



**State of Connecticut  
Division of Criminal Justice**

**TESTIMONY**

**JOINT COMMITTEE ON JUDICIARY**

*In opposition to:*

**H.B. No. 6491 (RAISED):**

**An Act Concerning Erasure of Police Records Upon the Expiration of the Applicable Statute of Limitations and Service of Process on Certain Police Officers**

*March 9, 2011*

The Division of Criminal Justice opposes Section 1 of the bill and would respectfully request and recommend its deletion should the Committee decide to move forward with the legislation.

It is not entirely clear whether the bill would apply only to instances of confirmed criminal activity since section 1-216 (the Freedom of Information Act) already requires the review and destruction of records consisting of uncorroborated allegations of criminal activity. With that in mind, the Division believes that the historical records of documented criminal activity that are included in police reports should not be erased beyond the requirements of 1-216.

For any variety of reasons, e.g., prior misconduct, the reports and/or statements contained in police records can be invaluable in proving later crimes. Additionally, while the statute of limitations might expire based on a single act it is possible that subsequent acts can revive the statute of limitations. This would be the case when the acts are part of a continuing course of conduct, such as a racketeering enterprise.

The basic erasure provisions already in place with regard to cases where a nolle, dismissal or acquittal occurs encompass records pertaining to such "charge." H.B. No. 6491 is much broader and encompasses records pertaining to such "investigation." Case law informs us that the "charge" language limits erasure to records that pertain or refer to the arrest or prosecution. As now written, H.B. No. 6491 would effectively result in the erasure of the police file in the case.

The main problem with this proposal is that it seeks to erase recordings of historical information that apart from having a police case number have potential independent significance. The police by their very nature record events both from their own observations and that of witnesses. It is not unusual for us to have older information that proves invaluable

in later prosecutions. For example a prior sexual assault that may not have had enough evidence on its own to convict, may, when combined with new information or additional criminal activity, make a case that clearly falls within the statute of limitations provable and/or stronger. This is just as much a victim's issue as it is a prosecution issue.

The Division would cite the recent example of a case where the defendant was accused of sexually assaulting his youngest daughter. Several years ago his older daughter from a previous relationship made a disclosure of sexual abuse by the father. It was investigated but the child refused to cooperate and no arrest was made. When the father was accused in the present case with his younger daughter, he made an admission to an independent witness along the lines of "I did to (younger daughter) what I did to (older daughter)." Under the provisions of H.B. No. 6491 the state would not be able to use the old investigation as potential uncharged misconduct in the present case.

The bill could further interfere with the ability to solve old sex crimes with new scientific testing procedures. Currently, section 54-193b states there is no statute of limitations for certain serious sex crimes if: (1) the victim notified any police officer or state's attorney not later than five years after the date of offense, and (2) the identity of the person who allegedly committed the offense has been established through a DNA profile using evidence collected at the time of the commission of the offense. We can envision a case where samples are taken at the time of the commission of the offense and tested at the laboratory but the results are inconclusive based on current technology. With the advent of new testing, the sample may yield a positive result down the road. There already have been several documented cases where "old" samples have been submitted for mitochondrial DNA testing and yielded a positive result. This bill would preclude such a scenario in the future if the statute of limitations had expired.

Finally, there is the question of how a case where an arrest warrant is issued but cannot be served immediately. The statute of limitations would toll for the purpose of making the arrest and initiating prosecution, but what would have become of the records in the case? This bill would require the destruction of the police file once the statute of limitations has expired even if there is a pending arrest warrant.

In conclusion, H.B. No. 6491 threatens serious negative ramifications far beyond what its relatively simple text would imply. The Division is aware of no abuse or other reason to justify the change proposed in section 1 of this bill and would thus recommend its deletion. We thank the Committee for this opportunity to offer our input on this legislation and would be happy to provide any additional information or to answer any questions the Committee might have.