State of Connecticut
DIVISION OF CRIMINAL JUSTICE

TESTIMONY OF THE DIVISION OF CRIMINAL JUSTICE

IN SUPPORT OF:

H.B. No. 5473 (RAISED) AN ACT CONCERNING THE INVESTIGATION OF FRAUD AND CORRUPTION

JOINT COMMITTEE ON JUDICIARY
March 7, 2016

The Division of Criminal Justice respectfully requests the Committee's JOINT FAVORABLE REPORT for H.B. No. 5473, An Act Concerning the Investigation of Fraud and Corruption. This bill is submitted to the Judiciary Committee as part of the Division's 2016 Legislative Recommendations to the General Assembly and is our top priority again this legislative session.

As we stated when this legislation was presented to the 2015 Regular Session, 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. Its consequences have generated more of the same. Yet to this day the Division of Criminal Justice, which is charged with protecting Connecticut's citizens from such crimes, has been denied the single most effective 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 Commissioner 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 Victims Services, the Real Estate Commission, and the State Elections Enforcement and Ethics Commissions, to name just a few, all have some sort of subpoena authority.

In many instances, the authority granted to those agencies is far broader and more intrusive than that which is provided by H.B. No. 5473. 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 General Statutes Section 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 certain types of criminal investigations this requirement poses few problems. In the investigation of an alleged robbery, for example, there often is physical and eyewitness evidence that establishes probable cause that a crime was committed. But 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 him. 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 are 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 hamstrings the investigation of economic crime.

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.

Connecticut's prosecutors are similarly hampered in their ability to investigate corruption. Having received credible information of possible corrupt activities on the part of a state or municipal official, prosecutors again must apply for search warrants to obtain documents that might prove – or disprove – the allegation. The search warrant must detail the investigation and set forth probable cause to believe that a particular official has acted corruptly. While search warrants may be sealed for some period of time, they usually become public at some point, thereby risking that an ongoing investigation may be compromised or – worse – that a person who may be cleared by subsequent investigation is defamed. An investigative subpoena would allow prosecutors to obtain non-privileged documents quietly and without undue risk to reputations or investigative integrity.

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 and corruption, clearly argues in favor of passing H.B. No. 5473. 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.

In conclusion, the Division of Criminal Justice respectfully recommends and requests the Committee's JOINT FAVORABLE REPORT for this critical legislation. We would like to express our appreciation to the Committee for raising this bill and would be happy to provide any additional information you require or answer any questions the Committee might have.