

## Legislative History for Connecticut Act

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|----------------------|---|------|----|
| <b>Act Number:</b>   | 182   | 2005 |    |
| <b>Bill Number:</b>  | 1356  |      |    |
| <b>Senate Pages:</b> | Senate: 3434-3436, 3461-3462  |      | 5  |
| <b>House Pages:</b>  | House: 7866- 7879   |      | 14 |
| <b>Committee:</b>    | Judiciary: 3893-3895, 3912-3916, 4121, 4122-4126, 4127-4128, 4130-4136, 4141-4147, 4181, 4182, 4217-4218, 4234-4239, 4321, 4322, 4323 |      | 43 |

**Page Total:**

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Transcripts from the Joint Standing Committee Public Hearing(s) and/or Senate and House of Representatives Proceedings

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S-514

CONNECTICUT  
GEN. ASSEMBLY  
SENATE

PROCEEDINGS  
2005

VOL. 48

PART 11

3255-3586

kmn  
Senate

May 31, 2005

me find it for you, the most recent fiscal note which came to us indicates that the expenditures will be achieved within existing resources of the state library and, therefore, there are no costs associated with this bill, through you, Mr. President.

THE CHAIR:

Senator McKinney.

SEN. MCKINNEY:

Thank you, Senator.

THE CHAIR:

Will you remark further on the bill? Remark further? Senator DeFronzo.

SEN. DEFRONZO:

Mr. President, if there's no further comment, I  
move the bill to the Consent Calendar.

THE CHAIR:

Hearing no objection, so ordered. Mr. Clerk.

THE CLERK:

Calendar Page 21, Calendar 421, File 570,  
Substitute for S.B. 1356, An Act Authorizing Law  
Enforcement Officials to Request Ex Parte Authority to  
Compel Disclosure of Telephone and Internet Records,

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Favorable Report of the Committees on Judiciary,  
Public Safety, and Energy and Technology.

THE CHAIR:

Senator McDonald.

SEN. MCDONALD:

Thank you, Mr. President. Mr. President, I move  
acceptance of the Joint Committee's Favorable Report  
and passage of the bill.

THE CHAIR:

On acceptance and passage, will you remark  
further? Senator McDonald.

SEN. MCDONALD:

Mr. President, this bill is intended to address  
the situation that used to be one of ordinary  
procedures in the State of Connecticut. And that is  
for law enforcement officials to obtain some  
information relating to subscriber information with  
telephone accounts.

It used to be that our law enforcement folks  
would be able to call their local telephone company  
and, in the investigation of a crime, find out who a  
telephone number of information about a telephone  
number was from.

However, with the ever-expanding telecommunications industry, and now the local telephone company is not your company down the street, but perhaps a company across the country, our law enforcement folks have found it more difficult to obtain readily information about subscriber, telephone subscriber information in the investigation of crimes.

And, Mr. President, this bill is intended to address that issue by allowing a court to issue an ex parte order requesting that information from telephone communication, telecommunications companies.

THE CHAIR:

Will you remark further? Senator McDonald.

SEN. MCDONALD:

Mr. President, if there's no objection, might this item be placed on the Consent Calendar.

THE CHAIR:

Hearing no objection, so ordered. Mr. Clerk.

THE CLERK:

Calendar Page 22, Calendar 444, File 608,  
Substitute for S.B. 1124, An Act Concerning the  
Custody of Remains of Deceased Persons, Favorable

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Calendar Page 20, Calendar 418, Substitute for  
S.B. 1295.

Calendar Page 21, Calendar 421, Substitute for  
S.B. 1356.

Calendar Page 22, Calendar 444, Substitute for  
S.B. 1124.

And Calendar Page 25, Calendar 518, Substitute  
for H.B. 6286.

Mr. President, that completes those items  
previously placed on the first Consent Calendar.

THE CHAIR:

The Clerk will please announce a roll call vote  
on the first Consent Calendar. The machine is open.

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.

THE CHAIR:

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If all Members have voted, the machine is closed.  
The Clerk will please announce the results of the roll  
call.

THE CLERK:

Motion is on adoption of Consent Calendar No. 1.

Total number voting, 35; necessary for adoption,  
18. Those voting "yea", 35; those voting "nay", 0.  
Those absent and not voting, 1.

THE CHAIR:

The items on the Consent Calendar are passed.

Mr. Majority Leader.

SEN. LOONEY:

Yes, thank you, Mr. President. Mr. President,  
the Clerk has on his desk a Senate Agenda No. 2.

THE CHAIR:

Mr. Clerk.

THE CLERK:

Mr. President, Clerk is in possession of Senate  
Agenda No. 2 for Tuesday, May 31<sup>st</sup>, 2005, copies of  
which have been distributed.

THE CHAIR:

Mr. Majority Leader.

SEN. LOONEY:

H-952

CONNECTICUT  
GEN. ASSEMBLY  
HOUSE

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PART 26

7718-8002

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House of Representatives

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SPEAKER AMANN:

Sounds like a wonderful idea.

UNIDENTIFIED SPEAKER:

Thank you, Sir. I'll take care of that.

SPEAKER AMANN:

Thank you. Thank you very much. Great job. Any other announcements or introductions? Announcements or introductions? Will the Clerk please call Calendar Number 615.

CLERK:

On Page 14, Calendar Number 615, Substitute for Senate Bill Number 1356, AN ACT AUTHORIZING LAW ENFORCEMENT OFFICIALS TO REQUEST EX PARTE AUTHORITY TO COMPEL DISCLOSURE OF TELEPHONE AND INTERNET RECORDS, Favorable Report of the Committee on Energy and Technology.

SPEAKER AMANN:

Representative Lawlor

REP. LAWLOR: (99<sup>th</sup>)

Thank you, Mr. Speaker. I move acceptance of the Joint Committee's Favorable Report and passage of the Bill in concurrence with the Senate.

SPEAKER AMANN:

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The question is on the Joint Committee's Favorable Report and passage of the Bill. Will you remark, Sir?

REP. LAWLOR: (99<sup>th</sup>)

Thank you, Mr. Speaker. This Bill is the result of a great deal of effort over the past year or so on the part of the law enforcement community, criminal defense lawyers, prosecutors, public defenders, and the various telephone and Internet utility companies to develop a mechanism in Connecticut, which would be similar to virtually all of the states, which would allow law enforcement under extraordinary circumstances to obtain very limited information related to the owners of particular accounts, whether it's a phone number account or an Internet, e-mail account or an Internet Web page, that type of thing, just the identity of the owner or information related to the origin or terminus of phone calls or Internet messages, emails, and things of the like.

The mechanism here, Mr. Speaker, is relatively straightforward. It would allow a police department to request from a judge the authority to obtain this information. It could be authorized very quickly by a

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judge. And that information could be given to, for example, the phone company or an Internet provider.

And that would allow them to disclose not the contents of conversations, not the contents of the emails, not the contents of people's web pages, etc., but simply the ownership information.

I should point out, Mr. Speaker, that in the good old days, this was done a very informal basis between the local telephone company at the time, Southern New England Telephone, and our local law enforcement agencies.

And a phone call, that was all that was necessary from a police officer to the phone company to get whose phone number belongs, whose phone number is this or what phone numbers are called from a particular phone over the last few hours, that type of thing.

Once the phone company became part of a national company, in our case, SBC is the major company in the State of Connecticut, the national companies are playing by national rules.

And in virtually all states, police have a limited authority to obtain this information, a legal

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authority to do it, and make these requests pursuant to that legal authority.

And I think, for understandable reasons, the phone companies, the Internet companies require local and state police agencies to make their request pursuant to a formal authorization under state law. And this is the purpose of the Bill before us, is to provide that formal authorization.

On the other hand, the Bill does provide a variety of safeguards for our citizens. And I would just like to detail some of those safeguards.

First of all, there is a standard in the Bill providing a legal basis, which must be cited in order to obtain one of these orders. It requires reasonable and articulable suspicion that a crime has been or is being committed or that exigent circumstances exist.

And the call identifying basic subscriber information has to be relevant and material to the ongoing criminal investigation. Police officers making this request must indicate the actual case that this is being requested in connection with.

I think if you think about it for a moment, you can understand why this is important. You know, what

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we certainly do not want to have happen is a police officer, for example, requesting information on his or her child's latest date or something like that.

It has to be in connection with a criminal case, and, therefore, the actual case number has to be cited, so this can be tracked. Beyond that, if a request of this type is made and granted, the actual subscriber must be notified within 48 hours.

There is an exception to that requirement relating to, and they're detailed from, on Lines 56 through 59 of the Bill, relating to lives being in danger, that type of thing. In that case, the disclosure can be delayed up to 90 days.

Moreover, Mr. Speaker, the Bill allows for the compensation of the utilities involved, if the request is more than a simple phone number. In some cases, you can imagine a very lengthy request of information could require a considerable amount of work being invested by the particular company involved.

And there is a requirement for an annual report of the number of these types of requests, so that there can be appropriate public oversight on a public

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policy basis. And this report would be available to us and to others who would be interested.

Mr. Speaker, as I said at the outset, this is the result of a good deal of discussions over the past year. There was sort of an informal taskforce convened by the Judiciary Committee and the Public Safety Committee in the off Session to talk about this.

I think the compromise that was arrived at formed the basis of the Bill. And there were further changes to acknowledge the legitimate privacy interests of our citizens, since that time.

I think the Bill is an appropriate balance of the need for police to take action under certain circumstances and the privacy interests of our citizens. And for those reasons, Mr. Speaker, I would urge passage of the Bill.

SPEAKER AMANN:

Thank you, Sir. Will you remark? Will you remark further on the Bill? Representative Witkos.

REP. WITKOS: (17<sup>th</sup>)

Thank you, Mr. Speaker. I also rise in support of the legislation before us here today. And I'd like

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to commend Representative Lawlor, excuse me, for his description, portraying it very accurately as to what it does and allows law enforcement to do, while still balancing the rights and protections of the citizens that we serve.

Kind of to drive the point home, I'm going to give another real life scenario, why I believe this Bill is important. Last Saturday or last Sunday, somebody came down to visit me at work and said, we need your help.

I just got a call from my 15-year-old daughter's friend that said she met a guy online, and he was picking her up, taking her to the Yankee's game, Yankees versus Mets. And we don't know anything about him, other than he's 28 years old and his first name.

But we really didn't have anything we could go on at that point. We said, bring down as much as you can as far as information goes, whatever emails you have. And we'll try to cipher through and see what we can come up with. Well, luckily, we were able to come up with a last name.

But if we were not able to do that, what we would have had to have done was contact, if we could have,

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our local FBI person that was on call, try to track that person down, and have them come into the office, and then have the FBI go and go through their channels, and fill out the proper paperwork that they needed to do in order to obtain the records, and then get back to us.

Luckily, if we had this Bill in place, we would have been able to act immediately on that. We came to find out the person was convicted of sexual assault, risk of injury to minors, and I can't go any further into the case. But this is a very important Bill, and I urge my colleagues to pass it. Thank you, Mr. Speaker.

SPEAKER AMANN:

Thank you, Sir. Will you remark further on the Bill? Representative Farr.

REP. FARR: (19<sup>th</sup>)

Yes. Thank you, Mr. Speaker. This is, indeed, a very important Bill. There was a murder that occurred on my, the street on which I live a few years back.

At the time of the police investigation, they realized that the victim had apparently records indicating that he was describing to, that he had a

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cell phone, but there was no cell phone found in his apartment.

Now, what happened then is they had to go out and get a search warrant in order to get information about whether or not that cell phone was currently being used and the numbers that were being called on it

As a result of that, they were able to go out and find out that the cell phone was, in fact, under current use and get numbers that were being called with it.

They then call those numbers and simply ask the people who was making the call. And, of course, it was the person who had committed the murder who was dumb enough then to steal the cell phone and continue to use it.

But in that case, they were able to get a search warrant. But the problem is, in many cases, they don't have probable cause for a search warrant because they don't know if a crime has been committed.

So there have been cases in Connecticut where someone disappears, whether it's an elderly person or a young person, and the family is desperate to try to find out what happened to them.

But there is no indication that there is a crime, and the police have no ability, if they have a cell phone with them, to find out if that person is currently using the cell phone.

And so that has presented real problems. There have been other cases where, there's been a case where there was a carjacking.

They knew there was a crime, but the amount of time it took for a search warrant is a lot longer than what would be, presumably would have to be done with this particular Bill.

Now, I have to confess that I'm a little bit concerned about the procedure that's been spelled out here and signed off by all the parties. I'm concerned it might be a little bit clumsy, and we may have to revisit this next year. But the underlying crust of the Bill is absolutely correct.

What we're trying to do is just put the law enforcement back into the position they were a few years ago in terms of getting subscriber information and getting the information about whether a phone is currently being used.

Representative Lawlor said this is partly because of the change in the makeup of the telephone, the structure of the telephone industry.

Now, a lot of the companies that sell cell phones or provide for telephone services are out of state. But it was also a reflection of the fact that there is a federal law, which restricted the disclosure of information.

Under, I think it's the Federal Communication Act that restricted disclosure. And it ordinarily requires the issuance of a subpoena or a court order in order to obtain that information. So in most states, law enforcement has the right to issue a subpoena.

In this state, they don't have that right. So all they could have done under current law is go to get a search warrant. And that is a cumbersome process and time consuming compared to the process that is involved in this particular Bill.

I would strongly urge adoption of this Bill. I think it will go a long way towards giving law enforcement a tool that they badly need. Thank you.

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SPEAKER AMANN:

Thank you, Sir. Will you remark further? Will you remark further? Representative Spallone.

REP. SPALLONE: (36<sup>th</sup>)

Thank you, Mr. Speaker. Mr. Speaker, I also rise in support of the Bill. And I think the way that the Bill was amended in the Judiciary Committee was appropriate to safeguard people's privacy rights and due process rights.

I think that the policy underlying the Bill was appropriate and well-stated to update our law and enable law enforcement to obtain this important information as quickly as possible.

I just wanted to state for the record, very briefly, that this issue of subpoenas from our prosecutor's office, our State's Attorneys Office came up in the context of this Bill.

And I just want to state, on the record, that the Investigative Subpoena Bill, that's being considered in this Legislature for the last couple of years, would also require a court order and a hearing before it issues.

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So that would also take time and, in fact, I believe would take more time than obtaining an ex parte order under this Bill.

So I see those as two separate issues. And I do fully support the underlying, the Bill and the changes that were made in the Judiciary Committee. This is a good Bill, and I hope it passes. Thank you, Mr. Speaker.

SPEAKER AMANN:

Thank you, Sir. Will you remark? Will you remark further? If not, staff and guests, please come to the Well of the House. Members, please take a seat. The machine will be open.

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.

SPEAKER AMANN:

Have all the Members voted? Have all the Members voted? If all the Members have voted, please check the board to make sure that your vote has been accurately cast.

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If all the Members have voted, the machine will be locked and the Clerk will take a tally. Will the Clerk please announce the tally.

CLERK:

Senate Bill Number 1356, in concurrence with the  
Senate.

|                             |     |
|-----------------------------|-----|
| Total Number Voting         | 141 |
| Necessary for Passage       | 71  |
| Those voting Yea            | 135 |
| Those voting Nay            | 6   |
| Those absent and not voting | 10  |

SPEAKER AMANN:

The Bill passes. Will the Clerk please call, will the Clerk please call Emergency Certified House Resolution Number 40.

CLERK:

House Resolution Number 40, RESOLUTION PROPOSING APPROVAL OF A COLLECTIVE BARGAINING AGREEMENT BETWEEN THE UNIVERSITY OF CONNECTICUT AND THE UNIVERSITY OF CONNECTICUT CHAPTER OF THE AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS. LCO Number 7475, introduced by Representative Amann.

SPEAKER AMANN:

JOINT  
STANDING  
COMMITTEE  
HEARINGS

JUDICIARY  
PART 13  
3754-4043

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JUDICIARY

March 28, 2005

COMM. LEONARD BOYLE: Good afternoon, Representative Lawlor--

REP. LAWLOR: Welcome Commissioner. I know this is your first time testifying before the Judiciary Committee. I just wanted to say congratulations--

COMM. LEONARD BOYLE: Thank you. Thank you very much.

REP. LAWLOR: Some people speak very highly of you at the Department and we're very happy to see you in that position.

COMM. LEONARD BOYLE: I'm reminded to Lincoln's SB1281 admonishment not to open your mouth and prove otherwise, but I'm afraid I'm going to have to do that.

The Department of Public Safety has submitted written testimony on a number of raised bills. And I'd be happy to answer any questions that the Members of the Committee might have with respect to those bills.

There are two that I would ask the Committee's indulgence in allowing me to address briefly, however.

The first is Raised Bill 1336 which is AN ACT SB1356 AUTHORIZING LAW ENFORCEMENT OFFICIALS TO SUBPOENA TELEPHONE AND INTERNET RECORDS.

Currently, if a law enforcement officer in the State of Connecticut is involved in an investigation and has either a telephone number

or a screen name of a person who has been communicating over the internet, the only way in which that law enforcement officer can obtain more information, that is the information which would identify who the subscriber to the telephone is or who it is that controls that screen name, is if that law enforcement officer drafts up a search warrant application, takes it to a judge in superior court, and gets the court to issue a search warrant, when the only thing that the officer may need in that circumstance is the name of the person who controls that particular phone number or that particular internet address.

The intent behind this bill is simply to give law enforcement officers the authority that all federal law enforcement officers have, and that law enforcement officers, I believe, in most states have, which is the ability to subpoena the telephone provider or the internet provider to simply get the subscriber information that the officer needs to pursue the investigation.

Right now, with the use of a search warrant, not only is it a cumbersome and time-consuming process, but it also allows the officer often times to get more information than she really needs and is in many ways much more intrusive than a subpoena would be.

Again the subpoena would allow the officer only to get the name of the person who controls that telephone number or that Internet address so that the investigation can be pursued.

In certain instances, particularly those involving people who are suspected of having been involved in predatory activities with children over the Internet, that time can be of great essence.

And the ability of that law enforcement officer to draft a subpoena, fax the subpoena to an internet or telephone provider, and get that information is critical to pursuing the investigation in a timely fashion and hopefully avoiding any injury to the child.

So the Department of Public Safety strongly supports this bill and asks that the Committee take favorable action upon it.

The second bill that I would like to address is Raised Senate Bill 1281 which is AN ACT CONCERNING ELECTRONIC RECORDING OF INTERROGATIONS.

I have had a couple of discussions and have received some lengthy correspondence from my friend Mr. Connery on this matter.

I have also discussed this particular issue with State's Attorney Kevin Kane from the New London judicial district, who I believe is planning to be here today, as well as with Christopher Morano, the Chief State's Attorney.

Our request of the Committee is as follows. Mr. Morano has put together a group, including the Connecticut Chief's of Police, the State Police, and the Police Officer Standards Training Council, to examine the issue of the

COMM. LEONARD BOYLE: I do, for the reasons that we just discussed, Representative Cafero, that I think that if there's a requirement of taping and there is no tape of the admission, there's almost going to be a presumption that the officer's testimony is not accurate and truthful.

And to me, that is one of the great dangers of the requirement.

There's also the question to be decided of what sort of jury instruction the court is going to give in a situation where that happens. How is the court going to instruct the jury as to what use the jury can make of the officer's testimony about the admission and what use the jury can make of the tape itself with the absence of the admission on tape?

And that, in itself, that instruction to the jury can be one that could switch one way or the other depending upon the force of the instruction.

REP. CAFERO: Thank you, Commissioner. Jumping to the next matter, which is the subpoena of telephone and Internet records.

SB 1336

You have given us a hypothetical in your example in your testimony with regard to child abduction cases. Can you, assuming this law were to be in effect, how would that play out in a case such as you referenced?

COMM. LEONARD BOYLE: Let's assume that a police officer get a call from a frantic parent who

says I just got a note from my 14 year old daughter, she said she's running off to meet so and so and I'm very concerned about her.

I went on to her computer and I noticed that she's been corresponding with a person with the screen name of A-B-C. Right now, the only way that the law enforcement officer can find out who subscribes to that screen name A-B-C is to draft up a search warrant and have that search warrant signed by a judge in the Superior Court and then transmit the search warrant to the Internet provider of A-B-C.

By having the subpoena authority, the officer herself can draw up the subpoena quickly, can fax it to the Internet provider and can get back just the name and address of the person that subscribes to that A-B-C screen name.

So that police then can try to find out where that person and look out for that particular person in an effort to determine if he or she is meeting with that child.

REP. CAFERO: Now Commissioner, the reason I ask the question is that looking at the bill, if you look at the definition of basic subscriber information, it indicates that, among other things, telephone number or other subscriber number, identity, means and source of payment, length of service, last start date, types of service utilized, local, local distance telephone connection records or records of sessions and times and durations.

What you just painted is very understandable, if you had an emergency situation if someone she's been dealing with had abducted her, etcetera. But the way I'm reading this, would they be allowed to get an entire pool of information, and let's say for the sake of argument that that 14 year old's dealing drugs, and among other correspondence, various ones on her Internet, there happens to be a correspondence from her supplier.

Meet me at Wall Street, you know, we'll buy the product, etcetera, etcetera. First of all, could all that information be subject to the subpoena and what if anything under that scenario could the law enforcement officer do with that information?

COMM. LEONDARD BOYLE: It's actually interesting because that's that matter that I spoke of before, that a subpoena is less intrusive than a search warrant.

The subpoena would only give the police officer the subscriber information and show the use of that particular telephone or that particular Internet address.

So that if we were in a different circumstance, let's say a fraud case where a person had been defrauded by someone through a series of telephone calls over a few week or month period.

The police officer, through the subpoena, could get a listing to show the contact that was made

between that target telephone and the victim telephone.

It would not, either in the context of the telephone call or an Internet address, it would not show the content of any of those conversations.

Interestingly, if the police officer gets a search warrant, a search warrant will authorize the officer to get the content of any read emails that appear.

So the subpoena that we're requesting here is actually less intrusive than a search warrant would be.

Then there might be circumstances where we'd still want a search warrant, depending upon the nature of the case and what the police officer's looking for.

REP. CAFERO: That's current law now, isn't that right, Commissioner?

COMM. LEONARD BOYLE: The search warrant allows that, yes.

REP. CAFERO: So if one were to have a concern about this bill thinking, you know, you go fishing for one thing and all of a sudden you come upon a bunch of other things that maybe was unintended and can act upon, is what I'm hearing you saying that might be the case, but they're not going to get it through this tool?

COMM. LEONARD BOYLE: They're not going to get any of the content of the communications. So if the person that you're looking at, the target of your investigation, is having other conversations with another person about narcotics dealing, there's nothing that you get from that subpoena that's going to tell the police officer that that's going on.

All it's going to show is where the contact occurred and who subscribes that address or that telephone.

REP. CAFERO: Thank you, Commissioner.

COMM. LEONARD BOYLE: Thank you.

REP. LAWLOR: And I do want to clarify, Commissioner, just to make sure I'm not misreading the bill, your responses to a couple of the questions.

The whole concept of, sorry, relating to the recording of confessions, the bill doesn't require that you have it recorded, if it happens, for example, in a police car or anything like that. Is that correct?

SB1281

COMM. LEONARD BOYLE: No, my understanding is that those matters are not covered by the bill. Again, the question will arise what happens in those circumstances where the person makes an admission according to the officer in the cruiser, refuses to make it when the person gets to headquarters, what's the court going to instruct the jury as to the use it can make of either of those two matters?

JOINT  
STANDING  
COMMITTEE  
HEARINGS

JUDICIARY  
PART 14  
4044-4404

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than 12 horsepower engines, which would allow them to go about 75 miles an hour.

REP. LAWLOR: Which is faster than some cars on the road. All right. Are there any other questions? If not, thanks again for coming out. Next is Fanol Bojka.

FANOL BOJKA: Good evening. My name's attorney Fanol Boyka and I'm a Board Member of the Connecticut Criminal Defense Lawyers' Association.

I'm here to testify in opposition to House Bill 6884 AN ACT CONCERNING THE INSTALLATION AND USE OF PEN REGISTERS AND TRAP AND TRACE DEVICES as well as Senate Bill 1356 AN ACT AUTHORIZING LAW ENFORCEMENT OFFICIALS TO SUBPOENA TELEPHONE AND INTERNET RECORDS.

With respect to House Bill 6884, in reviewing the proposed bill, there are some things that jump out of it. Number one, there's no limitation on the number of times that a law enforcement official can apply to have the pen registers or the trace devices implemented.

Connecticut currently does have a wire tap statute that allows police officers to do essentially what they're asking to be done within this bill.

The difference between this bill and the current statute is that there is some judicial oversight with regards to the conduct of the investigating officers.

With respect to House Bill 6884, the bill as proposed seems to suggest that once an investigator submits the application to the court, the court must grant it.

And there's currently no standard under which the court can deny it. It essentially seems as if as long as they swear to it, and as long as the investigating officer believes that there is grounds for issuing the order, the discretion is taken away from the court in terms of denying it.

The object of the pen registers does not have the ability to challenge that order until after the fact. It requires the register to be issued, but does not give the person a mechanism by which to challenge it.

It allows it for terrorism situations, without defining what terrorism means.

With respect to Senate Bill 1356, the ACT AUTHORIZING LAW ENFORCEMENT OFFICIALS TO SUBPOENA TELEPHONE AND INTERNET RECORDS, again there's no pre- or post- judicial supervision over that subpoena power.

It does not require at least a minimum of probable cause to obtain that information. If I may finish, there's no notice to allow someone to come into court to quash the subpoena.

The only standard is reasonable grounds, they must be given notice within 48 hours and that can be postponed up to 90 days under certain

circumstances. Fundamentally, the problem with these two bills is that there isn't a system of checks and balances that's in place to supervise any officer who seeks to obtain this information.

And I can see a situation where we give officers this subpoena power just for telephone records. It's not a great jump to say, listen, they already have this power for telephone records, why don't we let them do this with credit card records or some other private information that we're seeing?

It's the first step to potentially a greater issue down the road.

REP. LAWLOR: Thank you. Are there questions?  
Representative Farr.

REP. FARR: Yeah I think what bothers me with some of your testimony is you have failed to recognize the most important distinctions about what we're doing in both of these cases.

And namely that there's no content involved here. If you go to the bill on the subpoena of telephone and internet records, the testimony last year, the testimony we've had in other hearings, is that the way they handle that today is that they get a search warrant.

And when they get a search warrant, guess what? There's no advance notice, there's no opportunity to come in and quote quash the search warrant because it's served and you get it after the fact.

But the most important thing is when they give the search warrant to the Internet provider, they got access to all your mail. And this is a much more limited, much more limited, device in which it actually grants people some protection.

Because I'd certainly rather have them have the ability to get my address, my Internet address, than to give them the contents of it, which to me is a huge step.

So that part of it you don't make any, you fail in your comment to observe that. And also on the telephone records, all this is doing is putting us back to where we were about eight years ago.

Where it used to be if they wanted a telephone record, they would simply call up the telephone company and get that information.

It's not available now because the telephone company's in another state and there's a federal that says you have to have a subpoena.

FANOL BOJKA: Well with regard to the first situation, where you indicate that there's a search warrant that's required. At least in that situation there's some judicial oversight with regard to the party requesting the information.

Under this bill, there's no judicial oversight.

REP. FARR: But that's a heck of a trade-off, to say that we forced them to get a search warrant in every case so they have access to all of my email, because that way at least a judge has a look at it, versus just saying to them, okay you can have the email address but you don't get the contents?

The contents is my concern, not the--

FANOL BOJKA: Under this bill, though, I don't see any mechanism by which abuses can be prevented. At least when the officers are applying for search warrants, the judicial authority can step in and say enough is enough.

Under this bill, there isn't any of that that goes on.

REP. FARR: Well I'm not sure how many search warrant applications are denied. That's wholly not a protection that doesn't really exist because it's a one-sided application.

FANOL BOJKA: What is the remedy under this bill, though, if there are abuses?

REP. FARR: Well what's the remedy of the search warrant after you go back and the search warrant is returned, they've got all your email information, and now what's your remedy?

You can suppress it.

FANOL BOJKA: You can challenge the search warrant. Under this bill, you can't challenge the information.

REP. FARR: But you challenge that after-the-fact. And they've got access to all of your email and mail. To me, this is a good trade-off. I'm surprised that you wouldn't think that this is better than the current practice.

And then the second thing, as far as the pen registry, as I read this, pen registries used to be routinely put on people's phones as I understand it. And this prohibits that unless they follow these procedures, so it actually grants some protection. HB6884

I mean it says, as I read Section 1 it says except as provided in Section b in this section, no person can use a pen registry or a trap device without first obtaining a court order.

I mean that's protection. I don't know of any requirement that they have to do that now.

FANOL BOJKA: Again, the--

REP. FARR: I'm not being argumentative. I'm just kind of surprised that you didn't recognize that there are some benefits to these.

FANOL BOJKA: The problem is, and as I read Section 3 it says, upon application made under Section 2 of this act, the court shall enter an ex parte order authorizing the installation and use of the pen registry.

If the court finds that the applicant has certified to the court that the information

likely to obtained by such installation and use of the pen register, dot dot dot, is relevant to an ongoing criminal investigation.

Well it's easy to justify getting that application because it's very easy to justify that any information that you're seeking is relevant.

At least with a search warrant, you have to at least show that there is probable cause that a crime has been committed or is about to be committed. Here, all you have to show is that it's relevant to some sort of ongoing, criminal investigation.

It's very easy for almost anything to be relevant to an ongoing criminal investigation. It's a concern with respect to the systems of checks and balances because there isn't sufficient judicial oversight of this.

If the applicant simply says it's relevant, as it's written, the judge no longer has any discretion, he shall issue it.

REP. FARR: I guess what's the bottom line you would rather have a search warrant in both cases, and that gives you a lot more information, and I just disagree with that.

HB 6884  
SB 1356

FANOL BOJKA: I think preferable as a citizen, I would want some--

REP. FARR: I disagree that somebody's got to get more of my information that that's somehow protecting me. I don't want them to have my

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email information. And you're saying that gee that will be great, because at least a judge has some supervision.

I don't want them getting my email unless it's really necessary to do that.

FANOL BOJKA: Then refuse bill if you don't want that to happen.

REP. LAWLOR: Are there other questions? If not, thanks very much.

FANOL BOJKA: Thank you.

REP. LAWLOR: Next is Chief Strillacci.

CHIEF JAMES STRILLACCI: Good evening, Members of SB1356 the Committee that remain. You have many bills on the agenda that Chief Salvatore and I are interested in, but we'll spare you comment on all but two of them and submit written testimony on the rest.

First we'd like to speak towards Senate Bill 1281 on recording confessions. Most departments in this state do not currently routinely record all of our interviews.

And they're for practical reasons. The equipment costs, the staff and the training required, the necessity to preserve and store all of the recordings, the reluctance of some suspect or subjects to go on tape.

You have got to remember, all of these interviews are voluntary. We don't want to

identification. Next on the agenda is the taping.

If we do study it and we find that there is a way to make work for justice, then we'll get into it ourselves for the right reasons. We're not going to do it because some bill tells us to do it.

This bill is the wrong way about it. It's going to give an adverse instruction to the jury over a statement that right now, under current law, is voluntary, is truthful, and is legally admissible.

This is a gimme to the defense attorneys and there's no balance by way of counterbalancing this to the prosecution or to the victim, for that matter.

No offsetting benefit to law enforcement, and there's nothing in Connecticut's history that warrants tipping the balance this much.

Every year they drag in here poor Peter Riley, whose case was from 1973. There's got to be somebody, you would think, younger than 32 years old that they could point to as an abuse.

And even if they could find one or two, what's that out of the many, many thousands of cases that get prosecuted every year. This is not a huge problem and this is an overreaction to it. That's our feeling.

As much as we like technology, it's not a panacea, which brings us to our second bill

SB1356

which we advocated for, Senate Bill 1356 on the phone subpoenas.

As you've probably understood already from previous testimony, the use of telephones has changed in a generation. Back when phones were wired to the wall, connected, phone companies were locally owned, we had good relationship with them.

They honored police requests for information on subscribers. As you know, not content, just the information you will find in your phone bill. What numbers you call, who they belong to, when you called, etcetera.

But things have changed. Today phones are everywhere and they're mobile. They're moving around at the speed of a car. The phone companies that provide the service are out-of-state and they don't play by the same rules that they did a generation ago.

Now they want either a subpoena or a search warrant. We don't have, under Connecticut law, a provision for a subpoena. A search warrant is the alternative, as you've mentioned, it's labor-intensive, it's time-consuming, it goes deeper than we need it to go, and it's complicated by jurisdictional issues.

Try serving a search warrant out of state. We don't really have the legal authority to do that. We need to contact a law enforcement official in the state that does business with the company, the SBC or whatever, and see if

they'll serve it for us, which is really not what you want us to be doing.

In even the garden variety harassment case, the resulting delay in getting a search warrant is an inconvenience to the victim. It's a waste of limited police resources.

In a serious felony, it can make the difference between life and death, or the arrest of a dangerous criminal and his escape. And we can give you examples.

I know Mr. Prior's conversant on the murder on his street in which they stole the cell phone from the victim and were using it to call people, and we had to get a search warrant to find out who they were calling and get a line on those people.

We had a taxi driver who was kidnapped and his taxi and his phone were taken and the robber was using the phone. And again we had to jump through some hoops to get some information to track that down.

We had a dead body found on the boulevard in our town. And a subject had taken his cell phone, was using it in Eastern Connecticut and we had to get information from the phone company as to which towers that phone was hitting so we can hone in on the subject.

These are all things that if they take time, keep us from getting our man. We hope you will bring us back into the 20<sup>th</sup> century, must less

the 21<sup>st</sup>, or perhaps back to the future, because it's back to where we were a generation ago.

We're not asking to bring back the ten cent phone call, but at least get us on an even footing and regain the ground we've lost to technology's advance and the law's fair to keep up with it.

We hope you'll approve this bill.

We'll be happy to answer any questions.

CHIEF ANTHONY SALVATORE: And if I may, I would like to thank Representative Lawlor and the Committee that we worked on with you and Representative Farr. But as you know also, we're worried about those cases where we can't prove that there's probable cause that a crime is going to be committed and we still need that information, and that is the element, as you very well know, of a search warrant.

So in some of these cases we can't get search warrants and that's why we feel as strong as we do about this bill. Thank you.

REP. LAWLOR: Representative Farr.

REP. FARR: Yeah just to give an example, I think that particular situation I think you've indicated missing people, the classic one.

Somebody calls and says my daughter's missing or somebody's missing and they have their cell phone. How are we going to get a search warrant? We don't know that the fact that your

ten-year-old daughter is missing that there's a crime.

And the only way you can find out what's going on is to actually see whether that phone is being used and what numbers are being called.

CHIEF ANTHONY SALVATORE: that's correct, Sir. An Alzheimer's patient may have a cell phone, using it, and missing. We don't know where he is.

He calls up every once in a while. Certainly this would allow us to hopefully locate that individual. There's no crime, therefore can't get a search warrant.

REP. FARR: And also I think there was testimony before that if this were a federal situation, with I think it's a situation where for example on the Internet and there's Internet pornography or something, that they can just call the FBI and the FBI issues a search warrant and they get it that way.

Isn't that essentially what we were told before?

CHIEF JAMES STRILLACCI: There has to be a criteria of danger involved, yes.

REP. FARR: But we don't have that capacity to do that, so we rely upon the FBI to get the search warrant.

CHIEF JAMES STRILLACCI: In those types of cases, that's correct. It's got to have interstate

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implications of some sort though. The Internet you have it, with a cell phone you don't

REP. FARR: Okay, thank you.

REP. LAWLOR: Any other questions? Representative Hamm.

REP. HAMM: Let me see if I've got this straight, okay? My cell phone doesn't belong to me anymore. And what criteria would you as law enforcement have to have, under your bill, to go and get a subpoena?

You don't need probable cause, you don't need any evidence that a crime has been committed, what do you need? What's the standard?

CHIEF JAMES STRILLACCI: That it's relevant to an ongoing criminal investigation.

REP. HAMM: And that is assessed by who?

CHIEF JAMES STRILLACCI: By the department that it's reported to.

REP. HAMM: By the police department?

CHIEF JAMES STRILLACCI: Yes, ma'am. And there is checks and balances. If you read the bill I believe Section 3 we have to report to the Chief State's Attorney.

REP. HAMM: On the other bill--

CHIEF JAMES STRILLACCI: If I may, Representative, Representative Farr was correct, ten years ago

all I used to do was write a letter on my letterhead to SNET and get that information.

REP. HAMM: No I understand how you no longer have that ability. The one about the video taped confessions and your being part of the committee that Attorney Kane is working on, do you have a sense that should that committee recommend such a thing that the police go along, or will it be case by case and department by department?

CHIEF JAMES STRILLACCI: Yes. We rely on our prosecutors to handle our cases. There's no point of us doing investigations into crimes if they're not going to be prosecuted.

If our prosecutors say, do it this way, that's how we're going to do it.

REP. HAMM: And let's say we give you the year and you come back and you say, Judiciary Committee, you know we didn't like it before for all these reasons about it being the defense bar and all those things, but we did this study and now we're convinced more than ever that we don't like it.

Won't we just be a year further down the road the General Assembly will have to talk about the policy question anyway? I don't understand what we're gaining by the year.

It sounds to me from your testimony, though, that you're pretty much inclined not be persuaded that it's of any value.

they've considered, what pitfalls they found, and we'd be happy to share those with you.

Frankly, I don't foresee that. I think there are going to be some standards that are agreed upon and that they're going to recommend them strongly and that those of us who really want to do what our prosecutors are asking us to do are going to do those things.

REP. LAWLOR: Representative Green.

REP. GREEN: Yes on the Raised Senate Bill 1356..

CHIEF JAMES STRILLACCI: --has to do with that. He would report to the State's Attorney and he's got to report back on the results of the various sittings.

REP. GREEN: Let me just ask as sort of a tangent question to this. A few years ago, we had a bill that talked about racial profiling. And we had asked police departments to record some information.

Are police departments still gathering that information?

CHIEF JAMES STRILLACCI: Yes we are.

REP. GREEN: And all police departments are still gathering that information.

CHIEF JAMES STRILLACCI: that information was to be sent to the State's Attorneys Office under the first two years. A subsequent public act changed the destination to the African-American

Affairs Committee, which now receives that data.

REP. GREEN: Okay, so all police departments are still doing that?

CHIEF JAMES STRILLACCI: That's correct.

REP. GREEN: And that was just to try to make sure that information that we ask people to record are being made. So you're saying if, in a case like this, you would report to the Chief State's Attorney information that's required.

Now I'm looking at Section 1, subdivision 6, subsection D, I don't know whatever the legal terms are for these things. If you have a subpoena for a telecommunications company, is that subpoena for anybody that you suspect has information or is for the person that's the target of the investigation?

CHIEF JAMES STRILLACCI: That is essentially about a phone or phone numbers. It may be a suspect or a target of an investigation. It may even be a victim's phone, as in the case I mentioned earlier.

It doesn't matter what the relevance is to the case, we still need some legal mechanism to find the information.

REP. GREEN: Okay if you find a number and then for some reason that number that you find on that identification raises some kind of suspicion of something, does that then allow you to investigate and then have some reason to ask

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for a subpoena or get that information of that phone number's phone calls.

CHIEF JAMES STRILLACCI: All the subpoena can get us is the name and address and who that number belongs to. It's not going to give us anything about that person. We have to contact the person to find out--

REP. GREEN: But once you get the name and address of that person, if for some reason you suspect that that number is now a number that you have to investigate that cause, could you then based on that same subpoena, get information from that number that you got, because it seems to me that would be a continuation of your investigation?

CHIEF JAMES STRILLACCI: My understanding of the wording is that it would have to support another inquiry by another subpoena, to show why we had reason to believe that was germane to the investigation.

REP. GREEN: That's not clear to me at the end. I'm not an attorney again, but if the idea is that you're subpoenaing these numbers and you find out a number also needs to be subpoenaed, because it seems to me you can do that here, so if you're saying that's not the intent, then I hope we can work on this to make it very clear, that you're only, again I'm still not sure what you're looking at the numbers for--

CHIEF ANTHONY SALVATORE: Maybe I can clarify what we're talking about. If we subpoena your telephone records and on it is a telephone

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number, we can subpoena that number to see who the owner if that number is.

Is that what you're asking?

REP. GREEN: And then, well you would know the owner, you subpoena my numbers and you find the name and address of the person that I called, and then you say, that person is a known dealer.

Can you then say, in part of your ongoing investigation, I have a subpoena to subpoena all the numbers as a continuation of your investigation, can you now ask the phone company give me the numbers of the calls that this person made, name and number of calls.

CHIEF JAMES STRILLACCI: Again if it was germane to the initial investigation--

REP. GREEN: You could without another subpoena, that's what you think.

CHIEF JAMES STRILLACCI: No we would need another subpoena.

REP. GREEN: Okay well we just need to clear on that. Now I'm trying to understand Section B which talks about after you get a subpoena you have two days to notify the person that they're subject of the subpoena, after you've already gotten the information, is that what that says?

CHIEF ANTHONY SALVATORE: Yes.

REP. GREEN: And then, however, if you determine these one to five categories, you can extend those 2 days to 90. You don't have to tell the person for up to 90 days. For what purpose would we not want the person to know that and especially this last one, otherwise seriously jeopardize the investigation, what is that?

CHIEF JAMES STRILLACCI: Well the earlier enumerated are pretty clear. I mean, if it's going to put somebody's life in jeopardy, we certainly don't want it to put off the person that we're looking at his phone, if we think somebody's going to abscond from the country.

The last one it could be that they tip off other people involved. If we tell somebody that we got a subpoena for their phone, they're going to call to other places and say, hey they're onto my phone, don't call me or whatever you got, flush, etcetera.

We would have to justify that sort of an exception to the notice. Very similar to the ceiling for reasons that now exist for search warrants.

Where you have to leave a copy with the individual when you serve a search warrant, but if there are certain circumstances which would allow the judge to say no, we should keep this one sealed for a while, two week period, that lets you omit the notice while your investigation continues.

So you're hitting several targets at the same time. You're taking down a gun running group

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or something, and one place here and one place there and you can't get them all at once. You grab one, you serve a search warrant, you don't want them calling up other parties and say, hey I got served and this is why.

And so you protect the integrity of the investigation by not leaving that notice with them.

REP. GREEN: Currently, right now, you can subpoena or you can get the records or the identifying numbers--

CHIEF JAMES STRILLACCI: We need a search warrant now.

REP. GREEN: You need a search warrant now?

CHIEF JAMES STRILLACCI: We have no subpoena, or we don't get it.

REP. GREEN: Okay and if you develop a search warrant and you notify a telecommunications company you have a search warrant you get the numbers?

CHIEF JAMES STRILLACCI: Yes.

CHIEF ANTHONY SALVATORE: And more.

REP. GREEN: Okay and what's wrong with that system now?

CHIEF JAMES STRILLACCI: It takes time. If we've got this taxi driver with a gun to his head driving around and the robber's calling on this

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cell phone, we don't really have time to get a prosecutor and then get a judge and have them review that and issue the search warrant and then go to SBC and say, could you give us the numbers?

Some of these things are very time-sensitive.

REP. GREEN: Take your time. Thank you.

REP. LAWLOR: Okay, are there other questions? It not, thank you very much.

CHIEF JAMES STRILLACCI: Thank you.

REP. LAWLOR: Next is Donald Connery. As you come up, Mr. Connery, let me just see who else is here who is planning to testify. Is Sheila Jackson still here? How about Robert Rooks?

Bob Labanara? Frank Sykes? Is Frank Sykes here? Steve Steiner? And Chief Flahery is still here, right?

Please go ahead.

DONALD CONNERY: Thank you, Mr. Chairman. I'm SB 1281  
Donald Connery an independent journalist and I suppose I'd even claim to have been thinking about and addressing this issue longer than any other human being in Connecticut.

At least that's probably the case began in 1973. And this has led to my being a member of the Advisory Board of Northwestern University's Center on Wrongful Convictions, and part of national network of experts on the subject of



James F. Papillo, J.D.  
Victim Advocate

## STATE OF CONNECTICUT

OFFICE OF VICTIM ADVOCATE  
505 HUDSON STREET, HARTFORD, CONNECTICUT 06106

**Testimony of James Papillo, Victim Advocate  
Submitted to the Judiciary Committee  
Monday, March 28, 2005**

Good afternoon Senator McDonald, Representative Lawlor and distinguished members of the Judiciary Committee. For the record my name is James Papillo and I am the Victim Advocate for the State of Connecticut. Thank you for the opportunity to provide testimony concerning:

**Raised Senate Bill No. 1193, An Act Concerning Crimes Committed by Persons Subject to Foreign Orders of Protection** **SUPPORT**

**Raised Senate Bill No. 1285, An Act Concerning the Internet Solicitation of a Minor for Sexual Purposes** **SUPPORT**

**Raised House Bill No. 5294, An Act Increasing the Penalty for Criminal Violation of a Restraining Order** **SUPPORT**

**Raised Senate Bill No. 1356, An Act Authorizing Law Enforcement Officials to Subpoena Telephone and Internet Records** **SUPPORT**

**Raised House Bill No. 6887, An Act Concerning Investigative Subpoenas,** **SUPPORT**

**Raised Senate Bill No. 1281, An Act Concerning Electronic Recording of Interrogations,** **OPPOSE**

**Raised Senate Bill No. 1284, An Act Concerning Asportation in Kidnapping Cases,** **OPPOSE**

Many victims of domestic violence are fearful that the simple act of applying for a restraining order and having the respondent served with the order may spark increased threats and violence. In addition, many of those same victims view such orders of protection, once issued, as "not being worth the paper they are written on." This perception is fueled by a sense, on the part of many, that our criminal justice system is a revolving-door system in which subjects of restraining orders repeatedly violate such orders; the courts, in response, too often set a low bond; and the subjects of such orders quickly violate the orders again. This situation, which occurs all too frequently in this state, greatly exacerbates the fear many victims, in particular victims of domestic and family violence. Based upon the complaints that the Office of the Victim Advocate has received from crime victims, the scenario occurs on a fairly regular basis throughout the state and must be addressed to ensure victim safety.

**Raised Senate Bill No. 5294** will increase the penalty for a criminal violation of a restraining order from a class A misdemeanor to a class D felony. I firmly believe that elevating the violation of a restraining order to a class D felony will send a strong message throughout the criminal justice system that orders of protection, whether issued

by the civil court or criminal court, must be obeyed and violations will not be tolerated. This change should go a long way toward enhancing victim safety and victim confidence in the criminal justice system.

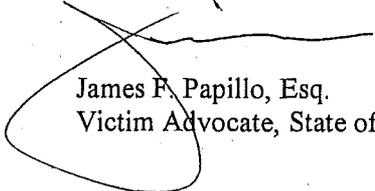
Raised Senate Bill No. 1193 will provide victims that have an order of protection issued from another state the same level of protection as if the order of protection was issued in this state. Many victims flee from one jurisdiction to another to further protect themselves from the abuser and should not have the burden of justifying an order of protection or its enforcement. I urge the committee to support this bill and the federal mandate of the Violence Against Women's Act.

Raised Senate Bill No. 1285 will allow law enforcement officers to work undercover to detect sexual predators by making a person subject to the crime of enticing a minor if such person reasonably believes the other person is under sixteen years of age. Unfortunately, technology has assisted sexual predators in committing hideous crimes against children. Law enforcement officers must have the same access to and advantage of technology as the sexual predators do for the protection of our children.

Other important measures to support law enforcement and prosecutorial officials are contained in Raised Senate Bill No. 1356, An Act Authorizing Law Enforcement Officials to Subpoena Telephone and Internet Records and Raised House Bill No. 6887, An Act Concerning Investigative Subpoenas. In order to effectively investigate alleged criminal activity and hold those accountable through criminal prosecutions, law enforcement and prosecutorial officials need the appropriate tools.

Finally, I would like to state, for the record, my opposition to Raised Senate Bill No. 1281, An Act Concerning Electronic Recording of Interrogations and Raised Senate Bill No. 1284, An Act Concerning Asportation in Kidnapping Cases.

Thank you for considering my testimony.



James F. Papillo, Esq.  
Victim Advocate, State of Connecticut



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### Testimony to the Judiciary Committee, March 28, 2005

Chiefs Anthony Salvatore & James Strillacci, Connecticut Police Chiefs Association

There are many bills on today's agenda which concern the Connecticut Police Chiefs Association. We will address most of them in written testimony only, and will spend our brief allotment of time on two issues.

The first is **RB #1281, AAC Electronic recording of Interrogations**. To date, few police departments routinely record all interviews. There are practical reasons:

- The equipment cost,
- the staff and training required,
- preservation and storage of the recordings,
- the reluctance of some subjects to go on tape (interviews are voluntary; if the subject takes the Fifth or Sixth, it's over)
- the instruction of state's attorneys who try our cases—some don't want tapes.

Proponents of similar bills claim that taping is a great benefit to police and prosecutors. If that's true, police and prosecutors will embrace it without being required by law.

State's attorneys, police chiefs, and state police have begun meeting to review investigative "best practices." Our intent is to identify techniques which will be endorsed and recognized by Connecticut's legal professionals.

The recording of confessions is on our short list of topics. If we decide that taping furthers the purposes of justice, we will recommend procedures which will be accepted by investigators and prosecutors. Recording will become a common practice—the right way and for the right reasons.

Bill #1281 is the wrong way. It would allow an adverse instruction to the jury about a statement which is voluntary, truthful, and legally admissible, solely because it is not recorded. The proposal is a gift to defense attorneys and their clients—guilty or innocent—with out any offsetting benefit to police, prosecutors, or crime victims. Nothing in Connecticut legal history warrants tipping the scales of justice to this degree.

Technology is not a panacea. In fact, problems caused by advancing technology led CPCA to advocate for Bill #1356, AN ACT Authorizing Law Enforcement Officials to Subpoena Telecommunications or Internet Records.

Over the past decade the use of telephones and the Internet has grown immeasurably; so has their use in crime. Law enforcement's ability to handle it has not kept pace; in fact, it has diminished.

Back when phones were wires to the wall, phone companies were locally owned, they honored police requests for release of subscriber information (that is, the identity of the phone owner and of numbers calling or called by the subject phone, *not* the content of any message). Today phones are everywhere, they are mobile, and the out-of-state corporations which provide service now require either a subpoena or a search warrant to release call-info records.

Connecticut law has no provision for subpoena in these circumstances. The alternative, a search warrant, is labor-intensive, time-consuming and complicated by jurisdictional issues.

In a harassment case, the resulting delay inconveniences the victim and wastes limited police resources. In a serious felony, it can make the difference between life and death, the arrest of a dangerous criminal and his escape.

This bill won't bring back the 10-cent phone call, but it will help law enforcement regain some of the ground we have lost. We hope you'll approve it.



## STATEMENT OF SBC CONNECTICUT

### Regarding Senate Bill 1356 An Act Authorizing Law Enforcement Officials to Subpoena Telephone and Internet Records

Before the Judiciary Committee  
March 28, 2005

**Proposal:**

Senate Bill 1345 would authorize specific law enforcement officials to issue subpoenas to telecommunications and Internet providers for disclosure of certain information pertaining to a subscriber or customer for purposes of investigation.

**Comments:**

SBC Connecticut supports Senate Bill 1356.

SBC and its affiliated companies have long worked closely with the law enforcement community on requests for subscriber information.

We appreciate the opportunity we had to work with members of the Judiciary Committee and other interested parties on the language found within Senate Bill 1356. That language adequately addresses the concerns that the company expressed concerning the need to have a process in place permitting *bona fide* requests for subscriber information with which the company can comply. We note that this language is consistent with applicable federal law and similar laws of other states. In addition, Senate Bill 1356 addresses our concerns with regard to reasonable cost recovery and holding the company and its employees harmless from action for providing information based on good faith reliance on subpoenas issued under the terms of the bill. Additional language indicating that such subpoenas may be enforced, objected to, or quashed through the State of Connecticut Superior Courts for the Judicial District of the law enforcement issuer's location, also would assist in this process.

**Conclusion:**

SBC Connecticut supports the legislation.



## CONNECTICUT CONFERENCE OF MUNICIPALITIES

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## Testimony

of the

## Connecticut Conference of Municipalities

to the

## Judiciary Committee

March 28, 2005

The Connecticut Conference of Municipalities appreciates the opportunity to testify on the following bill of interest to towns and cities:

**R.B. 1356, “An Act Authorizing Law Enforcement Officials to Subpoena Telephone And Internet Records”**

CCM supports this bill.

R.B. 1356 would allow local police chiefs, commanding officers of local state troopers and the Chief State's Attorney to, under certain circumstances, subpoena telephone and Internet records for criminal investigations.

The requirement that the law enforcement agency have “reasonable grounds to believe that such call-identifying or basic describer information is relevant and material to an ongoing criminal investigation” helps ensure that such agencies request such information only when it is integral to an investigation.

Also, the requirement that local law enforcement agencies submit a report each year to the Chief State's Attorney containing, among other things, the number of subpoenas acquired, the statutory offense for which the data was sought, and the final result of investigations provides reasonable checks and balances.

CCM urges you to support R.B. 1356.

\* \* \*

If you have any questions, please call Ron Thomas or Gian-Carl Casa at (203) 498-3000.



## State of Connecticut

### DIVISION OF PUBLIC DEFENDER SERVICES

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

#### Raised Bill No. 1356

#### *An Act Authorizing Law Enforcement Officials to Subpoena Telephone and Internet Records* Judiciary Committee March 28, 2004 - Public Hearing

The Office of Chief Public Defender is opposed to Raised Bill No. 1356, An Act Authorizing Law Enforcement Officials to Subpoena Telephone Records. This proposed legislation would authorize the Chief State's Attorney, a state's attorney, the chief of police of a department and commanding officers of certain state police troops to issue a subpoena to a telecommunications carrier that would compel disclosure of the telephone numbers for calls that a subscriber has made or received, the name and address of the subscriber, types of services utilized, network addresses, and means of payment for services including the subscriber's bank and credit card numbers. A telecommunications carrier would be compelled to disclose such information when the issuer of the subpoena has only "reasonable grounds to believe that such information is relevant and material to an ongoing criminal investigation" and specifies a case number assigned to such an investigation. For the reasons stated below and the reasons stated in opposition to Raised Bill 6884, An Act Concerning the Installation and Use of Pen Registers and Trap and Trace Devices, the Office of Chief Public Defender is opposed to this legislative proposal.

(Page 2 of 2) Judiciary Committee, March 28, 2004 - Public Hearing  
Testimony - Deborah Del Prete Sullivan, Legal Counsel, Office of Chief Public  
Defender

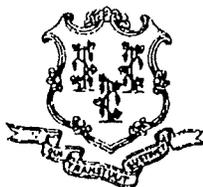
Re: Raised Bill No. 1356, An Act Authorizing Law Enforcement Officials To Subpoena  
Telephone and Internet Records

Pursuant to this proposal, a subscriber's "call identifying information" could be disclosed even if a crime has not been committed. The fact that an investigation is ongoing does not necessarily mean that a crime has been committed. Pursuant to this proposal, law enforcement is not required to specify the crime, if one has been committed, that is being investigated or the type of telecommunications device used by the subscriber such as a residential or business telephone, a cell phone or internet dial up service. This proposal does not require law enforcement to articulate the facts and circumstances upon which the grounds to issue the subpoena is based.

Federal and state constitutional protections require that the government have probable cause to believe that a crime has been committed before it can search or seize a person's property or records. This proposal does not provide this standard although seeking a person's records. And this subpoena power would compel disclosure of such information without the existence of a pending criminal or grand jury proceeding.

This proposal also lacks any judicial oversight prior to the issuance of such a subpoena which seeks to invade a subscriber's privacy and compel disclosure of the numbers of persons whom the subscriber calls and receives calls from. The bill does not provide a procedure for a person who would seek to quash such a subpoena, although section 2 requires the Chief State's Attorney to report to the joint standing committee of the General Assembly the number of motions to quash that were filed, granted or denied. The subscriber does not even receive notice or a copy of the subpoena simultaneously with the issuance of the subpoena. Law enforcement need only mail notice of having issued a subpoena not later than forty-eight hours after the subpoena is issued to the telecommunications carrier unless the law enforcement official certifies to an unknown entity that notice should be delayed for one of the reasons articulated in the proposed legislation. Such a delay of providing notice to the subscriber could be for as long as 90 days and remove any right of a subscriber to move to quash such a subpoena.

The subpoena permits an investigation to occur without compliance with constitutional requirements and in reality is an investigative subpoena. As in the past, this office remains opposed to such investigative subpoena power and urges this Committee not to adopt this proposal.



## STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC SAFETY  
OFFICE OF THE COMMISSIONER

Leonard C. Boyle  
Commissioner

Andrew R. Crumbie, Esq.  
Executive Assistant

Rep. Michael P. Lawlor, Co-Chairman  
Sen. Andrew J. McDonald, Co-Chairman  
Judiciary Committee  
Legislative Office Building  
Hartford, CT 06106

March 28, 2005

**SB 1356 AN ACT AUTHORIZING LAW ENFORCEMENT  
OFFICIALS TO SUBPOENA TELEPHONE AND INTERNET  
RECORDS**

*The Department of Public Safety supports this bill.*

All lawyers are familiar with the term "time is of the essence." While we often see the phrase in contracts, there is no life situation where time is more important than when the safety of a child is at risk. When hours, even minutes are critical to protecting the safety or life of a child, law enforcement must have a streamlined and effective method of obtaining necessary information.

Criminals who use the Internet to prey upon children present unique challenges to the law enforcement community. One of the most difficult occurs when it is believed that a child has been abducted by an Internet predator and may be sexually abused, raped or murdered. Police investigating such a case in Connecticut need the authority to issue a subpoena to compel a provider of electronic communication service or remote computing service to disclose basic subscriber information pertaining to a subscriber or customer. This information consists of the record of who subscribes to an Internet access account, including the person's name, address and credit card used to establish the account.

Presently, it is necessary to either rely on assistance from the FBI, which can subpoena such information in federal cases, or to draft a lengthy search warrant that must be signed by two officers and then taken to a judge for approval. Either of these procedures requires additional steps that take additional time when the child is at great risk.

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It cannot be emphasized enough that the subpoena authority of this bill is for subscriber information only. It does not authorize law enforcement entities to access the content of any telephone call or Internet message. One of the ironies of this is that the procedure that is provided by this bill will actually be less intrusive and provide greater privacy protection than the current procedure, which is obtaining search warrant. Subscriber information may be all that is needed at an early stage of a criminal investigation. Because a search warrant is the only investigative tool available, it is necessary to gain authority to access content when such broad access is not needed. A search warrant may be more intrusive than necessary, but is the only tool currently available to investigators. Passage of this bill, which provides statutory authority for a subpoena for subscriber information, will actually bring Connecticut into closer compliance with the intent of federal law codified in THE ELECTRONIC COMMUNICATIONS PRIVACY ACT (ECPA). The purpose of the ECPA is to protect privacy. The ECPA sets out the process for the government to obtain information held by Internet service providers (ISPs). The ECPA mandates that the government use certain minimal legal process to obtain the information they seek. The least intrusive legal process available should be used in order to protect individuals' privacy.

Presently, the ECPA authorizes three methods for obtaining information from electronic communications service providers:

1. administrative, grand jury or trial subpoena;
2. a court order issued pursuant to 18 U.S.C. §2703(d); or
3. a search warrant.

The less privacy protection afforded to the type of record, the less intrusive the legal process required. For instance, in order to obtain subscriber information, the least intrusive legal process is a subpoena. In order to obtain arguably more private transaction data (such as when an individual accessed her account, what services she used and how long she was online), the police must obtain a court order. In order to obtain the content of stored communications – the most private information - police must obtain a search warrant, authorizing a search for evidence.

This bill then, serves two purposes. The first is the critical one of providing a law enforcement tool that will enable quick action when children are at risk. The second is that it provides a procedure that is less intrusive than a search warrant. This will allow access to information needed in early stages of criminal investigations without having to use legal process that is more intrusive than necessary.

Sincerely,



Leonard C. Boyle  
Commissioner

**CCDLA**

*"Ready in the Defense of Liberty"*  
Founded in 1988

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March 28, 2005

Hon. Andrew J. McDonald, Senator  
Hon. Michael P. Lawlor, House Representative  
Chairmen, Judiciary Committee  
Room 2500, Legislative Office Bldg.  
Hartford, CT 06106

SB1304      SB1356  
HB6884

Re: Raised Bill No. 6887, An Act Concerning  
Investigative Subpoenas.

Dear Chairmen and Committee Members:

The Connecticut Criminal Defense Lawyers Association (CCDLA) is a statewide organization of 300 lawyers dedicated to defending persons accused of criminal offenses. Founded in 1988, CCDLA works to improve the criminal justice system by insuring that the individual rights guaranteed by the Connecticut and United States constitutions are applied fairly and equally and that those rights are not diminished.

CCDLA strongly opposes Raised Bill No. 6887, An Act Concerning  
Investigative Subpoenas.

CCDLA is strongly opposed to any legislation that would give, with or without judicial oversight, investigative subpoena power to prosecuting officials in criminal matters that are not pending in the Superior Court or before a grand jury, but simply are under investigation. Such officials already hold vast power. They have the power to apply for an investigatory grand jury, see General Statutes Section 54-76b, et seq., as amended by Public Act No. 03-273, to make application for immunity grants for witnesses, see Section 54-47a, to apply for search and seizure warrants, see Section 54-33a, et seq., to make application for wiretaps, see Section 54-41a, to request that material witnesses be detained, see Sections 54-82i and 82j, to engage in normal investigative techniques, and to prosecute on complaint or information. See Section 54-46. With the legal means that currently exist, there is no crime that the State cannot adequately investigate and prosecute. Thus, there is no compelling need for prosecuting officials to have this additional, powerful tool at their disposal.

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Additionally, Raised Bill No. 6887 is seriously flawed in that, unlike other investigative measures, the issuance of the subpoena is not tethered to the probable cause standard, the time-honored legal benchmark utilized by courts to determine when the protection of privacy must give way. Here, the prosecutor is only required to establish "reasonable grounds" to believe 1) that a crime was committed, 2) that the person summoned to appear has information relevant or necessary to the investigation, and 3) that the person will not appear absent the issuance of a subpoena. No definition of the phrase "reasonable grounds" is provided. However it is defined, it clearly represents a much lower legal standard for intrusion (and compulsion) than the probable cause requirement provides. That the prosecutor can establish "reasonable grounds" in an ex parte proceeding only makes it that much easier for the State to obtain the subpoena.

Notwithstanding state officials' representations that the power sought herein will be exercised with self-restraint, passage of Raised Bill No. 6887 is ripe for abuse. Coupled with other bills pending before the Judiciary Committee, see Raised Bill No. 1304, An Act Establishing A Citizen Grand Jury, Raised Bill No. 1356, An Act Authorizing Law Enforcement Officials To Subpoena Telephone And Internet Records, Raised Bill No. 6884, An Act Concerning The Installation And Use Of Pen Registers And Trap And Trace Devices, these laws will eventually lead to an erosion of our privacy and our liberty. The right of the citizenry to be free of such intrusions is one of our most cherished and essential rights and, absent the presence of probable cause, one not to be intruded upon in even the slightest manner. As Justice Brandeis stated in his famous dissenting opinion in Olmstead v. United, 277 U.S. 438 (1928),

The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings and of his intellect. They knew that only part of the pain, pleasure and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the government, the right to be let alone - the most comprehensive of rights and the right most valued by civilized men.

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Accordingly, CCDLA remains committed to opposing investigative subpoenas. Respectfully, a joint favorable vote by the Judiciary Committee on Raised Bill No. 6887 is neither warranted nor appropriate.

Thank you for your consideration.

Respectfully Submitted,

*Michael A. Fitzpatrick*  
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