

Legislative History for Connecticut Act

2002

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CONNECTICUT
GEN. ASSEMBLY
SENATE

PROCEEDINGS
2002

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PART 7

2095-2444

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Senate

Monday, May 6, 2002

THE CHAIR:

Without objection, so ordered.

SEN. JEPSEN:

Calendar 440, H.B. 5505.

THE CHAIR:

Without objection, so ordered.

SEN. JEPSEN:

Calendar 442, H.B. 5759.

THE CHAIR:

Without objection, so ordered.

SEN. JEPSEN:

Calendar 443, H.B. 5007.

THE CHAIR:

Without objection, so ordered.

SEN. JEPSEN:

From Page 14, Calendar 448, H.B. 5402.

THE CHAIR:

Without objection, so ordered.

SEN. JEPSEN:

Calendar 449, H.B. 5574.

THE CHAIR:

Without objection, so ordered.

SEN. JEPSEN:

And Calendar 451, H.B. 5627.

THE CHAIR:

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Senate

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THE CHAIR:

Thank you, Sir. Ladies and gentlemen, I just want to take this moment. A lot of times when we call the Consent Calendar I've noticed that some Senators will actually vote and leave. The reason that we actually call the Consent Calendar first is to try to get everybody back into the Chamber and then repeat the numbers, is to give you the opportunity to delete any item that you do not wish to be called or to have on the Consent Calendar.

So I would again just want to reemphasize that we call it and then we repeat that call so that you do have ample opportunity to remove an item if you so desire. Mr. Clerk, would you please once again announce a roll call vote on the Consent Calendar and then call it.

THE CLERK:

An immediate roll call has been ordered in the Senate on the Consent Calendar. Will all Senators please return to the Chamber.

An immediate roll call has been ordered in the Senate on the Consent Calendar. Will all Senators please return to the Chamber.

Madam President, those items previously placed on the Second Consent Calendar begins on Calendar Page 9.

Calendar 424, Substitute for H.B. 5644.

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Calendar Page 10, Calendar 429, Substitute for H.B. 5434.

Calendar Page 11, Calendar 431, Substitute for H.B. 5211.

Calendar Page 12, Calendar 436, Substitute for H.B. 5516 correction, Calendar 436, Substitute for H.B. 5514.
Calendar 440, Substitute for H.B. 5505.

Calendar Page 13, Calendar 442, Substitute for H.B. 5759.

Calendar 443, Substitute for H.B. 5007.

Page 14, Calendar 446, Substitute for H.B. 5258.

Calendar 448, Substitute for H.B. 5402.

Calendar 449, Substitute for H.B. 5574.

Calendar Page 16, Calendar 457, H.B. 5138.

Calendar Page 17, Calendar 458, H.B. 5210.

Madam President, I believe that completes those items previously placed on the Second Consent Calendar.

THE CHAIR:

Thank you, Sir. Would you once again announce a roll call vote. The machine will be opened.

THE CLERK:

An immediate roll call has been ordered in the Senate on the Consent Calendar. Will all Senators please return to the Chamber.

An immediate roll call has been ordered in the

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Senate on the Consent Calendar. Will all Senators please return to the Chamber.

THE CHAIR:

Have all members voted? If all members have voted, the machine will be locked. The Clerk please announce the tally.

THE CLERK:

Motion is on adoption of Consent Calendar No. 2.

Total number voting 36; necessary for adoption, 19.

Those voting "yea", 36; those voting "nay", 0. Those absent and not voting, 0.

THE CHAIR:

The Consent Calendar is adopted.

Senator Jepsen.

SEN. JEPSEN:

Thank you, Madam President. If the Clerk could call from Page 8, pick up with the Call of the Calendar from Page 18, Calendar 111.

THE CLERK:

Calendar Page 18, Calendar 111, File 117,

Substitute for S.B. 343 An Act Concerning An Electric Transmission Plan. Favorable Report of the Committee on Energy and Technology and Commerce and Export. The Clerk is in possession of amendments.

THE CHAIR:

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roll call. Members to the Chamber, please.

DEPUTY SPEAKER CURREY:

Have all members voted? Have all members voted?
Please check the board to make sure your vote is
properly cast.

If all members have voted, the machine will be
locked and the Clerk will take a tally.

The Clerk will please announce the tally.

CLERK:

H.B. 5627, as amended by House Amendment Schedule
"A"

Total Number Voting	146
Necessary for Passage	74
Those voting Yea	146
Those voting Nay	0
Those absent and not Voting	5

DEPUTY SPEAKER CURREY:

The bill, as amended passes.

Will the Clerk please call Calendar 305.

CLERK:

On page 30, Calendar 305, Substitute for H.B. 5759,
AN ACT CONCERNING ACTS OF TERRORISM. Favorable Report
of the Committee on General Law.

DEPUTY SPEAKER CURREY:

Representative Lawlor.

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REP. LAWLOR: (99TH)

Thank you, Madam Speaker. I move acceptance of the joint committee's favorable report and passage of the bill.

DEPUTY SPEAKER CURREY:

The question before us is on acceptance and passage. Please proceed, sir.

REP. LAWLOR: (99TH)

Thank you, Madam Speaker. This is a bill containing a variety of provisions which rewrite existing criminal law and add a few additional statutes to deal with the challenges we've been confronting these past six of seven months.

Madam Speaker, after a good deal of consideration, it was determined that we really need to put a finer point on the craftsmanship of this bill. So the Clerk has LCO number 4911. I would ask the Clerk call and I be permitted to summarize.

DEPUTY SPEAKER CURREY:

Would the Clerk please call LCO 4911, designated House "A".

CLERK:

LCO number 4911, House "A" offered by
Representatives Lawlor, San Angelo, Godfrey, and Stone.

DEPUTY SPEAKER CURREY:

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you, Madam Speaker. This bill contains a number of provisions changing existing criminal statutes and adding a few new statutes.

If, just briefly, Madam Speaker, I'd like to run through them quickly.

In Section 1, is a new definition of an act of terrorism. In essence, Madam Speaker, the model here is our existing hate crime statute which provides an enhanced penalty for people who violate existing criminal statutes with the particular intent in mind.

In this case, if someone commits a violent crime with the intent to intimidate or coerce the civilian population or a unit of government, then that would be an act of terrorism. And in general, throughout these new or modified statutes, Madam Speaker, that type of a motive would lead to an enhanced penalty.

In Section 2, Madam Speaker, is a new statute covering what I guess you might call the non-bomb bomb.

In other words, not explosives, but instead material which can cause serious injury and death to a number of people, which does not involve explosives.

Involving poisonous chemicals, toxics, disease organisms, radiation, radioactivity, and the like.

Madam Speaker, the manufacturer of these devices would subject one to the penalty provided there. And I'd like to point out, Madam Speaker, that for this offense and other offenses, the kind of terrorism we've come to understand in recent months, in all likelihood, if it took place, would be handled by the federal law enforcement authorities under federal law with federal remedies.

Although these laws would apply to that as well, they would also apply to let's say our domestic terrorism or junior terrorists, let's say, people who try to influence government or coerce a civilian population in our state, perhaps on a smaller level, but nonetheless, just as dangerous. We can take a page from the histories of other nations which have seen this nascent terrorism emerge, grow stronger, more embolden, and I think we all understand the importance of identifying that and stopping it before it begins.

In Section 3, a new version of a crime called hindering prosecution in the first degree. We have in existing statute, you can see it in Section 4, which now is becoming hindering in the second degree, but the enhanced penalty, the first degree crime would add to the existing elements, the intent to intimidate or coerce the civilian population of unit of government. In

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other words, when someone acts as an aider or abetter, an accomplice, so to speak, that's considered to be criminal assistance and if you did it with a view towards furthering a terrorist act, you would be subject to the penalties in this crime.

Hindering prosecution in the first degree becomes second degree and the existing second degree hindering becomes hindering in the third degree.

In Section 6 you can see the existing definition of rendering criminal assistance, which is not being changed other than some gender appropriate language, which is being inserted.

In Section 7, there's a new crime for damaging public transportation for terrorist purposes. This would apply to people seeking to interrupt public transportation, in particular trains, and buses. We know that although that's not happened as yet in this country, it could and if it did, and the motive was to intimidate a civilian population or coerce the government, etcetera, there would be a new class C felony.

In a similar fashion in Section 8, a new penalty contaminating a public water supply. I'd like to point out for the record, Madam Speaker, that anyone who contaminated a public water supply tonight would be

arrested and prosecuted. This provides, however, an enhanced penalty for anyone doing it with the intent to intimidate or coerce a civilian population or unit of government. In effect, be engaged in terrorism.

There are a variety of contaminants you can introduce to the water system, some of which are more deadly than others. Obviously, if you killed a number of people, that would be mass murder, which has its own penalties. But if you were not successful in that, or if you were an amateur or just trying to pull a stunt, you would be subject to these very, very serious penalties for what I think are understandable reasons.

In Section 9, another new penalty, computer crime for terrorists purposes. Obviously, deliberately crashing other people's computers, sending viruses in, disrupting their computer system is a crime under existing law. However, if the motive in doing so was to disrupt the government or a civilian population to coerce them or intimidate them in some fashion, you would be subject to the enhanced penalties in that statute.

In Section 10, criminal misrepresentation. This is basically lying or misleading law enforcement agencies and other agencies of government with the intent, again, to coerce or intimidate a civilian population. This

could include a false bomb threat or something of that nature, distributing what looks like Anthrax in the hopes that you could empty out a building in a way to intimidate or coerce it. For example, if that was done here at the State Capitol while we were in session to disrupt our deliberations, that conceivably could fall into this category and such an offense would carry the rather severe class C felony.

Section 11, is inserting a new area of inquiry for the investigatory grand juries we've learned so much about in the last couple of weeks. Those are allowed only for the investigation of certain types of crimes. Being added to the list is a felony involving the unlawful use or threatened use of physical force or violence committed with the intent to intimidate or coerce a civilian population or a unit of government. In other words, acts of terrorism.

Section 12 is not a criminal statute, but it is intended to focus in on price gouging in the aftermath of a terrorist incident or other related crisis. If anyone actually increased the price of an item, under certain circumstances that would become an unfair or deceptive trade practice under Subsection (a) of the existing state statute 42-110b which has enhanced civil penalties to any business that engages in such conduct.

In Section 13, we've added to the list of offenses for which the Chief State's Attorney or State's Attorney can apply for permission to engage in wire tapping, felonies involving the unlawful use or threatened use of physical force or violence committed with the intent to intimidate or coerce a civilian population or unit of government.

It's not making it any easier to get a wire tap. It's a very complicated process. It just says that if you're prepared to go through the existing procedures to investigate that type of a crime, that would be an allowed avenue to pursue.

I would point out, under the federal law, the new Patriot Act, there are expedited procedures and very flexible procedures, I might add, for doing that under the federal law and our state and local law enforcement agencies are allowed to work in concert with the federal authorities for that purpose, but if one wanted to take advantage of the state law, it would be possible assuming they could meet the threshold, which is rather high.

In Section 14, it makes it clear that if, in fact, there were evidence obtained pursuant to the appropriate federal law by federal authorities or federal authorities working in concert with local authorities,

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if that were relevant, material in a Connecticut state criminal prosecution, that evidence would be allowable in the prosecution, assuming it was otherwise accepted and relevant and material and not illegally obtained.

Section 15 corrects what I think is an inadvertent error, so to speak, that we made, I guess you could argue, during the special session last year in the aftermath of the terrorist attack. In an attempt to enhance the penalty for threatening in the context of terrorism, we inadvertently increased the penalty for what would be otherwise be run of the mill sort of domestic violence type threatening.

The language in the existing threatening statute relates to making threats with the intent to terrorize another person, like a threat - like, I'll punch you or I'll kick you or whatever. That would normally be threatening in the context of an interpersonal relationship. Because of the word "terrorism" in there, we kind of kicked it up to a rather serious terrorist type crime. The language in this section, in the final section, sort of reverts that to the run of the mill threatening, the misdemeanor version of threatening. If you are threatening other people in a way that actually terrorizes them, which is the threshold for the misdemeanor threatening statute, that's a misdemeanor,

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not a terrorist felony.

So, Madam Speaker, I think these are all important additions to our state statutes. With some luck, we'll never have to use them, but if we had to, they're available.

And I would point out, as was the case with the bill a couple of bills ago, this is a bipartisan, multi-philosophical effort to reach an appropriate compromise to get the job done without effecting the legitimate concerns of members of the Chamber who are concerned about public safety and civil rights and the like. like.

So, Madam Speaker, I would like to congratulate my colleagues in this effort, Representatives San Angelo, Godfrey and Stone and others who contributed their thoughts and expertise. I think it's a good outcome and I think it will get the job done.

So I urge adoption of the amendment.

DEPUTY SPEAKER CURREY:

The question before us is on adoption.

Representative San Angelo of the 131st.

REP. SAN ANGELO: (131ST)

Thank you, Madam Speaker. And I also rise, obviously, in support of this particular legislation.

It's been an interesting process in putting this particular piece of legislation together. And there are

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some people that I think really deserve to be thanked in that process.

It also started with an OLR report by George Coppola and you know, there are a lot of great staff members in this building who work their tail off to make good legislation and they don't get to sign their name as a co-sponsor, but quite frankly, Madam Speaker, I think that our staff in many, many cases deserve to be co-sponsors with the amount of work and George did a great job and I wanted to thank him.

And a guy who, frankly, I've come to really respect over the years, Rick Taff, the LCO attorney for the Judiciary Committee. He's done an phenomenal job and I think Rick's reward tonight is that once this bill is passed, I'll stop bothering him for a while.

And the House Republican staff, Mike Cronin, Mary Ann O'Neill, who started way back after September 11th working on this legislation and did a great job. And particularly House Republican attorney who spent hours and hours revising this bill, a fantastic attorney who, frankly, I think his family can be proud of the work he does up here and particularly on this item, Chris Adams, one of our great staff members.

As Representative Lawlor says, this has been a bipartisan kind of bill and I was very proud to see

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Chief State's Attorney Jack Bailey come on board with his assistance and Jack Cronin. We made numerous technical changes to this particular bill and I think really with his support, it's come a long way right through the various committees and into this process.

We've had everybody involved. The Governor had his own separate bill. What we did was basically take some of the best sections from the Governor's bill along with the Chief State's Attorney, different variations from the Public Defender's Office who contributed to this particular legislation. Representative Farr who met with us on a regular basis to fine tune it. And most particularly I want to thank Representative Lawlor who has done a phenomenal job and he led us in directions that I think made a lot of sense and it was really him who made sure that this was clearly guided towards terrorists and, in effect, we wouldn't catch some of other person that shouldn't have been caught up in what was considered - what is now considered an act of terrorism.

Representative Lawlor, I have come to respect you.

I think this is -- you've added so much to this Chamber in terms of your expertise and I appreciate the work you've done.

I also want to thank -- you know, this bill in my

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mind, at least, symbolizes, Madam Speaker, what's best about this Chamber. It's when in a bipartisan way we can all come together to put together an agreement that we can all be proud of and I'll give you an example of that.

Representative Martinez had an amendment that he would have liked to have offered to this bill, and to make sure that in now way we wouldn't send this bill to other committees and jeopardize it, he sort of stepped aside and said I'll do my amendment somewhere else. And it just sort of gave me the kind of feeling that people in this Chamber can really work together and do things that are important. So I wanted to thank him, as well.

Madam Speaker, I think this amendment is good for the people of Connecticut and I've got to tell you, I've never worked hard, so hard on an amendment that I hope is never ever, ever used. I think it does a lot of good things. The Governor, in putting the wire tapping provisions in it and the grand jury investigation, I think lent a lot of this bill. The Chief State's Attorney wanted to make sure what happened over at the Department of Environment Protection, the way they ended up getting that guy is through lying to a federal officer and it was covered under federal law. A lot of our state laws were not set up to ever deal with issues

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of terrorism. What this bill essentially does is allow our Chief State's Attorney to prosecute any act of terrorism under Connecticut state law and gives him the necessary tools to do that.

As Representative Lawlor had said, we do have in laws in terms of polluting the water on the books, but when you look at that pollution, if it doesn't result in a murder or hurting somebody, it's really designed for littering kinds of purposes and water pollution from some kind of littering process, not through somebody throwing some kind of chemical into our water. We just never thought that we would ever need legislation like this.

Madam Speaker, I had the experience in my district that a woman actually died because of terrorism. And I guess that really affected me a lot in watching how that whole process developed. It was a wonderful lady who, frankly, spent most of her life just doing the simple things that we all do, going to the hairdresser, and going to the supermarket. And I said it before when this first happened, I was proud of the way a small town named Oxford rallied around the family of the victim and, frankly, I think that if one thing came out of September 11th, it's that even the wonderful symbols of the World Trade Center and the Pentagon, while they mean

a lot, what really means so much to this country are the people in this country and while people can attack our symbols, they can't really attack us. We get stronger when we have to rally around each other.

Madam Speaker, I think this bill goes a long way to protecting the people of Connecticut and I support it entirely.

Thank you.

DEPUTY SPEAKER FRITZ:

Will you remark further on the amendment? Will you remark further on the amendment?

Representative Jack Stone.

REP. STONE: (134TH)

Thank you, Madam Speaker. I too rise in strong support of this amendment and I want to start by thanking Representative Lawlor for his strong leadership in this.

This amendment and bill came about because of the long hours that many of us spent in meeting with a whole host of people from around the State. And some of the people who have not mentioned are those representatives from the State Police, fire fighters who came up and spent their time. The chiefs of police, the Department of Public Health, almost every agency in the State that has anything to do whatsoever with the safety of our

people were involved in this process.

This is a very reasoned response to what could have been a knee jerk reaction and that's where I think Representative Lawlor really did the best work by keeping everything under control. It would have been easy to get a bit carried away with some of our penalties, but it's a reasoned response, realistic response and one that has the support of everybody involved.

So again, thank you to everybody involved and I urge the Chamber to support it.

Thank you.

DEPUTY SPEAKER FRITZ:

Thank you, Representative Stone.

Representative Green.

REP. GREEN: (1ST)

Thank you, Madam Speaker. Madam Speaker, I think I recall this bill before. And I wanted to make sure that we were going to be cautious and make sure we weren't going to have a witch hunt and just have a lot of people being arrested for senseless acts and threats.

And I do recall, I think after the discussion I read in the paper about a young man who was on a field trip who threatened that there was some Anthrax in the school and I was remembering how the people were saying

how that young man was a very good student and they didn't want that young man to be arrested.

And I just hope that we do have some sensible abilities to make sure that we just don't rush out and make sure that we arrest people under this, that we use a little caution.

Thank you, Madam Speaker.

DEPUTY SPEAKER FRITZ:

Thank you, Representative Green.

Representative Winkler.

REP. WINKLER: (41ST)

Thank you, Madam Speaker. A question, through you to Representative Lawlor.

DEPUTY SPEAKER FRITZ:

Please frame your question, Madam.

REP. WINKLER: (41ST)

Yes. Thank you. Representative Lawlor, I'm concerned when I read over Section 8 when we're looking at a class C felony for contaminating a public water supply system that would supply the inhabitants of a town.

What is the reason that you came up with just a Class C felony for that?

DEPUTY SPEAKER FRITZ:

Representative Lawlor.

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REP. LAWLOR: (99TH)

Thank you, Madam Speaker. Well, there was a considerable discussion on this issue and it's actually an interesting one and I tried to briefly mention it when I described the bill at the outset.

If someone actually did poison the drinking supply of a town or city, the crime there would be either multiple murder, capital murder, death penalty murder or attempt to commit multiple murder. I mean, if you really were dumping a bunch of real poison into a water supply, you're either trying to kill a lot of people or actually going to kill a lot of people.

So those penalties are available and are very severe in that event.

We tried to make sure that there would be a very severe penalty for someone who may not have been attempting to accomplish murders, but instead was trying to sort of take off to maybe temporarily shut down a water supply by introducing some type of agent would have to be tested and that type of thing.

So it's a higher penalty than you would normally get for criminal mischief, for example, just wrecking some other type of public commodity. But since it maybe a tempting target for hooligans who are attempting to, in effect, shut down a city for a day, theoretically I

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guess it's possible if you knew how to contaminate or make it look like you had contaminated the water supply. We wanted to have a more serious penalty than the run of the mill criminal mischief penalty for that.

But make no mistake it, anybody who really did introduce poison into a water supply is going to get charged, if they're lucky, with attempted murder, attempted multiple counts of attempted murder and if they're successful, multiple counts of actual murder.

So, I hope that answers the question.

Through you, Madam Speaker.

DEPUTY SPEAKER FRITZ:

Representative Winkler.

REP. WINKLER: (41ST)

Thank you, Madam Speaker. So, where it reads a Class C felony, and the sentence would be a term of imprisonment for five years would not really apply if those set of circumstances were proven?

DEPUTY SPEAKER FRITZ:

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you, Madam Speaker. I just want to point out, the minimum sentence would be five years. The maximum sentence would be ten years for a Class C felony. So, although in general, I think mandatory minimums are a

bad idea, this bill carries one for this particular crime. But as I said, if it was real poison and it was clear they were intending to either kill people or come very close to killing people, the crime would be much more serious and it would carry a life sentence and probably multiple counts of attempted murder.

By the way, I think if that really did happen, you would be in a federal court looking at the federal death penalty. Not that I think that's a good idea because I'm against the death penalty, but that's what you'd be looking at.

DEPUTY SPEAKER FRITZ:

Representative Winkler.

REP. WINKLER: (41ST)

Thank you, Madam Speaker. Thank you, Representative Lawlor. I feel better after that discussion. Thank you.

DEPUTY SPEAKER FRITZ:

Thank you, Madam.

Representative Godfrey.

REP. GODFREY: (110TH)

Thank you, Madam Speaker. Obviously, I rise in support of this. My name, after all, is on it. But here in the General Assembly family, September 11th is my birthday, Madam Speaker, not particular celebratory this

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year and I'm obviously facing a lifetime in which it's not going to be a celebration any more.

So, I was - I can't say happy, but content to have been assigned to work on all of the anti-terrorism bills and many of the other responses to the tragedies that took place on 9-11 this last year. And I certainly want to include in the thanks that have been given to a variety of people who deserve them so far today, to extend that to Mike Sullivan of the House Democrats staff who has done a tremendous amount of work on this bill and even more particularly on the public health bill that ran earlier today.

You know, I still have nightmares about what had happened on that day. I have a little trouble sleeping. Have a lot of images in my mind that aren't particularly pleasant. But I'm hoping that certainly for me, having been able to work positively on the issues that have come up before the General Assembly since then, is therapeutic to a certain degree. And obviously, some of the things I needed to work through. I certainly didn't want the terrorists to win. And that meant a lot of things to me.

Most particularly, I didn't want their very nefarious acts and the attack on this country to destroy the very fabric of what the Constitution means, what the

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laws of this country mean. And so was very, very careful working with all of my colleagues to make sure that yes, we did have the enhanced penalty. Yes, we did have the ability of the government to respond in future acts of terrorism, of bio-terrorism. But at the same time, protecting the liberties that we've all cherished, the liberties that we've defended all of these years.

And I think we've been able, very much, to be able to do that in this amendment and in this bill and in the many other ones that we're facing today and during this legislative session.

I'm pleased that my colleagues are joining together in this wonderful consensus to be able to prepare for the unimaginable. To prepare for events we pray don't happen. To ensure, as best we can, that events that have happened in the past not only aren't repeated, but that we're able, as a government and as a people and as extended family to be able to respond to in a way that preserves the way of life that we all do cherish.

And so I'm very supportive of this amendment. I urge everybody to adopt it and move on and adopt this bill.

Thank you, Madam Speaker.

DEPUTY SPEAKER FRITZ:

Thank you, Representative Godfrey.

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Representative O'Neill.

REP. O'NEILL: (69TH)

Thank you, Madam Speaker. Through you, a question to the proponent.

DEPUTY SPEAKER FRITZ:

Please proceed, sir.

REP. O'NEILL: (69TH)

I'll use Section 8 as an example. The language there talks about a terrorist act, for terrorist purposes, when such person with intent to intimidate or coerce the civilian population or a unit of government introduces a hazardous substance and it goes on to describe places and streams and lakes and things like that.

And I'm accustomed to seeing the word "coerced" being followed by to do something. Intimidate, I can understand is to cause fear or apprehension or disturbance of some kind, but coerced usually fits into a sentence that, for example, Section 53a-394 racketeering activity means to commit or attempt to commit or conspire to commit (a) intentionally solicit, coerce or intimidate another person to commit any crime which at the time of its commission was a felony and so on and so forth, that the coercion is intended to induce action, that follows the coercion.

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And so through you, Madam Speaker, I would ask the proponent if he could explain to me how coercion is going to be applied, that particular word, if that is the population or the unit of government is being coerced, the question is, coerced to do what? Or is that really, in fact, necessary as it appears in a number of criminal statutes, it is routinely followed by a course of action that you're being coerced into?

Through you, Madam Speaker.

DEPUTY SPEAKER FRITZ:

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you, Madam Speaker. Actually, there's a crime called coercion and I think I can answer the question by reading from the criminal code statute. "A person is guilty of coercion when he compels or induces another person to engage in conduct which such other person has a legal right to abstain from engaging in or abstain from engaging in conduct which such other person has a legal right to engage in."

In other words, - and by the way, it goes on to say, "by instilling in such other person the fear that if the demand is not complied with..." and then a list of a bunch of things that you might do.

So coercion is, in this particular case, is if the

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coercion is aimed at the government as an entity, for example. If someone felt that they could cause the General Assembly to take action or not take action on a bill by threatening to shut down the water supply of the City of Hartford, that would be a terrorist act.

The other type of coercion would be aimed at a community, to coerce a civilian population. That would refer, in my -- for legislative intent, it's always been our working understanding as we drafted this bill that means more than an individual, more than a family. It means a community in that sense.

So a civilian population is more than just one or two people or a specific group like the Elks Club or whatever it happens to be. It would have to be a true community, a group of people at the first group of people. It could be a town or city. It could be a neighborhood. It could be a region. That's what's intended.

So, it's to cause them to do or to stop doing something that they're otherwise entitled to do by either engaging in force or instilling some type of fear that a bad things about to happen.

So, that's the best I can do to define it, but fortunately, there is a separate crime called "coercion" and I think the intent of the bill is to track the

elements of that crime.

Through you, Madam Speaker.

DEPUTY SPEAKER FRITZ:

Representative O'Neill.

REP. O'NEILL: (69TH)

Thank you, Madam Speaker. And I thank the Representative for the reference to the coercion law, but that also seems to call for the causing the target of the coercion to engage in some course of conduct or refrain from some course of conduct.

Let me try a hypothetical. Someone takes a bag of white powder from the gallery, spills it, throws it across into the Chamber here. And it seems to look like Anthrax powder or powdered Anthrax or some kind of a chemical.

They don't say anything. They don't try to - they don't say we want you to vote against bill "x" or in favor of the nomination of so and so. They just do that act with no accompanying words, no demands to release prisoners or withdraw from some military operation. Just that stuff is dumped into the General Assembly, into the Hall here. And it turns out, let's say, to be flour. It is, in fact, not a dangerous chemical at all, but everybody looks at it with Anthrax on the mind, everybody runs and becomes very frightened.

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I can see intimidation as a result of that, that we are intimidated, although even that sort of applies intimidated to do something, at least as this RICO statute seems to follow intimidation and coercion to do something.

Would that act constitute a terrorist act, at least as far as the coercion part is concerned?

Through you, Madam Speaker.

DEPUTY SPEAKER FRITZ:

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you, Madam Speaker. Through you, I think it's an excellent question and I think in the hypothetical that Representative O'Neill has presented, that's hooliganism, not terrorism. I think another example, a real example was the incident at the DEP headquarters just down the street a number of months ago. I'm not exactly sure what the facts were, but as I understand them, someone wrote Anthrax, misspelled it, as a matter of fact, on the desk of with some type of white powder. I'm not sure what the motive was, but I think one possible motive might have been just to be funny and maybe to frighten, momentarily, some other folks in the office. Obviously, if that was the motive, it got totally out of hand, but absent of showing that the

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intent was to evacuate the whole building and shut down the DEP that day, I don't think that necessarily would constitute terrorism as we've defined it today.

If, however, there was a clear motive to empty out the building that day to stop a decision from being made on a particular pending matter before the DEP, and you could prove that, then that, I think, would be the type of coercion or intimidation that would constitute terrorism for purposes of the bill.

So, we do have to distinguish between hooliganism and terrorism, I think the hypothetical that the Representative would be hooliganism and not terrorism.

DEPUTY SPEAKER FRITZ:

Representative O'Neill.

REP. O'NEILL: (69TH)

Thank you, Madam Speaker. Just to follow up a little bit more. We actually did have and standing here and thinking and listening to Representative Lawlor, an example on opening day where someone thought that someone else was standing on a rooftop with a rifle or a machine gun or something. Obviously, the individual in this case was misinterpreted what he was, what he was carrying and so on, but had an individual been, let's say, standing on a rooftop with a rifle, obviously that would be a violation of the law that prohibits that

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people from coming on the grounds of the General Assembly carrying firearms, but again, without -- and we reacted, we closed the building, locked ourselves in, that sort of thing. Certainly, we shut down the operations of government for a while.

Had that, in fact, been a rifle instead of a video camera, would that have fallen within this definition?

Through you, Madam Speaker.

DEPUTY SPEAKER FRITZ:

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you, Madam Speaker. Again, I think you would look to the specific intent of the person engaged in it. I think if you can prove that it was specifically targeted at the government, in this case, with the intent to shut down the government temporarily, in other words to coerce us to not do something we're entitled or obligated to do, which would be to convene that day, then I think it would be an act of terrorism. I think if it was purely because they thought it would funny to do this, then it probably would not constitute an act of terrorism.

So, I think there's a fine line here, but I do think that if you could show specific intent to shut down the government that particular day, without regard

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to the political or ideological motivations, but if that was the goal to cause the government to shut down that day, that certainly would constitute an act of terrorism as it's defined under the statute today.

DEPUTY SPEAKER FRITZ:

Representative O'Neill.

REP. O'NEILL: (69TH)

Thank you very much, Madam Speaker and I appreciate Representative Lawlor's answers and I intend to vote for the bill.

Thank you.

DEPUTY SPEAKER FRITZ:

Thank you, Representative O'Neill.

Will you remark further on the amendment before us?

Will you remark further on the amendment before us?

If not, let me try your minds.

All those in favor, please signify by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER FRITZ:

Those opposed, nay. The ayes have it. The
amendment is adopted.

Re_resentative Lawlor.

REP. LAWLOR: (99TH)

Madam Speaker, I'm not sure if it was fortuitous or

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not, but a few moments ago the able clerk of the Judiciary Committee, Alma Carl Armand is seated before me, pointed out that the LCO number of the amendment we just adopted is 4991.

DEPUTY SPEAKER FRITZ:

I would say it's a bit fay.

Will you remark further on the bill, as amended?

Will you remark further on the bill, as amended?

If not, will staff and guests please come to the Well of the House and the machine will be opened.

CLERK:

The House of Representatives is voting by roll call. Members to the Chamber. The House is voting by roll call. Members to the Chamber, please.

DEPUTY SPEAKER FRITZ:

Have all the members voted? Have all the members voted? Please check the board to make sure your vote has been accurately recorded.

Have all the members voted? Have all the members voted? The machine will be locked and the Clerk will take the tally.

The Clerk will announce the tally.

CLERK:

H.B. 5759, as amended by House Amendment Schedule "A"

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Total Number Voting	144
Necessary for Passage	73
Those voting Yea	144
Those voting Nay	0
Those absent and not Voting	7

DEPUTY SPEAKER FRITZ:

The bill, as amended is passed.

Are there any points of personal privilege or announcements?

Representative Reinoso.

REP. REINOSO: (130TH)

Thank you, Madam Speaker. For a point of privilege, I'd like to - very proudly I'd like to announce to my colleagues and friends that there is another birthday at this moment, in about probably less than a second. Maybe two seconds from now. Our good friend and colleague from Bridgeport is turning 29 today. My dear friend, Lydia Martinez. Happy birthday, Lydia.

DEPUTY SPEAKER FRITZ:

Our heartiest congratulations, Lydia.

Will the Clerk please call Calendar number 155.

CLERK:

On page 5, Calendar 155, H.B. 5103, AN ACT
CONCERNING THE DISPOSITION OF STATE-ASSISTED HOUSING

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relatively few individuals who may have mental retardation or may have a psychiatric disability in addition to this sexually offending behavior, that strengthening the ties between those service systems and the adult probation system is a really important thing to do because that's, I think, you have the criminal justice component that's sort of like the iron master there that people have to comply with the treatment and then you also have the service system that's offering support.

So I would say having those two elements work together is a good policy direction to go in.

REP. AMANN: Thank you. Thank you, Mr. Chairman.

SEN. COLEMAN: Thank you, Representative Amann. Are there other questions for this witness? Seeing none, thank you, Mr. McGaughey.

JAMES MCGAUGHEY: Thank you.

SEN. COLEMAN: We have gone a bit beyond the hour's worth of testimony that was reserved for public officials. So I will begin the call from the public list.

The first person on that list is Michael Fitzpatrick.

MICHAEL FITZPATRICK: Good afternoon, Senator Coleman and members of the Judiciary Committee. I'm Attorney Michael Fitzpatrick from Bridgeport and I'm the Secretary of the Connecticut Criminal Defense Lawyers Association.

The Association has submitted written testimony on three matters which are before the committee today, raised H.B. 5723, which as you know, concerns sexual offenders, concerns the Sexual Offender Risk Assessment Board and raised H.B. 5759, and raised H.B. 5028, both of which concern acts of terrorism.

My testimony this afternoon will be limited to the latter two bills which address acts of terrorism.

The Connecticut Criminal Defense Lawyers

Association is opposed to raised H.B. 5759, AN ACT CONCERNING ACTS OF TERRORISM. In general, the Association is opposed to the bill because there are almost no proscribed acts in the legislation which are not already prohibited by the wide body of existing criminal laws in Connecticut.

At the end of the day, one must really ask himself or herself if this new legislation is really going to combat crime, having a deterrent effect or further enable the criminal justice system to exact punishment or is it merely a measure which is going to give the public a false sense of comfort and confidence.

So for that general reason, the CCDLA opposes this legislation.

Now, in particular, subsection (b) of Section 1 of raised H.B. 5759 is problematic for the following reason: it provides that upon conviction of a act of terrorism, the sentencing court may, if it is of the opinion that the defendant's criminal history and character and the nature and circumstances of the criminal conduct indicate that an increased penalty will best serve the public, the court thereafter may impose an elevated punishment.

In other words, if upon conviction of an act of terrorism, the defendant is subject to the punishment of a B felony, the court would have it, within its power, under this legislation, to sentence the defendant as if he or she were convicted of an A felony.

This committee may not be aware that in 1999 and again in 2000, the United States Supreme Court, in two separate decisions, overturned criminal convictions that were based on this very principle. In the case of Jones vs. United States and later in the case of Apprendi vs. New Jersey, the United States Supreme Court held that any fact, any fact that increases the maximum penalty for a crime, must be charged in the indictment or the information must be submitted to the jury and must be proven beyond a reasonable doubt.

If this legislation passes, it will be squarely at odds with the decision in Jones and Aprendi. By enabling the sentencing court to act on the basis of an opinion, and to consider the nature and circumstances of the defendant's criminal conduct, this court - this legislation would clearly violate those principles.

If I might move on to the second bill which is H.B. 5028 and in particular --

SEN. COLEMAN: We can only permit you to summarize the second bill.

MICHAEL FITZPATRICK: Yes. With respect to those provisions of H.B. 5028, which effect the capital felony statute and the capital sentencing statute, and in particular, the paragraph concerning aggravating factors, it's the position of the Connecticut Criminal Defense Lawyers Association that the absence of a specific intent would place this legislation at odds with four or five existing decisions of the United States Supreme Court, which say that at some point in the capital felony legislation, the prosecution must prove a specific intent to commit the homicide in order to secure a sentence of death.

Thank you.

SEN. COLEMAN: Are there questions? Senator Kissel.

SEN. KISSEL: Just a very quick question. I know that you're not in favor of the bill regarding terrorism, but if we struck subsection (b), other than a bill you don't like, would it have any constitutional infirmities?

MICHAEL FITZPATRICK: If you struck subsection (b) with respect to H.B. 5759?

SEN. KISSEL: Yes, sir.

MICHAEL FITZPATRICK: I believe that the impairment would be removed.

SEN. KISSEL: Thank you very much.

SEN. COLEMAN: Are there other questions? There apparently are no other questions. We thank you for your testimony.

MICHAEL FITZPATRICK: Thank you, Senator Coleman.

SEN. COLEMAN: Mike Savage.

MICHAEL SAVAGE: Good afternoon, Senator Coleman and members of the committee.

My name is Michael Savage and I am the Executive Director of the Connecticut Interscholastic Athletic Conference, better known as the CIAC.

The CIAC is the governing agency for high school athletics in Connecticut. And as such, it represents a total of 185 high schools, all the high schools in the State, serves some 90,000 student athletes and regulates approximately 3,500 interscholastic teams during any single year.

One of the primary purposes of the CIAC is to provide a safe environment for our student athletes. My testimony today will be very brief and to the point. I have also provided some written testimony.

The CIAC is here to speak in favor of H.B. 5722, as amended, AN ACT CONCERNING SEXUAL ASSAULTS BY A COACH OR INSTRUCTOR. It is very clear to us that the original bill which included psychologists and school employees, among others, should be changed to include coaches or others who provide ongoing instruction or coaching.

This would be a natural extension of the intent of the bill to protect young people from sexual contact with persons who have a very special position of control and authority in the lives of our young athletes.

I would like to thank you for giving us the opportunity to provide this testimony.

SEN. COLEMAN: Thank you for appearing. Are there

questions for Mr. Savage? There are none. Thank you very much, Mr. Savage.

Chiefs Strilacci and Salvatore.

CHIEF JAMES STRILACCI: Good afternoon, Senator Coleman, Representatives, members of the committee.

I'm Jim Strilacci. This is Anthony Salvatore. We speak on behalf of the Connecticut Police Chiefs Association.

We'd like to address the two bills on terrorism, H.B. 5028 and H.B. 5759. We don't have any particular position on the sentencing. We're happy that there's an attempt to define what we have not needed to define in the past. Both bills do have a definition of "terrorism".

We feel contrary to CTLA that the judges' input on the second of the two bills will help to weed out some of those who might otherwise fall into the definition who really have no place there.

Both these bills address some likely terrorist targets which the law has been silent. They also enable some investigative and preventive measures and we hope that they'll be combined and retained the best features of each.

Both bills define "terrorism". Both bills address hindering prosecution for terrorism. Both speak to contaminating the water supply. Both speak to criminal assistance. Each of them has their own strong points. The first bill mentions regulations for flight instruction. The barn door maybe closing and the horse is already out, but it's probably a good idea to address that in case of future terrorist activities with airplanes.

The second bill has a section about transportation property which we think is appropriate. The fingerprinting for licenses is probably a foresightful provision. It is the most common identification carried by anybody in this nation of ours and to make a true identifier would be appropriate, especially for the states to do

likewise.

We expect we will see more terrorism bills or a different version of this one. Our association supports bills that will provide new tools for state and local authorities to combat terrorism.

We would support legislation to provide planning, training, or equipment to local and regional responders and we welcome your questions.

SEN. COLEMAN: Are there questions? I'm sorry. Chief Salvatore, do you have testimony?

CHIEF ANTHONY SALVATORE: Yes, Senator. We just also want to comment that -- and I believe it was mentioned earlier that we want to be very careful with any law that we pass that we don't turn a juvenile or a wayward child into a terrorist. So we would support scrutiny in any provisions and again, that's our concern also.

Senator, if I can, for the third time, I'd like to, again for the record, state identical language to two previous bills that were testified on, H.B. 5756, we're opposed. We support a study group. Either way, whether this bill goes forward in its present form and that's AN ACT CONCERNING PRE-ARRAIGNMENT SCREENING. If it goes forward in its present form, or if it's later deemed to be a study bill, we would request that the Connecticut Police Chiefs Association's president or designee be included in that group.

Thank you.

SEN. COLEMAN: Are there questions? Seeing none, thank you once again for your appearance and your information.

CHIEF JAMES STRILACCI: Appreciate it, Senator. Thank you.

SEN. COLEMAN: John Sousa.

JOHN SOUSA: Good afternoon, Senator and members of the committee.

there's many salutary features of this proposal, but what would be a fairer period of time, given your experience in the field?

ROBERT DAHN: From a land surveying perspective, I would say thirty days.

SEN. KISSEL: As a minimum?

ROBERT DAHN: It would be a timeframe that you could fit it into your existing work schedule and also devote the appropriate analysis to the question at hand.

SEN. KISSEL: That's from the time the attorney contacted the professional to render their decision?

ROBERT DAHN: Yes.

SEN. KISSEL: Okay. So I'm thinking that we would have to build in time and then for the attorney to review that and build it into whatever complaint they're drafting. Okay, thank you very much. I have no further questions.

SEN. COLEMAN: Are there other questions for Mr. Dahn? Apparently not. Thank you, Mr. Dahn.

ROBERT DAHN: Thank you everyone. Do I leave these on the table or --

SEN. COLEMAN: Staff at this table.

ROBERT DAHN: Thank you very much.

SEN. COLEMAN: Thank you. Next is Representative Ron San Angelo.

REP. SAN ANGELO: Senator Coleman, if it's okay, Deputy Chief State's Attorney is going to testify with me. He's next on the list.

SEN. COLEMAN: We encourage group testimony.

REP. SAN ANGELO: Thank you. I'm here to testify on H.B. 5759, AN ACT CONCERNING ACTS OF TERRORISM.

Senator Coleman, Representative Lawlor, I know you're not here, but I'm sure you're listening, and distinguished members of the Judiciary Committee.

I come before you today in reference to H.B. 5759. This bill takes a bipartisan and I stress bipartisan approach to clarifying and strengthening Connecticut's laws pertaining to terrorist activity in our state.

We recognize that there are federal laws in place that deal with terrorism. However, now more than ever, it is imperative that Connecticut has its own laws in place to combat terrorism and to guard against threats or hoaxes.

The bill would do the following: establish the crime of terrorism under state law as an act with intent to intimidate or coerce a civilian population; influence the policy of a unit of government by intimidation or coercion; or effect the conduct of a unit of government by murder, assassination or kidnapping; expand the State's bomb making crime to prohibit the making of chemical, biological, or radioactive agents for illegal purposes. Anyone guilty of manufacturing these agents of mass destruction would be charged with a Class B felony.

Update state statutes to increase the penalty for damage to public transportation property for terrorists purposes to a Class C felony.

This would include intent to cause damage to buses, trains or other modes of public transportation in Connecticut.

To strengthen our statutes against the contamination of public water supplies for terrorist purposes by making it a Class C felony with a mandatory minimum sentence of five years. This would include introducing a chemical, biological or radioactive agent into any storage reservoir or distribution reservoir.

Making committing a computer crime to carry out terrorist activity a Class B felony regardless of

the monetary damage to the system and in particular, looking at protecting our State's emergency services computer systems.

And also to model a state crime of deceptive representation or false statement after the federal law by making it a Class C felony to give any material a false fictitious or fraudulent statement or representation and you'll understand that's exactly what happened at the DEP when the hoax happened at DEP and they ended up prosecuting under federal law. We could not have prosecuted under state law.

This legislation is designed to meet two important objectives. It would send a strong message that if you are caught making threats of terrorism or take part in actual terrorist activities in Connecticut, you will be prosecuted.

It would also give law enforcement officials in our state the tools they need to bring terrorists to justice within our own court system.

In my district, a woman died of inhalation Anthrax and there were false terrorist threats made just last year. We simply have to address the possibility of additional terrorist activity in our state.

I respectfully request your favorable action on this proposal. I would absolutely be happy to answer any questions. I want you to know, though, that there's been a working group that has been working on this legislation trying to put together as responsible and as bipartisan piece of legislation as could possibly be done.

I want to thank Representative Lawlor and Chief State's Attorney Jack Bailey, Representative Farr for working with me on this legislation and we really think that this Legislature, in a bipartisan way, should come out with an anti-terrorist bill that all of us, republic, democrat, House member, Senate member can all support.

I thank you with that and I'll take questions after

our Assistant Chief State's Attorney does.

JACK CRONIN: I'm Jack Cronin from the Office of the Chief State's Attorney. I would just simply say that for all the times I've been up here with bills, I'm hoping that this is one that we would never have to use, but the incidents after September indicated that there are gaps in our state statutes that really need to be looked at through a vehicle such as this, modifications of this that, as the Representative said, hopefully will be a bipartisan response to the needs of the State.

And Mr. Bailey asked me to also convey the fact that if we had an investigative subpoena, it would be even easier to carry this bill out.

REP. SAN ANGELO: With that, we would be happy to take any of the committee's questions.

SEN. COLEMAN: Thank you. Only because you made reference to him, I will inform you, as well as the members who are in the audience, members of the public who are in the audience, that co-chairman Lawlor has taken ill and will not be present at the hearing. He's not doing very well and was service above and beyond the call of duty for him to be in attendance at the committee meeting this morning. But for his illness, I'm sure he would be here to listen to your testimony.

REP. SAN ANGELO: And if I could, Senator Coleman, Representative Lawlor has been instrumental in helping to put this legislation together. We've changed this over and over again. This must be the 50th revision of this and thankful for Representative Lawlor's wisdom in these areas.

SEN. COLEMAN: Are there questions for the Representative and Attorney Cronin? Representative Farr.

REP. FARR: Yes, thank you. As you indicated, we've sat down and discussed this bill at length and I'm still a little bit concerned about definitions. I mean, this is, as expressed earlier, the major

problem with terrorism is we all know it when we see it, but trying to define it becomes very difficult.

And this talks about, for example, computer crimes in furtherance of terrorism. On line 108 it says that "when such person with intent to intimidate or coerce the civilian population or influence the policy of a unit of government by intimidation or coercion." And that - you know, the assumption is that that's sort of the threats that you know, we're going to blow you up or something. But this just uses the words "intimidation or coercion." And I'm a little bit concerned about whether we have to better define that. I don't know if you have given much thought to that, but whether the intimidation or coercion ought to be defined. Maybe either one of you can --

REP. SAN ANGELO: First, let me say this. The definition is, obviously, a critical piece of this particular legislation and we've leaned pretty heavily on the federal definition to incorporate our state definition and have run it by a host of people, including the Public Defender's Office to look at it.

We felt very strongly that we needed a separate section dealing strictly with terrorism. As you know, we had worked on updating individual statutes at first and then decided that because we don't want to catch anyone else that might not be a terrorist, some innocent exchanger - well, I guess it wouldn't be innocent, but some other kind of exchange that doesn't deal with terrorism, we decided to make a separate section just dealing with terrorist-types of activities.

We would be more than happy to continue working with you on that definition. We feel that this is a long way from where we started. We feel it's pretty clean, but we would be more than happy to work with you or any other committee members on changing that definition, but it is designed mostly after the federal definition.

REP. FARR: Well, maybe Jack could comment on that too,

but what happens is we ended up with something where we defined, in the first section, guilty of terrorism when you - with intent to intimidate or coerce, you committed a felony involving the unlawful use or threatened use of physical force or violence. Well, that's a fairly good definition, but when we get back down to the computer crimes, it ends up with only by intimidation or coercion commits computer crimes.

How, that gets away from felonies and it gets away from violence or threats of violence and I don't know whether we have to put that back in there or something. We may have to do that. If you have any thoughts.

JACK CRONIN: Representative Farr, I think we would have to look at the new penal code definition of computer crime and run this through that to see if it matches so it doesn't create any problems.

REP. FARR: Because I think that a hacker, depending on what he's hacking, could, if he's attempting by intimidation or coercion, I don't know what that means, intimidation or coercion with force or violence, I understand. I mean, it's a threat. But what is -- you know, we joked the other night about intimidation or coercion and as elected officials, people always try to do that to us because they try to tell us we're not going to get elected again if we do that or it will work against us or their group is going to do something to us. So we're used to that. But they don't tell us they're going to take violent acts against us. They may, but that's not what we're used to doing.

JACK CRONIN: They don't associate politics with crime, though.

REP. FARR: No, no. Okay, thank you very much. I think it's a great proposal and we'll have to see what we can coordinate with this and the other bill.

REP. SAN ANGELO: Terrific.

SEN. COLEMAN: Are there questions from other members? Seeing none, thank you both.

you have a copy of that, that we could have? Is there terms on that explaining what the coverage was? You said it was up to \$50,000.

DR. MARK GERBER: I will make a copy for the committee, but is says, "valuation - \$50,000 - 50 cents per hundred" which is the fee for the coverage, "total, \$250" which is added to the cost of the move.

REP. WINKLER: Thank you.

SEN. COLEMAN: Other questions? Seeing none, thank you, Dr. Gerber.

DR. MARK GERBER: Thank you.

SEN. COLEMAN: Deborah DelPrete-Sullivan is next.

DEBORAH DELPRETE-SULLIVAN: Good afternoon. My name is Deborah DelPrete-Sullivan. I'm legal counsel to the Office of the Chief Public Defender and I'm here to comment on two bills. Just for the committee's own knowledge, though I did submit written testimony in regard to H.B. 5721, concerning re-entry, the Office of Chief Public Defender is in opposition to that piece of legislation.

H.B. 5753 establishing the Connecticut Innocence Commission, which we do support.

And raised H.B. 5756, which is concerning pre-arraignment screening, which the Office does support.

And also raised S.B. 605, AN ACT CONCERNING THE USE OF DEADLY FORCE BY THE OFFICIALS OF THE DEPARTMENT OF CORRECTION and that was - just listing several concerns that we had about the bill.

The first bill I would like to discuss is raised H.B. 5028, AN ACT CONCERNING THE INVESTIGATION AND PROSECUTION OF ACTS OF TERRORISM. The Office of Chief Public Defender would not support passage of this bill. The definition of "terrorist act" in this bill is overly broad and would encompass lawful activity, conduct protected by the First Amendment and certain offenses that the Legislature

may not intend to be included. However, for purposes of the definition of "an act of terrorism" the Office of Chief Public Defender believes that the definition contained in H.B. 5759, AN ACT CONCERNING ACTS OF TERRORISM is preferable.

Line 4 of this bill provides a definition of "an act of terrorism" as "an act or acts intended to intimidate or coerce a civilian population, influence the policy of unit of government by intimidation or coercion or effect the conduct of the unit of government by murder, assassination or kidnapping." It has been assumed that this definition is to be read as three separate groupings.

Reading the first phrase, "an act or acts intended" could mean any act, even if it's lawful that would qualify so long as it was intended to intimidate or coerce a civilian population.

I have suggested that the term "unlawful" be added before the words "act or acts" if this definition is one that the committee were to consider further and I have in my written testimony contained explains some different examples of what types of acts would fall under each of these sections.

The second phrase, "influence of policy of a unit of government by intimidation or coercion" could include conduct by unions, the general public, students, and the media. Such conduct contemplated as possible inclusions under the definition includes strikes, walk outs, demonstrations, rallies, editorials, or just speaking out in public for or against something, even if the conduct is lawful so long as the intent is to influence the policy of government by intimidation or coercion.

Basically, whatever a person might say, if not in accordance with the view of government, could qualify under this definition.

The bill does not contain a definition of what a unit of government is, but reading it in its broadest sense, I would assume that includes every branch of government, including all of those

agencies, boards and commissions.

Also, there is no definition for the phrase "effect the conduct of" and therefore I query whether or not this phrase includes a response by an investigative unit or the police or any expenditures for such a response.

I give you an example under that third section of this definition under H.B. 5028. If a person here in Hartford were to kidnap someone, hold them hostage in their house, this conduct, under this bill, would qualify as a terrorist act because once the police respond or investigate a kidnapping or hostage situation and expend the funds for such, this could be interpreted as an act or acts intending to effect the conduct of a unit of government by murder, assassination, or kidnapping.

I want to briefly talk about Section 4, which has the capital felony enhancement. If you look at the language that's been added, a person would be guilty of a capital felony if they committed an offense involving an act of terrorism that results in a death of a person. The term "offense" could include any offense punishable as a felony, misdemeanor, or even an infraction. Further, under current law, a murder must be intentional to be prosecuted pursuant to the capital felony statute. This proposal would substantially expand the capital felony statute to include persons charged with felony murder. In addition, any act pursuant to the definition that resulted in a death, even if unintentional, would subject the actor to prosecution.

If such an expansion were contemplated, a substantial increases in the resources would be required in order to prosecute and defend these types of cases. And I give another example at this point. If you had a 17 year old high school student who decided, as a hoax, as a prank, to put some white powder on a desk, the building would be evacuated. So therefore, it's now intimidated the civilian population of the entire school body and then one of the teachers, with all of the stress and everything that's going on, has a heart attack.

It results in a death of a person. It's not intentional. This would fall under the capital felony statute, the way that this bill is drafted.

So I ask that this committee take careful care in looking at not only the definition, but any application to our capital felony statute.

The second bill, if I may briefly comment on this and this is in regard to H.B. 5723, AN ACT CONCERNING A SEXUAL OFFENDER RISK ASSESSMENT BOARD.

The Office of Chief Public Defender would strongly oppose this piece of legislation. There are several concerns and, in fact, they are very contrary - what's been raised in this bill is very contrary to what the SOPAC Committee had worked on for the last couple of years. I was a designee for the Chief Public Defender in working with the SOPAC Committee and this piece of legislation, as written, could violate the state and federal constitutional rights of a person, including their right to due process, the right not to incriminate themselves, and also raise privacy concerns.

The bill does not contain any criteria or qualifications for the selection of the board members or for the doctors who would actually conduct the assessment.

Secondly, because there are certain constitutional rights that could be violated, it permits the referral of a person who is actually pre-trial facing a prosecution to be referred to the Sex Offender Board. There's no notice to an attorney, no right to counsel or a right to have counsel present during any of this assessment.

It permits any state agency to refer to the Board someone in their custody and it actually treats people then if they are being detained by DOC, pre-trial differently than somebody who may be released on bond. It treats those people who are incarcerated and our clients are indigent differently than someone who would be on bond because that person who is indigent and incarcerated pre-trial could be referred for this type of an assessment.

Likewise, anyone in a drug treatment program, through the drug court, could also be referred because they're under the auspices of a provider that's under contract with the State.

The section would also permit the referral to the Board for an assessment of private persons, even though they're not involved in the criminal justice system as long as they're receiving services from a state agency and a provider that's contracted with them.

Section 2c provides no protections for maintaining the confidential nature of any of the information that's obtained from the individual or from other sources. And any of this information obtained or given to the Board by a referred person could be used against that person either in a pending prosecution or as a basis for new charges.

The bill also, as I indicated, has no provision for the right of counsel or any procedure to challenge any of those recommendations that may come from the Board and for these reasons, we would oppose this.

And I would be happy to answer any questions on those two bills and any of the other ones that I've submitted written testimony on.

SEN. COLEMAN: Attorney Sullivan, Representative Farr.

REP. FARR: Yes, quickly. Since you have familiarity with our criminal laws, the terms "coerce" or "intimidate" are they used very frequently in our criminal laws?

DEBORAH DELPRETE-SULLIVAN: I believe they may be in the threatening and harassment statutes. I couldn't tell you right now off the top of my head exactly which statutes, but I believe they are used elsewhere. I don't know that they're defined, but I do believe that they are used.

REP. FARR: Okay. Because I'm not sure how they - well, I like your use of the word "unlawfully" because I think that helps a lot.

DEBORAH DELPRETE-SULLIVAN: Well, again, Representative Farr, that's if you were to continue considering the definition in the first piece which was H.B. 5028. Our office is on record, actually, saying that the definition that's contained in H.B. 5759, which Representative San Angelo had spoken about earlier, is a preferable definition.

REP. FARR: But shouldn't we even put "unlawful" in that one, as well?

DEBORAH DELPRETE-SULLIVAN: Well, if I may just take a quick look at the legislation. I think that they already have that in line 4. If I'm looking at H.B. 5759, it talks about "intent to intimidate, coerce a civilian population or a unit of government, commits a felony" and therefore it is unlawful.

And it says, "involving the unlawful use or threatened use of physical force or violence." So they have to have committed a felony and that would, of course, be unlawful.

REP. FARR: Okay. Thank you very much.

DEBORAH DELPRETE-SULLIVAN: You're welcome.

SEN. COLEMAN: Are there other questions? Seeing none, thank you for your patience, Deborah.

DEBORAH DELPRETE-SULLIVAN: Thank you.

SEN. COLEMAN: Mike Minney and Tom Sellas. I only assume that you guys wanted to come together. You don't necessarily have to.

MICHAEL MINNEY: That's okay. We're trying to save you a little time here.

Good afternoon, Senator. My name is Michael Minney. I'm the President of the Connecticut State Prison Employees Union, AFSCME Local 391 and I've been a correctional officer for 20 years.

I'm offering testimony today regarding the training of correctional officers which is H.B. 5752.



State of Connecticut

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TESTIMONY OF DEBORAH DEL PRETE SULLIVAN, LEGAL COUNSEL OFFICE OF CHIEF PUBLIC DEFENDER

Raised H.B. No. 5028
*An Act Concerning the Investigation and Prosecution
of Acts of Terrorism*

March 20, 2002

The Office of Chief Public Defender would not support passage of *Raised H.B. No. 5028, An Act Concerning the Investigation and Prosecution of Acts of Terrorism*. The definition of a terrorist act is overly broad and will encompass lawful activity, conduct protected by the first amendment and certain offense that the legislature may not intend to be included. However, for purposes of the definition of an act of terrorism, the Office of Chief Public Defender believes that the definition contained in *H.B. 5759, An Act Concerning Acts of Terrorism* is preferable.

Line 4 of the bill provides a definition of an act of terrorism as “an act or acts intended to intimidate or coerce a civilian population, influence the policy of a unit of government by intimidation or coercion or affect the conduct of a unit of government by murder, assassination or kidnapping.” It has been assumed that this definition is to be read as three separate methods to commit an act of terrorism. Reading the first phrase, “an act or acts intended to intimidate or coerce a civilian population”, any act, even if lawful, could qualify so long as it was intended to intimidate or coerce a civilian population. A query is whether the lawful conduct of the police in its method of crowd control could qualify. A suggestion is to add the term *unlawful* before the terms “act or acts” if this definition is one that this committee discusses further.

JOINT
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PART 11
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2002



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March 20, 2002

The Hon. Eric Coleman, Senator
 The Hon. Michael Lawlor, House Representative
 Chairmen, Judiciary Committee
 Room 2500, Legislative Office Building
 Hartford, CT 06106

Re: Raised Bill No. 5759, An Act Concerning Acts Of Terrorism

Bill No. 5028, An Act Concerning The Investigation And Prosecution
 Of Acts Of Terrorism

Dear Chairmen and Committee Members:

The Connecticut Criminal Defense Lawyers Association (CCDLA) is a Connecticut-based legal organization comprised of some two hundred and eighty members, all of whom are dedicated to defending persons accused of criminal and motor vehicle offenses. Founded in 1988, the CCDLA serves to protect and insure that the individual rights guaranteed by the Connecticut and United States constitutions are applied fairly and equally. The CCDLA also serves to further the interests of Connecticut lawyers and legal workers who practice in the field of criminal defense. The above-noted legislative proposals are scheduled for public hearing before the Judiciary Committee on March 20, 2002. The CCDLA takes the following position on said bills:

The CCDLA opposes Raised Bill No. 5759, An Act Concerning Acts Of Terrorism. While the CCDLA deplors the acts of those persons and groups responsible for the September 11th attacks, and recognizes the need for state and federal governments to be vigilant about security, the CCDLA opposes Raised Bill No. 5759.

The CCDLA opposes Raised Bill No. 5759 on the general ground that the acts proscribed in the numerous sections of the bill are already prohibited by a wide body of existing criminal laws. Thus, the legislation is not necessary to combat crime or to exact punishment.

The CCDLA opposes Raised Bill No. 5759 on the specific ground that the legislation is unconstitutional. Subsection (b) of Section 1 of Raised Bill No. 5759 allows the sentencing court, upon conviction of an act of terrorism, to impose an enhanced sentence if the court is "of the opinion that [the defendant's] history and character and the nature and circumstances of [the defendant's] criminal conduct indicate that an increased penalty will best serve the public interest" Specifically, subsection (b) permits the sentencing court to "impose the sentence of imprisonment authorized by [section 53a-35a of the general statutes] for the next more serious degree of felony." Thus, a person convicted of a class B felony could be sentenced as if he or she were convicted of a class A felony.

Because the sentencing court may impose an increased penalty if the court is of the "opinion" that "the nature and circumstances of [the defendant's] criminal conduct" indicate that such penalty will best serve the public, subsection (b) violates the 5th, 6th and 14th amendments to the United States constitution and the United States Supreme Court's decisions in Jones v. United States, 526 U.S. 227 (1999) and Apprendi v. New Jersey, 530 U.S. 466, 120 S.Ct. 2348 (2000). The CCDLA therefore opposes Section 1 of Raised Bill No. 5759.

The Fifth Amendment provides that no person shall "be deprived of ... liberty ... without due process of law." U.S. Const. amend. V. The Sixth Amendment guarantees the accused the right to a "public trial, by an impartial jury." U.S. Const. amend. VI. "Taken together, these rights indisputably entitle a criminal defendant to a jury determination that [he] is guilty of every element of the crime with which he is charged, beyond a reasonable doubt." Apprendi v. New Jersey, 120 S.Ct. 2348, 2355-56 (2000)(citation omitted); see also In re Winship, 397 U.S. 358, 364 (1970).

The constitutional guarantee that the jury will determine whether the essential elements have been proven beyond a reasonable doubt formed the basis for the United States Supreme Court's fairly recent reversal of two criminal convictions. In Jones v. United States, 526 U.S. 227 (1999), the Supreme Court noted that "under the Due Process Clause of the Fifth Amendment and the notice and jury trial guarantees of the Sixth Amendment, any fact (other than prior conviction) that increases the maximum penalty for a crime must be charged in an indictment, submitted to a jury, and proven beyond a reasonable doubt." Jones, 526 U.S. at 243, n. 6; see Id. at 252-53 (Stevens, J., concurring) ("[I]t is unconstitutional for a legislature to remove from the jury the assessment of facts that increase the prescribed range of penalties to which a criminal defendant is exposed. It is equally clear that such facts must be established by proof beyond a reasonable doubt."); see also Id. at 253 (Scalia, J., concurring). The issue in Jones was whether "serious bodily injury" was an element of 18 U.S.C. Section 2119 that had to be charged, proven and submitted to the jury, or simply a sentencing factor that gave rise to an enhanced sentence. Invoking principles of statutory construction, the Court reversed the defendant's conviction, holding that "serious bodily injury" was an element of the offense. Id. at 243.

In Apprendi v. New Jersey, 530 U.S. 466, 120 S. Ct. 2348 (2000), the Supreme Court reversed and remanded the defendant's conviction, holding that the Fourteenth Amendment Due Process Clause requires that any fact that increases the penalty for a crime beyond the prescribed statutory maximum, other than the fact of a prior conviction, must be submitted to a jury and established beyond a reasonable doubt. 120 S. Ct. at 2351-67. The Court found New Jersey's "hate crime" law was unconstitutional because it provided for an enhanced sentence if the sentencing judge found by a preponderance of the evidence that the substantive offense was, *inter alia*, racially motivated.

Most recently, the constitutional guarantee that the jury, not the judge, will determine beyond a reasonable doubt the existence of any fact that increases the prescribed range of penalties, served as the basis for the Supreme Court's grant of certification in Ring v. Arizona, No. 01-488. At issue is whether the Arizona capital sentencing scheme, which requires judge sentencing in all capital cases, is legal in light of Apprendi. Ring was sentenced to death at the sentencing hearing after the judge found the existence of two aggravating factors.

Because the proposed legislation rests consideration of "the nature and circumstances of [the defendant's] criminal conduct]" from the jury and places it with the sentencing court, and further allows the sentencing court to consider such facts on the basis of "opinion," rather than by the test of proof beyond a reasonable doubt, Section 1 of Raised Bill No. 5759 is unconstitutional on its face. Accordingly, the CCDLA opposes Section 1 of Raised Bill No. 5759.

The CCDLA opposes Bill No. 5028, An Act Concerning The Investigation And Prosecution Of Acts Of Terrorism. The CCDLA opposes Bill No. 5028 on the general ground that the acts proscribed by the various sections of the bill are already prohibited by Connecticut's criminal laws. Thus, the legislation is not needed to combat crime or to impose punishment.

The CCDLA also opposes Bill No. 5028 on two specific grounds. First, Section 4 of Bill No. 5028, which amends Connecticut's capital felony statute, see General Statutes Section 53a-54b, by adding to the list of proscribed acts, any "offense involving an act of terrorism that results in the death of a person," is arguably defective and unconstitutional because the offense fails to require that the accused act with the "specific intent" to cause the death of another person. "Specific intent" is an essential element of every other act proscribed by the capital felony statute, see Section 53a-54b(1)-(8), and it is doubtful that this new offense, as drafted, will withstand challenge.

Second, taken together, Sections 4 and 5 of Bill No. 5028 also arguably render the legislation defective and unconstitutional. Section 5 amends the list of aggravating factors set forth in Connecticut's capital sentencing scheme, see General Statutes Section 53a-46a, by making the commission of a capital felony "during the commission



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TESTIMONY BY STATE REPRESENTATIVE RON SANANGELO
 JUDICIARY COMMITTEE • MARCH 20TH, 2002

PROPOSED HOUSE BILL No. 5759, AN ACT CONCERNING ACTS OF
 TERRORISM

March 20, 2002

Senator Coleman, Representative Lawlor and distinguished members of the
 Judiciary Committee:

I come before you today in reference to House Bill 5759. This bill takes a bipartisan approach to clarifying and strengthening Connecticut's laws pertaining to terrorist activity in our state. We recognize that there are federal laws in place that deal with terrorism. However, now more than ever, it is imperative that Connecticut has its own laws in place to combat terrorism and to guard against threats or hoaxes.

The bill would do the following:

- Establish the crime of terrorism under state law as an act with intent to intimidate or coerce civilian population, influence the policy of a unit of government by intimidation or coercion, or affect the conduct of a unit of government by murder, assassination, or kidnapping;

(Continued)

(Page 2)

- Expand the state's bomb making crime to prohibit the making of chemical, biological, or radioactive agents for illegal purposes. Anyone guilty of the manufacturing of these agents of mass destruction would be charged with a Class B felony;
- Update state statutes to increase the penalty for damage to public transportation property for terrorist purposes to a Class C felony. This would include intent to cause damage to buses, trains or other modes of public transportation in Connecticut.
- Strengthen our statutes against the contamination of public water supplies for terrorist purposes by making it a Class C felony with a mandatory minimum sentence of 5 years. This would include introducing a chemical, biological, or radioactive agent into any storage reservoir or distribution reservoir;
- Make committing a computer crime to carry out terrorist activity a Class B felony, regardless of monetary damage to the system.
- Model a state crime of deceptive representation, or false statement, after the federal law by making it a Class C felony to give any materially false, fictitious, or fraudulent statement or representation.

This legislation is designed to meet two important objectives. It would send a strong message that if you are caught making threats of terrorism or take part in any actual terrorist activities in Connecticut, you will be prosecuted. It would also give law enforcement officials in our state the tools they need to bring terrorists to justice within our own court system.

In my district, a woman died of Inhalation Anthrax and there were false terrorist threats made last year. We simply have to address the possibility of additional terrorist threats in Connecticut.

I respectfully request your favorable action on this proposal and would be happy to answer any questions you may have.