



State of Connecticut

DIVISION OF PUBLIC DEFENDER SERVICES

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Testimony of Deborah Del Prete Sullivan, Legal Counsel, Director Office of Chief Public Defender

Raised Bill 5587 - An Act Concerning Search Warrants

Judiciary Committee Public Hearing - March 24, 2014

The Office of Chief Public Defender is opposed to *Raised Bill No. 5587, An Act Concerning Search Warrants*. The bill permits law enforcement to apply for a warrant to place tracking devices on persons, including children, or objects, which could include automobiles and personal property such as cell phones, tablets and computers. The prosecutor need only believe, not only that a crime has been committed, but that one will be committed. This bill creates an investigatory search warrant for prosecutors to obtain a vast amount of personal information about someone who may never even know that his/her records and data have been collected. In this bill, law enforcement also seeks the ability to request a court to issue an extraterritorial warrant for electronic information on out of state servers for information related to crimes committed in this state. However, any such searches must comport with the constitutional protections afforded by the 4th amendment of the U.S. Constitution.

In the new subsection (c) of **Section 1** a prosecutor may seek a warrant to the court and identify only the person or property on which the tracking device will be placed and if known, the identity of property owner. The bill allows prosecutors to collect undefined data through the tracking device for up to 30 days. A 30 day time period is too long and should be based upon probable cause which is reasonably connected to the criminal activity the prosecutor seeks the warrant for. In any event, any such time period for the warrant should be tied to the specific criminal activity alleged and articulate a specific time period for such criminal activity. The warrant should articulate with particularization the evidence sought and what law enforcement is permitted to obtain.

Pursuant to subsection (e) of **Section 1** the bill, prosecutors would be able to obtain data and records from foreign corporations or businesses that transact business in this state which provide “electronic communication services or remote computing services to the public” which would include cellular and internet services including email and text messages. Any records or data sought would be required to be provided to the prosecutors within 5 business days or a shorter period of time if the court determines such is necessary.

In the new subsection (c) of Section 2, it is clear that the person who is the subject of tracking does not get notice by the prosecutor or the court that his/her/its records or data are being tracked until 10 days after the period authorized for the tracking has expired. As a result, a person may not get notice of the tracking device warrant until some undetermined time in the future. Because the bill provides for any such notice to be provided well after the data provided by the tracking device has been collected by a prosecutor, there is no process for a person to file a motion to quash and postpone the delivery of such information.

