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HB5125

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Judiciary	2262, (2263), 2264-2266, 2290-2296, 2449-2452, (2457-2473)	33
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And will the Clerk please take a tally.

The Clerk please announce the tally.

THE CLERK:

House Bill 5338.

Total number voting	144
Necessary for passage	73
Voting Yea	139
Voting Nay	5
Absent and not voting	5

SPEAKER SHARKEY:

The bill passes.

Will the Clerk please call Calendar Number 82.

THE CLERK:

On page 9, Calendar Number 82, Favorable Report of the joint standing Committee on Government Administration and Elections, Substitute House Bill 5125, AN ACT LIMITING ACCESS TO CERTAIN INFORMATION REGARDING PROHIBITION (sic) OFFICERS UNDER THE FREEDOM OF INFORMATION ACT.

SPEAKER SHARKEY:

The distinguished GAE Chairman, Representative Jutila; you have the floor, sir.

REP. JUTILA (37th):

Thank you, Mr. Speaker.

I move acceptance of the joint committee's Favorable Report and passage of the bill.

SPEAKER SHARKEY:

The question before the Chamber is acceptance of the joint committee's Favorable Report and passage of the bill. Will you remark, sir?

REP. JUTILA (37th):

Thank you, Mr. Speaker.

This bill would exempt from disclosure under the Freedom of Information Act certain personal information of probation officers that's not related to their duties of employment. And this would be limited in terms of disclosure to people who are under Court Services division supervision or under the supervision of the Department of Corrections for violating probation.

Mr. Speaker, the purpose of this bill is to prevent harassment and intimidation on the part of the -- the people who are supervised by these probation officers. We heard some significant testimony in this regard.

And we also are aware of the fact that corrections officers and public defenders are already covered by similar protections, and I would urge

passage of the bill.

SPEAKER SHARKEY:

Thank you, sir.

Would you care to remark further? Would you care to remark further on the bill that's before us?

The distinguished Ranking Member of the GAE Committee, Representative Hwang.

REP. HWANG (134th):

Thank you, Mr. Speaker. Good afternoon.

SPEAKER SHARKEY:

Good afternoon, sir.

REP. HWANG (134th):

Through you, some questions to the proponent of the bill?

SPEAKER SHARKEY:

Please proceed, sir.

REP. HWANG (134th):

Thank you.

In regards to the -- the disclosure request under the Freedom of Information, it's not general record, is it? Is it specifically personnel files?

Through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Jutila.

REP. JUTILA (37th):

Thank you, Mr. Speaker.

Yeah. Yes, it is. It's -- it's limited to personnel files and, in fact, it's limited to personal information in those files that is not related to the officer's duties or employment.

And some examples of that would be their date of birth, their Social Security number, their mailing and e-mail addresses, home addresses, driver's license information, as examples.

Through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Hwang.

REP. HWANG (134th):

Through you, Mr. Speaker. .

There -- there may be some questions in regards to the Freedom of Information Commission that said this statute has already been covered by Freedom of Information regulations and they are exempt from that.

To you, Mr. Speaker; could you ask the proponent to share some insight on that?

SPEAKER SHARKEY:

Representative Jutila.

REP. JUTILA (37th):

Thank you.

Through you, Mr. Speaker, the, some of the information could conceivably be protected and would require that it be disclosed unless it would constitute an invasion of personal privacy. That can be a -- a difficult standard in terms of obtaining the exemption.

And in this case, we felt it was important for these individuals in order to avoid that harassment and intimidation to adopt this legislation, which again, is similar to what already covers corrections officers and public defenders.

SPEAKER SHARKEY:

Representative Hwang.

REP. HWANG (134th):

Thank you, Mr. Speaker.

And -- and I want to thank the good Chairman's work on that because we did make a diligent effort to ensure that these were personnel files, as relates to these FOI requests, not general records and that, as the good Chairman specifically said, it was only pertaining to the performance of the job.

So I want to thank the good work of the Chairman and the committee in regards to defining those issues,

and I would urge support of this bill.

Through you, Mr. Speaker.

SPEAKER SHARKEY:

Thank you, sir.

Do you care to remark? Do you care to remark further on the bill that's before us?

Representative Carter.

REP. CARTER (2nd):

Thank you, very much, Mr. Speaker.

Through you, one question to the proponent of the bill, please?

SPEAKER SHARKEY:

Please proceed, sir.

REP. CARTER (2nd):

Thank you, sir.

Through you, Mr. Speaker, I noticed that photographs were listed in here as one of the things that could be limited from a personnel file or given to an inmate. Was that from, was photographs being added from specific testimony during the public hearing?

Through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Jutila.

REP. JUTILA (37th):

Through you, Mr. Speaker, I -- I don't recall if there was specific testimony that led to the establishment of this particular list of examples. But I -- I do know that there were significant discussions between representatives of the probation officers and advocates for Freedom of Information. And this is the -- the language that they agreed to.

Through you.

SPEAKER SHARKEY:

Representative Carter.

REP. CARTER (2nd):

Thank you, Mr. Speaker.

Now I appreciate the -- the answer to the question. It's just not lost on me the, I -- I don't want to say irony but, you know, we've talked about many times in this Chamber about protecting photographs. And in the past, we've actually talked about providing some protection for photographs of victims of accidents and crimes and things like this. And it's very interesting that we're being limited or allowing photographs of a probation officer to be protected but we're not doing those other things.

So I just wanted to make sure I asked that

question and saw where it came from.

Thank you, very much, Mr. Speaker.

SPEAKER SHARKEY:

Thank you, sir.

Do you care to remark further on the bill as before us?

Representative Srinivasan.

REP. SRINIVASAN (31st):

Thank you, Mr. Speaker.

Through you, Mr. Speaker, if I can ask a question to the proponent of the bill?

SPEAKER SHARKEY:

Please proceed, sir.

REP. SRINIVASAN (31st):

Thank you, Mr. Speaker.

On line 4 we talk about including but not limited to. Could, through you, Mr. Speaker, could we have an example of what may be included but not, is -- is not here on today's list?

Through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Jutila.

REP. JUTILA (37th):

Through you, Mr. Speaker, I -- I don't have a --

a specific example. As we often do, we include the language in including but limited to; we provide a few examples, sometimes.

But I think the important point here is that this only applies to information that is -- that would be exempt -- that is not related to the individual's employment.

Through you.

SPEAKER SHARKEY:

Representative Srinivasan.

REP. SRINIVASAN (31st):

Thank you, Mr. Speaker.

SPEAKER SHARKEY:

Thank you, sir.

Do you care to remark? Do you care to remark further on the bill as before us?

For the second time, Representative Hwang.

REP. HWANG (134th):

Thank you, Mr. Speaker, for the second time.

One of the questions, through you, to the proponent of the bill again.

SPEAKER SHARKEY:

Please proceed, sir.

REP. HWANG (134th):

Thank you.

Would this bill include past residences and former and parents' residences to be exempt on this bill?

Through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Jutila.

REP. JUTILA (37th):

Through you, Mr. Speaker, yes; we received some testimony on -- on that specific issue, and I believe it would be the intent of the legislation that past addresses would be covered.

Through you.

SPEAKER SHARKEY:

Representative Hwang.

REP. HWANG (134th):

Thank you, very much, Mr. Speaker.

SPEAKER SHARKEY:

Thank you, sir.

Do you care to remark? Do you care to remark further on the bill before us?

If not, staff and guests to the Well of the House. Members take your seats. The machine will be open.

THE CLERK:

The House of Representatives is voting by roll. The House of Representatives is voting by roll. Will members please return to the Chamber immediately.

(Deputy Speaker Berger in the Chair.)

DEPUTY SPEAKER BERGER:

Have all the members voted? Have all the members voted?

Will the members please check the board to determine if your vote has been properly cast.

If all the members have voted, the machine will be --

REPRESENTATIVES:

No.

DEPUTY SPEAKER BERGER:

The machine will be locked.

Representative Molgano?

THE CLERK:

You got to lock the machine.

DEPUTY SPEAKER BERGER:

Yea?

Mr. Clerk, Representative Molgano will be noted

as being in the affirmative.

Thank you, Representative.

Will the Clerk please take the tally.

Will the Clerk please announce the tally.

THE CLERK:

House Bill 5125.

Total number voting	143
Necessary for passage	72
Those voting Yea	143
Those voting Nay	0
Absent and not voting	6

DEPUTY SPEAKER BERGER:

The bill is passed.

Will the Clerk please announce Calendar Number 151.

THE CLERK:

Mr. Speaker, on page 14, House Calendar 151, Favorable Report of the joint standing Committee on Government Administration and Elections, Substitute House Bill 5278, AN ACT CONCERNING MANDATORY REGISTRATION (sic) OF VOTER SESSIONS.

DEPUTY SPEAKER BERGER:

Representative Jutila.

REP. JUTILA (37th):

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Those absent and not voting 3

THE CHAIR:

The bill passes.

Senator Looney.

SENATOR LOONEY:

Thank you, Madam President.

Madam President, before calling for a vote on the second Consent Calendar -- have several additional items to add to that Consent Calendar.

THE CHAIR:

Please proceed, sir.

SENATOR LOONEY:

Yes, Madam President.

The first is calendar page 6, Calendar 328, House Bill 5125, move to place that item on the Consent Calendar.

THE CHAIR:

Seeing no objection, so ordered, sir.

SENATOR LOONEY:

Thank you, Madam President.

The second item is calendar page 8, Calendar 337, House Bill Number 5131, move to place that item on the Consent Calendar.

THE CHAIR:

Seeing no objection, sir, so ordered.

SENATOR LOONEY:

Page 43, Calendar 387, Senate Bill 432.

Page 43, Calendar 399, Senate Bill 152. Also on page 43, Calendar 405, Senate bill 457.

On page 6, Calendar 328, House Bill 5125.

And on page 8, Calendar 337, House Bill 5131.

On page 19, Calendar 460, House Bill 5057; and on page 20, Calendar 462, House Bill 5472; and on page 25, Calendar 501, House Bill 5578.

THE CHAIR:

Mr. Clerk, please call for a roll call vote on the Consent Calendar. And the machine is open.

THE CLERK:

Immediate roll call has been ordered in the Senate. Immediate roll call on the Consent Calendar Number 2 has been ordered in the Senate.

THE CHAIR:

Have all members voted? All members voted. The machine will be closed.

Mr. Clerk, will you please call the tally.

THE CLERK:

On today's second Consent Calendar.

Total Number Voting	34
Necessary for Adoption	18
Those voting Yea	34
Those voting Nay	0
Those absent and not voting	2

THE CHAIR:

The Consent Calendar passes.

Senator Looney.

SENATOR LOONEY:

Thank you, Madam President.

Madam President, would request suspension for purposes of immediate transmittal to the House of calendar page 37, Calendar 198, Senate Bill 357.

THE CHAIR:

So ordered, sir.

SENATOR LOONEY:

Thank you, Madam President.

Madam President, yield the floor to members for announcements or points of personal privilege or upcoming committee meetings.

THE CHAIR:

Are there any points of personal privilege or upcoming meetings?

Senator Linares.

SENATOR LINARES:

Thank you, Madam President.

THE CHAIR:

Good morning, sir.

SENATOR LINARES:

Good morning. Happy Saturday to you.

THE CHAIR:

I don't know about that sir, but go ahead.

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SENATOR COLEMAN: In that event, Jim O'Neill is next. Oh, I'm sorry, you wanted Carmen Roda.

REP. O'DEA: Yes. Please.

SENATOR COLEMAN: Carmen, please come forward, and will be followed by Jim O'Neill.

CARMEN RODA: Thank you. Good afternoon. Let me first begin by saying thank you to Senator Coleman, Representative Fox and members of the Judiciary Committee for the opportunity to speak to you. HB5125

My name is Carmen Roda. I'm an adult probation officer with the State of Connecticut Judicial Branch. I'm currently assigned to the Bridgeport office. I have been employed by the Judicial Branch for over 17 years with a total of over 22 years of service to the State of Connecticut.

I am also the Vice-President of the Judicial Professional Employees Union. We are an AFT affiliate. We represent nearly 1,300 Judicial Branch employees, 700 of which are probation officers.

It is the mission of the Court Support Service Division to reduce the number of people who re-offend all while keeping the offenders accountable for their actions.

It is also, as part of our duties as probation officers, to keep our clients at arm's length and not to have any undue familiarity with them. This is not only a sound practice but is part of the Judicial Branch's operating procedures.

This theme of presenting undue familiarity is the purpose behind Senate Bill 387. If

probation officers cannot have undue familiarity with our clients, then why should the clients have undue familiarity with probation officers?

Senate Bill 387 would prohibit those persons on probation or those incarcerated for violation of probation from accessing a probation officer's personnel file or similar file through the Freedom of Information Act. Similar protections currently exist for Correction officers and others with close contact with offenders.

I have attached a copy of Connecticut General Statute 18-101f to my written testimony. CGS 18-101f protects Correction officers from inmate FOI requests.

In 2011, 18-101f was modified to include the Public Defender's Office. I have attached a copy of Public Act 11-220 to my written testimony.

It is interesting that in the public testimony for those bills, former Acting Commissioner Brian Murphy and former Pardon and Parole Chairperson Robert Farr articulated that inmates are using FOI as a means to intimidate staff.

This is no small part because the daily contact, direct contact Correctional staff has with inmates. Moreover, it was stated that Correction function and parole functions are not always agreeable to those in custody.

I have also attached Mr. Murphy and Mr. Farr's testimony to my written testimony.

It is these same issues that confront probation officers. We have direct, daily contact with

criminal offenders. The probation function is not always agreeable to those being supervised. Because of that, we are subject to intrusive inquiries of our employment records through the Freedom of Information Act.

I will admit that this bill does nothing to shield our records from the general public, nor are we asking that. Rather, we are asking to be protected from FOI requests from those criminal offenders we supervise and those who are incarcerated for violating their probation.

We are looking for the same protections afforded to other public servants. S.B. 387 does just that, and it is similar to that of Connecticut General Statute 18-101f.

As public safety professionals, we are asking for your help to protect our information while we continue to protect the citizens of Connecticut.

We have agreed, we have come to some agreed language and it is a compromise language with the Freedom of Information Commission. The language is represented in the substitute language in House Bill 5125, which is attached to my testimony.

This morning, before coming up here, I went to the Judicial Branch Human Resource office and asked to look at my personnel file, and specifically asked what information would be eligible for people to look at if it was so requested.

In there was my current and former address, my resume, the contents of the resume should be allowed to be seen, but on there is a former address where currently my parents still reside at, my social security card, my driver's

license and more importantly, and more dear to me is information regarding my wife and my step-children since I've been recently married. That information is out there.

We are asking you to please pass the bill to protect our personal information as we protect the citizens of Connecticut. Thank you for this opportunity and I'll answer any questions that you have.

SENATOR COLEMAN: Thank you. And just for the record, Representative O'Dea, I was going to let you go ahead and testify while Representative Fox was out of the room. But since he's back, absolutely out of the question.

And Mr. Roda, I don't mean to detract from the seriousness of your testimony, but a little levity with Representative O'Dea helps every now and then.

CARMEN RODA: That's okay. We have fun with him, also.

SENATOR COLEMAN: Any questions from Committee members? Representative Fox? No? Representative O'Dea.

REP. O'DEA: Thank you, Mr. Chairman. Mr. Roda, thank you for coming up, but just to clarify the record. Mr. Roda and I are friends. We both coach together, I guess technically against each other.

CARMEN RODA: Against each other.

REP. O'DEA: Youth football at the Fairfield County Football League. But on a serious note, Mr. Roda, thank you for your testimony and coming up here.

My understanding is, you've reached, as you stated, you've reached an agreement with the Freedom of Information Commission in support of House Bill 5125 limiting only personal information and medical information from your personnel files. Is that correct?

CARMEN RODA: Correct. We are only looking to have protections for things that would put our offenders in contact with our families and personal information, driver's license, social security information, et cetera.

Shortly you will hear testimony from a current probation officer, how her information was, her personal information was used and continuously is used to harass her.

REP. O'DEA: And so my understanding is you simply want the same protections that Connecticut General Statutes, Section 18-101f provides to other public servants, correct?

CARMEN RODA: Correct. Specifically the same as Corrections officers and Public Defender's Office.

REP. O'DEA: Well thank you very much for your testimony. Thank you, Mr. Chairman.

CARMEN RODA: Thank you.

SENATOR COLEMAN: Thank you both. Any further questions or comments? If not, thank you, Mr. Roda.

CARMEN RODA: Thank you for your time.

SENATOR COLEMAN: Jim O'Neill is next, to be followed by Doreen and George Bastian.

Office of Chief's State's Attorney has presented it this year because it is something that has, I believe does come up when you're trying these cases.

But right now, just to make sure that we understand the issue, if there is a film that depicts child pornography as you describe it, a two-hour film, that could still only be counted as a single image or would be charged as a single image photograph?

MICHAEL GAILOR: That's correct.

REP. G. FOX: Okay. That's the issue we're trying to address here.

MICHAEL GAILOR: That's the issue exactly.

REP. G. FOX: Thank you.

SENATOR COLEMAN: Are there other members with questions or comments? Seeing none, thank you very much.

MICHAEL GAILOR: Thank you.

SENATOR COLEMAN: Marshall Segar to be followed by Paula Pearlman.

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MARSHALL SEGAR: Good afternoon. First let me begin by saying thank you to Senator Coleman, Representative Fox and members of the Judiciary Committee for the opportunity to come before you. My name is Marshall Segar. I'm an attorney and I represent the Judicial Professional Employees Union that includes probation officers.

You heard Carmen Roda's testimony. He is a member of the union.

For the sake of being brief and allowing the Committee to move on with other functions, my testimony is in support of Senate Bill 387. Carmen Roda has testified as to the need for this bill and you'll hear from probation officer Sara Basford regarding the need for this bill as well.

In light of all of that, I have been working with the Freedom of Information Commissioner, particularly Paula Pearlman, who will also testify to develop substitute language that was voted on and approved through the GAE Committee last week.

You've been provided a copy of the Substitute Bill 5125. That is the agreed upon compromise language between the proposed bill S.B. 387 and H.B. 5125 and what has been agreed upon between the Freedom of Information Commission and us.

All we are asking is that the Judiciary Committee use the same or similar language in producing the bill and having it exit this Committee.

5125, Proposed Bill 5125, there's substitute language and that was agreed upon by the Freedom of Information Commission when we worked collaboratively with them on that.

I have no other testimony other than for you to consider that substitute language, but I'll be happy to answer questions if you have them.

SENATOR COLEMAN: Are there questions? Senator Kissel.

SENATOR KISSEL: Thank you very much. I support your proposal. Just for my own edification, you're the Judicial Professionals. How is that related to AFT because someone else, the

previous testimony was that AFT is the over-arching.

MARSHALL SEGAR: That is correct. We are AFT-Local 4200b. We are an AFT affiliate.

SENATOR COLEMAN: Are there others with questions or comments? Seeing none, thank you, attorney.

MARSHALL SEGAR: Thank you, Senator.

SENATOR COLEMAN: Paula Pearlman, to be followed by Sara Basford.

PAULA PEARLMAN: Good afternoon, Senator Coleman, Representative Fox and distinguished members of the Judiciary Committee. My name is Paula Pearlman. I'm a staff attorney with the Freedom of Information Commission and I am here today to express my opposition or the Commission's opposition to Senate Bill 387. HB5125

Senate Bill 387 prohibits disclosure of the personnel records of probation officers including but not limited to discrimination complaints. This proposal is unnecessary because there's already an exemption within the FOI Act for the nondisclosure of personnel, medical or similar files, if disclosure would constitute an invasion of personal property.

The standard for invasion of privacy, which is set forth in the Supreme Court case of Perkins v. The FOI Commission provides that the disclosure of information constitutes an invasion of privacy when, number one, the information does not pertain to the legitimate matters of public concern, and two, is highly sensitive to a reasonable person.

The explicit language in Section 1-210b-2 of the FOI Act, coupled with the time-tested

standards set forth by the Supreme Court already, establishes a comprehensive, objective and effective method by which to protect information relating to public employees.

In light of that, as testified to earlier by Marshall Segar as well as one of the probation officers, the Commission believes, even though the Commission believes this proposal is unnecessary, we have, there has been substitute language that has been agreed upon.

The substitute language narrows the proposal to personal information such as social security number, also former and current home addresses and not information relating to the performance of a probation officer's duties or employment.

For these reasons, the FOI Commission urges rejection of Raised Bill 387 as written and recommends the adoption of the same substitute language that was adopted by the GAE Committee in House Bill 5125. Thank you and I'd be happy to answer any questions.

SENATOR COLEMAN: Are there questions? Representative O'Dea.

REP. O'DEA: Thank you, Mr. Chairman. Just briefly as a follow up. When you say there's not a current problem, we're about to hear some testimony from a probation officer whose personal information was disclosed to a prisoner. Are you aware of that?

PAULA PEARLMAN: I am aware of that. That same probation officer testified at the GAE Committee. If I said there wasn't a problem, that's not what I meant to say.

I believe the bill itself is unnecessary because we already have an exemption within the FOI Act dealing with the personnel records.

In her situation, I was asked the same question at the GAE Committee, or a similar question. The information was given out and it's information that the Commission would not have ordered disclosed. We would have, pursuant to 1-210b-2 we would have found that information to be exempt.

In her case, I believe her former and current home address was given out. I think portions of her social security number were given out. She'll be able to, obviously she'll be up here to give you more information on that.

So if that case of a complaint had been filed with the Commission by a (inaudible) to deny that information, the Commission pursuant to 1-b-2, that's not the type of information that we would order disclosed.

REP. O'DEA: Okay, just so we're clear. You are in agreement that a probation officer's personal information should not be handed out under any circumstances, meaning that, not job related information but address, social security, family information, that should never be disclosed to the public. Is that fair to say?

PAULA PEARLMAN: Well, the Commission believes that as long as it doesn't pertain to the performance of the probation officer's duty or employment then that personal information can be disclosed.

REP. O'DEA: So, as I understand, too, the FOI Commission is going to support House Bill 5125 as submitted?

PAULA PEARLMAN: With the substitute language that came out of Committee.

REP. O'DEA: Thank you very much. Thank you, Mr. Chairman.

SENATOR COLEMAN: In your response to Representative O'Dea you said as long the information pertains to the probation officer's performance.

PAULA PEARLMAN: As long as the personal information does not pertain. Within the substitute language that was agreed upon --

SENATOR COLEMAN: Yeah.

PAULA PEARLMAN: -- there was language including but not limited to, was inserted purposely. We agree that social security numbers, the Commission has never ordered social security numbers be disclosed. We agreed to the residential addresses. Actually, there is 1-217b of the FOI Act that deals with residential addresses for certain public employees --

SENATOR COLEMAN: Uh-huh.

PAULA PEARLMAN: -- and those have been the Division of Criminal Justice are included in that, so we don't give out the residential addresses.

So those were explicitly put into the substitute language. Other information, because it's very difficult to sit here and list all the type of personal information that are out there, but if that information, we don't see how social security number would pertain to their job performance or their home address would pertain to their job performance.

But it's hard to say. I can't sit here and say that no personal information ever wouldn't pertain to the job performance.

SENATOR COLEMAN: All right. Okay. Understood. So are you saying or not saying that probation officers are specifically listed among those officials who are protected under the statute that you just made reference to.

PAULA PEARLMAN: I believe in 1-217 it deals specifically with residential addresses, certain categories of public employees, and if I'm correct, and perhaps Attorney Segar could clarify, that they fit within the Division of Criminal, or Judicial Branch, excuse me, the Judicial Branch so they would be covered.

SENATOR COLEMAN: All right. Thank you. Are there other questions? Seeing none, thank you very much for your input.

PAULA PEARLMAN: Okay, thank you.

SENATOR COLEMAN: Sara Basford and then Andrew Schneider.

SARA BASFORD: Good afternoon. First let me begin by saying thank you to Senator Coleman, Representative Fox and the members of the Judiciary Committee for the opportunity to be heard. My name is Sara Basford and I am an adult probation officer with the State of Connecticut Judicial Branch. I am assigned to the Danbury Office. I have been employed by the Judicial Branch for over 12 years. SB387

As a probation officer, I supervise people convicted of a wide variety of crimes. It is the mission of the Court Support Services Division to reduce the number of people who

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FREEDOM OF INFORMATION COMMISSION STATEMENT IN OPPOSITION TO RAISED BILL 387, AN ACT CONCERNING THE NONDISCLOSURE OF CERTAIN PERSONNEL OR MEDICAL FILE INFORMATION OF A PROBATION OFFICER TO A PERSON WHO IS UNDER PROBATION SUPERVISION.

March 12, 2014

The Freedom of Information Commission (FOIC) submits this statement in opposition to Raised Bill 387 concerning the personnel records of probation officers.

The bill would provide a blanket prohibition on the disclosure of "personnel or medical file or similar files" including discrimination complaints and security investigations concerning probation officers (both current and former) to individuals under the supervision of the Court Support Services Division or certain individuals committed to the custody or supervision of the Commissioner of Correction.

The proposal is unnecessary because there is already an exemption contained in the Freedom of Information Act that can be utilized to withhold these kinds of records under appropriate circumstances. Section 1-210(b)(2) provides for the non-disclosure of personnel, medical or similar files that, if disclosed, would constitute an invasion of personal privacy. The Supreme Court has provided in Perkins v. FOI Commission, 228 Conn. 158, 175 (1993), the standard to determine what constitutes an invasion of personal privacy. Specifically, under the Perkins test, in determining whether disclosure would constitute an invasion of personal privacy, the claimant must establish both of two elements: first, that the information sought does not pertain to legitimate matters of public concern, and second, that disclosure of such information is highly offensive to a reasonable person.

The explicit language of the statute coupled with the time-tested standard set forth by the Supreme Court, already establishes a comprehensive, objective and effective method by which to protect information relating to public sector employees.

Notably, although the Commission believes that this proposal is unnecessary, a similar bill (HB 5125)[1] was recently voted out of the Government Administration and Elections Committee with substitute language that is agreeable to the Commission. Specifically, the substitute language provides that:

> Any personal information of a current or former probation officer employed by the Judicial Branch that is not related to the performance of such officer's duties or employment, including, but not limited to, such officer's date of birth; Social Security number; current and former electronic mail address, telephone number and residential address; photographs; and driver's license information; shall not be subject to disclosure under the Freedom of Information Act, as defined in section

[1] *See* HB 5125, An Act Limiting Access to Certain Information Regarding Probation Officers under the Freedom of Information A ct.

> 1-200 of the general statues, to any individual under the supervision of the Court Support Services Division or any individual committed to the custody or supervision of the Commissioner of Correction for a violation of section 53a-32 of the general statutes.

The substitute language purposefully narrows the application of the proposal to personal information and not to information relating to the performance of a probation officer's duties or employment. Hiring decisions, investigations and disciplinary matters, commendations, timesheets – all are public records whose accessibility to the public helps ensure accountability of all public employees – including probation officers.

For these reasons, the FOIC urges rejection of Raised Bill 387, as written, and recommends the adoption of the substitute language referenced above.

For further information contact: Colleen M. Murphy, Executive Director and General Counsel or Mary Schwind, Managing Director and Associate General Counsel, at (860) 566-5682.

330 Main Street, Hartford, Connecticut 06106
860-523-9146 | www.acluct.org

Testimony in Opposition to Raised Bill No. 387, An Act Concerning the Nondisclosure of Certain Personnel or Medical File Information of a Probation Officer to a Person Who is Under Probation Supervision

HB5125

March 12, 2014

Good afternoon Senator Coleman, Representative Fox and distinguished members of the Judiciary Committee. My name is Andrew Schneider. I'm the executive director of the American Civil Liberties Union of Connecticut and I'm here to testify against Raised Bill No. 387, An Act Concerning the Nondisclosure of Certain Personnel or Medical File Information of a Probation Officer to a Person who is Under Probation Supervision

In 1996, Richard Straub was charged with more than 100 counts of sexually abusing boys and young men, most of them under his supervision as a probation officer. Police searched four probation offices in their investigation and found piles of documents showing that Straub was suspected of sexually abusing teenagers in his office and that these suspicions had been reported to his supervisors over the course of the preceding seven years. According to The Hartford Courant, the police found complaints from co-workers, internal investigation reports, files, notes and other documents written by Straub's supervisors.[1] These are the very kinds of documents this bill seeks to conceal, the very documents that his victims could have used to get help. And those victims were the only individuals outside the Court Support Services Division to know that those documents might exist.

I remind you of this horrific story because it shows why an individual under the supervision of a probation officer or in prison for violating probation could have a legitimate, indeed a crucial, interest in such documents. The police investigation of Richard Straub revealed, by the way, that he often used the threat of a probation violation, of sending his victims to prison, as a way to coerce them.

Of course the vast majority of probation officers could never be suspected of committing such horrible crimes. And it's understandable that this committee wants to protect those hard-working and innocent probation officers from any harm. Fortunately, the Freedom of Information Act already does that. As Section 1-210 of the Connecticut General Statutes states: "Nothing in the Freedom of Information Act shall be construed to require disclosure of ... [p]ersonnel or medical files and similar files the disclosure of which would constitute an invasion of personal privacy."[2] Under this provision, the Freedom of Information Commission has carefully and reasonably protected the privacy and safety of government employees, without fail.

That's why this proposed exemption is unnecessary, a solution in search of a problem where none exists. It is an attempt to further erode the Connecticut's Freedom of Information Act without

[1] http //www.courant.com/news/special-reports/hc-straub artdec1996,0,3841703.story
[2] http://www.cga.ct.gov/2011/pub/chap014.htm#Sec1-210 htm

justification. There is no legitimate interest here that is not already protected. There is nothing to balance against the public's right to know.

Connecticut's Freedom of Information Act is intended to allow all of us who are subject to government authority to hold the government accountable for how it exercises that authority. And none of us is more thoroughly subject to government authority, monitoring and supervision than individuals who are incarcerated or on probation. Nobody is more vulnerable to the abuse of that authority. To exclude them as a class from access to information about the official conduct of the people who wield that authority over them is to invite injustice.

Additionally, a more narrowly-tailored bill regarding personal information of probation officers, House Bill 5125, was recently approved by the Government Administration and Elections Committee. Although we believe both bills are unnecessary, House Bill 5125 is more acceptable proposal. I respectfully ask you to reject Raised Bill 387.

TESTIMONY OF ADULT PROBATION OFFICER CARMEN RODA

IN SUPPORT OF S.B. 387

PUBLIC HEARING, S.B. 387

AN ACT CONCEDRNING THE NONDISCLOSURE OF CERTAIN PERSONNEL OR MEDICAL FILE INFORMATION OF A PROBATION OFFICER TO A PERSON WHO IS UNDER PROBATION SUPERVISION.

(HB5125)

March 12, 2014

Good afternoon. First, let me begin by saying thank you to Senator Coleman, Representative Fox and the members of the Judiciary Committee for the opportunity to speak to you.

My name is Carmen Roda. I am an Adult Probation Officer with the State of Connecticut Judicial Branch. I am assigned to the Bridgeport Office. I have been employed by the Judicial Branch for over 12 years with a total of over 22 years of service with the State. I am also the Vice President of the Judicial Professional Employees Union. We are an AFT affiliate. We represent nearly 1300 Judicial Branch employees. 700 of which are probation officers.

It is the mission of the Court Support Services Division to reduce the number of people who reoffend all the while keeping offenders accountable for their actions. It is also, as part of our duties as probation officer, to keep our clients at an arm's length and not to have any undue familiarity with them. This is not only a sound practice, but is part of our Judicial Branch operating procedures. This theme of preventing "undue familiarity" is the purpose behind S.B> 387. If probation officers cannot have undue familiarity with their clients, why should clients have undue familiarity with their probation officers?

S.B. 387 would prohibit those persons on probation or those incarcerated for violation of probation from accessing a probation officer's personnel file or similar file through the Freedom of Information Act. Similar protections currently exist for corrections officers and others with close contact with offenders. I have attached a copy of C.G.S. 18-101f to my written testimony. C.G.S. 18-101f protects corrections officers from inmate FOI requests. In 2011, 18-101f was modified to include the Public Defender's Office. I have attached a copy of Public Act 11-220 to my written testimony.

It is interesting that in the public testimony for those Bills, former Acting Corrections Commissioner Brian Murphy and former Pardon and Paroles Chairman Robert Farr articulate that inmates are using FOI as a means to intimidate staff. This was is no small part because of the daily and direct contact Corrections staff has with inmates. Moreover, it was stated that the corrections function and parole function are not always agreeable to those in custody. I have attached Mr. Murphy's and Mr. Farr's testimony to my written testimony.

It is these same issues that confront probation officers. We have direct daily contact with criminal offenders. The probation function is not always agreeable to those being

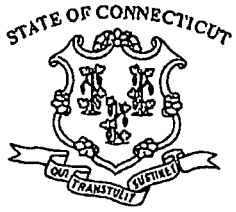
supervised. Because of that, we are subject to intrusive inquires of our employment records through the Freedom of Information Act. I will admit that this Bill does nothing to shield our records from the general public. Nor are we asking for that. Rather, we are asking to be protected from FOI requests from those criminal offenders we supervise and those who are incarcerated for violating their probation. We are looking for the same protections afforded to other public servants. S.B. 387 does just that and is similar to that of C.G.S. 18-101f

As public safety professionals we are asking for your help protect our information while we continue to protect the citizens of Connecticut.

Please pass S.B. 387.

Again, thank you for your time and for this opportunity.

I would be happy to answer any questions you may have.



General Assembly

Proposed Substitute Bill No. 5125

February Session, 2014

LCO No. 2438

AN ACT LIMITING ACCESS TO CERTAIN INFORMATION REGARDING PROBA T/ON OFFICERS UNDER THE FREEDOM OF INFORMATION ACT.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

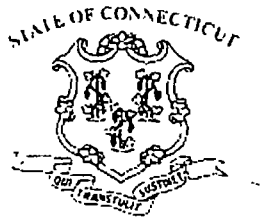
Section 1. (NEW) *(Effective July 1,* 2014) Any personal information of a current or former probation officer employed by the Judicial Branch that is not related to the performance of such officer's duties or employment, including, but not limited to, such officer's date of birth; Social Security number; current and former electronic mail address, telephone number and residential address; photographs; and driver's license information; shall not be subject to disclosure under the Freedom of Information Act, as defined in section 1-200 of the general statutes, to any individual under the supervision of the Court Support Services Division or any individual committed to the custody or supervision of the Commissioner of
Correction for a violation of section 53a-32 of the general statutes.

This act shall take effect as follows and shall amend the following sections:

Section 1	*July 1, 2014*	New section

Sec. 18-lOlf. Prohibition against disclosure of certain employee files to inmates under the Freedom of Information Act.

A personnel or medical file or similar file concerning a current or former employee of the Division of Public Defender Services, Department of Correction or the Department of Mental Health and Addiction Services, including, but not limited to, a record of a security investigation of such employee by the department or division or an investigation by the department or division of a discrimination complaint by or against such employee, shall not be subject to disclosure under the Freedom of Information Act, as defmed in section 1-200, to any individual committed to the custody or supervision of the Commissioner of Correction or confmed in a facility of the Whiting Forensic Division of the Connecticut Valley Hospital. For the purposes of this section, an "employee of the Department of Correction" includes a member or employee of the Board of Pardons and Paroles within the Department of Correction.



Senate Bill No. 38

Public Act No. 11-220

AN ACT CONCERNING ACCESS TO INFORMATION CONCERNING THE DIVISION OF PUBLIC DEFENDER SERVICES AND SECRET BALLOTS OF VOLUNTEER FIRE DEPARTMENTS UNDER THE FREEDOM OF INFORMATION ACT.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Subdivision (1) of section 1-200 of the general statutes is repealed and the following is substituted in lieu thereof *(Effective October 1,* 2011):

(1) "Public agency" or "agency" means:

(A) Any executive, administrative or legislative office of the state or any political subdivision of the state and any state or town agency, any department, institution, bureau, board, commission, authority or official of the state or of any city, town, borough, municipal corporation, school district, regional district or other district or other political subdivision of the state, including any committee of, or created by, any such office, subdivision, agency, department, institution, bureau, board, commission, authority or official, and also includes any judicial office, official, or body or committee thereof but only with respect to its or their administrative functions, and for purposes of this subparagraph, "judicial office" includes, but is not limited to, the Division of Public Defender Services;

(B) Any person to the extent such person is deemed to be the functional equivalent of a public agency pursuant to law; or

(C) Any "implementing agency", as defined in section 32-222.

Sec. 2. Section 18-101£ of the general statutes is repealed and the following is substituted in lieu thereof *(Effective October 1,* 2011):

A personnel or medical file or similar file concerning a current or former employee of the Division of Public Defender Services, Department of Correction or the Department of Mental Health and Addiction Services, including, but not limited to, a record of a security investigation of such employee by the department or division or an investigation by the department or division of a discrimination complaint by or against such employee, shall not be subject to disclosure under the Freedom of Information Act, as defined in section 1-200,

State of Connecticut JUDICIAL BRANCH COURT SUPPORT SERVICES DIVISION POLICY AND PROCEDURES	POLICY NO 1.4	EFFECTIVE DATE June 15, 2009	PAGE 1 of 6
	SUPERSEDES November 1, 2005		
APPROVED BY William H. Carbone, Executive Director	TITLE ADMINISTRATION, ORGANIZATION, & MGMT INVESTIGATIONS		

1. **Policy** The Court Support Services Division (CSSD) will ensure that members of the public and CSSD employees have an accessible central office at which they may raise concerns about the conduct ofCSSD employees or individuals serving a term of probation or under pre-trial supervision, and have those concerns addressed in an appropriate manner.

2. **Definition** For the purposes stated herein, the following defmitions apply:

   A. Administrative Investigation An official inquiry conducted within and by personnel of the CSSD.

   B. Administrative Investigator A CSSD employee assigned by the Executive Director or designee to conduct an Administrative Investigation.

   C. Alleged Misconduct by CSSD Employee Report Form Official CSSD form JD-AP-145,http://spforms/CourtF orms/Shared%20Documents/PDF /ap 145.pdf detailing the nature of a complaint.

   D. Americans with Disabilities Act (ADA) The federal law which protects the rights of employees with disabilities.

   E. Criminal Investigation An official inquiry conducted by a law enforcement agency.

   F. Internal Complaints A complaint reported by a CSSD staff member regarding another CSSD staff member.

   G. Investigation Summary Report The final written report containing fmdings and recommendations submitted to the CSSD Executive Director.

   H. Person with Complaint A member of the public and/or a Judicial Branch employee.

   I. Serious Misconduct Serious misconduct includes, but is not limited to:

      (1) Criminal activity

      (2) Offensive, indecent or abusive conduct toward the public, superiors, co-workers, subordinates, clients, detainees, etc.

      (3) Theft, willful neglect or misuse of any state funds, property, equipment, material or supplies, including state-owned vehicles

(4) Deliberate violation of any law, regulation, CSSD or Judicial Branch policy or procedure

(5) Impairment while on duty

(6) Gross neglect of duty

(7) Prohibited political activity

(8) Other activity that is similarly detrimental to the best interest of the CSSD.

J. Statement of Witness Form The official CSSD form where statements from witnesses will be recorded.

3. **Procedures**

A. Internal Complaint All CSSD employees will be responsible to report any incident that reasonably appears to involve serious misconduct by any other CSSD employee.

B. Complaints of Misconduct from the Public Complaints from the public will be handled in accordance with the prescribed policy for oral and written complaints.

C. Administrative Investigation The Executive Director or designee will complete an administrative investigation in accordance with this policy, for all alleged misconduct reported on the Alleged Misconduct by CSSD Employee Report Form, JD-AP-145, http://spforms/CourtForms/Shared%20Document s/PDF/ap145.pdf. Other management staff may be utilized as needed, to assist in the investigation process.

D. Multiple Investigations Some alleged ADA violations, affirmative action violations and sexual harassment complaints will require a separate investigation by the Affirmative Action and Employment Discrimination Program Coordinator. The CSSD Manager of Human Resources will be notified of the results of this investigation, as appropriate.

E. Possible Criminal Conduct When possible criminal activity is alleged, (i.e., physical or sexual assault, risk of injury, theft, drug abuse, sexual contact, damaged property, etc.), such complaints will be directed to the CSSD Manager of Human Resources.

The state or local police will also be notified immediately. Any doubt as to whether conduct should be reported to the police will be resolved in favor of reporting, after consultation with the CSSD Manager of Human Resources or designee. The CSSD Manager of Human Resources will cooperate with the police investigation and ask to be kept apprised of the results thereof.

F. Notice of Procedures for Telephonic and Written Complaints of Misconduct The name, address, telephone number and email address of the CSSD Manager ofHuman Resources or designee should be posted rominently in each office of the CSSD. The Notice (CSSD Attachment A and Spanish Version, Attachment Al), informs both the public and Division employees that an Alleged Misconduct by CSSD Employee Report Form, Judicial Form JD-AP-145, http://spforms/CourtForms/Shared%20Documents/PDF/ap145pdf will be available from the supervisor at that location as well from the CSSD Manager of Human Resources. It is the responsibility of the office supervisor to ensure that this Notice is visibly posted in a public area. In the event that the person with complaint wishes to bring certain conduct to the attention of a supervisor or the CSSD Manager of Human Resources but does not wish to file a written complaint, the notice will also provide that oral complaints will be permissible.

G. Investigation Process for Oral Complaints Oral complaints made to the local supervisor of the employee against whom the complaint is made should be handled in one of two ways:

(1) Complaints of a non-serious nature that can be resolved at the local office with agreement of the person with complaint will be handled as other minor disciplinary matters are, and without the involvement ofthe Human Resource Management Unit.

(2) For more serious complaints or non-serious complaints that cannot be resolved without additional involvement, the person with complaint should be urged to fill out an Alleged Misconduct by a CSSD Employee Report Form. The party receiving the complaint shall assist the person with complaint in completing the form. If the person with complaint does not wish to fill out the form, he/she will be referred to the CSSD Manager of Human Resources.

(3) If the allegation involves serious misconduct, the party receiving the complaint will immediately contact the CSSD Manager of Human Resources

and forward the completed Alleged Misconduct by a CSSD Employee Report Form thereafter.

(4) For oral complaints about either a serious complaint or unresolved non-serious complaint made to the CSSD Manager of Human Resources, a Misconduct Report Form should be immediately completed by the person with complaint or, in the alternative, by the CSSD Manager of Human Resources or designee. If the person with complaint wishes to remain anonymous, then "Anonymous" shall be entered in lieu of the person with complaint's name on the Misconduct Report Form. Once the Alleged Misconduct by a CSSD Report Form is complete, the procedure for written complaints shall be followed.

H. Investigation Process for Written Complaints on Alleged Misconduct by a CSSD Employee Report Form

(1) One copy of all completed forms shall be given to the person with complaint. The original will become part of the investigation file. Immediately after the Alleged Misconduct by a CSSD Employee Report Form is completed, one copy will also be sent to both the Executive Director and the CSSD Manager of Human Resources.

(2) Upon the receipt or completion of the Alleged Misconduct by a CSSD Employee Report Form, the CSSD Manager of Human Resources will determine, based upon the seriousness and nature of the allegations, whether the Human Resource Management Unit will conduct the investigation or whether the matter will be referred to the Executive Director for further investigation.

(3) Once the determination is made by the Executive Director or designee as to who will conduct the administrative investigation of misconduct detailed on the Alleged Misconduct by a CSSD Employee Report Form, the investigation should begin immediately. The investigation normally will be conducted concurrently with the criminal investigation and/or the affirmative action investigation, where these occur.

(4) The party assigned to conduct the investigation will be responsible for the development of all evidence in the administrative investigation. This includes, but is not limited to, obtaining physical evidence, gathering all relevant documents, interviewing all individuals who may have information relevant to the alleged violation, and obtaining statements from all involved persons and witnesses.

(5) Whether the investigation is handled by the CSSD Manager of Human Resources or designee, upon its conclusion, the Statement of Witness Form (CSSD Attachment B), will be completed detailing the nature of the investigation and the conclusions relevant to the conduct of the employee. The investigator will send all Statement of Witness forms to the CSSD Manager Human Resources immediately upon its completion.

I. Determination of Action to be Taken A thorough review of the investigation file, applicable policies, and all other related materials will be completed by the CSSD Manager of Human Resources and reported to the CSSD Executive Director. If no administrative action is warranted, the employee who is the subject of the investigation will be so informed in writing, and the case will be closed. If administrative action is warranted, it will be handled in accordance with existing CSSD Policy and Procedure 2.13, Employee Discipline. Upon completion of the investigation, the CSSD Manager of Human Resources will notify the person with complaint.

J. Investigation File An investigation file showing the chronology of events will be compiled and maintained by the CSSD Manager of Human Resources or designee. The file will include the following information:

(1) Alleged Misconduct by CSSD Employee Report form

(2) Any Statement of Witness forms obtained

(3) Interview notes and observations

(4) Any physical evidence obtained

(5) Pertinent documents

(6) Written reports identifying similar incidents and explanation of disciplinary action(s) taken

(7) Investigation Summary Report Form (CSSD Attachment C).

K. Complaints by the public concerning individuals serving a term of probation or under pre-trial supervision will be handled as follows:

(1) Oral or written complaints received by field staff will be communicated in writing to the local office/facility supervisor.

(2) The Supervisor will review the complaint and if the address or location of the individual making the complaint is known, respond in writing or face-to-face. A copy of the complaint and the response or summary of the response will be forwarded to the Regional Manager or, in the case of Juvenile Detention, to the Deputy Director of Residential Services for review. The Regional Manager / Deputy Director will retain copies.

(3) Written or oral complaints received directly by CSSD Central Office staff will be forwarded to the Executive Director.

(4) The Executive Director or designee will review and investigate the complaint and respond in writing to the complaint party, or to the party who initially forwarded the complaint to the CSSD Central Office. A copy of the initial complaint and the written response will be retained by the Executive Director or designee.

4. Reference American Correctional Association (ACA) 4th Edition Performance Based Standards for Adult Probation and Parole Field Services. 4-APPA 1C-02, 2G-02, 2002, ACA, Lanham, Maryland.

5. Exceptions Any exception to this policy will reqmre pnor written approval from the Division's Executive Director.

STATE OF CT-JUDICIAL BRANCH
COURT SUPPORT SERVICES DIVISION

Attachment A
1.4 - Investigations

NOTICE

If you want to report any form of harassment, discrimination, or misconduct by an employee of this office you may, in addition to any other options available to you by law:

ASK TO SPEAK TO A SUPERVISOR

(OR)

COMPLETE AN INCIDENT REPORT FORM (BELOW)

(OR)

CONTACT
MANAGER OF HUMAN RESOURCES
AND INVESTIGATIONS
936 Silas Deane Hwy.
Wethersfield, CT 06109
TEL: 1-866-627-1583
hr.incidentreport@jud.state.ct.us

- Your probation will not be negatively affected if you file a complaint.
- Filing a complaint does not relieve you from your responsibilities to the court.

STATE OF CT-JUDICIAL BRANCH
COURT SUPPORT SERVICES DIVISION

Attachment A-1
1.4- Investigations

AVISO

Si desea denunciar algun acto de acoso, discriminacion o conducta inapropiada cometido por un empleado de esta oficina, Ud. dispone de los siguientes recursos, ademas de los previstos por Ia ley:

PEDIR HABLAR CON UN SUPERVISOR

(O)

COMPLETAR UN FORMULARIO DE DENUNCIA DE INCIDENTE (ABAJO)

(O)

COMUNICARSE CON EL
DIRECTOR DE INVESTIGACIONES Y
RECURSOS HUMANOS
936 Silas Deane Hwy.
Wethersfield, CT 06109
TEL: 1-866-627-1583
hr.incidentreport@jud.state.ct.us

- Presentar una queja no perjudicara su regimen probatorio.
- Presentar una queja no lo exime de sus responsabilidades ante el tribunal.

STATE OF CT - JUDICIAL BRANCH
COURT SUPPORT SERVICES DIVISION

Attachment B
1.4 - Investigations

STATEMENT OF WITNESS / INVOLVED PERSON

Facility	Location of Incident	Incident Date	Time (AM/PM)

Statement of (Name)	Title

Description of Conduct	(Describe accurately and completely events that occurred Indicate persons involved If injury occurred, describe nature of injury, cause, and actions taken to treat injury)

Knowledge that this statement is accurate an complete to the best of my knowledge and belief

Signature	Date	Time (AM/PM)

STATE OF CT- JUDICIAL BRANCH
COURT SUPPORT SERVICES DIVISION

Attachment C
1 4-Investigations

Investigation Summary Report Form

Date of Investigation:

Alleged Perpetrator:

Alleged Victim(s):

Date of Incident:

Location of Incident:

Description of Allegation:

Investigation Details

INDIVIDUALS INTERVIEWED:

DOCUMENTS REVIEWED:

INTERVIEW SUMMARY & FINDINGS:

POLICY MODIFICATION RECOMMENDATIONS:

OTHER NOTES:

SUBMITTED BY:

NAME

TITLE:

DATE:

JOINT
STANDING
COMMITTEE
HEARINGS

GOVERNMENT
ADMINISTRATION
AND ELECTIONS
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delayed. Maybe he'll be here a little later.

And Paula Perman, excuse me, Pearlman. Where's Paula? Oh there she is, hi.

PAULA S. PEARLMAN: Good afternoon, Senator Musto, Representative Jutila and distinguished members of the GAE Committee. My name is Paula Pearlman. I'm a staff attorney with the Freedom of Information Commission and I am here today to discuss our support of House Bill 5124 and 5127 and our opposition to House Bill 5125.

House Bill 5125 prohibits the disclosure of the personal records of probation officers including discrimination complaints and security investigation of those probation officers.

We believe that this proposal is unnecessary because there is already an exemption within the FOI Act for the nondisclosure of personnel, medical or similar files if disclosure would constitute invasion of privacy. In addition, no one has articulated a reason, to our knowledge at least, why this restriction is necessary.

With respect to House Bill 5124, that bill opens up access to certain records retained in the state archives after a certain amount of time has passed. Under the proposal, government records that have been deemed to be confidential, classified or private would be accessible to the public 75 years after the record is created.

Medical records will be acceptable 50 years after the death of the individual who is the subject of the record.

take out this advertisement and have no need to discount in any way to solicit your business.

LEO PAUL, JR.: I'm not here, sir, to -- to discourage anybody or make any insinuations like that. I'm just suggesting that the best approach here is to maybe give us an option where we would not have to put in our full description, you know, for our posting, just a -- maybe, you know, a couple of lines that tell people where to go to get that information and it would be the web or hard copy available at the town hall or somewhere else.

REP. LEMAR: Terrific, thank you very much for your testimony.

LEO PAUL, JR.: Thank you, sir.

REP. JUTILA: Other questions from members of the Committee? Any other questions?

All right, thank you again.

LEO PAUL, JR.: Thank you very much for your time, sir.

REP. JUTILA: That is the end of the public officials list. So we will now go right to the general public and the first speaker will be Carmen Roda.

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CARMEN A. RODA: (Inaudible). In 2011, 18-101f was modified to include the Public Defender's Office. I have attached a copy of Public Act 11-220 to my written testimony.

It is interesting that in the public testimony of those bills, former acting Corrections Commissioner, Brian Murphy, and former Pardon and Paroles Chairperson, Robert Farr,

articulated that inmates are using FOI as a means to intimidate staff. This is no small part because of the daily and direct contact corrections officers -- or corrections staff have with inmates. Moreover, it was stated that the corrections function and parole function are not always agreeable to those in custody. I have attached Mr. Murphy's and Mr. Farr's testimony to my written testimony.

It is these same issues that confront probation officers. We have direct daily contact with criminal offenders. The probation function is not always agreeable to those being supervised. Because of that, we are subject to intrusive inquiries of our employment records through the Freedom of Information Act.

I will admit that this bill does not shield our records from the general public nor are we asking for that. Rather we are asking to be protected from FOI requests from those criminal offenders we supervise and those who are incarcerated for violating their probation. We are looking for the same protections afforded to other public servants. Bill 5125 does just that and is similar to that of Connecticut General Statute 18-101f.

As public safety professionals we are asking for your help to protect our information while we continue to protect the citizens of Connecticut. Please pass Bill 5125.

Again, thank you for your time and for this opportunity. I'll be happy to answer any questions you may have.

REP. JUTILA: Questions from members of the Committee? Any questions?

SENATOR MUSTO: Thank you, Mr. Chairman.

I'm having trouble finding your written testimony here. So Mr. Roda, correct?

CARMEN A. RODA: Yes, sir.

SENATOR MUSTO: Okay. So you said attached to your written testimony was --

CARMEN A. RODA: I have copies if you would like.

SENATOR MUSTO: No -- no I got it here, thank you. I just don't why I couldn't find it. And you're -- you're saying that 18-101f is a similar provision for Department of Corrections officials.

CARMEN A. RODA: Yes, sir.

SENATOR MUSTO: And -- and it looks like others as well.

CARMEN A. RODA: Public defenders.

SENATOR MUSTO: Public defenders and it's got Department of Mental Health and Addiction Services in here as well. I think those are the three that seem to be -- so you're looking for the -- pretty much the same protections as those folks.

CARMEN A. RODA: Yes, sir.

SENATOR MUSTO: Okay. All right, thank you.

Any other questions from members of the Committee?

REP. JUTILA: I've got one.

SENATOR MUSTO: Yes.

REP. JUTILA: Yes, Mr. Roda, thank you for testifying today. When the Freedom of Information Commission testified earlier, they argued that this would be unnecessary because there's already an exemption in the Freedom of Information Act that you would be able to take advantage of that would protect the -- the privacy of the individuals and they cited Section 1-210(b)(2).

Are you familiar with that and, you know, would that not be a viable mechanism for you to achieve what you're trying to achieve through this proposed bill?

CARMEN A. RODA: I am not familiar with the specifics of that, however, our belief is that that does not protect us. I believe -- and shortly you will hear testimony how the loophole was used against a probation officer that will testify later on today.

REP. JUTILA: Okay, fair enough.

Other questions from members of the Committee?

Okay, thank you again.

CARMEN A. RODA: Thank you for your time.

REP. JUTILA: The next speaker is Sarah Basford followed by Raphael Podolsky.

SARA BASFORD: Good afternoon. First let me begin by saying thank you, Senator Musto, Representative Jutila and the members of the Government Administration and Elections Committee for the opportunity to be heard. My name is Sara Basford. I'm an adult probation

HB5125

officer with the State of Connecticut Judicial Branch.

I am assigned to the Danbury office. I have been employed by the Judicial Branch for over 12 years. As a probation officer I supervise people convicted of a wide variety of crimes. It is the mission of the Court Support Services Division to reduce the number of people who reoffend all the while keeping offenders accountable for their actions. It is this accountability that needs to be addressed and Bill 5125 does just that.

Bill 5125 would not permit those persons on probation or those incarcerated for violation of probation to access my personnel file through the Freedom of Information Act. Similar protections currently exist for corrections officers and others with close contact with inmates. I have close contact with offenders and have been harassed by inmates simply because I've done my job as a probation officer.

In June of 2012, an inmate who was incarcerated for violating his probation, made a Freedom of Information Act requesting my personnel file and other employment records. I was not informed of the request. Subsequently information about me from my personnel file was sent to the inmate.

A year after I began receiving love letters from another inmate being held in the same correctional facility as the inmate that requested my information through the Freedom of Information Act. A copy of the letter I received is attached to my written testimony.

In that letter it says that he received the

information from another inmate. The inmate that had my information and who sent me the letter is a reported member of a notorious street gang.

The release of this information was done without my knowledge and in compliance with current loopholes in the law. I am asking that these loopholes are closed as they have been closed for other public servants. Passing Bill 5125 would close these loopholes.

As a public safety professional, I am asking to help protect our information while I continue to protect the citizens of Connecticut.

Again, thank you for your time and for this opportunity. I would be happy to answer any questions that you may have.

REP. JUTILA: Representative McLachlan.

SENATOR McLACHLAN: Thank you, Mr. Chairman.

Thank you, Ms. Basford, for your service. You certainly do have a difficult job and -- and I'm glad you're in Danbury.

SARA BASFORD: Oh thank you.

SENATOR McLACHLAN: I would say -- I wonder if you are getting feedback from your peers that the current Freedom of Information exemption for other law enforcement personnel, is that exemption working and eliminating the experience that you've had?

SARA BASFORD: I do know prior -- correctional officers and I was a correctional officer before I was a probation officer and as a correctional officer inmates cannot get your

private information. Yet we deal with the exact same people just once they're released. Whether they're incarcerated or they're out in the public, they committed the same crime. We just supervise them in a different capacity where actually they have access to us because they are now in the community. So while they are incarcerated they don't have access because they're behind bars. Yet they're released, they have access to us and then they can get our personal information.

SENATOR McLACHLAN: It's interesting that you have the viewpoint of also having been a correction officer and when you were a correction officer did you have this problem or this experience?

SARA BASFORD: No they knew they couldn't do that. They knew that they -- that they -- there was no attempt to try to get our personal information because they knew they wouldn't get it. And -- and I have to say that was over ten years ago where Freedom of Information wasn't as a hot topic as it is now.

But I will say in the jail, like my -- my personal information was sent to an inmate in jail so he therefore passed it around to all the other inmates which they don't have much to do other than read and fester and think about what they want to do when they are released and they're angry because we sent them to jail on a violation of probation. So they have personal vendettas. They, you know, they have time.

SENATOR McLACHLAN: And it was your experience that this individual began writing to you and contacting you at home.

SARA BASFORD: No it was at work.

SENATOR McLACHLAN: Okay. Well thank you for your service and thank you for your testimony today.

SARA BASFORD: Thank you.

REP. JUTILA: Questions from other members of the Committee?

Representative Sear.

REP. SEAR: Thank you, Mr. Chairman.

Just in general category, what is the -- what is the information in the file that makes you vulnerable, just in general terms, not your file?

SARA BASFORD: General in the file they -- they request our performance appraisals. They request -- they are allowed to get anything in the personnel file even though our home address may be redacted. They got my original application from 12 years ago when I lived at home so my mother's address where she still lives alone was given to the inmate.

My -- copy of my driver's license. My Social Security number was redacted but it was redacted differently on every document so if you line up three documents, my entire Social Security number was there because it was redacted differently.

My marriage certificate for insurance reasons, children's -- children's birth certificates, my personal birth certificate, anything personal. Letters I wrote to human resources. Anything in my personnel file they have access to. So just because your home address may be redacted, your entire personal history, my college transcripts. Anybody -- just anything really.

Any personal information and it's in your personnel file.

REP. SEAR: Thank you.

REP. JUTILA: Other questions?

SENATOR MUSTO: Thank you, Mr. Chairman.

To follow up on that, it -- it sounds like the information is something we would all -- seem like it would be unreasonable --

SARA BASFORD: Yes.

SENATOR MUSTO: -- for someone convicted of a crime to have.

SARA BASFORD: Yes.

SENATOR MUSTO: And certainly largely irrelevant for someone convicted of a crime to have. But there are arguably things in your file that would be relevant --

SARA BASFORD: Sure.

SENATOR MUSTO: -- and perhaps appropriate for someone who you're supervising to have. Is there anything like that that you would consider to be relevant and appropriate that should not be exempted from FOIA in this case?

SARA BASFORD: They can have our -- our start date, our hire date, our salary. Personally they could have my performance appraisals. I mean that could be public knowledge. I have no issue with that.

I -- I would -- it's the -- it's the -- anything that's job related is perfectly fine.

It's when it come -- when it's not job related there's absolutely no reason for -- for an inmate or anybody to really have access to that.

You know if you chose to have your number not listed in the phone book or you have a suppressed driver's license or you chose to be private on social media, you know, you have a right to -- to keep your -- your personal life private. Yet an inmate can have access to your entire file of your employment history is ridiculous to me.

SENATOR MUSTO: Okay so when the -- the legislation specifically says a personal or medical file, or similar file and the similar file let's forget about for a second because we could -- you know that could mean anything.

When you're talking about a personnel file, you're talking about things like personal information, your -- your high school diploma and your college transcripts, things like that, parent's names, reference names, maybe you put down, you know, a brother or something as an emergency contact and something like that.

That's -- that's what you consider a personnel file. Is that fair? And -- and a bunch of other things you mentioned before.

SARA BASFORD: Yes.

SENATOR MUSTO: I'm not trying to limit it just to that.

SARA BASFORD: Sure.

SENATOR MUSTO: Those kinds of personal identifiers and those kinds of personal records

information, et cetera, that -- that identify you personally and -- and identify maybe family members, your address, driver's license, things like that. Everybody is nodding behind you too so I guess this okay. So that's your personnel file.

SARA BASFORD: Yes.

SENATOR MUSTO: Medical file I think we -- we were talking a little bit before about medical records from Civil War veterans and we had -- so, you know, medical checkups, any medications you may have had, you know, records of medical treatment, checkups, things like that, that's medical, that's also not job related. I think that's fair to -- maybe if you have some sort of --

SARA BASFORD: If it's job related, I mean I will say when I did go through my file due to all of this, there were some letters. I was in a car accident and took time off due to a car accident. All of that was in the file and that was released to the inmate.

SENATOR MUSTO: Okay.

SARA BASFORD: So there are some things in your, you know, personnel file that relate to medical but it wasn't like a diagnosis.

SENATOR MUSTO: Okay. And then there's this similar file which I'm not quite sure what that means. Is there anything else that you would consider out of bounds here like a personal or medical file that you would sort of lump into the similar file category? It's words -- words like that give me pause. You know we're not quite sure what they mean. They may mean something different to different people and

we're try -- you know one of the reasons we go through the public hearing is try to define what's in the statute.

SARA BASFORD: Well there are three files in the Judicial Branch that are kept at -- three different personnel files that are kept at three different locations.

In our home office, where for instance mine is Danbury, my chief would have a personnel file on me in -- in his desk with probably time sheets, performance appraisals, basic things.

Then there's another master file up in Hartford that has everything from the very first day I applied 15 years ago, my very first application or interview and everything there. And then there is another file at our central office which has other documents in it. I'm not sure exactly what documents are in it but when I did review one of my files, any e-mail that I'd ever sent to human resources in the past 12 years was printed out and in that.

So there was a lot of different information in there and -- and things like that were not redacted. The inmate has access to that.

SENATOR MUSTO: Okay so it sounds like, and you know again correct me if I'm wrong, and we're trying to get to the -- the good line here. It sounds like what you're talking about is things that are -- maybe personal and medical file isn't really the terms we should be using. Maybe it's any type of personal information identifiers, addresses, Social Security numbers certainly, everything that is personal as opposed to job related and certainly medical is -- would -- would fall under that category as personal as opposed to job related.

That's the sort of thing you're saying it's -- it's irrelevant to my job, it's irrelevant to how I do my job and there's no rational reason why this person whom I'm supervising should have it.

SARA BASFORD: Correct.

SENATOR MUSTO: That you believe should be excluded --

SARA BASFORD: Correct.

SENATOR MUSTO: -- and not subject to FOI. But things like job performance assessments, things like that, you don't have -- and -- and again if I say things like that, I shouldn't use that language either, it's a similar file.

But when you talk about job performance issues, discipline, you know, if you were investigated for discrimination against a certain class or race or religion, things like that, it should be in the file and those should be available.

SARA BASFORD: That's fine.

SENATOR MUSTO: You don't have a problem --

SARA BASFORD: That's related to job function, that's fine.

SENATOR MUSTO: Okay, all right.

Questions from members of the Committee?

Thank you very much.

SARA BASFORD: Thank you.

SENATOR MUSTO: Just -- I'm going to take a minute here as the Chair and ask Ms. Pearlman, could you hang around a little bit after this? We're going to want some feedback on this, at least I will on this issue. Thank you.

Next up Mr. Podosky -- Podolsky, excuse me.

SB95

RAPHAEL L. PODOLSKY: Thank you very much. I'm here in a -- different from my usual role on behalf of a state advisory board known as the Advisory Council to the Superior Court Housing Session. The Board goes back to 1978 when the first housing court was created and at the time -- and until last year it was known as the Citizens Advisory Council for Housing Matters.

The -- the Advisory Council has been very much involved in how courts handle housing matters and has been a -- a long-time advocate for making the court user-friendly and accessible to pro ses. Back in the 1980s the -- the Advisory Council was a pioneer in pushing for pro se forms in that part of the court system.

I'm here on behalf of the Council because last year Public Act 13-299, which is an omnibus bill on government agencies, in Committee you added some changes. You changed the name of the Council. You changed the size.

The Council, unfortunately, never noticed this bill at the time and only noticed it afterwards and asked for this bill to make two what I think are small changes in the Council.

One is they ask for the -- for the -- its name to be changed to something closer to its old name. The reason is housing matters, the Council on Housing Matters, adequately describes what it does so that phrase was in

Thank you.

SENATOR MUSTO: Thank you. Good timing, Raph.

For those -- we didn't announce it before but generally during this session we allow people three minutes to speak. No -- so far you're the only one that's rung the bell so that's good news.

Are there any questions from members of the Committee? No?

Thank you.

RAPHAEL L. PODOLSKY: Thank you very much.

SENATOR MUSTO: Real quick, Mr. Roda, would you sit down there for a second? Mr. Roda, you had heard what the -- the lady after you, Ms. Basford, had mentioned.

HB5125

Do you -- you were nodding sort of in the background along with some of your colleagues. Is that pretty much your understanding as well as to how this should work per 50 --

CARMEN A. RODA: Yes.

SENATOR MUSTO: Okay. I just wanted to confirm, you know, before -- it seems like there are a lot of people here about it. It seems like an issue. I want to make sure everybody is sort of on the same page.

CARMEN A. RODA: It is -- it is an issue. We are not opposed to our job performance appraisals being out to anybody. We are not opposed to our job functions, whether it was -- somebody was unfortunately disciplined being offered to our clients.

What we are opposed to is our personal information. For example, I'm recently married with two step-children. My wife's name and my step-children's names are in my personnel file. We don't believe that our family's information or things that would lead to our families should be given or our clients have access to that information.

We all believe that we took this job, we chose our job, to help protect the citizens of Connecticut. Our families didn't. They should have some kind of protection against the people we supervise. We take great lengths, even in our training, to make sure that there's an arms distance away.

SENATOR MUSTO: Are there any follow up questions from members of the Committee based on Mr. Roda's statement? No?

Thank you.

CARMEN A. RODA: Thank you, sir.

SENATOR MUSTO: Next person up is Andrew Schneider. Mr. Schneider? All right we'll skip over Mr. Schneider for now.

Claude Alpert.-- Albert.

CLAUDE ALBERT: Good afternoon. Senator Musto, Representative Jutila, thanks for letting me appear. I'm Claude Albert. I'm the legislative chair of the Connecticut Council on Freedom of Information. We're an organization that's been committed to furthering government transparency and accountability for more than 50 years now.

HB5124
HB5127

I'm here to strongly support Bill 5124, the act concerning historical records and Bill 5127 concerning the UCONN Foundation.

On the historical records bill, we think that this proposal, proposed by the State Librarian, is both reasonable and balanced, provides a reasonable and balance time limit for historical, medical and other records. It would put Connecticut in harmony with federal law including HIPAA which has a 50-year privacy limitation now and the practice of other authoritative institutions such as the National Archives.

We think the present law in Connecticut stifles legitimate and valuable historical research. It was enacted under murky circumstances in the last minute rush in 2011 when sweeping language which had failed to make it out of this very Committee but got tucked into a 98 section Public Health bill at the last minute.

You've heard about the research that prompted the bill. I think nobody would argue that it's both relevant and valuable. So in sum, we think Mr. Wiggin's proposal takes a big step forward to addressing this problem in a balanced way. Preserves the legitimate privacy interests of individuals during their lifetime and for a long period afterwards.

At the same time it would allow historians and other researchers to mine the historical record for that understanding of the past that enriches and informs our present and we think it's an opportunity for the Legislature to correct an overreaction, frankly, with a thoughtful law that serves both privacy and history.

SENATOR McLACHLAN: Thank you, Mr. Chair.

SENATOR MUSTO: Thank you, Senator.

Any other questions from members of the Committee? No.

Thank you very much.

Mr. Claude Albert is next.

CLAUDE ALBERT: That was me.

SENATOR MUSTO: Oh sorry. Who is -- I'm sorry, did Andrew Schneider show up?

ANDREW SCHNEIDER: Yes.

SENATOR MUSTO: Yes, thank you. Welcome.

ANDREW SCHNEIDER: Thank you. Good afternoon distinguished members of the Government Administration and Elections Committee. My name is Andrew Schneider. I'm the Executive Director of the American Civil Liberties Union of Connecticut and I'm here to testify against Raised Bill Number 5125, AN ACT LIMITING ACCESS TO CERTAIN INFORMATION REGARDING PROBATION OFFICERS UNDER THE FREEDOM OF INFORMATION ACT.

In 1996, Richard Straub was charged with more than 100 accounts -- 100 counts of of sexually abusing boys and young men. Most of them under his supervision as a probation officer. Police searched four probation offices in their investigation and found piles of documents showing that Straub was suspected of sexually abusing teenagers in his office and that these suspicions had been reported to his supervisors over the course of the preceding seven years.

According to the Hartford Courant, the police found complaints from coworkers and internal investigation reports, files, notes and other documents written by Straub's supervisors. These are the very kinds of documents the bill seeks to conceal, the very documents that the victims could have used to get help. And those victims were the only individuals, outside the Court Support Services Division, to know that these -- those documents might exist.

I remind you of this horrific story because it shows why an individual under the supervision of a probation officer or in prison for violating probation could have a legitimate, indeed a crucial, interest in such documents. The police investigation of Richard Straub revealed, by the way, that he often used the threat of a probation violation, of sending his victims to prison as a way to coerce them.

Of course the vast majority of probation officers could never be suspected of committing such horrible crimes. And it's understandable that the Committee wants to protect those hardworking and innocent probation officers from any harm.

Fortunately the Freedom of Information Act already does that. As Section 1-210 of the Connecticut General Statutes states quote nothing in the Freedom of Information Act shall be construed to require disclosure of personnel or medical files and similar files, the disclosure of which would constitute invasion of personal privacy, unquote.

Under the -- under this provision the Freedom of Information Commission has carefully and reasonably protected the privacy and safety of government employees without fail.

That's why this proposed exemption is unnecessary, a solution in search of a problem where none exists. It is an attempt to further erode the Connecticut's Freedom of Information Act without justification. There is no legitimate interest here that is not already protected. There is nothing to balance against the public's right to know.

Connecticut's Freedom of Information Act is intended to allow all of us who are subject to government authority to hold the government accountable for how it exercises that authority.

And none of us is more thoroughly subject to government authority, monitoring and supervision than individuals who are incarcerated or on probation. Nothing -- nobody is more vulnerable to the abuse of that authority. To exclude them as a class from access to information about the official conduct of the people who wield that authority over them is to invite injustice.

I respectfully ask you to reject this legislation. Thank you.

SENATOR MUSTO: Thank you, Mr. Albert. I have a couple questions.

ANDREW SCHNEIDER: It's Schneider.

SENATOR MUSTO: Mr. Schneider, sorry. Guess everybody is out of order today. Mr. Schneider, I apologize.

So you're -- you're referencing 1-210(b)(2) in your statement as the exemption. Is that correct?

ANDREW SCHNEIDER: Yes.

SENATOR MUSTO: That's when we were talking about, we've heard that before.

ANDREW SCHNEIDER: Yes.

SENATOR MUSTO: Okay. The standard there seems to be if it's an invasion of personal privacy. What -- how is that evaluated? Is that -- there's a -- there's certainly a standard for unwanted invasion of personal privacy that FOIA law currently governs. Is that the same standard for that provision as for other personal privacy?

ANDREW SCHNEIDER: Yeah I mean I -- I think it -- you know there's -- there's a certain sort of common sense that, you know, where there's official responsibilities, official public conduct, that ought to be transparent and made available to the public. Where it's personal information, you know, addresses, medical information, you know, that clearly is personal and private.

SENATOR MUSTO: Okay the -- the standard invasion of personal privacy, if -- if I remember correctly, is something like it has to be outrageous or -- or offensive to a person -- to a reasonable person, and maybe Ms. Pearlman can help me with this later, but I believe it's somebody that has to be --, and -- and have no completely -- be completely devoid or have no public relevance.

ANDREW SCHNEIDER: Uh-huh.

SENATOR MUSTO: Something like that. Again I'm trying to do this from memory and I'm not as

familiar with it as I'd like to be. Is that the standard that you believe applies there as well?

ANDREW SCHNEIDER: I mean I believe that standard has served us well. I -- you know I -- I don't think that there needs to be any -- any changes to the existing law.

SENATOR MUSTO: Okay. The case you cite of -- of the individual who was abusing young children, there was no prohibition at that time on that information (inaudible) it being released. Is that correct?

ANDREW SCHNEIDER: Yes as -- as far as I know.

SENATOR MUSTO: Okay. So this -- and you don't believe this law would change that? That that information would still be available under FOIA.

ANDREW SCHNEIDER: Well I think that this law -- that this proposed legislation could restrict that information from the public.

SENATOR MUSTO: In what way? If it -- if it's complaints from coworkers and evaluations and things like that how would --

ANDREW SCHNEIDER: And -- and the personnel file is being exempted from access to a FOIA request from a probation -- person on probation then I think that that could -- that information could be restricted.

SENATOR MUSTO: Okay. Would you agree or disagree with the two probation officers who testified that the issue of what is personal information is -- if we just -- if we define personal information, and -- and I know it says

personnel and that's -- we're trying to get --

ANDREW SCHNEIDER: Yeah, yeah.

SENATOR MUSTO: -- to the root. Okay. So if we define it instead as personal information, birth dates, Social Security number, address, family, you know, college transcripts, things like that, and medical, sir, I think you even said medical --

ANDREW SCHNEIDER: Yes, yes.

SENATOR MUSTO: -- should be something that's exempt.

ANDREW SCHNEIDER: Yes.

SENATOR MUSTO: Anyway if we define it in that way, would you object to the bill?

ANDREW SCHNEIDER: I think that sounds a lot more reasonable than a -- this blanket exemption that's -- that's proposed in the -- in the bill --

SENATOR MUSTO: Okay.

ANDREW SCHNEIDER: -- as written.

SENATOR MUSTO: And then if -- if 1-210(b)(2) applies as you're saying it does, what is the purpose of the exemption for public defenders, corrections officers, et cetera? Why is that not redundant of that 1-210(b)(2)?

ANDREW SCHNEIDER: And what is not -- why is (inaudible)?

SENATOR MUSTO: One of the -- Mr. Roda I think, one of the probation officers, testified earlier

said that they're looking for the same protections that corrections officers, DMHAS officials and public defenders are given in the Statute 18-101(f).

ANDREW SCHNEIDER: Yeah.

SENATOR MUSTO: It seems to me that that statute, since it's sort of -- it's almost identical to what we're talking about here today, if that statute provides additional protections for those classes of people, why is it not redundant of the exemption that your citing in 210(b)(2)?

ANDREW SCHNEIDER: You mean because the -- those exemptions go through those other classes. Why -- why can't we provide it here?

SENATOR MUSTO: Yeah why do we need both in the first place for those classes of people if two (inaudible)?

ANDREW SCHNEIDER: Yeah I -- I think -- in fact I -- I recall testifying against the -- the bill to restrict that blanket information for corrections officers a few years back.

SENATOR MUSTO: Okay. So you think that 18- -- the -- the one for corrections officers, 18-101(f) --

ANDREW SCHNEIDER: Yeah.

SENATOR MUSTO: -- you think that that goes farther than --

ANDREW SCHNEIDER: Than we would like.

SENATOR MUSTO: -- than 210(b)(2).

ANDREW SCHNEIDER: Yes.

SENATOR MUSTO: Okay. So -- okay. So what we're trying to do here obviously is -- is define those -- draw those lines.

ANDREW SCHNEIDER: Find that balance.

SENATOR MUSTO: Right.

ANDREW SCHNEIDER: Yeah.

SENATOR MUSTO: And it seems like you would agree -- and it sounds like so far the probation officers would agree that personal information, all the things we talked about, addresses, phone numbers, Social Security numbers, family information, marital status, his -- education, history, those things, are -- should be exempt -- or you wouldn't have an objection if those were exempt from FOIA?

ANDREW SCHNEIDER: Anything that -- that doesn't have a bearing on their official conduct --

SENATOR MUSTO: Okay.

ANDREW SCHNEIDER: -- that is -- is strictly personal and private information.

SENATOR MUSTO: Okay. All right. Thank you.

ANDREW SCHNEIDER: Thank you.

SENATOR MUSTO: Well hang on, hang on.

Any other questions from members of the Committee? No?

All right. Thank you very much.

that we had earlier today and we're holding it open until 4 o'clock so at this point we'll reconvene that meeting and I would entertain a motion to adjourn.

REP. LESSER: (Inaudible).

REP. JUTILA: Motion by Representative Lesser, seconded by Senator Meyer.

Any discussion? All those in favor, say aye.

VOICES: Aye.

REP. JUTILA: Opposed? Motion carried. The meeting is adjourned.

And now we will come back to the public hearing and the next speaker will be Mike Muszynski followed by Marshall Segar.

Is Mike Muszynski in the room? Does not appear to be so we will go on to Marshall Segar and he will be followed by LeAnn Power.

HB5125

MARSHALL T. SEGAR: Good afternoon. First let me begin by saying thank you to Senator Musto, Representative Jutila and members of the Government Administration and Elections Committee for the opportunity to come before you.

My name is Marshall Segar and I'm an attorney and I represent the Judicial Professional Employees Union. I'm also retired Deputy Chief of Police serving 22 years as a municipal police officer.

In my capacity as the Union's attorney I have encountered a growing number of instances whereby probation officers' personnel files and

similar employment records are being requested using the Freedom of Information Act as the vehicle for this request.

Some of these requests are legitimate and within the intent of open government statutes like Connecticut's Freedom of Information Act. Some requests, unfortunately, are made without legitimate reason. Instead probation clients and inmates are using the Act for nefarious purposes.

These nefarious purposes are attempts to intimidate and harass the probation officer who, in most cases, is supervising the client or has sent them to jail for violating the probation -- their probation.

With my experience as an attorney and as a law enforcement executive, I know public safety and the policies behind it. As such, it is disturbing for me and to those who I represent to learn that loopholes in the Freedom of Information Act allow for abuse and misuse of such a powerful statutory scheme. Passing Raised Bill 5125 will close such a loophole.

It should be noted that criminal offenders that are on probation do have a forum in which to file complaints about their probation officers. I have attached a -- a copy of the applicable policy and complaint form to my written testimony.

Raised Bill 5125 does nothing to interfere or curtail with this procedure nor does it obstruct traditional means of discovery, disclosure or legal process.

As with Connecticut General Statute 18-101f and its amendments, the Legislator -- Legislature

recognized the potential for danger that exists when inmates or those being supervised by corrections officers are able to access employment records of those precise people who are supervising them.

The danger of personal information being circulated by an inmate population was enough for the General Assembly to act to prevent it. These probation officers are seeking the same degree of protection as they have direct daily contact with criminal offenders.

I realize that this bill only provides protection from intrusions by criminal offenders on probation or those who have violated their probation.

I also realize that further encroachments of the Freedom of Information Act are not popular topics here and now. But I also recognize that these men and women need the protections -- need the protections afforded to them in House Bill -- correction Raised Bill 5125 so they can continue to do their jobs and perform professionally without the specter of nefarious and malicious attacks on their personal property.

I urge you to please pass Raised Bill 5125. Again thank you for your time and for this opportunity. I would be happy to answer any questions that you may have.

SENATOR MUSTO: Thank you, sir. You're representing the Union today?

MARSHALL T. SEGAR: I am.

SENATOR MUSTO: Okay. And you were here -- have you been here the whole time? Did you hear what

the other probation officers had to say who testified?

MARSHALL T. SEGAR: I have, yes sir.

SENATOR MUSTO: Okay. Is -- is that acceptable in your eyes what -- what we talked about as far as making personal information, medical information, et cetera, exempt under all circumstances but job-related information accessible?

MARSHALL T. SEGAR: Not only is it acceptable but I've made it a point today during the Committee hearing to reach out to Attorney Pearlman and to Mr. Schneider from the ACLU to offer compromise and a willingness to work with them to ensure that this is a unilateral -- it's going to be a bilateral support of this bill.

We do not seek to encroach or infringe upon FOI other than to provide protections for public safety professionals like probation officers. If we can agree on restricting information to job performance appraisals, work-related job function-related documents, we do not have a problem with that.

Just to echo some of the testimony that I heard from Probation Officer Basford, her resume that she submitted when she was hired by the Judicial Branch, seemingly is an innocuous, nonprivacy issue-related document but the information contained on it was -- or was prior home addresses, information about references and their information, addresses, et cetera.

That may seem innocuous. That may seem not a violation of privacy but it goes out -- it goes out to inmates and people who are on probation and they may utilize that information for less

than legitimate purposes.

So yes, Senator, we're happy to keep on discussing with our colleagues at the Freedom of Information Commission, ACLU or whatever other stakeholders are involved in this process.

SENATOR MUSTO: Thank you.

Any other -- yes, Representative Lesser.

REP. LESSER: Thank you, Mr. Chairman.

And thank you for your testimony. I missed some of your earlier conversation so I apologize if this has come up. But one of the things that was apparent to me when I was reading about this -- this issue was that as I understand it existing law should protect at least the address of the officer and if that's being released, then there may be an issue where folks aren't obeying existing law.

So while I'm supportive of the concept that you're expressing, I was curious if there are other ideas that you had about how will we make sure that where information being released would violate existing law, that that -- that that law is not being broken. How do we protect your members, the people you represent?

MARSHALL T. SEGAR: Well that's an excellent question and as a licensed attorney I would never intimate that the Judicial Branch was violating the law but what I can tell you is that the exemptions -- the exclusions, exceptions, under the current act, the Freedom of Information Act on 1-210(b)(2), do provide for a privacy screening of the information that goes out to the requestor.

Unfortunately case law that is based on those -- that privacy screening, under the Perkins v. Freedom of Information Commission case, creates a very high, high threshold for determining whether something is an invasion of privacy.

I spoke earlier about this innocuous resume or college transcripts or things that were in Probation Officer Basford's file. To the -- to the casual or screener -- the casual onlooker or the screener of that document it's not going to rise to the level of a Perkintet -- Perkins test exemption and it's going to go out.

As far as how I would like to protect the members, 18 -- 18-101f is a -- is a great start. If that has some objection and we need to further refine the bill and we need to further refine our request to prevent the release of personal information such as former addresses, other things that are not job related, we're agreeable to that.

Yes statutes do protect the release of home addresses but the addresses in their personnel file may be former home addresses which is not protected.

REP. LESSER: Thank you.

SENATOR MUSTO: Yes, Representative Lemar.

REP. LEMAR: Thank you, Mr. Chairman.

Thank you again for your testimony. I think Ms. Basford and Mr. Roda have done a great job kind of highlighting where they see the potential concern as and then a great job clarifying what the language in the proposed bill says versus what their real concerns

actually are. And so I think it's -- it's been a terrific conversation and I admire your ability to work with those who are generally opposed to your approach to try and figure out if there is ways to work together moving forward.

We've used the words resumes and transcripts in a way to outline concerns about addresses getting released that we'd prefer to protect. I want to make sure that we are in agreement though that resumes and transcripts are the types of things that we think should be available to the general public. We just think that we should redact the identifiable information on those types of documents. Am I -- am I hearing that correctly?

MARSHALL T. SEGAR: I don't disagree with you but I would -- I would argue, Representative Lemar, that information that may seem innocuous on some documents: resumes, letters of reference, correspondence to and from human resources which again to the casual onlicker -- onlooker who the -- or the person who is screening these documents, may not seem as invasive when, in fact, they are coupled with other documents that may be in that file.

So I understand you're concerned and the general public does have the right to know but we're not restricting this to the general public. We're restricting this to inmates and people on probation. And strike that, inmates that are incarcerated for violating their probation, not all inmates. So it's a very narrow scope of people who are impacted by this legislation or proposed legislation. The general public does have a right to know.

REP. LEMAR: Thank you. I -- I just want to -- my

-- my only concern is as we as a Committee and -- and generally in the state are struggling with this idea of what is prevailable and what is not, what are we withholding, what are we not.

I think the qualifications and education of people who hold these positions is something that folks should have access to. By folks I mean even those who are on probation. I would just concern myself with -- with the level of effort that's put into ensuring that all person -- personally identifiable information and addresses are redacted from that.

I want to get to that underlying point but I -- I -- to me that's the crux of this. It's like we want to make sure that information is available and is available to everyone, resumes, qualifications, classes that you took. I think that's part of the scope of information that should be available.

I just -- you know I want to try and highlight, if we can as a Committee and with your work with Mr. Schneider and -- and others, what is it that we're most concerned about and how do we ensure that we have the staffing ability and education and training to make sure that the old resume that's okay to release but we're taking that extra step and ensuring that addresses are scrubbed from that.

You know even -- you know Social Security numbers are released in different formats but unfortunately allow Ms. Basford's entire Social Security to be released in those documents and I want to make sure we're hitting the real issue and not just blanketly outlining documents that can never be released. And so I appreciate your effort to work with that I -- I

appreciate the conversation back and forth.

MARSHALL T. SEGAR: I -- if in fact the training and experience of a probation officer are a legitimate issue that needs to be released under FOI, I don't have a problem with that. These are professional employees. They all are educated. Their college degrees are a requisite for employment with the Judicial Branch.

So on that note, yes, it is job performance related. Where they went to school, where they lived while they were in school, recommendations from college professors and the like are not information that should be released and are not job specific and job task related.

REP. LEMAR: Thank you.

Thank you, Mr. Chairman.

SENATOR MUSTO: Yes, Representative Sear.

REP. SEAR: I thank you very much.

So there's one component which is the data, but my sense is that -- that that data, whatever that data is, there's a vulnerability that that's being used in a retaliatory or harassing manner?

MARSHALL T. SEGAR: Yes.

REP. SEAR: That as a psychological component to the parole officer. Am I correct?

MARSHALL T. SEGAR: Probation officer.

REP. SEAR: Parole officer -- the probation, I'm

sorry.

MARSHALL T. SEGAR: Parole are currently exempt.

REP. SEAR: Okay but the probation yes. But there's a perceived vulnerability that they're being retaliated against. This is an avenue for retaliation and harassment and I -- I agree with -- with you it's a balance of public safety and public knowledge.

I -- I just don't know where we draw that line. If somebody is intent on, you know, utilizing that mechanism for retaliation or harassment, I guess maybe I'm just trying to help the debate, what information provides legitimate harmful ammunition or whatever to that -- to that intent and which wouldn't? I mean is there a way that we can debate that?

MARSHALL T. SEGAR: To speak to that directly, Representative, I can tell you this much that there is no uniformity in what is contained in a personnel file. There could be a vast array of different types of documents depending on what the employee is attempting to put the employer on notice of.

They could be putting them on notice of their qualifications for promotion. They could be putting them on notice of the birth of a child to change their medical coverage. They could be putting them on notice of a address change. They could be putting them on notice of a whole host of things.

So to say that a personnel file is comprised of any one particular series of documents is probably well beyond the scope of this Committee, well beyond the scope of the employer to try to regulate.

With that being said, under 18-101f is a general exemption. To the general they can't get it. That provides for a great deal of clarity because they can't get it. Now we're only talking about people who are incarcerated for violation of probation, in Connecticut General Statute 53a-32, and those currently on probation.

Once they're -- once they've served their debt to society and their full rights as a citizen are restored and as such they can get the information. But while they're being supervised, to prevent that intimidation, to prevent that harassment, to prevent that scenario that you've articulated, that's why we would need the bill as drafted keeping in mind that if we were protect personal, we have to be articulate so it's not personnel, but personal information from nefarious requestors I'm happy to work with the Committee, aides, staff, Legislative personnel, any stakeholder in being able to draft a bill that's not only agreeable for the Committee but that's going to be agreeable to the floor of the House and the Senate.

REP. SEAR: Thank you.

SENATOR MUSTO: Any other questions from -- yes, Representative Molgano.

REP. MOLGANO: Thank you, Mr. Chairman.

I just want to make -- hear something clearly here. When we're talking about those who should not have access that are either on probation or violation of probation, the information you're not allowed to, who that is not in that group should have access to that?

MARSHALL T. SEGAR: Who -- if you're -- if I understand your question correctly, everyone. If they're not within that class of people, the people who are incarcerated through 53a-32, or currently being supervised by CSSD for probation, the -- the information is available to the general public, properly redacted and in compliance with the Freedom of Information Act of course.

REP. MOLGANO: Okay. So the parts that are private would be redacted.

MARSHALL T. SEGAR: That's correct.

REP. MOLGANO: It's not general public knowledge.

MARSHALL T. SEGAR: That's correct.

REP. MOLGANO: That's what I wanted to make clear. Thank you.

Thank you, Mr. Chairman.

SENATOR MUSTO: Thank you, Representative.

Other questions?

So, sir, I -- I could not remember before the Perkins standard the two-pronged test. Do you happen to know it off the top of your head? I don't mean to put you on the spot but --

MARSHALL T. SEGAR: You're going to put me on the spot in front of Hearing Officer Pearlman.

SENATOR MUSTO: Yeah I couldn't remember it so -- okay. I'll ask her later, don't worry about it.

MARSHALL T. SEGAR: The -- the two-pronged test -- to do the two pronged test number one it has to be a matter of public concern and as you -- the second prong, as you have indicated, is that it's shocking to the conscience is probably the wrong test but that's the only one that I remember but it's a very high standard.

It has to be a matter of public concern and it has to be objective -- or excuse me objectionable to a reasonable person. I believe that's a standard. I will defer to Attorney Pearlman. She is the expert.

SENATOR MUSTO: All right, we'll ask her later. Thank you. I guess that's it.

MARSHALL T. SEGAR: Thank you very much.

SENATOR MUSTO: Thank you.

Did Mr. Muszynski appear? No, okay.

LeAnn Power.

LEANN POWER: Good afternoon, Senator Musto, Representative Jutila and distinguished members of the GAE Committee. My name is LeAnn Power. I'm the public records administrator. I'm speaking on behalf of the State Librarian, Kendall Wiggin, who has a family medical situation which prevents him from being here today.

The State Library has submitted written testimony on Senate Bill 91 and House Bill 5124. First I will speak regarding our concerns with Senate Bill 91 which could have widespread implications regarding the retention and preservation of long-term and permanent public records.

quick? Thank you.

So first of all, what's the standard (inaudible)?

PAULA S. PEARLMAN: Okay so the standard for the disclosure of personal medical or similar files it's whether it would (inaudible) no privacy. So an agency claiming that exemption would first have to show that it's a personnel -- personnel, medical or similar file and then second that, under the records should not be disclosed because it does not pertain to a matter of legitimate public concern and that the information is highly offensive to a reasonable person. So that's the standard that currently exists.

HB5125

SENATOR MUSTO: Okay. So for things we're talking about, transcripts and -- and resumes and things like that, those wouldn't (inaudible) be considered offensive I would imagine.

PAULA S. PEARLMAN: Generally no.

SENATOR MUSTO: Okay. All right. I -- I assume someone's home address would not be considered offensive either.

PAULA S. PEARLMAN: There is -- there's within the FOI Act there's 1-217 that provides for the redaction of a certain delineated category of public employees and so I know that law enforcement fits within there.

So those addresses are already permitted to be redacted under the FOI Act.

SENATOR MUSTO: Okay. I know you were sitting there the whole time so I'm just -- you know you heard what the folks had said from -- who were

representing the correction -- excuse me the probation officers.

What -- what's your reaction to that sort of discussion as far as whether things that are really -- I can't -- I can't -- I understand some of the arguments about how someone's qualifications and things might -- but we can talk about the details, but as -- as a general matter that the issue of those personal, as opposed to personnel, personal matters and medical records should just, as a basic rule, not be disclosed? What is -- what's your reaction to that discussion?

PAULA S. PEARLMAN: Well I -- I think it was -- generally speaking it's the information that would pertain to someone's job (inaudible) qualifications within the personnel records, disciplinary records and should be made available.

I -- I would have to just -- you'd have to be more specific in terms of what type of personal information. If it's in -- information pertaining to someone's divorce or their children, their marital status even, perhaps that information could be redacted.

You know if someone was out sick for six months, the -- the fact that they were out for six months should be made available if you're a public employee. Now depending on the reason they were out, it may or may not be a legitimate reason to be disclosed or not.

You'd have to really look at what exactly -- what the information is and what it would be disclosing.

Just commenting on one. The -- I don't know

the -- the probation officer's name and when she testified she -- she indicated that certain information was released and, under current law, you know, looking at it, the Commission would -- I would be surprised if they would have ordered the redact -- I -- excuse me disclosed because the Commission -- there's no actual statute but the Social Security numbers are always redacted. They're always ordered redacted.

If -- depending on the residential address, if it fits within the -- those delineated categories of employees, those would be -- those would be redacted and if the -- the agency to whom the request was made, they would have to first look at it and then see if they thought there would be a reason to believe that was an invasion of privacy.

And if they thought it was, they would inform the individual that a request is made and give that individual an opportunity to object and it doesn't sound like that was given in her -- in her particular situation.

SENATOR MUSTO: Yeah I think, you know, it sounds like that's one of the reasons for the request for the blanket exemption is that it's a matter of practice and just in reality.

You know things are going to slip through the cracks whether as she said -- the -- the lady who testified her Social Security number was redacted on, you know, one document. The first three numbers were redacted on the second document. The last four were redacted and, you know, on the third document. The middle two were redacted so if you put them all together you could sort of get the whole number.

If -- if you had a blanket exemption, that would clearly make that not an issue because nothing would go out the door in the first place so that's -- you know I think what some of the testimony here was -- was alluding to.

And when we're trying to draw these lines here in the Legislature and the Committee and on the FOIA Commission, you know, we're -- we're trying to figure out what would be a reasonable, not compromises to (inaudible), but a reasonable position to take as far as someone's home address, the names and addresses and ages of their children. I think we can pretty much agree that that's not really appropriate.

And the point also that the person who was in prison, the cellmate is the person who actually wrote her a letter. The cellmate, if it was not one of her charges, could have gotten that information himself.

So it -- it really doesn't even -- it -- it seems - it seems like the restrictions may not go far enough in some ways to keep home addresses, you know, former addresses, marital status, things like that, private unless there are other -- subject to other exemptions in FOIA law that may exist that -- that we haven't talked about much today.

But in some ways maybe too far where you're talking about the entire personnel file where there could be instances where someone's history of discipline for -- for example, you know, disproportionately violating people who are African-American, for example. That might be a valid inquiry and we don't want to prevent anybody from having that information, most -- perhaps especially those people under

supervision by that person.

So you guys being the Commission, we -- we talk to you a lot about this. You know your opinion I think is going to be very valuable to us, not only what the position should be of the law in the State of Connecticut, the Legislature and this Committee specifically, but also as a practical matter what can we do to protect these individuals and their personal information, their privacy from harassment and perhaps worse but also to not unduly restrict the ability of those who may oversee (inaudible) to get the information they might need to prove their case.

The -- the one instance -- I know it's an extreme example obviously that the gentleman brought up about the probation officer who was sexually abusing his charges. I mean obviously that's, we hope, an extreme and -- and isolated incident but to the extent that information should have been available to that person's charges I think that would be important. That particular person's home address and what the name of his children were, probably not important to that charge in any case.

So that's -- I -- I think I'm making more of a statement than I'm asking a question but I -- I do want to get from you at some point, maybe not now, if you have a chance to think about it after the testimony you've heard, subject to whatever other questions the Committee may have certainly, I'd -- I'd like to have more of a conversation about that and where we should draw that line and certainly as a practical matter when they have three different files and some things don't come before your Commission and, you know, the resume may be appropriate for some instances but not in others but in no

instance is the address -- home address important and we're going to need to look at all that a little more carefully.

PAULA S. PEARLMAN: Okay.

SENATOR MUSTO: But that's it for me. Any -- any other -- yes, Senator McLachlan.

SENATOR McLACHLAN: Thank you, Mr. Chairman.

Thank you for staying and -- and offering further clarification. I wonder if the situation with the probation officer from Danbury, it is your understanding, am I hearing correctly, that it -- it may have been a procedural mistake, if you will, in some of the disclosure in that particular case?

PAULA S. PEARLMAN: I don't want -- I don't want to say it was the procedural mistake. I don't know if I was clear before. I know that some of the information that she said was disclosed. The Commission has not ordered (inaudible) disclosed.

So for instance the Social Security number, Commission has ordered redacted. I believe there are also some DMV statutes that would -- that regulate disclosure of driver's licenses and I think her driver's license information was disclosed also.

Without obviously looking at the file, I don't know -- I don't -- the agency may or may not have looked at the file and determined whether it could have been a reasonable invasion of privacy. Perhaps whoever looked at the file just said here you go, here's the -- just take the file.

I don't know if they sat down and actually reviewed it and made the determination whether it would be an invasion of privacy. If they had and they believe that it would be reasonable invasion of privacy, then they would have -- under the FOI law, they would have given the individual whose record was requested the opportunity to object to the disclosure of -- of the -- the personnel file and it doesn't sound like that happened in this case.

I -- I don't know who made the determination. Whether they just believed that the whole personnel file should be handed over, that was unclear to me from her -- her testimony.

SENATOR McLACHLAN: Thank you. And for further clarification, the other protected classes of state employees, law enforcement for instance, they have a blanket exclusion is -- is my understanding and there is no disclosure whatsoever. Is that correct or is it just home addresses?

PAULA S. PEARLMAN: It's within 1-217 of the FOI Act that deals with the residential addresses of law enforce -- of law enforcement individuals and there's a number -- I've -- I've actually lost count of how many there are. Every year there seems to be a new category added to the -- the redaction -- the residential redaction list.

But it would just be their -- their person -- excuse me the residential addresses. The personal records of law enforcement are subject to disclosure. But again when a request is made for their personnel records, they could claim 1-210(b)(2), the personnel and medical file exemption.

SENATOR McLACHLAN: Thank you. Thank you for being here.

Thank you, Mr. Chairman.

REP. JUTILA: I'd like to join in thanking you for spending the rest of the afternoon with us here to -- to come back. It's an important issue and I -- I think you can tell by some of the commentary and the questions that are being asked that this Committee takes this issue very seriously and as is so often the case not only in FOI, but maybe particularly in FOI, not only in this Committee but in all the committees here, the Legislature is often left with the task of balancing between competing interests.

And in the course of the -- the dialogue we've had here today, particularly when the -- the proponents of the bill were speaking, they seemed to be very forthright in their recognition that there is certain information that is really important to them to not be disclosed and other information that -- that they feel is rightfully something that the public should have access to when it seemed like that's the balance that we're trying to strike here.

And there was a lot of discussion about personal versus personnel information and maybe that's where we need to try to get at this from is what really is that personal information that is important to the -- the people who have the concerns that are, you know, coming out in this proposed legislation to try to figure that out and -- and if there's a way to describe that in statutory language.

I don't know if there is yet some way without getting into every single detail but I would

just leave you with that thought that, you know, maybe that's a key area that we look at and try and strike some kind of balance here.

And again if you want to comment on any of that, that's fine. If you want to think about it, you know, that's probably even better but maybe both but I'll thank you once again for your -- your testimony today and your patience in answering our questions.

Well no other questions for Ms. Pearlman?

Then we'll ask one more time if Mike Muszynski ever made it? And looking as though he did not or --

PAULA S. PEARLMAN: I just want -- I just want to say --

REP. JUTILA: Go ahead.

PAULA S. PEARLMAN: -- thank you for -- for taking into consideration, you know, our testimony and for the questions and we look forward to working with you.

REP. JUTILA: Okay. Thank you once again.

Is there anyone else in the room that did not have an opportunity to testify who would like to?

Seeing no one coming forward, we will declare the public hearing adjourned.

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Speaker #1 - Public List

TESTIMONY OF ADULT PROBATION OFFICER CARMEN RODA

IN SUPPORT OF H.B. 5125

PUBLIC HEARING, H.B. 5125

AN ACT LIMITING ACCESS TO CERTAIN INFORMATION REGARDING PROBATION OFFICERS UNDER THE FREEDOM OF INFORMATION ACT.

February 19, 2014

Good afternoon. First, let me begin by saying thank you to Senator Musto, Representative Jutila and the members of the Government Administration and Elections Committee for the opportunity to speak to you.

My name is Carmen Roda. I am an Adult Probation Officer with the State of Connecticut Judicial Branch. I am assigned to the Bridgeport Office. I have been employed by the Judicial Branch for over 12 years with a total of over 22 years of service with the State. I am also the Vice President of the Judicial Professional Employees Union. We are an AFT affiliate. We represent nearly 1300 Judicial Branch employees. 700 of which are probation officers.

It is the mission of the Court Support Services Division to reduce the number of people who reoffend all the while keeping offenders accountable for their actions. It is also, as part of our duties as probation officer, to keep our clients at an arm's length and not to have any undue familiarity with them. This is not only a sound practice, but is part of our Judicial Branch operating procedures. This theme of preventing "undue familiarity" is the purpose behind H.B 5125. If probation officers cannot have undue familiarity with their clients, why should clients have undue familiarity with their probation officers?

H.B. 5125 would prohibit those persons on probation or those incarcerated for violation of probation from accessing a probation officer's personnel file or similar file through the Freedom of Information Act. Similar protections currently exist for corrections officers and others with close contact with offenders. I have attached a copy of C.G.S. 18-101f to my written testimony. C.G.S. 18-101f protects corrections officers from inmate FOI requests. In 2011, 18-101f was modified to include the Public Defender's Office. I have attached a copy of Public Act 11-220 to my written testimony.

It is interesting that in the public testimony for those Bills, former Acting Corrections Commissioner Brian Murphy and former Pardon and Paroles Chairman Robert Farr articulate that inmates are using FOI as a means to intimidate staff. This was is no small part because of the daily and direct contact Corrections staff has with inmates. Moreover, it was stated that the corrections function and parole function are not always agreeable to those in custody. I have attached Mr. Murphy's and Mr. Farr's testimony to my written testimony.

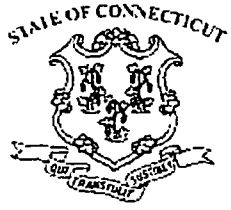
It is these same issues that confront probation officers. We have direct daily contact with criminal offenders. The probation function is not always agreeable to those being supervised. Because of that, we are subject to intrusive inquires of our employment records through the Freedom of Information Act. I will admit that this Bill does nothing to shield our records from the general public. Nor are we asking for that. Rather, we are asking to be protected from FOI requests from those criminal offenders we supervise and those who are incarcerated for violating their probation. We are looking for the same protections afforded to other public servants. H.B. 5125 does just that and is similar to that of C.G.S. 18-101f

As public safety professionals we are asking for your help protect our information while we continue to protect the citizens of Connecticut.

Please pass H.B. 5125.

Again, thank you for your time and for this opportunity.

I would be happy to answer any questions you may have.



Senate Bill No. 38

Public Act No. 11-220

AN ACT CONCERNING ACCESS TO INFORMATION CONCERNING THE DIVISION OF PUBLIC DEFENDER SERVICES AND SECRET BALLOTS OF VOLUNTEER FIRE DEPARTMENTS UNDER THE FREEDOM OF INFORMATION ACT.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Subdivision (1) of section 1-200 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2011*):

(1) "Public agency" or "agency" means:

(A) Any executive, administrative or legislative office of the state or any political subdivision of the state and any state or town agency, any department, institution, bureau, board, commission, authority or official of the state or of any city, town, borough, municipal corporation, school district, regional district or other district or other political subdivision of the state, including any committee of, or created by, any such office, subdivision, agency, department, institution, bureau, board, commission, authority or official, and also includes any judicial office, official, or body or committee thereof but only with respect to its or their administrative functions, and for purposes of this subparagraph, "judicial office" includes, but is not limited to, the Division of Public Defender Services;

(B) Any person to the extent such person is deemed to be the functional equivalent of a public agency pursuant to law; or

(C) Any "implementing agency", as defined in section 32-222.

Sec. 2. Section 18-101f of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2011*):

A personnel or medical file or similar file concerning a current or former employee of the Division of Public Defender Services, Department of Correction or the Department of Mental Health and Addiction Services, including, but not limited to, a record of a security investigation of such employee by the department or division or an investigation by the department or division of a discrimination complaint by or against such employee, shall not be subject to disclosure under the Freedom of Information Act, as defined in section 1-200,

as amended by this act, to any individual committed to the custody or supervision of the Commissioner of Correction or confined in a facility of the Whiting Forensic Division of the Connecticut Valley Hospital. For the purposes of this section, an "employee of the Department of Correction" includes a member or employee of the Board of Pardons and Paroles within the Department of Correction.

Sec. 3. Subsection (d) of section 1-212 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2011*):

(d) The public agency shall waive any fee provided for in this section when:

(1) The person requesting the records is an indigent individual;

(2) The records located are determined by the public agency to be exempt from disclosure under subsection (b) of section 1-210;

(3) In its judgment, compliance with the applicant's request benefits the general welfare; [or]

(4) The person requesting the record is an elected official of a political subdivision of the state and the official (A) obtains the record from an agency of the political subdivision in which the official serves, and (B) certifies that the record pertains to the official's duties; or

(5) The person requesting the records is a member of the Division of Public Defender Services or an attorney appointed by the court as a special assistant public defender under section 51-296 and such member or attorney certifies that the record pertains to the member's or attorney's duties.

Sec. 4. (NEW) (*Effective October 1, 2011*) Nothing in chapter 14 of the general statutes shall be construed to require the disclosure of secret ballots used for the election of an officer of a volunteer fire department.

Approved July 13, 2011

Sec. 18-101f. Prohibition against disclosure of certain employee files to inmates under the Freedom of Information Act.

A personnel or medical file or similar file concerning a current or former employee of the Division of Public Defender Services, Department of Correction or the Department of Mental Health and Addiction Services, including, but not limited to, a record of a security investigation of such employee by the department or division or an investigation by the department or division of a discrimination complaint by or against such employee, shall not be subject to disclosure under the Freedom of Information Act, as defined in section 1-200, to any individual committed to the custody or supervision of the Commissioner of Correction or confined in a facility of the Whiting Forensic Division of the Connecticut Valley Hospital. For the purposes of this section, an "employee of the Department of Correction" includes a member or employee of the Board of Pardons and Paroles within the Department of Correction.

Department of Correction

Testimony of Brian K. Murphy, Acting Commissioner

Government Administration and Elections Committee

Raised Bill No. 5404, *An Act Concerning the Nondisclosure of Certain Information Regarding Department of Correction Employees to Inmates Under the Freedom of Information Act*

March 8, 2010

Good morning, Senator Slossberg, Representative Spallone and honorable members of the Government Administration and Elections Committee. I am Brian K. Murphy, Acting Commissioner for the Department of Correction. I am here this morning to speak in strong support of the concept contained in Raised Bill No. 5404, *An Act Prohibiting the Disclosure of Employee Files to Inmates An Act Concerning the Nondisclosure of Certain Information Regarding Department of Correction Employees to inmates Under the Freedom of Information Act.*

Inmate abuse of the Freedom of Information (FOI) process is a new and growing issue for the Department of Correction and other systems across the country. Eleven states have amended their FOI statutes in order to limit inmates' access to records. Washington State most recently amended their laws in March 2009 to limit inmate access.

Inmates are seeking personal information about the DOC staff through the FOIA, as a means or retaliation and intimidation. Over the course of the past six years, the agency has seen increasing usage of the FOIC by the inmate population in our correctional facilities. In a growing number of instances, inmates are attempting to utilize these statutes as a weapon against my staff. It is becoming part of the inmate culture that if a correctional officer files a disciplinary report against you, or confiscates contraband in your cell; a means of getting back at that officer is to FOI his or her personnel file. I do not believe that this is what these laws were intended for.

In fighting this and speaking in strong support of the nondisclosure of DOC employee files to inmates, I am upholding the agency's mission of protecting the public, protecting my staff and their families as well as maintaining the safety, security and good order of our correctional institutions.

FOIC has taken the position that inmates use the FOI process as a means to air grievances about the correctional system. Inmates have appropriate avenues, both internally and externally, to file grievances. There are a number of

administrative and legal remedies readily available to and regularly used by inmates to address complaints about the agency and the staff.

Additionally, nothing in the FOIA requires the disclosure of personnel or similar files which would constitute an invasion of privacy. The FOIC interpretation of this statute is that staff personnel or similar files do not meet the personal privacy criteria and are public records. I don't believe it was the intent of the legislature to allow the FOIA to be used by the inmate population as a harassment and intimidation tool.

I respectfully request the passage of legislation that would provide essential statutory protection that would protect my staff from disclosure of personal information to inmates. The majority of the Department's employees are classified as hazardous duty and have regular ***daily, direct*** contact with the inmate population. They work with accused and sentenced offenders in correctional facilities and with offenders in the community. Even those employees who do not work directly with the offender population have exposure to and can be affected by those who are incarcerated through their work in facilities and by decisions they may make in the course of their employment.

Gates and wires are security mechanisms to maintain order and safety but the most important tool is the correctional staff. It is the staff that maintains control and order within the facilities and in the community through their interpersonal skills and professionalism.

The safety and security of staff and the facility are severely compromised when inmates have access to an employee's files – whether they are personnel, medical, disciplinary, affirmative action or security investigative files. Providing <u>any</u> information about an employee to an inmate undercuts the training that the Department provides for all new and current employees not to divulge information about themselves or another employee to an inmate. For the Department to be ordered to release such information to inmates places the Department in the untenable position of committing a violation of its own policy – something for which a staff person would certainly be disciplined and more likely be suspended or terminated from state service. Personal information that I have described about staff can be and is used to harass, manipulate and extort staff.

The following is an example of how an inmate uses FOI for harassment and intimidation purposes: Inmate T. has requested personnel or similar files on any staff member who issues him a disciplinary report, poor work report or shakes down his cell for contraband--all within the realm of their official duties. The staff member is then placed in the position to defend his personal information from the inmate population.

The Department is currently appealing eight FOIC decisions in which it was ordered to release employee files or information to inmates. In one case, *Taylor I*

(2007),[1] the hearing officer recognized the danger in releasing the employee record and found the documents exempt under *C.G.S. §1-210(b)(18)*.[2] He based his findings and decision on the testimony presented by me and based on my 26-year history as a correctional professional with special expertise in gang management.

Despite the hearing officer's findings, the full Commission stripped the decision of these findings, did not acknowledge my expert testimony, stated no evidence was presented to support the Department's position and ordered the release of the requested records. The Superior Court sustained the Department's appeal of this order.

That same inmate brought another appeal requesting staff files (*Taylor II*).[3] In its final decision in this case the FOIC acknowledged that it lost the appeal of the first case (*Taylor I*). It nevertheless again ordered the release of staff files to the inmate. The FOIC maintained that its decision in *Taylor I* was correct and that, pending final resolution of *Taylor I* by the Appellate Court or Supreme Court, it was bound in *Taylor II* by the same standard of proof applied in the earlier decision. That case, too, is being appealed.

The FOIC's decision in *Taylor I* not only undermines Departmental policy and compromises safety and security within our state's correctional facilities, it ignored a prior Superior Court decision[4] that recognized the legislative intent of *C.G.S. Section 1-210(b)(18)*, which gives me, as Commissioner of Correction, the authority to deny disclosure of records that I have "reasonable grounds to believe may result in a safety risk, including the risk of harm to any person or the risk of an escape from, or a disorder in, a correctional institution or facility..."

There continues to be requests from the inmate population for staff personnel and similar files. The arguments presented by the Department and the testimony and witnesses put forth by the Department remain the same in all subsequent cases. The safety and security exemption allowed to the commissioner of correction by the legislature with regards to "reasonable grounds" is almost never met, with the exception of one case despite the fact that the staff and members of the Commission have no correctional experience. The outcome from the Freedom of Information Commission does not change.

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[1] *David Taylor v. Commissioner, State of Connecticut, Dept. of Corr.*, Docket #FIC 2006-502, (9/12/07)

[2] *C.G.S 1-210(b)(18)* exempts "Records, the disclosure of which the Commissioner of Correction...has reasonable grounds to believe may result in a safety risk, including the risk of harm to any person or the risk of an escape from, or a disorder in, a correctional institution or facility under the supervision of the Department of Correction..."

[3] *David Taylor v. Commissioner, State of Connecticut, Dept. of Corr*; *and State of Connecticut, Dept of Corr.*, Docket #FIC 2008-029 (12/10/08)

[4] *State of Connecticut, Department of Correction, v. Quint & The FOIC, Conn. Super. LEXIS 1742 (J. Levine)*

It is estimated that approximately $1 million per year is expended to respond to all inmate FOI requests for the Department as well as other state agencies and municipalities. The Department believes that passage of this language would result in cost-savings to the state. In a recent inmate case, the staff cost to the state taxpayer for just the hearing process exceeded $10,000.

In order to continue to protect the safety of our community, staff and other inmates, we are calling upon the legislature to insure that inmates cannot obtain personal information of correctional staff.

I urge your support for Raised Bill No. 5404 and respectfully request your consideration of the attached proposed substitute language. Passage of proposed substitute language will ensure not only the safety and surety of our correctional staff and their families but also our correctional facilities.

Thank you for giving me this opportunity to speak on this very important issue. I will be happy to address any questions you may have.

Government Administration and Elections Committee

Testimony re: Raised Bill No. 5404

An Act Concerning the Nondisclosure of Certain Information Regarding Department of Correction Employees to Inmates Under the Freedom of Information Act

Submitted by Robert Farr, Chairman - Board of Pardons and Paroles
March, 8th, 2010

Good morning, Senator Slossberg, Representative Spallone and honorable members of the Government Administration and Elections Committee. I am Robert Farr, Chairman of the Board of Pardons and Paroles. I am here this morning to support the concept contained in Raised Bill No. 5404, *An Act Prohibiting the Disclosure of Employee Files to Inmates An Act Concerning the Nondisclosure of Certain Information Regarding Department of Correction Employees to inmates Under the Freedom of Information Act.*

Inmate abuse of the Freedom of Information (FOI) process is a new and growing issue for the Department of Correction and other systems across the country. Eleven states have amended their FOI statutes in order to limit inmates' access to records. Washington State most recently amended their laws in March 2009 to limit inmate access.

I concur with the Commissioner Murphy's testimony where he states that Inmates that are seeking personal information about the DOC staff through the FOIA, are doing so as a means of retaliation and intimidation

For that reason, I would request that this legislation be amended to mirror the substitute language in SB 221 as reported out by the judiciary committee, which would protect members and employees of the Board of Pardons and Paroles.

Whereas Freedom of Information Requests have been levied against correctional staff, they can also be directed toward members and/or officers of the Board of Pardons and Paroles. Many inmates who are not happy with the Board and its decision-making authority or officers who present cases to the Board can seek to retaliate against my fellow members and staff as well.

Given that the Department of Corrections has seen an increase in usage of the FOIC by the inmate population in our correctional facilities, I fear that is only a matter of time before many of these requests are levied against our agency I do not believe that this is what the Freedom of Information was established for.

Thank you for your attention. I would be happy to any questions you may have.

Sincerely,

Robert Farr

Robert Farr, Chairman

It is estimated that approximately $1 million per year is expended to respond to all inmate FOI requests for the Department as well as other state agencies and municipalities. The Department believes that passage of this language would result in cost-savings to the state. In a recent inmate case, the staff cost to the state taxpayer for just the hearing process exceeded $10,000.

In order to continue to protect the safety of our community, staff and other inmates, we are calling upon the legislature to insure that inmates cannot obtain personal information of correctional staff.

I urge your support for Raised Bill No. 5404 and respectfully request your consideration of the attached proposed substitute language. Passage of proposed substitute language will ensure not only the safety and surety of our correctional staff and their families but also our correctional facilities.

Thank you for giving me this opportunity to speak on this very important issue. I will be happy to address any questions you may have.

Line Number 16

Page Number 4
Speaker # 2 - Public List

TESTIMONY OF ADULT PROBATION OFFICER SARA BASFORD

IN SUPPORT OF H.B. 5125

PUBLIC HEARING, H.B. 5125

AN ACT LIMITING ACCESS TO CERTAIN INFORMATION REGARDING PROBATION OFFICERS UNDER THE FREEDOM OF INFORMATION ACT.

February 19, 2014

Good afternoon. First, let me begin by saying thank you to Senator Musto, Representative Jutila and the members of the Government Administration and Elections Committee for the opportunity to be heard.

My name is Sara Basford. I am an Adult Probation Officer with the State of Connecticut Judicial Branch. I am assigned to the Danbury Office. I have been employed by the Judicial Branch for over twelve years.

As a probation officer, I supervise people convicted of a wide variety of crimes. It is the mission of the Court Support Services Division to reduce the number of people who reoffend all the while keeping offenders accountable for their actions. It is this accountability that needs to be addressed and H.B. 5125 does just that.

H.B. 5125 would not permit those persons on probation or those incarcerated for violation of probation to access my personnel file through the Freedom of Information Act. Similar protections currently exist for corrections officers and others with close contact with offenders. I have close contact with offenders and have been harassed by inmates simply because I have done my job as a probation officer.

In June of 2012, an inmate who was incarcerated for violating his probation made a Freedom of Information Act requesting my personnel file and other employment records. I was not informed of the request. Subsequently, information about me from my personnel file was sent to an inmate. A year after, I began receiving love letters from an inmate being held in the same correctional facility as the inmate that requested my information through the Freedom of Information Act. A copy of a letter I received is attached to my written testimony. In that letter, it says that he received my information from another inmate. The inmate that has my information and the one who sent me the letter is a reported member of a notorious street gang.

The release of this information was done without my knowledge and incompliance with current loopholes in the law.

I am asking that these loopholes be closed, as they have been closed for other public servants. Passing H.B. 5125 would close these loopholes.

As a public safety professional I am asking to help protect our information while I continue to protect the citizens of Connecticut.

Again, thank you for your time and for this opportunity.

I would be happy to answer any questions you may have.

11-9-1

DEAR, SARA BASFORD

MY NAME IS MIKEY [redacted], AND FOR REAL NO LIE, THIS IS MY LAST ENVELOPE T.IL FRIDAY. AND I AM WRITING YOU BECAUSE MY FRIEND TOLD ME YOU W LOOKING FOR A MAN WHO IS CAPABLE OF TAKEING GOOD CARE OF THEM SELF'S AND WHO CAN SUPPORT YOU, AND HE SAID YOU WOULD LOVE ME BECAUSE, I FIT YOUR CRITERIA AND YOU LIKE BIZZNESS MEN. - I GOT A ILL JOB WRITTING FILM SCRIPS=G AND I AM TRYING TO MEET SOMEONE WHO CAN HELP ME STAY ON POINT AND MAINTAIN. I HOPE YOU DONT FEEL AKWARD. BUT I AM JUST TRYNA GET MY ACT TOGETHER AND STAY OUT THE JA SCENARIO! I'MA TELL YOU A LIL MORE ABOUT ME AND IF YOU ARE INTERESTED LET ME KNOW A.S.A.P.= I AM COMEING HOME SOON AND I GOT LONG HAIR, BRAIDS. I DO HAVE TONS OF TATTOOS, BUT NO GANG WORDS, JUST A BIG CASTLE ON MY BACK AND YOU WILL LOVE THE ART ON MY CHEST, A HEART WITH WINGS AND A RIVER MAKEING IT LOOK LIKE THE HEART FADE AWAY, (!!) AND I GOT A SMALL HOUSE, NOT A MANSON! PAID OFF AND A BMW 750. 2010, WHITE I OWN A LLC COMPONY IN NEW MILFORD, CT AND I AM A WRIGHTER AND MADE $350,000 LAST YEAR OFF A SCRIPT... AND IF YOU DONT BELEAVE ME, LOOK ME UP ON GOOGEL!!!! AND THERE MAY BE A CRIME I DID BACK IN THE DAY ABOUT A HESS GAS STATION, I AINT GOING TO LIE... I DID IT BUT IT WAS YEARS AGO WHEN I USE TO SMOKE WEED. I BEEN SOBER FOR 2 YEARS AND I WONT SMOKE. I AM 5'9.. 170 POUNDS AND I DRAW PORTRIAT'S B+W! EVEN IF YOU AINT INTRESTED... I'LL DRAW YOU FOR FREE, TO SHOW YOU I HAVE TALENT! I AM A GOOD MAN CAUGHT IN THE MIX... TRYING TO TURN MY LIFE AROUND. SO LET ME KNOW WAS GOOD BEALTIFUL... RESPECFULY SUBMITED,

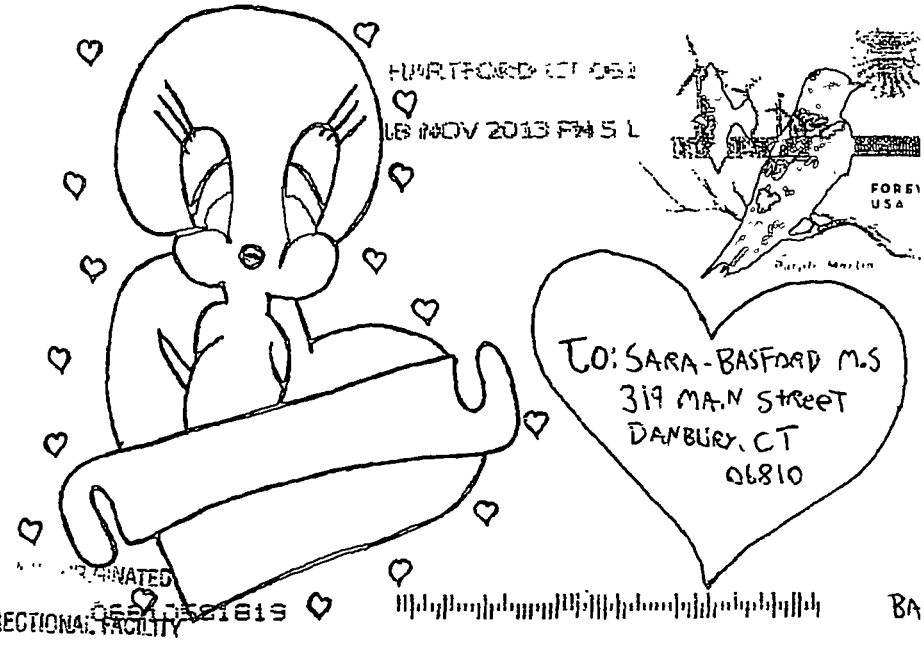
MIKEY [redacted]

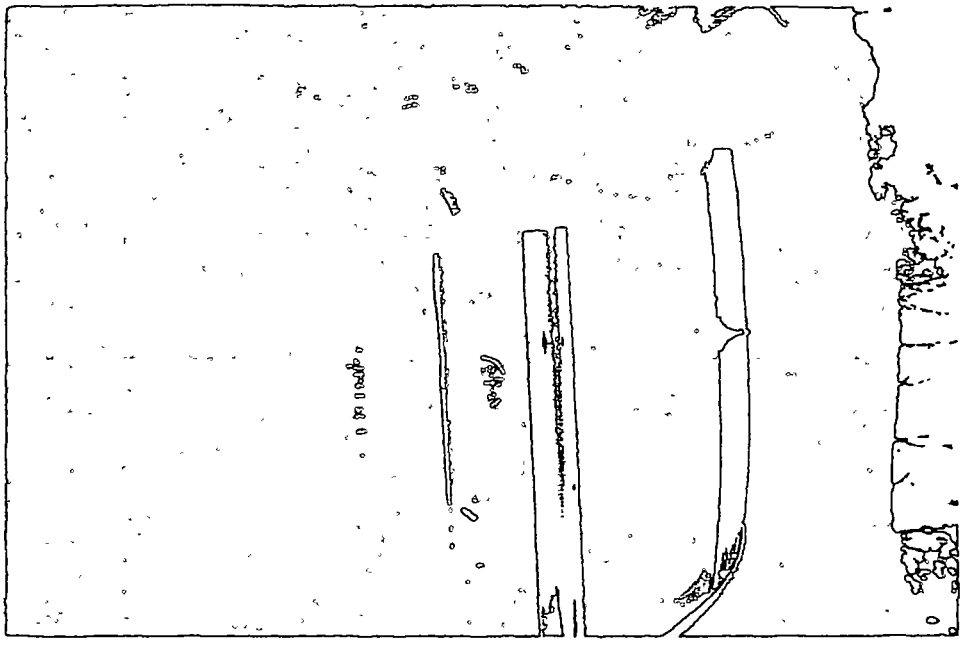
WWW.FACEBOOK.COM/MIKEY.[redacted]

[illegible] PUBLISHING PRODUCTIONS LLC

☆ SORRY FOR DRAWING ON ENVELOPE.... MY LAST ENVELOPE TO YOU... ☆

[redacted]
V CORRECTIONAL CENTER
VICH - NEW LONDON TPKE
E, CT 06382





Speaker #5 - Public List

330 Main Street, Hartford, Connecticut
860-523-9146 | www.acluct.org

Testimony in Opposition to Raised Bill No. 5125, An Act Limiting Access to Certain Information Regarding Probation Officers under the Freedom of Information Act

February 19, 2014

Good afternoon Senator Musto, Representative Jutila and distinguished members of Government Administration and Elections Committee. My name is Andrew Schneider. I'm the executive director of the American Civil Liberties Union of Connecticut and I'm here to testify against Raised Bill No. 5125, An Act Limiting Access to Certain Information Regarding Probation Officers under the Freedom of Information Act.

In 1996, Richard Straub was charged with more than 100 counts of sexually abusing boys and young men, most of them under his supervision as a probation officer. Police searched four probation offices in their investigation and found piles of documents showing that Straub was suspected of sexually abusing teenagers in his office and that these suspicions had been reported to his supervisors over the course of the preceding seven years. According to The Hartford Courant, the police found complaints from co-workers, internal investigation reports, files, notes and other documents written by Straub's supervisors.[1] These are the very kinds of documents this bill seeks to conceal, the very documents that his victims could have used to get help. And those victims were the only individuals outside the Court Support Services Division to know that those documents might exist.

I remind you of this horrific story because it shows why an individual under the supervision of a probation officer or in prison for violating probation could have a legitimate, indeed a crucial, interest in such documents. The police investigation of Richard Straub revealed, by the way, that he often used the threat of a probation violation, of sending his victims to prison, as a way to coerce them.

Of course the vast majority of probation officers could never be suspected of committing such horrible crimes. And it's understandable that this committee wants to protect those hard-working and innocent probation officers from any harm. Fortunately, the Freedom of Information Act already does that. As Section 1-210 of the Connecticut General Statutes states: "Nothing in the Freedom of Information Act shall be construed to require disclosure of ... [p]ersonnel or medical files and similar files the disclosure of which would constitute an invasion of personal privacy."[2] Under this provision, the Freedom of Information Commission has carefully and reasonably protected the privacy and safety of government employees, without fail.

That's why this proposed exemption is unnecessary, a solution in search of a problem where none exists. It is an attempt to further erode the Connecticut's Freedom of Information Act without justification. There is no legitimate interest here that is not already protected. There is nothing to balance against the public's right to know.

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[1] http://www.courant.com/news/special-reports/hc-straub.artdec1996,0,3841703.story
[2] http://www.cga.ct.gov/2011/pub/chap014.htm#Sec1-210.htm

Connecticut's Freedom of Information Act is intended to allow all of us who are subject to government authority to hold the government accountable for how it exercises that authority. And none of us is more thoroughly subject to government authority, monitoring and supervision than individuals who are incarcerated or on probation. Nobody is more vulnerable to the abuse of that authority. To exclude them as a class from access to information about the official conduct of the people who wield that authority over them is to invite injustice.

I respectfully ask you to reject this legislation.

Line Number 17

Page Number 9

Speaker #7 - Public List

TESTIMONY OF ATTORNEY MARSHALL T.SEGAR

IN SUPPORT OF H.B. 5125

PUBLIC HEARING, H.B. 5125

AN ACT LIMITING ACCESS TO CERTAIN INFORMATION REGARDING PROBATION OFFICERS UNDER THE FREEDOM OF INFORMATION ACT.

February 19, 2014

Good afternoon. First, let me begin by saying thank you to Senator Musto, Representative Jutila and the members of the Government Administration and Elections Committee for the opportunity to come before you.

My name is Marshall Segar, I am an attorney and I represent the Judicial Professional Employees Union. I am also a retired Deputy Chief of Police, serving 22 years as a municipal police officer.

In my capacity as the Union's attorney, I have encountered a growing number of instances where by probation officers' personnel files and similar employment records are being requested using the Freedom of Information Act as the vehicle for this request. Some of these requests are legitimate and within the intent of the open government statues like Connecticut's Freedom of Information Act. Some requests, unfortunately, are made without legitimate reasons. Instead, probation clients and inmates are using the Act for nefarious purposes. These nefarious purposes are attempts to intimidate and harass the probation officer who in most cases is supervising the client or has sent them to jail for violating their probation.

With my experiences as an attorney and as a law enforcement executive, I know public safety and the policies behind it. As such, it is disturbing for me, and to those who I represent, to learn that loopholes in the Freedom of Information Act allow for abuse and misuse of such a powerful statutory scheme. Passing H.B. 5125 will close such a loophole.

It should be noted that criminal offenders that are on probation do have a forum in which to file complaints about their probation officer. I have attached a copy of the applicable policy and complaint form to my written testimony. H.B. 5125 does nothing to interfere or curtail this procedure. Nor does it obstruct traditional means of discovery, disclosure or legal process.

As with C.G.S. 18-101f, and its amendments, the legislature recognized the potential for danger that exists when inmates, or those being supervised by corrections officers, are able to access employment records of those precise people who are supervising them. The danger of personal information being circulated by an inmate population was enough for the General Assembly to act to prevent it. The probation officers are seeking that same degree of protection as they have direct, daily contact with criminal offenders. I realize that this Bill only provides protections from intrusion by criminal offenders on probation or those who have violated their probation. I also realize that further encroachments on the Freedom of Information Act are not popular topics here and now. But I also recognize that these men and women need the protections afforded to them in H.B. 5125 so they can continue to do their jobs and perform professionally without the specter of nefarious and malicious attacks on personal privacy.

I urge you to please pass H.B. 5125.

Again, thank you for your time and for this opportunity.

I would be happy to answer any questions you may have.

State of Connecticut JUDICIAL BRANCH COURT SUPPORT SERVICES DIVISION POLICY AND PROCEDURES	POLICY NO 1.4	EFFECTIVE DATE June 15, 2009	PAGE 1 of 6
	SUPERSEDES. November 1, 2005		
APPROVED BY. William H. Carbone, Executive Director	TITLE. **ADMINISTRATION, ORGANIZATION, & MGMT** **INVESTIGATIONS**		

1. **Policy** The Court Support Services Division (CSSD) will ensure that members of the public and CSSD employees have an accessible central office at which they may raise concerns about the conduct of CSSD employees or individuals serving a term of probation or under pre-trial supervision, and have those concerns addressed in an appropriate manner.

2. **Definition** For the purposes stated herein, the following definitions apply:

   A. Administrative Investigation An official inquiry conducted within and by personnel of the CSSD.

   B. Administrative Investigator A CSSD employee assigned by the Executive Director or designee to conduct an Administrative Investigation.

   C. Alleged Misconduct by CSSD Employee Report Form Official CSSD form JD-AP-145, http://spforms/CourtForms/Shared%20Documents/PDF/ap145.pdf detailing the nature of a complaint.

   D. Americans with Disabilities Act (ADA) The federal law which protects the rights of employees with disabilities.

   E. Criminal Investigation An official inquiry conducted by a law enforcement agency.

   F. Internal Complaints A complaint reported by a CSSD staff member regarding another CSSD staff member.

   G. Investigation Summary Report The final written report containing findings and recommendations submitted to the CSSD Executive Director.

   H. Person with Complaint A member of the public and/or a Judicial Branch employee.

   I. Serious Misconduct Serious misconduct includes, but is not limited to:

      (1) Criminal activity

      (2) Offensive, indecent or abusive conduct toward the public, superiors, co-workers, subordinates, clients, detainees, etc.

      (3) Theft, willful neglect or misuse of any state funds, property, equipment, material or supplies, including state-owned vehicles

(4) Deliberate violation of any law, regulation, CSSD or Judicial Branch policy or procedure

(5) Impairment while on duty

(6) Gross neglect of duty

(7) Prohibited political activity

(8) Other activity that is similarly detrimental to the best interest of the CSSD.

J. Statement of Witness Form The official CSSD form where statements from witnesses will be recorded.

3. **Procedures**

A. Internal Complaint All CSSD employees will be responsible to report any incident that reasonably appears to involve serious misconduct by any other CSSD employee.

B. Complaints of Misconduct from the Public Complaints from the public will be handled in accordance with the prescribed policy for oral and written complaints.

C. Administrative Investigation The Executive Director or designee will complete an administrative investigation in accordance with this policy, for all alleged misconduct reported on the Alleged Misconduct by CSSD Employee Report Form, JD-AP-145, http://spforms/CourtForms/Shared%20Documents/PDF/ap145.pdf. Other management staff may be utilized as needed, to assist in the investigation process.

D. Multiple Investigations Some alleged ADA violations, affirmative action violations and sexual harassment complaints will require a separate investigation by the Affirmative Action and Employment Discrimination Program Coordinator. The CSSD Manager of Human Resources will be notified of the results of this investigation, as appropriate.

E. Possible Criminal Conduct When possible criminal activity is alleged, (i.e., physical or sexual assault, risk of injury, theft, drug abuse, sexual contact, damaged property, etc.), such complaints will be directed to the CSSD Manager of Human Resources.

The state or local police will also be notified immediately. Any doubt as to whether conduct should be reported to the police will be resolved in favor of reporting, after consultation with the CSSD Manager of Human Resources or designee. The CSSD Manager of Human Resources will cooperate with the police investigation and ask to be kept apprised of the results thereof.

F. Notice of Procedures for Telephonic and Written Complaints of Misconduct The name, address, telephone number and email address of the CSSD Manager of Human Resources or designee should be posted prominently in each office of the CSSD. The Notice (CSSD Attachment A and Spanish Version, Attachment A1), informs both the public and Division employees that an Alleged Misconduct by CSSD Employee Report Form, Judicial Form JD-AP-145, http://spforms/CourtForms/Shared%20Documents/PDF/ap145.pdf will be available from the supervisor at that location as well from the CSSD Manager of Human Resources. It is the responsibility of the office supervisor to ensure that this Notice is visibly posted in a public area. In the event that the person with complaint wishes to bring certain conduct to the attention of a supervisor or the CSSD Manager of Human Resources but does not wish to file a written complaint, the notice will also provide that oral complaints will be permissible.

G. Investigation Process for Oral Complaints Oral complaints made to the local supervisor of the employee against whom the complaint is made should be handled in one of two ways:

(1) Complaints of a non-serious nature that can be resolved at the local office with agreement of the person with complaint will be handled as other minor disciplinary matters are, and without the involvement of the Human Resource Management Unit.

(2) For more serious complaints or non-serious complaints that cannot be resolved without additional involvement, the person with complaint should be urged to fill out an Alleged Misconduct by a CSSD Employee Report Form. The party receiving the complaint shall assist the person with complaint in completing the form. If the person with complaint does not wish to fill out the form, he/she will be referred to the CSSD Manager of Human Resources.

(3) If the allegation involves serious misconduct, the party receiving the complaint will immediately contact the CSSD Manager of Human Resources

and forward the completed Alleged Misconduct by a CSSD Employee Report Form thereafter.

(4) For oral complaints about either a serious complaint or unresolved non-serious complaint made to the CSSD Manager of Human Resources, a Misconduct Report Form should be immediately completed by the person with complaint or, in the alternative, by the CSSD Manager of Human Resources or designee. If the person with complaint wishes to remain anonymous, then "Anonymous" shall be entered in lieu of the person with complaint's name on the Misconduct Report Form. Once the Alleged Misconduct by a CSSD Report Form is complete, the procedure for written complaints shall be followed.

H. Investigation Process for Written Complaints on Alleged Misconduct by a CSSD Employee Report Form

(1) One copy of all completed forms shall be given to the person with complaint. The original will become part of the investigation file. Immediately after the Alleged Misconduct by a CSSD Employee Report Form is completed, one copy will also be sent to both the Executive Director and the CSSD Manager of Human Resources.

(2) Upon the receipt or completion of the Alleged Misconduct by a CSSD Employee Report Form, the CSSD Manager of Human Resources will determine, based upon the seriousness and nature of the allegations, whether the Human Resource Management Unit will conduct the investigation or whether the matter will be referred to the Executive Director for further investigation.

(3) Once the determination is made by the Executive Director or designee as to who will conduct the administrative investigation of misconduct detailed on the Alleged Misconduct by a CSSD Employee Report Form, the investigation should begin immediately. The investigation normally will be conducted concurrently with the criminal investigation and/or the affirmative action investigation, where these occur.

(4) The party assigned to conduct the investigation will be responsible for the development of all evidence in the administrative investigation. This includes, but is not limited to, obtaining physical evidence, gathering all relevant documents, interviewing all individuals who may have information relevant to the alleged violation, and obtaining statements from all involved persons and witnesses.

(5) Whether the investigation is handled by the CSSD Manager of Human Resources or designee, upon its conclusion, the Statement of Witness Form (**CSSD Attachment B**), will be completed detailing the nature of the investigation and the conclusions relevant to the conduct of the employee. The investigator will send all Statement of Witness forms to the CSSD Manager Human Resources immediately upon its completion.

I. Determination of Action to be Taken A thorough review of the investigation file, applicable policies, and all other related materials will be completed by the CSSD Manager of Human Resources and reported to the CSSD Executive Director. If no administrative action is warranted, the employee who is the subject of the investigation will be so informed in writing, and the case will be closed. If administrative action is warranted, it will be handled in accordance with existing CSSD Policy and Procedure 2.13, Employee Discipline. Upon completion of the investigation, the CSSD Manager of Human Resources will notify the person with complaint.

J. Investigation File An investigation file showing the chronology of events will be compiled and maintained by the CSSD Manager of Human Resources or designee. The file will include the following information:

(1) Alleged Misconduct by CSSD Employee Report form

(2) Any Statement of Witness forms obtained

(3) Interview notes and observations

(4) Any physical evidence obtained

(5) Pertinent documents

(6) Written reports identifying similar incidents and explanation of disciplinary action(s) taken

(7) Investigation Summary Report Form (**CSSD Attachment C**).

K. Complaints by the public concerning individuals serving a term of probation or under pre-trial supervision will be handled as follows:

(1) Oral or written complaints received by field staff will be communicated in writing to the local office/facility supervisor.

(2) The Supervisor will review the complaint and if the address or location of the individual making the complaint is known, respond in writing or face-to-face. A copy of the complaint and the response or summary of the response will be forwarded to the Regional Manager or, in the case of Juvenile Detention, to the Deputy Director of Residential Services for review. The Regional Manager / Deputy Director will retain copies.

(3) Written or oral complaints received directly by CSSD Central Office staff will be forwarded to the Executive Director.

(4) The Executive Director or designee will review and investigate the complaint and respond in writing to the complaint party, or to the party who initially forwarded the complaint to the CSSD Central Office. A copy of the initial complaint and the written response will be retained by the Executive Director or designee.

4. **Reference** American Correctional Association (ACA) 4th Edition Performance Based Standards for Adult Probation and Parole Field Services. 4-APPA 1C-02, 2G-02, 2002, ACA, Lanham, Maryland.

5. **Exceptions** Any exception to this policy will require prior written approval from the Division's Executive Director.

STATE OF CT – JUDICIAL BRANCH
COURT SUPPORT SERVICES DIVISION

Attachment A
1.4 - Investigations

NOTICE

If you want to report any form of harassment, discrimination, or misconduct by an employee of this office you may, in addition to any other options available to you by law:

ASK TO SPEAK TO A SUPERVISOR

(OR)

COMPLETE AN INCIDENT REPORT FORM (BELOW)

(OR)

CONTACT
MANAGER OF HUMAN RESOURCES
AND INVESTIGATIONS
936 Silas Deane Hwy.
Wethersfield, CT 06109
TEL: 1-866-627-1583
hr.incidentreport@jud.state.ct.us

- **Your probation will not be negatively affected if you file a complaint.**
- **Filing a complaint does not relieve you from your responsibilities to the court.**

AVISO

Si desea denunciar algún acto de acoso, discriminación o conducta inapropiada cometido por un empleado de esta oficina, Ud. dispone de los siguientes recursos, además de los previstos por la ley:

PEDIR HABLAR CON UN SUPERVISOR

(O)

COMPLETAR UN FORMULARIO DE DENUNCIA DE INCIDENTE (ABAJO)

(O)

COMUNICARSE CON EL DIRECTOR DE INVESTIGACIONES Y RECURSOS HUMANOS
936 Silas Deane Hwy.
Wethersfield, CT 06109
TEL: 1-866-627-1583
hr.incidentreport@jud.state.ct.us

- **Presentar una queja no perjudicará su régimen probatorio.**
- **Presentar una queja no lo exime de sus responsabilidades ante el tribunal.**

STATE OF CT - JUDICIAL BRANCH
COURT SUPPORT SERVICES DIVISION

Attachment B
1.4 - Investigations

STATEMENT OF WITNESS / INVOLVED PERSON

Facility	Location of Incident	Incident Date	Time (AM/PM)

Statement of (Name)	Title

Description of Conduct	(Describe accurately and completely events that occurred. Indicate persons involved. If injury occurred, describe nature of injury, cause, and actions taken to treat injury.)

Knowledge that this statement is accurate an complete to the best of my knowledge and belief.

Signature	Date	Time (AM/PM)

STATE OF CT - JUDICIAL BRANCH
COURT SUPPORT SERVICES DIVISION

Attachment C
1.4 - Investigations

Investigation Summary Report Form

Date of Investigation:

Alleged Perpetrator:

Alleged Victim(s):

Date of Incident:

Location of Incident:

Description of Allegation:

Investigation Details

INDIVIDUALS INTERVIEWED:

DOCUMENTS REVIEWED:

INTERVIEW SUMMARY & FINDINGS:

POLICY MODIFICATION RECOMMENDATIONS:

OTHER NOTES:

SUBMITTED BY:

NAME:

TITLE:

DATE:

FREEDOM OF INFORMATION COMMISSION STATEMENT IN OPPOSITION TO RAISED BILL 5125, AN ACT LIMITING ACCESS TO CERTAIN INFORMATION REGARDING PROBATION OFFICERS UNDER THE FREEDOM OF INFORMATION ACT

February 19, 2014

The Freedom of Information Commission (FOIC) submits this statement in opposition to Raised Bill 5125 concerning the personnel records of probation officers.

The bill would provide a blanket prohibition on the disclosure of "personnel or medical file or similar files" including discrimination complaints and security investigations concerning probation officers (both current and former) to individuals under the supervision of the Court Support Services Division or certain individuals committed to the custody or supervision of the Commissioner of Correction.

The proposal is unnecessary because there is already an exemption contained in the Freedom of Information Act that can be utilized to withhold these kinds of records under appropriate circumstances. Section 1-210(b)(2) provides for the non-disclosure of personnel, medical or similar files that, if disclosed, would constitute an invasion of personal privacy. The Supreme Court has provided in Perkins v. FOI Commission, 228 Conn. 158, 175 (1993), the standard to determine what constitutes an invasion of personal privacy. The explicit language of the statute, coupled with the time-tested standard set forth by the Supreme Court, already establishes a comprehensive, objective and effective method by which to protect information relating to public sector employees.

Hiring decisions, investigations and disciplinary matters, commendations, timesheets – all are public records whose accessibility to the public helps ensure accountability of all public employees – including probation officers.

For these reasons, the FOIC urges rejection of Raised Bill 5125.

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