State of Connecticut
DIVISION OF CRIMINAL JUSTICE

TESTIMONY OF THE DIVISION OF CRIMINAL JUSTICE

IN SUPPORT OF:

H.B. NO. 5532 (RAISED) AN ACT CONCERNING THE USE OF AN ADMINISTRATIVE SEARCH WARRANT FOR PROPERTY POSING A SERIOUS HAZARD TO PERSONS.

JOINT COMMITTEE ON JUDICIARY
March 7, 2016

The Division of Criminal Justice respectfully requests and recommends the Committee's JOINT FAVORABLE SUBSTITUTE Report for H.B. No. 5532, An Act Concerning the Use of An Administrative Search Warrant for Property Posing a Serious Hazard to Persons. This legislation was submitted to the Judiciary Committee as one of the Division of Criminal Justice's 2016 Legislative Recommendations to the General Assembly.

The State of Connecticut has long sanctioned the use of administrative search warrants. These non-criminal warrants allow for *reasonable* inspection by health and safety officials of private property protected by the Fourth Amendment of the U.S. Constitution and by Article I, Section 7 of the our state Constitution when entry is needed pursuant to existing state or municipal law. Administrative search warrants are aimed at prevention of injuries to persons or damage to property and not a criminal arrest. In nearly all circumstances where violations are found upon entry, those responsible for the conditions are given the opportunity to remediate the conditions by order of the official. Such an order can be appealed at law before the party is subject to any further enforcement action for the conditions themselves.

Connecticut public health and safety laws critically and legitimately serve the chief governmental interest of the protection of persons and property from preventable injury and illness. They cannot do so inanimately as they sit in a book on a shelf or on a page on a web site. Our public safety officials must conduct property inspections in order to effectively minimize preventable risks to the public. Our statutes direct these inspections, and are paired with authorizations for right of entry to conduct them. See, e.g., Conn. Gen. Stat. Sec. 29-305 (authorizing and directing state and local fire marshals in the interest of public safety to conduct statutorily defined periodic inspections and to inspect upon receipt of an authentic complaint that a property is hazardous to life safety from fire); Conn. Gen. Stat. Sec. 29-393 (authorizing and directing the local building official to immediately conduct an inspection on receipt of information from the local fire marshal or from any other authentic source that any building in

his jurisdiction, due to lack of exit facilities, fire, deterioration, catastrophe or other cause, is in such condition as to be a hazard to any person or persons, and further requiring that the building inspector immediately make an inspection by himself or by his assistant, and may make orders for additional exit facilities or the repair or alteration of the building if the same is susceptible to repair or both or for the removal of such building or any portion thereof if any such order is necessary in the interests of public safety.); and Conn. Gen. Stat. Sec. 19a-206(a) (authorizing and directing the local public health director to enter all places within his jurisdiction when there is cause to suspect any nuisance or source of filth exists).

Our health and safety officials have the cooperation and compliance of the vast majority of the public and endeavor greatly to educate and work with communities statewide to seek voluntary consent to conduct these inspections. They are primarily successful. However, when refused by any person pursuant to their right of privacy, there is a need for a judge to review the requested entry in order to balance the two equally important rights at stake: SAFETY versus PRIVACY; because despite the legitimate refusal, the official is yet legitimately demanded by law to enter and inspect.

Many health and safety inspections require immediate or prompt response, and yet, are not considered "emergency" inspections outside the warrant requirement. Therefore to give the statute its intended utility, the request for entry must be reviewed in an expedited manner under these circumstances. Certainly, absent exigency or some other exception to the warrant requirement, the official is required to obtain a warrant to enter to conduct this health or safety inspection. See, *Camara v. Municipal Court*, 387 U.S. 523, 539 (1967); see also, *Bozrah v. Chmurynski*, supra at 691. And although civil injunctive remedies exist, they take significantly longer to proceed and are often costly civil actions for the municipalities.

The passage of a statute codifying common law authorizing public officials entrusted with enforcing health, building, fire and zoning codes and ordinances to obtain administrative search warrants will significantly aid in advancing public safety. The Division of Criminal Justice stands prepared to work with the legislature and other interested parties to ensure that a statute is passed that will truly benefit public safety. In supporting this bill, the Division recommends two minor changes in the language to Section 1(a)(2) in deleting the words "program" and "natural" from the phrase "the property to be searched or inspected is to be searched or inspected as part of a legally authorized inspection *program* which *naturally* includes such property," as both words are cumulative, since the statute already qualifies that the search must be as part of a legally authorized inspection.

In conclusion, the Division requests the Committee's JOINT FAVORABLE SUBSTITUTE Report for H.B. No. 5532 to incorporate the changes in language referenced in this testimony. We would like to take this opportunity to thank the Committee for your consideration of this legislation and we would be happy to provide any additional information or answer any questions you might have.