

CCDLA

“Ready in the Defense of Liberty”

Founded 1988

Connecticut Criminal Defense

Lawyers Association

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March 20, 2015

The Honorable Eric D. Coleman, Co-Chair
The Honorable William Tong, Co-chair
Joint Committee on Judiciary
Room 2500, Legislative Office Building
Hartford, Connecticut 06106

Re: Raised Bill No. 1105, An Act Concerning Minor Revisions to Certain Criminal Statutes

Dear Chairmen and Committee Members:

The Connecticut Criminal Defense Lawyers Association (CCDLA) is a statewide organization of over 300 licensed lawyers, in both the public and private sectors, dedicated to defending persons accused of criminal offenses. Founded in 1988, the CCDLA works to improve the criminal justice system by ensuring that the individual rights guaranteed by the Connecticut and United States constitutions are applied fairly and equally and that those rights are not diminished.

The CCDLA strongly **opposes Sections 9, 10 and 11 of Raised Bill 7027, An Act Concerning Minor Revisions to Certain Criminal Statutes**. These three sections amend the statutes that provide for the prosecution of a person for Tampering with a Witness (~~pursuant to~~ C.G.S. 53a-151), Intimidating a Witness ~~pursuant to~~ (C.G.S. 53a-151a), and Tampering With or Fabricating Evidence ~~pursuant to~~ (C.G.S.53a-155). Currently, the statutes prohibit certain conduct once an official proceeding has begun. These changes would prohibit behavior before any law enforcement agency starts an official proceeding and even before a law enforcement agency begins an investigation. There are several problems with this broad, expanded language.

First, there is no definition contained within this bill that defines an “investigation” or what it means for when an investigation “is about to be instituted” and nothing that determines the burden of proof with regard to a person’s “belief” that an investigation “is pending or is about to be instituted.” if the alleged conduct occurs prior to or during a law enforcement investigation. These modifications significantly expand the tampering statutes to cover conduct occurring during an investigation and conduct that occurs before an investigation even begins. As this Committee may be aware, law enforcement investigations often are covert, fluid, and extend over long time periods. At other times, investigations are spontaneous, ephemeral and undocumented and may result in no criminal charges being lodged. Even with formalized investigations, the targets of these inquiries often don’t receive any notice (official or otherwise) that they are being investigated. In fact, investigating authorities may strategically avoid naming

a targeted individual as an investigation progresses and evidence is gathered -- making it difficult, if not impossible, for an outsider to determine the existence of an investigation. The lack of notice — to targets and witnesses alike -- regarding the inception of an investigation makes this proposal unworkable.

Second, tThis bill will create scenarios in which parents, friends or associates of witnesses arguably would engage in “tampering” behavior simply by discussing whether or not the witness should provide a statement to the police or otherwise cooperate with an ongoing investigation. If passed, this proposal will isolate witnesses and enable law enforcement to improperly exert pressure not only on the witnesses but on their families, friends and associates as well.

~~The CCDLA further endorses the testimony submitted by the Office of the Chief Public Defender concerning the problems with identifying when an investigation “is about to be instituted” and determining the burden of proof with regard to a person’s “belief” that an investigation “is pending or is about to be instituted.” As this Committee may be aware, law enforcement investigations often are covert, fluid, and extend over long time periods. At other times, investigations are spontaneous, ephemeral and undocumented—this is particularly true with regard to motor vehicle and pedestrian street stops in which no one has been arrested and there are no other indicia of a formal investigation. Even with formalized investigations, the targets of these inquiries often don’t receive any notice (official or otherwise) that they are being investigated. In fact, investigating authorities may strategically avoid naming a targeted individual as an investigation progresses and evidence is gathered—making it difficult, if not impossible, for an outsider to determine the existence of an investigation.~~

The CCDLA is concerned that passage of this bill will provide law enforcement~~The lack of notice — to targets and witnesses alike — regarding the inception of an investigation makes this proposal unworkable. The second problem lies~~ with the unfettered ability of police to use this statute strategically to inappropriately pressure individuals to “cooperate” with law enforcement which they currently have no obligation to do.

The final~~the third and perhaps most significant~~ concern with this proposal involves the potential for constitutional violations. To criminalize conduct that a law enforcement agency deems intrusive with regard to one of its investigations (informal or otherwise) is to cast an extraordinarily wide net and runs afoul of our First Amendment free speech protections.

For all the reasons stated above the CCDLA **strongly opposes Sections 9, 10 and 11 of Raised Bill 1105, An Act Concerning Minor Revisions to Certain Criminal Statutes.** The CCDLA takes no position as to the bill’s other sections. If you have any questions regarding this testimony please feel free to contact me.

Respectfully submitted,

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