

TESTIMONY OF ATTORNEY MARSHALL T.SEGAR

IN SUPPORT OF H.B. 5125

PUBLIC HEARING, H.B. 5125

***AN ACT LIMITING ACCESS TO CERTAIN INFORMATION REGARDING
PROBATION OFFICERS UNDER THE FREEDOM OF INFORMATION
ACT.***

February 19, 2014

Good afternoon. First, let me begin by saying thank you to Senator Musto, Representative Jutila and the members of the Government Administration and Elections Committee for the opportunity to come before you.

My name is Marshall Segar, I am an attorney and I represent the Judicial Professional Employees Union. I am also a retired Deputy Chief of Police, serving 22 years as a municipal police officer.

In my capacity as the Union's attorney, I have encountered a growing number of instances where by probation officers' personnel files and similar employment records are being requested using the Freedom of Information Act as the vehicle for this request. Some of these requests are legitimate and within the intent of the open government statues like Connecticut's Freedom of Information Act. Some requests, unfortunately, are made without legitimate reasons. Instead, probation clients and inmates are using the Act for nefarious purposes. These nefarious purposes are attempts to intimidate and harass the probation officer who in most cases is supervising the client or has sent them to jail for violating their probation.

With my experiences as an attorney and as a law enforcement executive, I know public safety and the policies behind it. As such, it is disturbing for me, and to those who I represent, to learn that loopholes in the Freedom of Information Act allow for abuse and misuse of such a powerful statutory scheme. Passing H.B. 5125 will close such a loophole.

It should be noted that criminal offenders that are on probation do have a forum in which to file complaints about their probation officer. I have attached a copy of the applicable policy and complaint form to my written testimony. H.B. 5125 does nothing to interfere or curtail this procedure. Nor does it obstruct traditional means of discovery, disclosure or legal process.

As with C.G.S. 18-101f, and its amendments, the legislature recognized the potential for danger that exists when inmates, or those being supervised by corrections officers, are able to access employment records of those precise people who are supervising them. The danger of personal information being circulated by an inmate population was enough for the General Assembly to act to prevent it. The probation officers are seeking that same degree of protection as they have direct, daily contact with criminal offenders. I realize that this Bill only provides protections from intrusion by criminal offenders on probation or those who have violated their probation. I also realize that further encroachments on the Freedom of Information Act are not popular topics here and now. But I also recognize that these men and women need the protections afforded to them in H.B. 5125 so they can continue to do their jobs and perform professionally without the specter of nefarious and malicious attacks on personal privacy.

I urge you to please pass H.B. 5125.

Again, thank you for your time and for this opportunity.

I would be happy to answer any questions you may have.

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1. **Policy** The Court Support Services Division (CSSD) will ensure that members of the public and CSSD employees have an accessible central office at which they may raise concerns about the conduct of CSSD employees or individuals serving a term of probation or under pre-trial supervision, and have those concerns addressed in an appropriate manner.

2. **Definition** For the purposes stated herein, the following definitions apply:
 - A. **Administrative Investigation** An official inquiry conducted within and by personnel of the CSSD.
 - B. **Administrative Investigator** A CSSD employee assigned by the Executive Director or designee to conduct an Administrative Investigation.
 - C. **Alleged Misconduct by CSSD Employee Report Form** Official CSSD form JD-AP-145, <http://spforms/CourtForms/Shared%20Documents/PDF/ap145.pdf> detailing the nature of a complaint.
 - D. **Americans with Disabilities Act (ADA)** The federal law which protects the rights of employees with disabilities.
 - E. **Criminal Investigation** An official inquiry conducted by a law enforcement agency.
 - F. **Internal Complaints** A complaint reported by a CSSD staff member regarding another CSSD staff member.
 - G. **Investigation Summary Report** The final written report containing findings and recommendations submitted to the CSSD Executive Director.
 - H. **Person with Complaint** A member of the public and/or a Judicial Branch employee.
 - I. **Serious Misconduct** Serious misconduct includes, but is not limited to:
 - (1) Criminal activity
 - (2) Offensive, indecent or abusive conduct toward the public, superiors, co-workers, subordinates, clients, detainees, etc.
 - (3) Theft, willful neglect or misuse of any state funds, property, equipment, material or supplies, including state-owned vehicles

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- (4) Deliberate violation of any law, regulation, CSSD or Judicial Branch policy or procedure
- (5) Impairment while on duty
- (6) Gross neglect of duty
- (7) Prohibited political activity
- (8) Other activity that is similarly detrimental to the best interest of the CSSD.

J. Statement of Witness Form The official CSSD form where statements from witnesses will be recorded.

3. Procedures

- A. Internal Complaint All CSSD employees will be responsible to report any incident that reasonably appears to involve serious misconduct by any other CSSD employee.
- B. Complaints of Misconduct from the Public Complaints from the public will be handled in accordance with the prescribed policy for oral and written complaints.
- C. Administrative Investigation The Executive Director or designee will complete an administrative investigation in accordance with this policy, for all alleged misconduct reported on the Alleged Misconduct by CSSD Employee Report Form, JD-AP-145, <http://spforms/CourtForms/Shared%20Documents/PDF/ap145.pdf>. Other management staff may be utilized as needed, to assist in the investigation process.
- D. Multiple Investigations Some alleged ADA violations, affirmative action violations and sexual harassment complaints will require a separate investigation by the Affirmative Action and Employment Discrimination Program Coordinator. The CSSD Manager of Human Resources will be notified of the results of this investigation, as appropriate.
- E. Possible Criminal Conduct When possible criminal activity is alleged, (i.e., physical or sexual assault, risk of injury, theft, drug abuse, sexual contact, damaged property, etc.), such complaints will be directed to the CSSD Manager of Human Resources.

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The state or local police will also be notified immediately. Any doubt as to whether conduct should be reported to the police will be resolved in favor of reporting, after consultation with the CSSD Manager of Human Resources or designee. The CSSD Manager of Human Resources will cooperate with the police investigation and ask to be kept apprised of the results thereof.

F. Notice of Procedures for Telephonic and Written Complaints of Misconduct The name, address, telephone number and email address of the CSSD Manager of Human Resources or designee should be posted prominently in each office of the CSSD. The Notice (CSSD Attachment A and Spanish Version, Attachment A1), informs both the public and Division employees that an Alleged Misconduct by CSSD Employee Report Form, Judicial Form JD-AP-145, <http://spforms/CourtForms/Shared%20Documents/PDF/ap145.pdf> will be available from the supervisor at that location as well from the CSSD Manager of Human Resources. It is the responsibility of the office supervisor to ensure that this Notice is visibly posted in a public area. In the event that the person with complaint wishes to bring certain conduct to the attention of a supervisor or the CSSD Manager of Human Resources but does not wish to file a written complaint, the notice will also provide that oral complaints will be permissible.

G. Investigation Process for Oral Complaints Oral complaints made to the local supervisor of the employee against whom the complaint is made should be handled in one of two ways:

- (1) Complaints of a non-serious nature that can be resolved at the local office with agreement of the person with complaint will be handled as other minor disciplinary matters are, and without the involvement of the Human Resource Management Unit.
- (2) For more serious complaints or non-serious complaints that cannot be resolved without additional involvement, the person with complaint should be urged to fill out an Alleged Misconduct by a CSSD Employee Report Form. The party receiving the complaint shall assist the person with complaint in completing the form. If the person with complaint does not wish to fill out the form, he/she will be referred to the CSSD Manager of Human Resources.
- (3) If the allegation involves serious misconduct, the party receiving the complaint will immediately contact the CSSD Manager of Human Resources

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and forward the completed Alleged Misconduct by a CSSD Employee Report Form thereafter.

- (4) For oral complaints about either a serious complaint or unresolved non-serious complaint made to the CSSD Manager of Human Resources, a Misconduct Report Form should be immediately completed by the person with complaint or, in the alternative, by the CSSD Manager of Human Resources or designee. If the person with complaint wishes to remain anonymous, then "Anonymous" shall be entered in lieu of the person with complaint's name on the Misconduct Report Form. Once the Alleged Misconduct by a CSSD Report Form is complete, the procedure for written complaints shall be followed.

H. Investigation Process for Written Complaints on Alleged Misconduct by a CSSD Employee Report Form

- (1) One copy of all completed forms shall be given to the person with complaint. The original will become part of the investigation file. Immediately after the Alleged Misconduct by a CSSD Employee Report Form is completed, one copy will also be sent to both the Executive Director and the CSSD Manager of Human Resources.
- (2) Upon the receipt or completion of the Alleged Misconduct by a CSSD Employee Report Form, the CSSD Manager of Human Resources will determine, based upon the seriousness and nature of the allegations, whether the Human Resource Management Unit will conduct the investigation or whether the matter will be referred to the Executive Director for further investigation.
- (3) Once the determination is made by the Executive Director or designee as to who will conduct the administrative investigation of misconduct detailed on the Alleged Misconduct by a CSSD Employee Report Form, the investigation should begin immediately. The investigation normally will be conducted concurrently with the criminal investigation and/or the affirmative action investigation, where these occur.

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(4) The party assigned to conduct the investigation will be responsible for the development of all evidence in the administrative investigation. This includes, but is not limited to, obtaining physical evidence, gathering all relevant documents, interviewing all individuals who may have information relevant to the alleged violation, and obtaining statements from all involved persons and witnesses.

(5) Whether the investigation is handled by the CSSD Manager of Human Resources or designee, upon its conclusion, the Statement of Witness Form (CSSD Attachment B), will be completed detailing the nature of the investigation and the conclusions relevant to the conduct of the employee. The investigator will send all Statement of Witness forms to the CSSD Manager Human Resources immediately upon its completion.

I. Determination of Action to be Taken A thorough review of the investigation file, applicable policies, and all other related materials will be completed by the CSSD Manager of Human Resources and reported to the CSSD Executive Director. If no administrative action is warranted, the employee who is the subject of the investigation will be so informed in writing, and the case will be closed. If administrative action is warranted, it will be handled in accordance with existing CSSD Policy and Procedure 2.13, Employee Discipline. Upon completion of the investigation, the CSSD Manager of Human Resources will notify the person with complaint.

J. Investigation File An investigation file showing the chronology of events will be compiled and maintained by the CSSD Manager of Human Resources or designee. The file will include the following information:

- (1) Alleged Misconduct by CSSD Employee Report form
- (2) Any Statement of Witness forms obtained
- (3) Interview notes and observations
- (4) Any physical evidence obtained
- (5) Pertinent documents

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(6) Written reports identifying similar incidents and explanation of disciplinary action(s) taken

(7) Investigation Summary Report Form (CSSD Attachment C).

K. Complaints by the public concerning individuals serving a term of probation or under pre-trial supervision will be handled as follows:

(1) Oral or written complaints received by field staff will be communicated in writing to the local office/facility supervisor.

(2) The Supervisor will review the complaint and if the address or location of the individual making the complaint is known, respond in writing or face-to-face. A copy of the complaint and the response or summary of the response will be forwarded to the Regional Manager or, in the case of Juvenile Detention, to the Deputy Director of Residential Services for review. The Regional Manager / Deputy Director will retain copies.

(3) Written or oral complaints received directly by CSSD Central Office staff will be forwarded to the Executive Director.

(4) The Executive Director or designee will review and investigate the complaint and respond in writing to the complaint party, or to the party who initially forwarded the complaint to the CSSD Central Office. A copy of the initial complaint and the written response will be retained by the Executive Director or designee.

4. Reference American Correctional Association (ACA) 4th Edition Performance Based Standards for Adult Probation and Parole Field Services. 4-APPA 1C-02, 2G-02, 2002, ACA, Lanham, Maryland.

5. Exceptions Any exception to this policy will require prior written approval from the Division's Executive Director.

NOTICE

If you want to report any form of harassment, discrimination, or misconduct by an employee of this office you may, in addition to any other options available to you by law:

ASK TO SPEAK TO A SUPERVISOR

(OR)

COMPLETE AN INCIDENT REPORT FORM (BELOW)

(OR)

**CONTACT
MANAGER OF HUMAN RESOURCES
AND INVESTIGATIONS**

936 Silas Deane Hwy.

Wethersfield, CT 06109

TEL: 1-866-627-1583

hr.incidentreport@jud.state.ct.us

- **Your probation will not be negatively affected if you file a complaint.**
- **Filing a complaint does not relieve you from your responsibilities to the court.**

AVISO

**Si desea denunciar algún acto de acoso,
discriminación o conducta inapropiada
cometido por un empleado de esta oficina,
Ud. dispone de los siguientes recursos,
además de los previstos por la ley:**

PEDIR HABLAR CON UN SUPERVISOR

(O)

**COMPLETAR UN FORMULARIO DE
DENUNCIA DE INCIDENTE (ABAJO)**

(O)

**COMUNICARSE CON EL
DIRECTOR DE INVESTIGACIONES Y
RECURSOS HUMANOS**

936 Silas Deane Hwy.

Wethersfield, CT 06109

TEL: 1-866-627-1583

hr.incidentreport@jud.state.ct.us

- Presentar una queja no perjudicará su régimen probatorio.
- Presentar una queja no lo exime de sus responsabilidades ante el tribunal.

Investigation Summary Report Form

Date of Investigation:

Alleged Perpetrator:

Alleged Victim(s):

Date of Incident:

Location of Incident:

Description of Allegation:

Investigation Details

INDIVIDUALS INTERVIEWED:

DOCUMENTS REVIEWED:

INTERVIEW SUMMARY & FINDINGS:

POLICY MODIFICATION RECOMMENDATIONS:

OTHER NOTES:

SUBMITTED BY:

NAME:

TITLE:

DATE:

