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Raised Bill 5532

*An Act Concerning the Use of an Administrative Search Warrant for Property
Posing a Serious Hazard to Persons*

Judiciary Public Hearing – March 7, 2016

The Office of Chief Public Defender is opposed to *Raised Bill 5532, An Act Concerning the Use of an Administrative Search Warrant for Property Posing a Serious Hazard to Persons*. The bill is reminiscent of a prior proposal, *Raised Bill 5502, An Act Concerning Standing to Appeal a Zoning Decision and Municipal Power to Obtain a Search Warrant*, which made it out of Committee without the administrative warrant language. The bill as drafted violates the constitutional rights against unreasonable searches and seizures. A determination of probable cause that a crime has been or is being committed is necessary before such a search can be authorized.

The Connecticut Supreme Court in Bozrah provides a detailed discussion about the differences between a search warrant intended to uncover evidence of a crime and an administrative warrant. Town of Bozrah, et al vs. Anne D. Chmurynski et al, 303 Conn. 676 (2012). In Bozrah, the Supreme Court held that:

"a zoning official may inspect a single property – not part of a routine or area wide search – pursuant to § 8-12 if the zoning official first obtains an injunction issued upon probable cause by a judicial officer as articulated in this opinion. Because the trial court failed to make a preliminary determination of probable cause to believe that a zoning violation existed on the property, its order permitting a search of the defendants' property violates the fourth amendment."

Town of Bozrah v. Chmurynski, 303 Conn. 676, 697 (2012).

While recognizing the need for enforcement of local administrative codes, the Office of Chief Public Defender opposes this legislation because it would permit law enforcement to conduct criminal investigations under the guise of enforcing administrative codes, thereby circumventing the constitutional requirements. Instead, the Office of Chief Public Defender supports a process, as in Bozrah, which affords constitutional protections and prefers a process that allows for an adversarial proceeding where all of the parties can be heard from.

The Connecticut Supreme Court has recognized that where an administrative warrant is sought, the applicant must demonstrate probable cause to believe that a specific administrative violation is present on the targeted property. Town of Bozrah, et al vs. Anne D. Chmurynski et al, 303 Conn. 676 (2012). In Bozrah, the Connecticut Supreme Court held that:

When a "proposed search is not part of a periodic or area inspection program . . . the reasonableness requirement of the fourth amendment applies and is satisfied when a judicial officer orders a search upon a showing by municipal authorities that probable cause exists to believe that a zoning violation will be discovered upon inspection of the premises."

In the Bozrah case, the town had sought to "inspect" a residential property for unregistered motor vehicles and "other junk". When the property owners would not consent to the search, the Town filed for an injunction against the property owners to stop them from refusing to consent. The Supreme Court held in Bozrah that "before a court may issue an order permitting a zoning enforcement officer to enter and search a particular property, there must be a preliminary showing of facts within the knowledge of the zoning officer and of which that officer has reasonably trustworthy information that are sufficient to cause a reasonable person to believe that conditions constituting a violation of the zoning ordinances are present on the subject property." Id. The language of the Raised Bill is much broader and vague as drafted than the standard enunciated in Bozrah.

In addition, the Supreme Court in Bozrah found that "an injunction is an appropriate procedural vehicle through which a municipality may seek judicial authorization to conduct a zoning inspection." It stated that "the conditions that constitute zoning violations are, in general, continuing conditions, thereby rendering an immediate ex parte hearing unnecessary." Id. The court found that there was no undue burden placed upon a municipality if an injunction hearing were held. A hearing on a request for an injunction is adversarial in nature. All of the parties, including the residential property owners receive notice and are able to be represented by counsel. The adversarial hearing is held before a Judge in an open court. As a result, more safeguards exist to protect against unreasonable searches.

Section 1 (a) of this bill would permit authorized official of the state, a town, city borough or district, to make a complaint, also referred to as an application, under oath to a Superior Court Judge, that they are authorized under state law to search or inspect private property. The phrase "authorized official" is undefined. The fact that the application can seek to "search" a private residence and/or property triggers state and federal constitutional protections against unreasonable searches and seizures. Search warrants of properties and homes of a person are typically only utilized in criminal investigations.

The Proposal Vastly Exceeds the Dictates of Bozrah

The proposal requires that the court grant the application if (1) the "authorized officials" have not obtained the consent of the owner; (2) the search or inspection is part of a "legally authorized inspection program", which may vary from town to town, or they have probable cause, not that a crime has been or is being committed, but that there is a situation which presents a serious hazard (which is undefined) which justifies the search or inspection; (3) the warrant describes the property to be searched or inspected; and (4) the warrant "indicates the conditions, objects, activities or circumstances which the search or inspection is intended to view or reveal". Such broad language could encompass a massive list of situations that could fall within these vague criteria.

Law Enforcement/Inspectors of Division Of Criminal Justice Execute The Warrants:

Subsection (b) of Section 1 further subjects innocent property owners to the risk of unreasonable search and seizures without clearer standards to satisfy the burden of establishing probable cause. This lack of standards raises questions regarding the intent of this proposal. In addition, the Judge is required to direct this administrative search warrant to a police officer, state or municipal, or an inspector in the prosecutor's office. This raises significant concerns that this proposal does not go far enough to protect individuals from unreasonable searches.

Private Property Owners Are Powerless To Object In Court Prior to the Execution of the Search Warrant:

Subsection (c) of Section 1 provides broad and sweeping power to conduct an administrative search which will be utilized to gain access to residential properties without notice to the property owners and without an opportunity for them to be heard in a court as all such search warrant applications would be made *ex parte*. A copy of the warrant only, is given to the owner of the property upon the execution of the warrant, if they are present.

Search Warrant Execution and Entry Upon Private Property Is Permitted Even When Owner is Not Present:

And if the property owner is not present, the bill authorizes law enforcement or inspectors employed by the prosecutor's office to execute the administrative search warrant anyway. That said, it appears they can enter a home when the owner is out, all without probable cause that a crime has been or is being conducted or in the absence of exigent circumstances. (Lines 56 - 65.)

Arrests Are Contemplated by the Bill:

Subsection (c) of Section 1 contemplates that an arrest can be made and that a prosecutor can make a motion to the court asking for nondisclosure because the state's "interest substantially outweighs the defendant's right to disclosure." (Lines 81-83). The proposal distinctly raises the use of confidential informants, typically utilized in criminal investigations.

Private Property Owners May Not Get a Copy of the Warrant or Affidavits:

Subsection (d) of Section 1 permits a prosecutor to move for an extension of time in which to disclose the warrant application and affidavits to the property owner. As a result, a private property owner will not know the basis for the search and/or inspection even after their private property has been searched and evidence seized.

Criminal Penalties and Incarceration Can Result if Private Property Owner Questions the Execution of the Administrative Warrant

Subsection (e) of Section 1 provides for criminal penalties to anyone who questions the execution of an administrative search warrant. The range of the penalty is from a fine of one to 10 thousand dollars, 1 to ten years incarceration or both depending upon the conduct of the property owner.

Motion to Suppress

Subsections (f) (g) and (h) of Section 1 provide a late, if not meaningless opportunity for a person to move to suppress "evidence" obtained after the execution of the search warrant and eventual notice to the property owner. In addition, it is unclear as to what is meant by the final sentence in this subsection.

In conclusion, this Office opposes the Bill as drafted and urges this Committee to take no action. Thank you.