State of Connecticut

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Testimony of
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Raised Bill 488 - An Act Concerning Grand Jury Reform

Judiciary Committee Public Hearing - March 24, 2014

The Office of Chief Public Defender is adamantly opposed to ***Raised Bill No. 488, An Act Concerning Grand Jury Reform*** and asks that the Judiciary Committee take no action on it. The bill raises numerous constitutional and procedural concerns that should not be adopted in a state whereby the prosecutor only need file an information, based upon probable cause, to charge a person of committing a criminal offense.

The Office of Chief Public Defender has been engaged in discussions pertaining to grand jury reform. At least three meetings were held and attended by the Honorable Elliott Solomon, the Honorable Maria Kahn, Deputy Chief Public Defender Brian Carlow, Chief State's Attorney Kevin Kane, Attorney Moira Buckley as the representative of the Connecticut Criminal Defense Lawyers Association and Alan Sobol, Esq. as the representative of the Criminal Justice Section of the Connecticut Bar Association.

At each meeting, there was extensive discussion in regard to: grand jury reform as sought by the Division of Criminal Justice; previous years' reports pertaining to the Investigatory Grand Jury System published as mandated by C.G.S. §54-47h; grand jury reform in other states; and, limiting any grand jury reform to certain crimes. Lacking from these discussions was any real evidence as to why grand jury reform is necessary in Connecticut especially in light of legislative reform that has taken place since 1985. ***(See OLR Research Report, 2013-R-0366, Investigatory Grand Jury System, by James Orlando, Associate Attorney dated November 22, 2013).*** However, despite the lack of consensus, the Office of Chief Public Defender is willing to continue the discussion that has taken place thus far.

Testimony - Deborah Del Prete Sullivan, Legal Counsel, Director, Office of Chief Public Defender
R.B. 488 An Act Concerning Grand Jury Reform

Raised Bill No. 488, An Act Concerning Grand Jury Reform is almost identical to Raised Bill 6698 proposed in the 2013 session and quite similar to Senate Bill 695 proposed in the 2008 session which did not garner the support of this Committee. Raised Bill 488 is unnecessary and will only dilute the current grand jury process and put law abiding citizens in danger. Current law requires a panel of judges to report to the Chief Court Administrator the number of grand jury applications made and approved each year as well as the number of applications for extensions made. Attached are the Reports on the Investigatory Grand Jury System for the last three calendar years, 2011, 2012 and 2013. These reports demonstrate that of all of the applications made, none were denied. As the Division of Criminal Justice has not demonstrated that a problem exists that needs fixing, no action should be taken on this proposed bill. In addition, there is no necessity to have state officials duplicate federal law enforcement investigative efforts.

The bill as proposed is unconstitutional and ***would effectively repeal the Fourth Amendment*** to the United States Constitution and Article I, Section 7 of the Connecticut State Constitution in overly broad investigations that would be conducted by prosecutors and compel the attendance/testimony of witnesses which can include children. This legislation would impact upon innocent persons, not suspected of criminal behavior, to incur legal costs and force them to appear and testify as witnesses after only 72 hours has passed from the issuance of the subpoena, significantly disrupt their personal lives and could result in findings of contempt against innocent persons, including children, if they do not respond to the grand jury subpoena and testify or produce property. Property that could be subpoenaed can include personal belongings such as the witness's personal journals, computers and medical/psychiatric record in contradiction to the constitutional right to be free of unreasonable searches and seizures.

The bill removes the authority of the Judiciary to apply for a grand jury investigation and authorizes any prosecutor in consultation with the Chief State's Attorney to apply for a grand jury application based only upon the bald assertion that the "interests of justice require" it. Any such application would be made to the presiding judge and not to a panel of three judges as required under current law.

The proposal authorizes a grand jury to convene whenever a prosecutor believes that "the interests of justice require" it. As such it strips away all other requirements in the statutes that currently need to be met including demonstrating that the grand jury is necessary to determine whether probable cause exists that a crime has been committed and that all other efforts of investigation have failed. Put simply, the standard of probable cause which currently exists and is well settled in the law is totally removed from this proposal. This "interest of justice" threshold, not defined in the law, is subjective and a minimal standard with no expressed criteria for implementation. Such expansive language allows unfettered discretion to state prosecutors to investigate whenever he/she wants information when they "reasonably

suspect" a crime was committed and they wish to compel witnesses to testify and produce evidence. The bill substantially extends the time period for a grand jury to convene from 6 months to 12 months and allows for extensions of time to be granted only if the "interests of justice" require such.

Witnesses that can be summoned include people of all ages, including children. Any subpoenas issued must under the proposal be approved by the Judge and must be served at least 72 hours before the date the person so subpoenaed must appear and give testimony. That provides a person so subpoenaed only 3 days to obtain counsel and advice regarding the scope of the subpoena and to produce what could be voluminous records and documents. If a person is indigent and needs counsel, they will need to wait until they can travel to the court where the grand jury is convening, even if across the state, and apply for the appointment of counsel after completing an affidavit of indigency. They then need to wait until counsel is appointed and they can make an appointment to meet with their court appointed counsel, again to discuss the scope of the subpoena as it applies to them.

Although the bill ostensibly allows assistance of counsel, once inside the grand jury room, the witness is alone answering the questions of the Judge and/or the prosecutor(s). The witness's lawyer is not allowed inside the grand jury room, although the witness can leave the room to consult with his/her counsel "at reasonable times" and "for a reasonable period of time" upon request, but there is no guarantee that the witness will be able to meet with the counsel for the amount of time necessary to obtain the needed advice. It appears that any discretion as to when and for how long such periods of time are within the discretion of the prosecutor.

The process is especially troubling in cases where juveniles are subpoenaed to appear before the grand jury. Our office has had some experience with this issue of a juvenile client subpoenaed from a residential facility to testify regarding incidents of gun violence in a Connecticut city. Although the client was not the target of the investigation, he clearly felt intimidated, confused and distraught about his safety should he testify about any of these events.

Section 8 deletes "grand jury" from subsection (2) and is confusing in regard to the prosecutor's subpoena power as it discusses investigations by the prosecutors.

Therefore, the Office of Chief Public Defender urges this Committee not to take any action on this proposed legislation. The Office of Chief Public Defender remains committed to continue its participation in discussions with the Division of Criminal Justice, the Judicial Department, the CCDLA and the CBA, but is opposed to the current proposal.