



330 Main Street, Hartford, Connecticut 06106  
860-523-9146 | [www.acluct.org](http://www.acluct.org)

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## **Written Testimony In Opposition to House Bill No. 7051, An Act Concerning the Investigation of Fraud and Corruption**

**April 1, 2015**

Good afternoon Senator Coleman, Representative Tong and members of the Judiciary Committee. My name is David McGuire. As the Staff Attorney for the ACLU of Connecticut, I am here to oppose An Act Concerning the Investigation of Fraud and Corruption.

If this bill becomes law, subpoenas will be issued to compel the production of property for search and inspection without any of the safeguards required by the Fourth Amendment to the United States Constitution and Article 1, Section 7 of the Connecticut Constitution. Under this proposal, prosecutors can subpoena the production of any personal or business property for any conduct the prosecutor believes to be a crime. The bill does not require that there be an arrest or any form of criminal proceeding. Further there is no judicial approval or oversight at any stage of the process. The broad language in the definition section would authorize the use of subpoenas to mandate production of a vast range of tangible property, including emails, texts, cell phones, computers and tablets—many containing both personal and business data.

This bill does not require the state to show probable cause to issue the subpoena for the production of property and yet the effect of the subpoena will be to allow the state access to inspect and search private property. Under this proposal, the state only needs to show that the property is relevant to *any* criminal investigation. The bill disregards the Fourth Amendment to the United States Constitution protections against unreasonable searches and seizures:

*The people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures and no warrant to search any place or to seize any person or things, shall issue without describing them as nearly as may be, nor without probable cause supported by oath or affirmation.*

The bill lacks appropriate judicial oversight and involvement and will not withstand scrutiny under constitutional search and seizure principles. For example, unlike most subpoenas, this bill requires documents be delivered to the Prosecutor's office, not the court clerk's office. The investigations for which the subpoenas can be issued are not monitored and can go on both secretly and indefinitely. There is also no objective standard for what constitutes information that can lead to an investigation and give rise to a subpoena. It is based entirely on the discretion of the prosecutor.

Another significant flaw in the bill is the lack of adequate safeguards to protect confidential, privileged information of parties whose records are being subpoenaed. If passed into law prosecutors could obtain without probable cause or judicial oversight could include privileged communications including the records of attorneys and medical providers. This bill threatens the expected privacy of people not even under investigation but whose information is being subpoenaed because they have had the bad luck to pick a provider under investigation.

Although in the case of medical or psychiatric records, the bill would allow those to whom the records pertain to motion to quash the subpoena, it is unduly burdensome on that person who then must hire counsel to aid in filing the motion. The minimal process requirements mean that the subpoena process can be finished before the effected person has time to properly obtain and consult with counsel. Additionally, the motion only grants the person a hearing, and does not guarantee that their information will not still be released under the subpoena. Though the bill attempts to provide some safeguards for medical records, other types of confidential information are not even subject to the notice requirement, including material covered by attorney-client confidentiality.

The ACLU-CT respectfully urges this committee to reject House Bill 7051.