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**Testimony of Attorney Vicki Hutchinson**  
**Connecticut Criminal Defense Lawyers Association**  
**Raised Bill No. 324 - *An Act Concerning a Temporary Holding Period for Certain Family***  
***Violence Arrestees***  
**Judiciary Public Hearing – March 7, 2016**

The Connecticut Criminal Defense Lawyers Association is a not-for-profit organization of more than three hundred lawyers who are dedicated to defending persons accused of criminal offenses. Founded in 1988, CCDLA is the only statewide criminal defense lawyers' organization in Connecticut. An affiliate of the National Association of Criminal Defense Lawyers, CCDLA works to improve the criminal justice system by insuring 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 Connecticut Criminal Defense Lawyers Association is opposed to *Raised Bill No. 324, An Act Concerning A Temporary Holding Period for Certain Family Violence Arrestees*. This bill is almost identical to *Committee Bill 651, An Act Concerning a Temporary Hold for Certain Family Violence Arrestees* which was proposed during the 2015 Legislative Session. This proposal provides for an 8 hour temporary hold. As drafted this bill would violate a person's right to bail, due process and equal protection under the state and federal constitutions. The bill requires police to hold any person arrested and accused of a family violence crime, *without bail* for 8 hours, based upon a police officer's discretion after his/her consideration of certain factors listed in the bill. However, constitutional safeguards require that an adversarial hearing be held at which the defendant is represented by counsel. Only after such a hearing and a court order entered should a defendant be held.

In *U.S. v. Salerno*, the United States Supreme Court held that the "[t]he [Bail Reform] Act [a]lso referred to as 18 U.S.C. § 3142 et seq.] authorizes the detention prior to trial of arrestees charged with serious felonies who are found after an adversary hearing to pose a threat to the safety of individuals or to the community which no condition of release can dispel." *U.S. v. Salerno*, 481 U.S. 739, 755, (1987). Bill 324, as drafted contemplates no such hearing. Instead, the bill would permit even persons charged with a breach of peace in a family violence situation to be held for 8 hours without bail. In Connecticut a defendant has a constitutional right to bail pending a trial in all but certain capital offenses. Section 8, Article First of the Connecticut State Constitution states "[i]n all criminal prosecutions, the accused shall have a

right ... to be released on bail upon sufficient security, except in capital offenses, where the proof is evident or the presumption great....".) See also, State v. Menillo, 159 Conn. 264, 269 (1970); State v. Aillon, 164 Conn. 661 (1972). State v. Olds, supra. State v. Ayala, 222 Conn. 331, 342-43, 610 A.2d 1162, 1168-69 (1992).

Persons charged with a crime are presumed innocent until proven guilty. The state has the burden of proving a person guilty beyond a reasonable doubt. However, pursuant to this bill, a person's alleged conduct or his prior conduct, whether proven beyond a reasonable doubt or not, will require that he/she be held without bail. This bill will result in the unequal application of bail as it will permit bail for persons charged with more serious offenses, including felony offenses, so long as they are not family violence matters.

While understanding the public safety intent of this bill, this bill goes too far and is contrary to the constitutional protections as guaranteed to all. Therefore, the Connecticut Criminal Defense Lawyers Association requests the Committee to take no action on this bill.



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**Testimony of Ioannis A. Kaloidis**  
**Connecticut Criminal Defense Lawyers Association**  
**Raised Bill No. 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 Connecticut Criminal Defense Lawyers Association is a not-for-profit organization of approximately three hundred lawyers who are dedicated to defending persons accused of criminal offenses. Founded in 1988, CCDLA is the only statewide criminal defense lawyers' organization in Connecticut. An affiliate of the National Association of Criminal Defense Lawyers, CCDLA works to improve the criminal justice system by insuring that the individual rights guaranteed by the Connecticut and United States constitutions are applied fairly and equally and that those rights are not diminished.

CCDLA opposes Raised Bill 5532, *AN ACT CONCERNING THE USE OF AN ADMINISTRATIVE SEARCH WARRANT FOR PROPERTY POSING A SERIOUS HAZARD TO PERSONS*. The proposed legislation represents an unnecessary and unconstitutional intrusion into the homes of the people of the State of Connecticut. This legislation ignores constitutional protections guaranteed by the 4<sup>th</sup> Amendment to the United States Constitution and Article First, Section 7 of the Connecticut Constitution.

Probable cause to believe a crime has been committed is a prerequisite to the issuance of a search warrant. The proposed legislation ignores this basic constitutional principle.

The proposed legislation would allow "duly authorized officials of the State of Connecticut or any town, city, borough or district" permitted to make inspections of properties to apply for the proposed administrative warrants. This language is vague and overly broad. The bill would permit individuals such as building inspectors, fire marshals and other local government agents to enter the residences of people across this state based on their affirmation that such entry is needed to search or inspect a potentially hazardous condition existing on the property. The search of a residence is an activity normally reserved for law enforcement having reasonable belief that a crime has been committed after first obtaining a search warrant issued by a judge who has considered our 4<sup>th</sup> Amendment jurisprudence. No such standard exists in the proposed legislation.

Also very broad and not sufficiently defined is the potential basis for a search. Specifically, that there "exists a condition, object, activity or circumstance which presents a serious hazard to persons or property, or which violates state or local law, or which legal justifies such a search or inspection." There can be any number of things that fall within these categories; in some instances, it can conceivably even be simple violations of fire codes, building codes or zoning regulations. The proposed legislation fails to identify what

potentially hazardous conditions or which violations of state or local law would justify the issuance of a warrant and the entry into a home. The lack of clarity and specificity is extremely problematic as it leaves itself open to great disparities in its application, interpretation, and execution.

Subsection (b) of Section 1 provides that police officers or inspectors from the State's Attorney's office are to conduct the search. This provision is extremely troubling as well. Law enforcement actively executing administrative search warrants seems to be an end-around our current search and seizure jurisprudence. When law enforcement officials do not have enough evidence to obtain a search warrant to further a criminal investigation there is nothing to prevent them from using a local building official and any number of potential safety violations to obtain a warrant under this section whereby allowing them access to a home in furtherance of an investigation. The likelihood for abuse is real. For example, it is not uncommon for law enforcement to use powers available to probation officers as a mean to conduct searches of homes in furtherance of criminal investigations where they cannot secure a warrant and the target of their investigation is on probation. Similarly, certain law enforcement agents or departments will abuse this law in instances where they may not have enough evidence to secure a criminal search warrant. This proposal appears to be a veiled attempt at expanding efforts of law enforcement to make its way into the homes of civilians without first adhering to constitutional principles and safeguards against unreasonable searches.

Additional sections of this proposed legislation are also extremely troubling such as Section 1 (c) which provides that notice of the entry and search of the residence need not occur if the search is part of an ongoing investigation which may be adversely affected. In other words, this bill would permit local government agents to have local law enforcement enter the homes of civilians, conduct a search of the residence, and leave without notifying the occupants. Such clandestine operations which claim to be "administrative" in nature are not proper in a free society and cannot be reconciled with our constitutional safeguards. It is a terrifying proposition that government actors are entering homes in such a secretive manner. With respect to an ongoing investigation noted in this section, it is difficult to imagine any investigation by a building or fire inspector that would require the entry into the home of a resident of this state remain secret. It appears that this section contemplates ongoing criminal investigations. This supports our position that these administrative warrants will likely be used as a tool for law enforcement primarily rather than a safety mechanism for local government officials. Government actors, whether law enforcement or otherwise, should be forced to prove to a judge that probable cause to believe a crime has been committed exists before homes are entered and searched.

A more appropriate approach to permitting local officials such as building, zoning or fire officials into the homes of people is that which was identified in Town of Bozrah, et. al. vs. Anne D. Churmynski, et. al., 303 Conn. 676 (2012) which determine an injunction was the appropriate method and required a preliminary hearing be held prior to the issuance of an order permitting entry into a property. This method allows the person whose property is to be search an opportunity to be heard and represented by counsel at an adversarial hearing. This procedure has been approved by our state Supreme Court and is constitutionally sound.

There are numerous flaws in this proposed bill ranging from the improper extension of police power to the unconstitutional search of homes. The CCDLA is strongly opposed to this proposed bill and urges the committee to take no action.