand Jury	54-47f 54-82i
House Speaker	2-46
Interstate Commission	54-133
Judicial Review Council	51-51o
Judicial Selection Commission	51-44a
Legislative Program Review and Investigations Committee	2-46
MERA arbitration panel members	7-473c 7-474
Office of Claims Commissioner	4-151
Office of Health Care Access	19-149 19a-180
Office Policy and Management	12-129d 12-170cc 12-170g 16a-5
Office of Protection and Advocacy for Persons with Disabilities	46a-11c
Office of State Ethics	1-82 1-93
Office of Victim Services	54-205
Pharmacy Commission	20-575
Psychiatric Security Review Board	17a-595
Real Estate Commission	47-107
Senate President	2-46
State Bar Examining Committee	51-81
State Board of Accountancy	20-280 20-280b 20-424
State Board of Education	10-4b
State Board of Labor Relations	10-153e 31-108
State Elections Enforcement Commission	9-7(b)
State Ethics Commission	1-82
State Fire Marshal	29-310
State-Wide Grievance Committee	51-91
Uniform Administrative Procedures Act	4-177b
Wage Division	31-76a
Workers' Compensation Commission	31-271