TESTIMONY OF THE DIVISION OF CRIMINAL JUSTICE

REGARDING:

RAISED BILL NO. 1071 AN ACT CONCERNING DECEPTIVE OR COERCIVE INTERROGATION TACTICS

The Division of Criminal Justice is in broad support of any efforts by the legislature to ensure the reliability and voluntariness of statements made by persons subject to custodial interrogation. In furtherance of this support, the Division offers the following commentary regarding the bill presently under consideration.

I. With respect to that portion of the bill which applies exclusively to persons under eighteen years of age (Section 1. Subsection (a)(7)):

The Division of Criminal Justice fully supports that portion of Raised Bill No. 1071, An Act Concerning Deceptive or Coercive Interrogation Tactics, which seeks to curtail the use of deceptive or coercive interrogation tactics by law enforcement officers during the custodial interrogation of persons under eighteen years of age.

- The Division does, however, maintain that subsections (a)(7)(B) & (C) be limited to intentionally false statements, misrepresentations, or promises.

II. With respect to the remainder of the bill, as it applies to the custodial interrogation of both adults and persons under eighteen years of age, the Division respectfully submits the following suggestions:

Section 1(a)(1) Unreasonably [D]eprives the person being interrogated of physical or mental health needs that the interrogator or agent knows, or reasonably should know, exists, including, but not limited to food, sleep, use of the restroom or prescribed medications;

- The Division suggests that the limiting language of “unreasonably” be included in Subsection (a)(1)
**Section 1(a)(2)** Uses or threatens the use of physical force upon the person being interrogated or another person for the purpose of compelling a statement.

- The Division suggests that the additional proposed language be included in Subsection (a)(2) to account for situations in which justifiable reasonable force may be required by an officer, for officer safety purposes, in response to a physical action taken by the subject of the custodial interrogation. This additional language makes clear that the prohibited physical force is that which is directed at compelling a statement from the person being interrogated.

**Section 1(a)(3)** Uses unreasonably coercive means or undue pressure to impair the physical or mental condition of the person being interrogated to the extent of undermining the person's ability to make an informed choice whether to make a statement of a reasonable person similarly situated; that renders the person’s statement unreliable in violation of federal or state constitutional law;

- The Division maintains that the suggested substitute language embraces the intent of the original language utilized, but instead utilizes language that is in accord with very well settled federal and state caselaw. To the extent that these subsections of this bill attempt to codify already existing common law, the Division believes that the proposed language will avoid unnecessary conflict in interpretation.

**Section 1(a)(4)** Uses or threatens the unlawful arrest unwarranted criminalization of another person;

- The Division suggests that the proposed substitute language aptly describes the action which the bill seeks to prevent and is more in line with language utilized in Connecticut caselaw.

**Section 1(a)(5)** Uses or threatens the unwarranted use of enhanced imposition of unlawful penalties upon the person being interrogated or another person.

- The Division’s position is that the suggested substitute language more adequately encompasses the purport and intent of the bill, as “enhancement” has specific meaning in the realm of sentencing that may lead to confusion in application.

**Section 1(a)(6)** Violates the constitutional rights of the person being interrogated;

- The Division suggests that this subsection be stricken entirely and that a new subsection 1(d) be added as set forth below. The reason for striking this subsection is that, if a constitutional violation of the person’s rights occurs during the course of the interrogation, the remedy for the violation would be that the statement would be suppressed as a matter of constitutional law. Therefore, this
subsection is not legally in line with the presumption established in subsection 1(b), and cannot be overcome, as set forth in subsection 1(c).

Proposed new Subsection 1(d): “Any admission, confession, or statement that is found to be involuntary in violation of state or federal constitutional law shall be inadmissible.”

- The Division adds that, if the proposed new Subsection 1(d) is incorporated into the bill, Subsection 1(b) would need to be amended such that it would begin “Except as provided in subsection (d) of this section …”

Finally, the Division proposes that the Committee may wish to consider adding an additional subsection (a new Subsection 1(a)(6)), with the following suggested language: “Uses or threatens the imposition of unlawful administrative or immigration sanctions upon the person being interrogated, or another person.”

- In the spirit of ensuring the reliability of statements made by persons subject to custodial interrogation, the Division suggests that, in addition to the use or threat of unlawful arrest, consideration be given to the use or threat of unlawful administrative actions, such as the threatened involvement of agencies such as the Department of Children and Families or federal immigration authorities.

We appreciate you taking the time to consider our position and please reach out to our office should there be any questions that you may have regarding the bill or our testimony.