



State of Connecticut
DIVISION OF CRIMINAL JUSTICE

TESTIMONY

JOINT COMMITTEE ON JUDICIARY

In Support of:

H.B. No. 6423 (RAISED):
An Act Concerning Subpoenas for Property

March 7, 2011

The Division of Criminal Justice respectfully recommends and requests the Committee's Joint Favorable Report for H.B. No. 6423, *An Act Concerning Subpoenas for Property*. This bill would at long last give the Division of Criminal Justice, which bears sole responsibility to protect 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. Those practices continue unabated, yet Connecticut's prosecutors remain woefully behind the times because they are denied a critical 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. 6423. Yet the Division of Criminal Justice lacks even the ability to subpoena pre-existing records.

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 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 the victim. 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 hamstring the investigation of economic crime.

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

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. 6423. 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.

ADDENDUM

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

- 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
- Commissioner of Economic and Community Development: 8-43; 8-278
- Commissioner 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
- Liquor Control Commission: 30-8
- Permanent 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-428l; 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 Education: 10-4b; 10a-22v
- Department of Emergency Management and Homeland Security: 28-5
- Department of Environmental Protection: 15-124; 21a-6; 22a-6; 22a-424; 21a-449d; 22a-501
- Department of Insurance Commissioner: 38a-16; 38a-687; 38a-817; 38a-923
- Department of Labor: 31-76a; 31-108; 31-128j; 31-271; 31-245; 31-376
- Department of Mental health and Addiction Services Commissioner: 17a-450
- Department of Motor Vehicles Commissioner: 14-76; 14-110; 14-327d(b)
- Department of Public Safety Commissioner: 17b-137; 29-143j; 29-143n; 29-310

- Department of Revenue Services Commissioner: 12-2; 12-207; 12-232; 12-268f; 12-310; 12-330k; 12-357; 12-374; 12-405k(b); 12-429; 12-445; 12-475; 12-491; 12-510; 12-552; 12-565; 12-592; 12-638h; 12-656; 12-740(e); 12-565; 12-357; 12-395; 12-656; 12-740
- Department of Social Services Commissioner: 17b-60; 17b-64; 17b-137; 17b-238; 17b-452; 17b-454; 17b-531
- Department of Transportation Commissioner: 8-278; 13b-18; 13b-231
- Elections Enforcement/Campaign Financing: 9-625
- 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 of 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 Fire Marshal: 29-310
- Statewide Grievance Committee: 51-91
- Uniform Administrative Procedures Act: 4-177b
- Wage Division: 31-76a
- Workers' Compensation Commission: 31-271