

Legislative History for Connecticut Act

**PA 15-164**

HB6750

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CONNECTICUT  
GENERAL ASSEMBLY  
SENATE**

**PROCEEDINGS  
2015**

**VOL. 58  
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SENATE

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THE CHAIR:

Seeing no objection, so ordered, sir.

SENATOR DUFF:

On Calendar Page 26, Calendar 619, House Bill 6750.  
I'd like to place that item on the Consent Calendar.

THE CHAIR:

Seeing no objection, so ordered, sir.

SENATOR DUFF:

On Calendar Page 12, Calendar 518, House Bill 6770.  
I'd like to place that item on the Consent Calendar.

THE CHAIR:

So ordered, sir.

SENATOR DUFF:

Thank you, Madam President. On Calendar Page 13,  
Calendar 525, House Bill 6984. I'd like to place that  
item on the Consent Calendar.

THE CHAIR:

Seeing no objection, so ordered, sir.

SENATOR DUFF:

On Calendar Page 14, Calendar 531, House Bill 6994.  
I'd like to place that item on the Consent Calendar.

THE CHAIR:

Seeing no objection, so ordered, sir.

SENATOR DUFF:

On Calendar Page 17, Calendar 557, House Bill 6155.  
I'd like to place that item on the Consent Calendar.

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THE CLERK:

House Bill 6915. Page 4, Calendar 383 -

THE CHAIR:

Hold on a minute. Mr. Clerk, you're gonna have to use your microphone so we can hear you, please. I apologize. Thank you.

THE CLERK:

Page 4, Calendar 382, House Bill 6915. Page 4, Calendar 383, House Bill 6723. Page 5, Calendar 390, House Bill 6317. Page 5, Calendar 437, House Bill 6771. Page 5, 438, House Bill 6772. On Page 6, Calendar 439, House Bill 6259. On Page 8, Calendar 480, House Bill 6910.

On Page 8 also, Calendar 481, House Bill 6978, and on Page 9, Calendar 500, House Bill 6579. On Page 10, Calendar 502, House Bill 6868. Page 11, Calendar 511, House Bill 6937. Also on Page 11, Calendar 513, House Bill 6986, and on Page 12, Calendar 515, House Bill 6902.

Also on Page 12, Calendar 521, House Bill 6971. On Page 12 again, Calendar 522, House Bill 6834. Page 12, Calendar 518, House Bill 6770. On Page 13, Calendar 524, House Bill 6997. Also on Page 13, Calendar 525, House Bill 6984, and on Page 14, Calendar 530, House Bill 6977.

Also on Page 14, Calendar 531, House Bill 6994. Page 15, Calendar 535, House Bill 6730. Page 17, Calendar 552, House Bill 6884. Page 17, Calendar 557, House Bill 6155. On Page 18, Calendar 564, House Bill 7000. Page 18 again, 566, House Bill 6138. Also on Page 18, Calendar 571, House Bill 5092, and on Page 19, Calendar 577, House Bill 6853.

On Page 20, Calendar 585, House Bill 6571. Page 20, Calendar 578, House Bill 6852. On Page 23, Calendar 606, House Bill 5660, and on Page 24, Calendar 609, House Bill 5257. Page 24, Calendar 611, House Bill 7060. Page 24, Calendar 610, House Bill 7050. On Page 25, Calendar 617, House Bill 6020.

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On Page 26, Calendar 619, House Bill 6750. Also on Page 26, Calendar 620, House Bill 6745. Page 27, Calendar 627, House Bill 5101. Page 29, Calendar 635, House Bill 5110. Also on Page 29, Calendar 641, House Bill 6967. On Page 30, Calendar 645, House Bill 6943, and also on Page 30, Calendar 642, 6707.

THE CHAIR:

Thank you, Mr. Clerk. We're adding - we have to add one more. Hold on for one second, please.

[pause]

THE CLERK:

On - and the last item is on Page 19, Calendar 576, House Bill 6976.

THE CHAIR:

Mr. Clerk, will you call - hold on a minute. There's a question. Senator Kelly, you have a question? Senator Kelly.

SENATOR KELLY:

Thank you, Madam President. That last item on Page 19, the Clerk called 576, House Bill 6976. Was it supposed to be 57 - Calendar No. 575, 6975?

THE CHAIR:

Senator Duff.

SENATOR DUFF:

Thank you, Madam President. And thanks to Senator Kelly for the - catching that. Yes, it is Calendar 575, House Bill 6975.

THE CHAIR:

6975.

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And that is Page 19, Calendar 575, House Bill 6975.

THE CHAIR:

Are there any other corrections anybody has? If not, at this time, Mr. Clerk, will you please call for a roll call vote on the Consent Calendar. The machine is open.

THE CLERK:

Immediate roll call has been ordered in the Senate.  
Immediate roll call on today's Consent Calendar has been ordered in the Senate.

[pause]

THE CHAIR:

If all members have voted, all members have voted. The machine will be closed. Mr. Clerk, please call a tally. You wanna call on the Consent Calendar? Yes, it's closed. It's closed on the machine here.

THE CLERK:

On today's Consent Calendar

Total Number Voting	36
Necessary for Passage	19
Those voting Yea	36
Those voting Nay	0
Absent/not voting	0

THE CHAIR:

The Consent Calendar passes. [gavel] Senator Duff.

SENATOR DUFF:

Thank you, Madam President. Before we adjourn, I'd like to yield for any points or announcements.

THE CHAIR:

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[pause]

DEPUTY SPEAKER SAYERS:

Have all the members voted? Have all the members voted? Please check the board to see that your vote has been properly cast. If all the members have voted, then the machine will be locked, and the Clerk will take a tally.

The Clerk will announce the tally.

CLERK:

House Bill 6186, as amended by House "A"

Total Number Voting	139
Necessary for Passage	70
Those voting Yea	138
Those voting Nay	1
Absent and not voting	12

DEPUTY SPEAKER SAYERS:

The bill, as amended, passes. [gavel] Will the Clerk please call Calendar No. 437.

CLERK:

House Calendar 437, on Page 51, Favorable Joint Report - or Favorable Report of the Joint Standing Committee on Judiciary, Substitute House

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Bill 6750, AN ACT CONCERNING THE REQUIREMENT FOR  
DISCLOSURE OF THE ARREST RECORD UNDER THE FREEDOM  
OF INFORMATION ACT.

DEPUTY SPEAKER SAYERS:

Representative Jutila.

REP. JUTILA (37<sup>th</sup>):

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

DEPUTY SPEAKER SAYERS:

Question is on acceptance of the Joint  
Committee's Favorable Report and passage of the  
bill? Will you remark further, sir?

REP. JUTILA (37<sup>th</sup>):

Thank you, Madam Speaker. As is the case with  
many, if not most, of the bills that we take up  
here, the story here begins with a current statute.  
And in this case, it's the Freedom of Information  
Act, and specifically, Section 1-215; 1-215  
currently provides that following an arrest and a  
pending prosecution, law enforcement agencies must  
provide the following information: The name and  
address of the person arrested; the date, time, and  
place of arrest; and the offense charged. The so-

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called basic blotter information. In addition to that, the law enforcement agency is required to provide one other document, which could be either the arrest report, the incident report, or a news release or similar report.

Madam Speaker, for 20 years, the Freedom of Information Commission has been interpreting this statute to mean that's the minimum that the law enforcement agency has to provide. And that any other public record is subject to the Freedom of Information Act generally, including the law enforcement exemptions or any other exemption that might apply.

Enter the Connecticut Supreme Court in July of 2014, the Case of Commissioner of Public Safety Versus the Freedom of Information Commission. This is a case that started with a request by a journalist with the *New Haven Register* for police records related to an arrest of an individual for assault in the Town of Derby. The law enforcement agency provided the basic blotter information but refused to provide the police report, citing the exemptions. Freedom of Information Commission ruled against the Commissioner, concluding that that was

the minimum they were required to provide and would have to provide the police report unless there was an exemption that applied to it.

So the case went on. The trial court actually overturned the decision of the Freedom of Information Commission and ruled for the agency. The Appellate Court in the Supreme Court affirmed, the Supreme Court holding that Section 1-215 exclusively governs law enforcement agencies' disclosure obligations under the Freedom of Information Act during a pending criminal prosecution to the exclusion of the broader disclosure obligations elsewhere in the FOI Act.

The Court also concluded that the current statutory scheme was ambiguous and effectively invited the legislature to take this up as a policy matter in this body.

So that's where we are today, Madam Speaker. The legislature, at least the GAE Committee, accepted the invitation, and put forward House Bill 6750, which is before us today, and modified the statute to require that the record of arrest be disclosed without exemption from the time of

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arrest. And any other records requested would be subject to the FOI Act unless exempt.

The bill went on to the Judiciary Committee. The Judiciary Committee made some modifications. And from there, the stakeholders have been having discussions right up basically until today.

So the solution, Madam Speaker, is an amendment. The Clerk has in his possession LCO 8499. I would ask that the Clerk please call the amendment and that I be given leave of the Chamber to summarize.

DEPUTY SPEAKER SAYERS:

Will the Clerk please call LCO No. 8499, which will be designated House Amendment Schedule "A."

CLERK:

House Amendment Schedule "A," LCO 8499, as introduced by Representatives Jutila, Smith, Tong, and Godfrey.

DEPUTY SPEAKER SAYERS:

The Representative seeks leave of the Chamber to summarize the amendment. Is there any objection to summarization? Is there any objection? Hearing none, Representative Jutila, you have the floor, sir.

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REP. JUTILA (37<sup>th</sup>):

Thank you, Madam Speaker. So what the amendment does is provide that the record of arrest, as defined, gets disclosed without any exemptions. And the record of arrest is defined as that basic blotter information that I just spoke about - name, race, address, date, time and place of arrest, and the offense charged.

If the arrest is by warrant, also to be disclosed would be the warrant application, including an affidavit, any affidavit, in support of the application. Where the arrest is without warrant, the official arrest incident or similar report.

And if the affidavit or report is sealed by the court, then what has to be disclosed is any portion that's unsealed plus a report setting forth a summary of the circumstances leading to arrests in a manner that doesn't violate the court order.

Not included in the definition of record of arrest would be any juvenile record, a record erased, or the investigative files of the law enforcement agency.

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The law enforcement agency is not permitted to redact the documents, with the following exceptions: Redactions to protect the identity of witnesses; specific information the disclosure of which the law enforcement agency reasonably believes may prejudice a pending prosecution; and any information under seal.

Some additional information that is required to be disclosed that's not part of the definition of record of arrest would be any other public record that documents or depicts arrest or custody of a person during pending prosecution unless subject to applicable exemption. The Office of State's Attorney also gets written notice and an opportunity to intervene. [coughs] And the bill also makes clear that it applies - that this section applies only during the period of a pending prosecution. [coughs] Otherwise, the Freedom of Information Act governs, and I would move adoption.

DEPUTY SPEAKER SAYERS:

The question before the Chamber is adoption of House Amendment Schedule "A." Will you remark on the amendment? Representative Jutila.

REP. JUTILA (37<sup>th</sup>):

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[coughs] Thank you, Madam Speaker. I have some additional general remarks I'd like to make, but given that I'm losing my voice at the moment, I think it would be a good time to take a break and let others begin to join the discussion. Thank you.

DEPUTY SPEAKER SAYERS:

Thank you, Representative. Representative Smith of the 108<sup>th</sup>.

REP. SMITH (108<sup>th</sup>):

Good afternoon, Madam Speaker. Thank you.

DEPUTY SPEAKER SAYERS:

Thank you, sir.

REP. SMITH (108<sup>th</sup>):

I'll try to give the good Chairman a break and just give a little dialogue here about this particular bill. Ladies and Gentlemen, this is a bill that may not seem all that sexy on the face of it, but it actually has a significant impact on how our press is able to get information after an arrest and how our police departments are able to protect witnesses, protect those charged who may be innocent, and what information the police have to disclose.

I mean in today's world we live in an open society. Pretty much what we do on a daily basis is subject to disclosure. We can find it in the newspaper. We can find it in a blog. We can find it in Twitter. We can find it on the good, old web that's out there. So there's so much information, and naturally the press would like to have as much information as possible.

Sometimes when a person is arrested, there is certain information that needs to be protected. And it needs to be protected to make sure that those who are arrested and potential witnesses are also protected from influence, from perhaps being harmed. And so there's a fine balance, here, Madam Speaker. And we heard a lot of testimony in the public hearing at the GAE Committee, and we have had the stakeholders meet with us on several occasions.

Unfortunately, over the years, there's been a disparate treatment of the statute that's currently on the books. Some police departments were great in what they did in disclosing police records and arrests and giving out information so we have a free and open society. Some police departments were

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not so forthcoming in what they wished to disclose, merely giving a simple, succinct summary that there was arrest and some very limited details. That type of disclosure did not seem to me to be in compliance with our statutes, and I think our Supreme Court ultimately agreed with that.

So we are here today, Ladies and Gentlemen, to talk about this amendment. And I must commend the stakeholders, Madam Speaker. Our State's Attorney Kevin Kane, and I know several people from Freedom of Information have met over the past few months trying to hammer out an agreement that they thought was fair for both the press and for the police. And I commend them, and they came forth with some language we have before us today that I'm happy to be a sponsor of.

It provides protections on both levels. It makes sure that we, as a society, know what's happening out there - that the police cannot hide behind closed doors. That it is a free and open society.

At the same token, it does protect those who may be vulnerable, and it does protect also certain

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instances that may not be - need to be disclosed right away.

Madam Speaker, I would just, if I may, like to go through the bill a little bit. I know, as always, the Chairman goes through the bill. And he went through it so thoroughly this time that he lost his voice, but I'm hoping he's regained it. I do have a few questions, so we can just kind of [ ] out what's in the bill today. And I will, through you, Madam Speaker, just pose a few questions.

DEPUTY SPEAKER SAYERS:

Please prepare your questions, sir.

REP. SMITH (108<sup>th</sup>):

So I know in Section 1 of the bill, it seems pretty clear that what needs to be disclosed upon an arrest, and it's laid out, and I'm not gonna have the Chairman reiterate what's there.

DEPUTY SPEAKER SAYERS:

Representative Jutila.

REP. SMITH (108<sup>th</sup>):

I'm sorry, Madam Speaker. I did not finish my question. I'm just -

DEPUTY SPEAKER SAYERS:

Oh, sorry, sir.

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REP. SMITH (108<sup>th</sup>):

That's okay. Because I think he would've just come back to me and said I didn't hear him ask a question, and we'd be back and forth just talking about nothing. So - I do have a question, though, Madam Speaker. It's - we talked about - or the Chairman talked about the police are unable to redact the police report. Are there any situations where the police can redact the police report? Through you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Representative Jutila.

REP. JUTILA (37<sup>th</sup>):

Thank you, Madam Speaker, and I thank the distinguished ranking member for the question. [coughs] Yes, there can be redaction in the case of protecting the identity of witnesses where specific information - the disclosure of which law enforcement and the law enforcement agency reasonably believes would prejudice a pending prosecution or for information under seal.

DEPUTY SPEAKER SAYERS:

Representative Smith.

REP. SMITH (108<sup>th</sup>):

Thank you, Madam Speaker. And shooting back to Section 1 for a section - Section 1 outlines what the police must disclose upon an arrest. It identifies various items. And my question for the Chairman is - are all those items subject to disclosure? In other words, will all those items have to be disclosed or can the police pick and choose from the list that's provided in Section 1? Through you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Representative Jutila.

REP. JUTILA (37<sup>th</sup>):

Thank you, Madam Speaker. The police are required to disclose the basic blotter information and the three other items that I indicated, depending upon whether it's an arrest by warrant or without warrant and in the case where an affidavit or a report might be sealed. Through you.

DEPUTY SPEAKER SAYERS:

Representative Smith.

REP. SMITH (108<sup>th</sup>):

Thank you for that clarification from the good Chairman. If we shoot over to Subsection (c), it talks about, in addition, any other public record

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of a law enforcement agency that documents or depicts the arrest or custody of a person during the period in which prosecution is pending, what other public records are we talking about there? Through you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Representative Jutila.

REP. JUTILA (37<sup>th</sup>):

Through you, Madam Speaker, that would be any public record that documents or depicts the arrest or custody of a person during the prosecution. I believe that in the discussions between the Office of Chief State's Attorney and the FOI Commission that they were generally thinking about photographs, the body cams that, you know, may be beginning to come into use, things of that nature. Through you.

DEPUTY SPEAKER SAYERS:

Representative Smith.

REP. SMITH (108<sup>th</sup>):

Thank you, Madam Speaker. So just to dig down a little bit - so if this bill becomes law - I'm driving home. I get pulled over and I'm arrested. And the police have a body cam or a camera on them

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that depicts the arrest and the events surrounding that arrest. I would assume, by this language in Subsection (c), that that would be subject to disclosure to the press. Through you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Representative Jutila.

REP. JUTILA (37<sup>th</sup>):

Through you, Madam Speaker. It would be subject to disclosure unless it falls within one of the FOI exemptions.

DEPUTY SPEAKER SAYERS:

Representative Smith.

REP. SMITH (108<sup>th</sup>):

Thank you. And just to dig down just a little bit further. So, as we all know, we had an unfortunate - and we always, unfortunately - have situations where it kind of boggles the mind that people could engage in these horrendous crimes. We had one such incident in Sandy Hook, Connecticut, where there were some photographs that really none of us really would ever wanna see or yet there were a lot of people trying to get a hold of those photographs and disclose them as part of the press.

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Would those types of photographs that depict the arrest scene and are graphic and horrendous in nature - would they still be subject to disclosure under this Subsection 3 - (c)? Through you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Representative Jutila.

REP. JUTILA (37<sup>th</sup>):

Through you, Madam Speaker. Those would be - or could be - exempt under the exemptions in, I believe, it's 1-210 (b). Specifically, I think it's Subdivision 27. Yes. Through you, Madam Speaker, it would be as I cited, 1-210 (b) Subdivision 27.

DEPUTY SPEAKER SAYERS:

Representative Smith.

REP. SMITH (108<sup>th</sup>):

And thank you, Madam Speaker. For the exemption that was just referenced by the good Chairman. If he could just indicate which - I understand the section of the statutory site - what does that exemption actually say? Through you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Representative Jutila.

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REP. JUTILA (37<sup>th</sup>):

Through you, Madam Speaker. It would exempt any record created by a law enforcement agency or other federal, state, or municipal governmental agency [coughs] consisting of a photograph, film, video, or digital or other visual image depicting the victim of a homicide to the extent that such record could reasonably be expected to constitute an unwarranted invasion of the personal privacy of the victim or the victim's surviving family members. Through you.

DEPUTY SPEAKER SAYERS:

Representative Smith.

REP. SMITH (108<sup>th</sup>):

And again I thank the Chairman. I know his voice is a little hoarse today from these late nights here in the Chamber into the early mornings. We're all feeling a little weary from the task at hand, so I appreciate clarifying for the Chamber what exemption we're talking about.

And I think it's an important distinction, Madam Speaker, because under Subsection (c) we're talking about photographs or evidence depicting the arrest of person held in custody. The photographs

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of the crime scene just referred to by the Chairman are different photographs. They do not depict the arrest nor the custody of the person in arrest. But they could be so prejudicial and such an invasion of one's privacy, especially for the family, that they still remain exempt under this particular amendment that's being proposed to the Chamber today. So for that reason, I support this bill as well.

And I notice, Madam Speaker, that I did not find anything within this amendment that otherwise changes - either makes it larger or smaller - the current exemptions that we have in statute. And is that true? Through you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Representative Jutila.

REP. JUTILA (37<sup>th</sup>):

Through you, Madam Speaker. We made no changes to the current FOI exemptions.

DEPUTY SPEAKER SAYERS:

Representative Smith.

REP. SMITH (108<sup>th</sup>):

And Madam Speaker, I'm just wondering, if a request is made by the press for copies of the

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photographs. Let's assume it's the photographs of the arrest or the body cam of the arrest. And the police object - well, let me first ask - can the police object to any type of request that is made by the press or for somebody else? Through you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Representative Jutila.

REP. JUTILA (37<sup>th</sup>):

Through you, Madam Speaker. I'm not sure that I caught the circumstances under which they would be objecting. What the facts would be.

DEPUTY SPEAKER SAYERS:

Representative Smith.

REP. SMITH (108<sup>th</sup>):

Sure. I'd be happy to clarify that. So going back to the scenario I raised where if one was arrested and there was a body cam that depicted the arrest and a camera in the police station that depicted the custody of the person who was arrested. A request is made for the release of that - those photographs or depictions - and the police are looking to object to that disclosure. Is

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there any procedure within this amendment that would provide for that? Through you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Representative Jutila.

REP. JUTILA (37<sup>th</sup>):

Through you, Madam Speaker. Yes, we included a provision that in the case of - under the circumstances as I understand them - the State's Attorney's Office would get notice and an opportunity to intervene.

DEPUTY SPEAKER SAYERS:

Representative Smith.

REP. SMITH (108<sup>th</sup>):

And if the State's Attorney's Office decided to intervene, I'm assuming that would then be a - well, they could just simply say yes, disclose it or no, do not disclose it. And at that point, I'm assuming the person making the request or the entity making the request would have the right to file a claim under the Freedom of Information Act. Is that accurate? Through you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Representative Jutila.

REP. JUTILA (37<sup>th</sup>):

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Through you, Madam Speaker. That would be correct.

DEPUTY SPEAKER SAYERS:

Representative Smith.

REP. SMITH (108<sup>th</sup>):

And I noticed in Subsection (d) of the bill, and that's the section we've just been talking about - it requires the police to promptly provide written notice to the State's Attorney's Office after the arrest has occurred if there is any type of objection. Now promptly is not defined by this particular amendment, but I'm assuming, for legislative intent purposes, it has to be as quickly as possible under the circumstances. Is that a fair understanding of this amendment?

Through you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Representative Jutila

REP. JUTILA (37<sup>th</sup>):

Through you, Madam Speaker. Yes, I think clearly by the word promptly that means exactly what it says. They should do it right away. Through you.

DEPUTY SPEAKER SAYERS:

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Representative Smith.

REP. SMITH (108<sup>th</sup>):

And I appreciate the good Chairman hanging in there. I just have one final question. I noticed he mentioned that the amendment really before us is primarily dealing with requests while the arrest is pending or while the case is pending. And what does that really mean? Do we have a determination of when the pendency of a claim or a case would end? Through you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Representative Jutila.

REP. JUTILA (37<sup>th</sup>):

Through you, Madam Speaker. We wanted no ambiguity. That's our whole purpose is to make this statute clear. So we have a very clear dividing line. During the pendency of a prosecution, this section applies. Once the prosecution is complete - for instance, a verdict is issued, a plea bargain agreement is entered into, there's an acquittal - that would terminate the applicability of the provisions here, and the remainder of the general FOI Act would apply. Through you.

DEPUTY SPEAKER SAYERS:

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Representative Smith.

REP. SMITH (108<sup>th</sup>):

And again, thank the Chairman for his answers. I did say that was my last question. I do have one more, Madam Speaker. And that is, once the action is complete, what happens then? Are the - are all the documents then open to disclosure or - I'm not sure? Through you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Representative Jutila.

REP. JUTILA (37<sup>th</sup>):

Any document that is a public record as defined under the FOI Act would be subject to disclosure unless it was exempt per one of the exemptions. Through you. [coughs]

DEPUTY SPEAKER SAYERS:

Representative Smith.

REP. SMITH (108<sup>th</sup>):

Ladies and Gentlemen, we've just gone through the amendment pretty much in detail. This is a bill when it came through the Committee that I voted against. I was worried it was too broad at the time. There were not enough protections in the bill that came before the Committee. I think the

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language that we're looking here at today has come a long way. I commend the parties involved that have brought it to this stage. I ask my colleagues to support it. Thank you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Thank you, sir. Representative Labriola of the 131<sup>st</sup>.

REP. LABRIOLA (131<sup>st</sup>):

Thank you, Madam Speaker. I rise in support of this amendment. I, too, voted against this in Committee, the underlying bill. But I think that this amendment makes the bill a good piece of legislation that I'm proud to support. I want to thank the Chairman and the ranking member of the GAE Committee for their good work on this amendment. And I had a question to the Chairman. Through you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Please prepare your question, sir.

REP. LABRIOLA (131<sup>st</sup>):

Thank you, Madam Speaker. In Section 1, the amendment talks about how what will be disclosed is in the case where a warrant was obtained, the arrest warrant application, and in an on-site

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arrest, a summary indicating where the probable cause was determined. So essentially, the mirror of what would happen if you had a warrant and the arrest warrant application. Is that correct?

Through you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Representative Jutila.

REP. JUTILA (37<sup>th</sup>):

Through you, Madam Speaker. That would be correct.

DEPUTY SPEAKER SAYERS:

Representative Labriola.

REP. LABRIOLA (131<sup>st</sup>):

Thank you, Madam Speaker. And I think that is critical to supporting this particular amendment because what this does is it strikes a good balance. I know that the stakeholders were involved. Chief State's Attorney Kane, as well as the FOI Commission, and the State's Attorney, his concern is to make sure that the public safety is not jeopardized in any way. And because the redacting of the police reports would happen in the case where there's an ongoing investigation so that

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nothing would be threatened in terms of public safety - that part of the balance is taken care of.

And as far as the public's right to know, that there is going to be disclosure of the facts and circumstances of how probable cause was determined in these cases. And so we don't have too much disclosure. That's part of the balance.

If we had too much disclosure it could be inflammatory, as indicated, where videos or pictures, which would be unfair to the victims and the victims' families in many criminal cases, and also could potentially prejudice a jury so that a defendant wouldn't be able to get a fair trial.

So I do think that this strikes a good balance, and for all those reasons, I ask adoption of this amendment. Thank you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Thank you, sir. Representative Godfrey of the 110<sup>th</sup>.

REP. GODFREY (110<sup>th</sup>):

Good afternoon, Madam Speaker. I rise in support of House Amendment "A," which I happen to be a co-sponsor of. It's been an interesting journey to get this legislation to us here today.

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[coughs] And I think I have Representative Jutila's cold. [coughs]

The Supreme Court, of course, thought - released a decision I thought was wrong but in confining what was previously made public as part of an arrest record and taking away a lot of the access that the public had to this kind of information. In the past, happily, both the Court and certainly this legislature has recognized that it was a statutory construction so we can fix it. And that's what we're doing today. We are overturning the Court's decision so it will no longer have precedential value. And restoring the Freedom of Information Act to that point where people will have access to these police records.

In my lifetime, the history of law enforcement has been the continuing professionalization, if there is such a word, of law enforcement officials. Starting back in the 1960s with the Miranda warnings everybody's now familiar with, from every television show about cops, right up to the use of technology. If you've watched CSI and all of those things that don't really happen in the real world - sometimes with all the technology - which has been

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a problem, I know, with juries in this state. The trend has been more and more professionalization of law enforcement. And this moves that forward.

As we are in an era clearly has been alluded to where police behavior is being recorded. Where there are more and more questions about policies, about practices - this goes a very long way in assuring that our law enforcement is given every opportunity to continue that professionalization, at the same time giving people a very high comfort level of being able to know what is going on in the course of an arrest.

It also protects - and I think this is very important - not only witnesses, but victims of crime in that what a very traumatic experience that they're going through, we don't wanna see that on You Tube. We don't wanna see that all over the Internet. We need to make sure that that constitutional protection we enacted like 15 years ago or so, giving victims rights, is also maintained.

So this is a balance. This is the result of very hard work between Colleen Murphy over at the Freedom of Information Commission with the Chief

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State's Attorneys. And I wanna particularly commend Representative Jutila who has worked doggedly this entire session on moving forward the legislation that we've seen - we're seeing here today. I also wanna thank his ranking member, down from my way in New Fairfield, for being a part of ensuring that the public's right to know is maintained. That the professionalism of law enforcement officials is enhanced and that the Supreme Court ruling has been overturned. I encourage everybody to vote for this amendment. Thank you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Thank you, sir. Representative Carney of the 23<sup>rd</sup>.

REP. CARNEY (23<sup>rd</sup>):

Thank you very much, Madam Speaker. Just a question for the proponent of the bill. Through you.

DEPUTY SPEAKER SAYERS:

Please prepare your question, sir.

REP. CARNEY (23<sup>rd</sup>):

My only question is if somebody, I guess, is falsely arrested. It turns out that, you know, they were falsely arrested. And - but between the time

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when they were arrested and it was found out, you know, charges were dropped. Either charges were dropped or there was found that there was a false arrest - my concern is that - would those - if there's a video camera or documents pertaining to that arrest would be available during that time period, and would - if so, would that be - my concern, I guess, is if that were to be redistributed throughout the Internet because, unfortunately, I've seen - there's been some very famous cases of it recently - that once information is put on the Internet, it's sort of - you're guilty before proven innocent. So - just a clarification on that. Through you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Representative Jutila.

REP. JUTILA (37<sup>th</sup>):

Through you, Madam Speaker. The good Representative is absolutely correct. Those - if they're public documents and they fit within the definition of record of arrest - they would be subject to public disclosure. Through you.

DEPUTY SPEAKER SAYERS:

Representative Carney.

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REP. CARNEY (23<sup>rd</sup>):

Okay. Thank you very - I thank the good Chairman for his answer on that. Thank you very much, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Will you remark? Will you remark further on the amendment that is before us? If not, I will try your minds. All those in favor, please signify by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER SAYERS:

Those opposed, nay. The ayes have it. The amendment is adopted. [gavel] Will you remark further on the bill as amended? Will you remark further? Representative Jutila.

REP. JUTILA (37<sup>th</sup>):

Thank you, Madam Speaker. Since that was a strike all, that - the amendment becomes the bill. To the extent that I have any voice remaining, I would like to just say that this amendment restores significant transparency and accountability to government during a critical time when the liberty

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of our citizens can be impacted by the power of arrest and detainment.

At the same time, the bill addresses the legitimate concerns of the Chief State's Attorney and the public safety community generally. Those concerns are the integrity of a pending prosecution. The protection of witness identities. The confidentiality of investigatory techniques. Madam Speaker, I think it's an example of the legislature at its best.

This bill went through a public hearing. Went through two Committees. Has had numerous examples of continuous discussion between the stakeholders and interested parties. It's bipartisan in nature. And it achieves the proper balance between government transparency and public safety.

Again, Madam Speaker, an example of the legislature at its best and our government at its best, and I would hope all the members are willing to accept this important bill. Thank you.

DEPUTY SPEAKER SAYERS:

Thank you, sir. Will you remark? Will you remark further on the bill as amended? Will you remark? If not, will staff and guests please come

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to the Well of the House, will members take their seat, and the machine will be opened.

CLERK:

[bell ringing] The House of Representatives is voting by roll. Members to the Chamber. The House of Representatives is voting by roll. Members to the Chamber.

[pause]

DEPUTY SPEAKER SAYERS:

Have all the members voted? Have all the members voted? Please check the board to see that your vote has been properly cast. If all the members have voted, then the machine will be locked, and the Clerk will take a tally.

The Clerk will announce the tally.

CLERK:

House Bill 6750, as amended by House "A"

Total Number Voting            142

Necessary for Passage           72

Those voting Yea                142

Those voting Nay                 0

Absent and not voting            9

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DEPUTY SPEAKER SAYERS:

The bill, as amended, passes. [gavel] Any introductions or announcements? Representative Ryan.

REP. RYAN (139<sup>th</sup>):

Thank you, Madam Speaker. I've been short-coated here. For the purposes of introduction.

DEPUTY SPEAKER SAYERS:

Please proceed, sir.

REP. RYAN (139<sup>th</sup>):

Madam, sometimes when you leave the doors of this Chamber open, you can never tell who will come through them. And today we're fortunate that what did come through them was one of our former colleagues, and that's Representative Shawn Johnston, who held Representative Rovero's seat, and it's good to have him back here. And I ask the Chamber to join with me in welcoming him back. Thank you.

[applause/cheering]

DEPUTY SPEAKER SAYERS:

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and forth. So our next speaker is Chief State's Attorney Kevin Kane.

CHIEF STATE'S ATTORNEY KEVIN KANE: -- Jutila and Senator McLachlan, Representative Smith and members of the committee for hearing us today on these issues. I'm here briefly, I think, to just remark that the Division of Criminal Justice is in favor of Bill 876 and I'm here primarily to testify about the 6750, which the Division is opposed to for reasons which I'll describe in a minute. 6750 is a bill that would amend the Freedom of Information statute as it now exists, as it was written in 1994 and make a significant change to that decision and the reason the division is opposed to it is there are several reasons. This would -- this deals information that is required to be released when there is a pending prosecution, right after an arrest, as soon as an arrest occurs. Section 1-215 provides that police departments shall make available -- make public certain information. That information consists of the booking information and one of the following -- and the following are described as an arrest report and/or and incident report or a news release or some other report or narrative describing the incident. The police department have freedom to release of further information if they choose to, but they must at least make this information available.

There have been over the years different practices with police departments. What happened last summer that brought this to ahead is this amendment -- this section was enacted back in 1994, gradually people were making requests -- Freedom of Information requests to police departments and the Freedom of Information Commission started applying in another section of the Freedom of Information, 1-210, to determine whether or not information should be released. And that statute, the way it was going at the time, the police departments had to show how a pending investigation or pending action -- pending

prosecution would be prejudiced by the release of any particular information. That was very difficult in some cases, an impossible burden to make and the consequences can be drastic.

The Supreme Court last summer ruled that after -- that the Legislature's intent that the what the Legislature did when it enacted 215 and what it was intended to do when it enacted 215 was to make that the sole statute applicable to pending criminal cases and the case was over when the case was disposed of, then 210 would apply. Now, the problem is this -- is several -- the problem with this amendment is several. First of all, it would subject witnesses and victims to harassment, to intimidation, to threats and to injury, if not death. I've seen far too many cases over the years where witnesses have been murdered, many more that have done unknown where they are subject to harassment, threats, intimidation, embarrassment and caused not to testify or become reluctant to testify and those are a myriad and releasing police reports will expose them to that information. We have a system in the courts if a defendant is arrested and charged with a crime, that defendant is entitled to certain information, the defendant needs that information to defend himself or herself. The state has an obligation and in many cases it does release the police report and information to the defendant.

Prior to doing that, the prosecutors have to go through it, A, to make sure nobody -- no witnesses will be endangered or threatened or intimidated or that there is another valid reason to -- to withhold that even from a defendant who has a paramount right to access that information. If we wish to withhold something, we can submit it to the court, sealed, ask the court to make a ruling as to whether or not the defendant should be need that information to defend himself or herself. If the court decides, no, they're -- it's not (inaudible), it doesn't help the defense in any

way, but it would be harmful to somebody to have it released, the court can issue what's called a protective order. This would get around that where it would make that totally meaningless because the defendant then could just make an FOI request and get it from the police department unbeknownst to us. We have had cases where police reports were obtained by defendants and it's one thing if a defendant goes and says so and so testified against me or so and so is an informant or so and so is a (inaudible) or whatever slang is used, but if somebody actually comes up with a police report that quotes that, that person can be in a significant amount of danger and has been in danger and horrible things have happened because of it.

So this would impact on the rights of witnesses and victims to be free from intimidation and harassment while the pending prosecution is going on and even worse, this would also fly in the face of the defendant's right if in the end of the case, there is a dismissal. It would absolutely fly in the face of the Governor's Second Chance Program in society where information -- if this information which could consist of mug shots, police reports and details, crime scene photographs, any number of things, would have to be made public, would be made public while a prosecution is pending, later on there is an acquittal or a dismissal where the judge decides after hearing the defense after the discussion that the state can't get a conviction and nolle the charges and there is a dismissal. The court records are erased. The police records pertaining to the arrest are erased, but this information would already be out there and would be available on the Internet for anybody, anytime. You can look at I don't know what on the Internet these days and you see mug shots, see who has been arrested in your town and you get all these mug shots out there to look at. Those cases are subject -- the prosecution may have been dismissed or the defendant may have

been acquitted, nevertheless, his or her mug shot is out there for the public see, for future employers to see, for neighbors to see when somebody -- when somebody moves into a neighborhood and all of a sudden the neighbors use Google and there is a mug shot that the neighbors see even though the case has been acquitted. This would cause great problems with that.

I think we've submitted lengthy written testimony. I don't want to go on any longer about this, but those are the key things that -- and the law -- the Legislature -- the Supreme Court decided last summer -- that's what brought it on -- in a case called Commissioner versus Freedom -- Commissioner of Public Safety, or DEPPS -- I can never remember all of the initials now -- versus the Freedom of Information Commission and the Supreme Court went through the legislative history of the statute and they interpret -- they did very little interpretation -- they read the statute and looked the history -- the legislative history when this Legislature very wisely enacted that section and said this is what the section says, this is what the Legislature intended to do. This statute doesn't -- this statute would operate as an expansion of the Freedom of Information statute that now exists that was passed by the Legislature, the Division is opposed to it for the reasons that I've given, but more importantly for the reasons set forth and detailed in our written testimony and I don't want to take the time to read it here. There are plenty of my friends here who are opposed to this, have been opposed to our -- to the Division's position for years are here to testify. I don't want to deprive them of the right to be heard here. But this really brings forth -- this gets right in the -- smack in the middle of two very important basic rights we have here.

One of the basic right of the public's right to know, transparency, that's a critical right in

this country for the citizens to have -- to be informed of their government, up against that is the right of a defendant to have a free and fair trial that's not hampered by undue publicity where a fair jury can't be picked because they've been subject to so much publicity in a sensational case, that's the defendant's ability to get a fair trial is prejudiced. We've had many cases where a defendant has moved to change venue or moved to dismiss because of undue publicity. Their claim is that undue publicity causes an inability to get a fair and impartial jury. Sometimes we have had cases where -- where we've had to have a change of venue and cases have transferred to other -- other venues. One from Danbury, I remember, came from New London. The Defendant's name was Crafts. It was the wood chipper murder. It had to be transferred because of the publicity around Danbury that prevented the -- that caused the belief that he wouldn't get a fair trial. Time and again we have jurors who were excused because they read too much or they've known too much about the case and they get excused almost automatically so you end up with jurors either who just moved to the state if we're lucky who jurors who pay no attention whatsoever to the world around them and you wonder what -- what kind of jury that will be both for the public's right to a fair trial and for the defendant's right for a fair trial.

So this is the clash and this is the thing and the state's position -- or my position is that the Legislature addressed this in 1994, did so very wisely and struck an appropriate balance and that's where it should be today. Sorry it took so long, but I know you said at the beginning there is a lot of people here. It's a Friday weekend and you're here, but if you have any questions, I'll do my best to answer them.

REP. JUTILA: Thank you, Attorney Kane.

And no problem with the time you've taken. This is a very important issue to this committee and I'm sure to the people that we represent. So it's been a bit of time since I took a look at the case that you referenced that gave rise to this and my memory is fading, but my recollection is that the court did seem to struggle a bit to interpreting the legislative history in arriving at their decision and the court seemed to be -- in fact I think was pretty clearly was inviting the Legislature to take some action to try to clarify what they seemed to be saying was some ambiguity or conflict between the various statutes that touch on this issue. Do you disagree with that because you have indicated that the Legislature did the right thing back in '94 which suggests to me that you believe this statute is just fine the way it is. Is that the case?

CHIEF STATE'S ATTORNEY KEVIN KANE: Yeah. I'm glad you mentioned that because I wanted to mention something that's very important. The Legislature did -- I wouldn't say the Supreme Court invited the Legislature -- well, you might argue whether that's an invitation or a suggestion -- or just a statement that the Legislature could change this -- might want to look at this. We have -- and this is something -- because I do think have to address -- the public certainly is entitled to more than booking information. There are legitimate interests in expanding on the information that they provide. The question is what kind of information should be provided in this -- this is other subsection, the arrest report, the incident report or a news release or other similar report. What we're trying to do is find out -- right now we're in the process of this and I hope to do it before the end of the year. I wish we could do it now -- or before next session certainly to come back as -- police departments, as I've said, have had different practices with regard to what they release. Some release mug shots -- I don't

want to forget that -- there is something important that I did forget about mug shots that I want to tell you about. Some release mug shots, some don't. We always used to release mug shots.

The more we've learned about eyewitnesses identification and problems with eyewitness identification, the more I've decided we should not release mug shots as a matter of course without making sure that that wouldn't interfere with a problem later on. I'll mention that in a minute. But what we're trying to do is, A, find out quickly -- when we had a meeting at POST a while ago when we got together with the chiefs of police to see if we can -- if the state's attorney can either -- can issue a policy expanding on or describing what the police should release as a matter of course in every arrest and try to expand that to include information the public would be entitled without opening up the door to -- without then requiring police reports to be admitted. Now, the Legislature could do that -- could try to do that, I would ask that you give us chance to try to do it first to see how it works, see how it works and if we can't do something that's satisfactory to the Legislature, I'm sure it won't be to some people, but if it's not satisfactory to the Legislature then go ahead and take a crack at it yourselves. We should do this -- we should have more of a uniform policy.

There are some cases to use mug shots as an example where you have strong belief the same defendant committed other crimes. We've had serial rapists. We've had serial murderers and we've arrested them on one and are hoping to get information for more. That might be a valid legitimate interest to release a mug shot in some cases and I wouldn't want to be -- prohibit police departments from releasing mug shots, but the problem for example with a mug shot this, you get an eyewitness identification who has made a -- we've learned a lot about the

manner in which we show photographs to eyewitnesses and we've established a procedure. The Legislature has enacted a statute recently requiring that. One of the things that is very important is the feedback the witness gets. You can have a witness who says this looks like the person who did it or I'm 80 percent sure this is the person who did it and then what can happen is a police officer or somebody else can say you're right, that's the person. We've arrested him. And then the person's mug shot comes up on the TV or in the newspaper and the witness sees that, now the witness has gone from that looks just like the person to I know that's -- you know -- witnesses who are witness or victims of a horrible crime really want to really believe this person should be caught and this person should be brought to justice. They want to believe then that the person has been caught and brought to justice and that can lead a witness unconsciously and in good faith to going from I'm pretty sure that's the person or that looks like the person to I know that's the person.

Or a witness can be testifying a year later and you start to wonder, is the witness testifying from his or her memory of the person who he or she saw at the time of incident or is the witness testifying from his or her memory of what she saw on television or in the newspaper and it's hard -- it's an unconscious thing. It's hard to equate. So the release of a mug shot early could prevent -- could be grounds and defendants will move to prevent that eyewitness from testifying and there may be situations will a court will rule that witness can't testify. There certainly will -- now we're using expert testify and the defendants are using expert witnesses all the time, the release of a mug shot could impair the ability of witnesses to testify and the ability of the state to prosecute a case when it's very important. So we've got to think this out and be careful, but I think we can find a way and as I look at my friends over here, we've argued

about it over the years, they're not going to agree to anything we can draft up, but we are trying to make law enforcement in general with the police department, with the state's attorneys, we're trying to set forth a protocol for what should be released on every case and hopefully we can do that and I'd ask you to give us a chance to do it. And I think that's what the Supreme Court was probably talking about.

REP. JUTILA: And thank you. I'm glad that my initial question led you to think about telling us about the various practices that different law enforcement agencies might -- or procedures, policies that they may employ in order to comply with this statute because that's something I'm very interest in learning more about and I can tell you that as I look at the existing statute, which requires that the, quote, record of arrest is subject to Freedom of Information and that that record of arrest is defined as the name, the address and the date and time of the -- the arrest and what the offense is and at least one other thing that is either the arrest report, which is your biggest concern, I think, an incident report or a news release or other similar report of the arrest of the person so it can be any one of those, not all of those and to me, a news release -- that says nothing. I mean, a news release, as the gentleman behind you there I think knows, who is a reporter, can tell you that they vary from including very little information to lots of information and it seems that any police department can create a news release with as little or as much as they want in it and be complying with this statute, which to me, effectively, obliterates the statute so I think we need to do something with this and whether it's something along the lines that you described or something more than that, which the next speaker will be probably asking us to do, remains to be seen in something that this committee needs to consider very seriously and

so I thank you for your testimony. I'll open it up to other members of the committee.

Senator McLachlan.

SENATOR MCLACHLAN: Thank you, Mr. Chairman.

Thank you, Chief, for your testimony, and it's always good to see you. This is a perplexing challenge. I think it -- it didn't seem to be one that was in the forefront for most people. Certainly it was for you and FOI for a long time, but it certainly did come to ahead here and -- and that leads me to my question about the different policies across law enforcement agencies. What I'm hearing is -- and please correct me if I'm wrong -- what I'm hearing is that a cookie cutter disclosure policy could very well be counterproductive to the whole law enforcement and most importantly in this -- in your case the prosecutorial process. So what I'm hearing is if you do the cookie cutter and you're forced to do certain things it could impair a prosecution. Is that correct?

CHIEF STATE'S ATTORNEY KEVIN KANE: Yes. It could on a given case. There are cases where releasing the entire police report wouldn't cause anybody any harm unless of course the defendant was acquitted afterwards and that police report is out there on the Internet somewhere where anybody could Google it and get it even though the records have been erased. When somebody gets a pardon later on, it could be -- but would it impair law enforcement, there are many cases -- and this is why -- one of the reasons it hasn't been a direct problem in law enforcement is there are many cases where it's not going to cause any problems for the prosecution to release this report. I think there are clearly things and as Representative Jutila said, a press release can be a one-sentence press release or it can be five pages of detailed narrative about it. There are things which the public needs to know. We should find a way where we can make

routine more information available to inform the public. If there is a sexual assault, is this a serial rapist? Is this a random? Is this a sexual assault involving a stranger who was abducted and -- by a total stranger or is this a sexual assault of a former intimate partner or is it -- you know, what's the nature of this? The community may need to have some information to assess their own safety in the community and they may need to know some -- some more information. We need to find ways to get that out there because the public is entitled to that kind of information or we need to be able to do so in such a way as to protect the witnesses, to protect the integrity of the trial, to protect the defendant's right to a fair and impartial trial, et cetera. So it's not an easy thing to do. It's probably why -- why it hasn't been done before and that's why the court said what it said at the end of its opinion.

SENATOR MCLACHLAN: Thank you. One of the closing comments in your written testimony is that House Bill 6750 is premature. Given what you're trying to accomplish in -- in partnership with the Connecticut Police Chiefs to document the current practices, what is your feeling that you can come up with a reasonable balance, if you will, policy, that would be uniform that could also make FOI comfortable?

CHIEF STATE'S ATTORNEY KEVIN KANE: I'm not sure we can make FOI comfortable with anything. Colleen Murphy is going to be here to testify and she'll express her opinions. This is why I've suggested that we sit down and try to talk about this. I haven't had any takers who wanted to try to meet and define something. I don't know if anybody imagines that we could come to a compromise. We were joking earlier about -- talking -- talking about -- here we are talking about something that we can't agree on and I don't know whether we could on this because they're so -- part of the problem is that it really is a case-by-case basis. It's

hard to predict when a witness will be in danger. How do we prove that somebody may murder somebody if we reveal that. How do we know in advance? I've seen all too many murders over my career as a prosecutor and every time I get a call if there's been a new murder I'm surprised. We've had witnesses -- given information to defense attorneys thinking it's not problem, defense attorneys have given it to their clients thinking it's no problem, honestly believing it, no negligence, nothing we can say we should have known and hey something terrible happens and it's happened too many times. And this is a hard thing to do, but when -- the other side of this coin is that at the end of the prosecution when those rights have been protected, when the defendant's rights have been protected for a fair trial, when the integrity of the criminal prosecution has been protected, then the case is no longer pending and 1-210 all applies and the public certainly is entitled to much greater information at that time. So this really just -- just -- just says the public is going to have to be patient a little bit and wait until the criminal proceeding is over. I described this as a real clash between two basic very important right, but in the end -- and the bottom line is really, there is a time span until a case is no longer pending and when it's no longer pending then 210 applies and the exemptions in 210(b)(3) apply and that's the Freedom of Information Commission is then applying those and dealing well with those for a long time. We may even have disagreements there about how they apply that, but in the end, they win on that category and it's hard to go there. But this is just to protect the cases while the prosecution is pending.

SENATOR MCLACHLAN: Thank you.

And through you, Mr. Chairman, just one final question. Ms. Murphy's written testimony, which I've just been reviewing in anticipation of her testimony makes a statement -- I don't

want to steal her thunder -- but she talks about restore the standard for disclosure of law enforcement records during a pending prosecution to what had been FOIC's interpretation of the law for many decades. It -- it -- it does seem like we've sort of turned things upside down and yet what I'm hearing from you is that you're still proceeding along ways of operating that have gone on for years and that this decision really is protecting that. So I guess I'm missing what really happened as a result of the court case.

CHIEF STATE'S ATTORNEY KEVIN KANE: What happened was -- and Attorney Murphy is right -- that's what -- the Freedom of Information Commission's interpretation of the statute was that they would apply the (b)(3) -- the 1-210 exceptions and they made that argument eloquently in the Supreme Court. The Supreme Court disagreed and did not accept that argument. And the Supreme Court said that the -- what the Legislature had did -- did and had intended to do when it did it was make 215 the sole standard for determining whether or not to release -- information should be released during a pending prosecution. That was a disagreement. Now, she's right and you're right that the Freedom of Information Commission had taken that interpretation and had done so. I think the Supreme Court in its opinion describes the history of that. I think they said there were six rulings -- there were six cases they cited over that period between the mid-90s -- 1995, 1996 and today -- or last summer in which that had been the Freedom of Information Commission's interpretation of the statute. They argued that their interpretation should be given deference. The Supreme Court went over it and went over the statute, went over the history and decided that that was an unreasonable interpretation.

SENATOR MCLACHLAN: Thank you. Thank you for your testimony.

Thank you, Mr. Chairman.

REP. JUTILA: Thank you, Senator.

Let me just ask you to go back again to the practices of the various police agencies in responding to a Freedom of Information request for the arrest record, do you have any idea how frequently various departments or the state police choose one or the other of those subdivision 2 choices. In other words, when a department is asked to release the record of arrest, do they tend to choose more frequently and I think the answer is probably pretty obvious, the actual arrest report, the incident report or the news release or this catchall category at the end, other similar report of arrest, which one do they go for more frequently and do they release the actual arrest report with any degree of frequency at all?

CHIEF STATE'S ATTORNEY KEVIN KANE: I don't think they release the reports. First of all, they do so only when a request is made. Depending on that request, some departments will release -- that's always been -- over the years when I was in New London -- and I was there for many years -- I would be surprised to find out in a pending case a police report has been released. Usually if it was a murder case, somebody would call up should we do that. We always tried -- a variety of problems, too, and I don't have no idea what the numbers are or what the percentages are. I don't know how frequent or infrequent. I know reports are released sometimes too frequently. Often these decisions are made by the town counsel. Often it's made if the police department is going to seek -- because it's the town counsel. It's not the state. The state's attorney's office would have to move to intervene or would have to appear in all of these. We don't have the staff or the ability to do that. Usually it's up to the town. If a police department gets a request, if their records department realizes

it's a pending case, unless it's a very serious one, we probably wouldn't get a call, they often release the reports assuming that it won't do any harm.

If their alerts say -- if it's a case where the detectives or the investigating officers realize this might jeopardize the safety of a witness then it will red -- they will become aware of it hopefully and say we better object to this and then have to decide whether or not they should pay the town counsel if it's a part-time town counsel to do it. So these decisions are made fairly randomly. The bigger departments, the state police, I think New Haven, Hartford and Bridgeport have a records department on their own that is familiar with this and spends time redacting reports before they are released. They may release -- just redact certain items and that's time consuming and involved and some of those departments have the time to do it, others don't. That's why it varies so widely.

REP. JUTILA: So it's not the general policy of the state police to refuse to provide the actual arrest report then?

CHIEF STATE'S ATTORNEY KEVIN KANE: I think it would be the general policy of the state police to refuse to release. I'm not sure of that.

REP. JUTILA: Well that's what I would have thought until you said --

CHIEF STATE'S ATTORNEY KEVIN KANE: I think --

REP. JUTILA: -- that sometimes they redact it and release it.

CHIEF STATE'S ATTORNEY KEVIN KANE: I'm talking about some towns or I have seen that done over the years. I know that's been done. I think the state police and the policy on the part of a lot of towns would certainly be not to

release the entire report. I would hope that would be the case.

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

Representative Smith.

REP. SMITH: Thank you, Mr. Chair.

And welcome, Attorney Kane. It's good to see you again.

CHIEF STATE'S ATTORNEY KEVIN KANE: Thank you.

REP. SMITH: From what I'm hearing your testimony to be is I think you would agree with me that even though your testimony says leave it as is, it sounds to me that you feel and your colleagues feel that 215(b) needs to be changed. Is my impression correct?

CHIEF STATE'S ATTORNEY KEVIN KANE: No. I think what I'd like to do is get more of a -- more of a uniform protocol or policy in addressing the statute as it is written now and expand on or decide what type -- types of information should be routinely made available in the form of a narrative or a press release to fulfill that subsection 2.

REP. SMITH: So I'm hearing that and I think the reason you're suggesting that a protocol or policy be created is that the way the statute is written now it's being abused so I don't want to put words in your mouth, but that's what I'm hearing and that's some of the things that we've heard. So is the need for a more standardized policy, the reason being because the statute has been abused?

CHIEF STATE'S ATTORNEY KEVIN KANE: I don't think it's been abused. I don't think it's been abused. I think there is a need for it because I think the public is probably entitled to more information than is routinely given. Sometimes

a lot of information is given on -- when there is an arrest, sometimes less, sometimes -- you know, when a police make an arrest, we may have a prosecution and we're focusing on the case should there be a prosecution, can we prove the case, are there reasons not to prosecute and we go ahead, we're not thinking necessarily what should be in the release and what shouldn't be in the release. That's secondary.

REP. SMITH: Well, it seems to me then that the statute -- what I'm hearing is that the -- you want to maintain discretion or the police wish to maintain discretion on what's released and what's not released depending on the particular time and the circumstances surrounding that crime.

CHIEF STATE'S ATTORNEY KEVIN KANE: Yes.

REP. SMITH: And I guess the statute almost reads that way in the sense that -- it says, you know, clearly identifies things they can release such as a -- the arrest report, the incident report -- those are -- you know, those are well-known documents. A news release can be anything from we're investigating the crime, have a great day or other similar report which can be whatever else the police may want to provide at that time.

CHIEF STATE'S ATTORNEY KEVIN KANE: Right.

REP. SMITH: And so that's the discretion part of the statute that I think was written into the statute by the Legislature back in '94, I suspect. I mean, I wasn't here, but I suspect that was the rationale behind it then and it sounds to me like you wish to maintain that discretion but come up with some sort of uniform list, if you will, or policy that all the state departments across the state of Connecticut can look to and say, you know, we can cherry-pick based on the circumstances of the crime and the events surrounding as to what they wish to disclose, which is of course

competing with the interest of the public's wish to know what's actually happening here.

CHIEF STATE'S ATTORNEY KEVIN KANE: Right.

REP. SMITH: Okay. I just want to make sure I understood that.

CHIEF STATE'S ATTORNEY KEVIN KANE: We want to establish a floor and it really has to be on a case-by-case basis. I mean, just take the mug shot example I gave. There may be reasons and very good reasons for public safety reasons to put somebody's mug shot out there so that people can see -- see him and recognize him, maybe other victims will come forward of other crimes, maybe that person will make bond and people maybe should be aware. But that flies in the face of the defendant's -- of, A, the state's ability to put eyewitnesses on later on who may see that mug shot before they testify -- are called upon to testify and, B, it flies in the face of the defendant's interests in case the defendant should be acquitted after a trial or the charges should be dropped. And that's -- this is a had -- this is hard to balance and that's probably why the Legislature didn't do it, but there has to be a minimum floor of information that ought to be revealed. The way this statute is worded right now, it opens the door to everything having to be released unless --

REP. SMITH: Or nothing, right? It could other way. It could say, yes, I want to release everything or, you know what, I'm not going to release anything such as a news release or a report that says nothing. So I think it works both ways. I agree with you that there should be some type of floor as to the minimum of what must be disclosed to public. I don't think we have that hear. I mean, I think we have pretty much -- pretty much we have an incident report, an arrest report or whatever else we may want to give you, which I don't think that's a floor. I would love to see the floor and I'm

looking forward to the -- you know, the policies that you come up with going forward, but I don't agree with you there is a floor now.

CHIEF STATE'S ATTORNEY KEVIN KANE: I'm talking about 6750. The bill, 6750, would require anything to be released. I can't -- I mean -- or you can make an argument -- a reasonable argument here that this requires everything to be released and there is no item that can be protected unless it falls within Section 210.

REP. SMITH: I'm sorry. I do agree with you. I wasn't so much talking about the proposed changed language. I was more or less talking about the language that's in the statute now because when this was first -- was first brought to me as a new member of this committee, this issue, you know, the first thought I have is why do we have two different statutes, number one, why do we have 215 and 210. And when I first heard you testify earlier, I'm thinking that Attorney Kane is suggesting that we repeal 210 and I don't think -- and then later on I think there is -- I heard there is a reason for 210, that would be -- you know, once the case is concluded and if the press or the public wishes to look into it further, they can do it pursuant to 210. Would that be the rationale that you have with 210?

CHIEF STATE'S ATTORNEY KEVIN KANE: Yes. And if there is no arrest made. If there is an investigation and no arrest, say, then 210 would apply and the protections would apply there. 215 applies only to a pending case and the court was very clear with that.

REP. SMITH: And I'm assuming -- and I don't have the case before me, although it was provided to me, I just don't have it with me today -- that 210 subsection, I guess it was three, that deals with the disclosure, I would assume that was enacted prior to 215.

CHIEF STATE'S ATTORNEY KEVIN KANE: I think 210 in the first subsection, subsection (a) of 215, I think, were all enacted together as part of the act. Afterwards and maybe this is -- I don't think this is in the Supreme Court opinion. I know Colleen Murphy can explain the history better than I can and she'll do it honestly, I'm sure of that so you can ask her this question. But after Gifford -- Gifford decided that the police had to -- all they had to do was release the booking information then the Legislature enacted Subsection (b) of 215, that was what they did in -- in -- to expand on what Gifford said to be released -- what the prior statute said had to be released. The Legislature in '94 -- or '93, whenever it was a public act -- '94 -- addressed this issue and decided to add this additional language.

REP. SMITH: Well, it's a -- it's a fascinating issue and I will continue to look at it. I appreciate your testimony.

CHIEF STATE'S ATTORNEY KEVIN KANE: Thank you.

REP. SMITH: Thank you.

REP. JUTILA: Thank you, Representative.

Other questions from members of the committee?

Yes, Representative Devlin.

REP. DEVLIN: Thank you, Mr. Chairman.

Thank you very much. Just a clarifying question. Again at the end of your testimony, you mentioned that there is the ongoing and as of yet incomplete initiative underway by the Division and the Connecticut Police Chief's Association to document current practices. When was that initiated and when do you envision that work being completed?

CHIEF STATE'S ATTORNEY KEVIN KANE: We started talking about it in November, back before

Thanksgiving, things get awful busy. We had a meeting recently. I don't know if we can promise doing it by the end of this term. We can certainly try and do it. Maybe we can come up with a uniform policy and then at least then we'll have a policy and it will say all the police departments are doing this as a matter of course. That's still going to leave a lot to argue about.

REP. DEVLIN: Right. So not a target completion date, per se, at this point?

CHIEF STATE'S ATTORNEY KEVIN KANE: We don't have a target completion date.

REP. DEVLIN: Okay. Thank you.

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

Thank you again for your testimony, Attorney Kane, and I think this is one we'll be continuing to have some dialogue about and appreciate your participation in it, obviously. Thank you.

CHIEF STATE'S ATTORNEY KEVIN KANE: Thank you very much.

REP. JUTILA: Okay. Just a reminder or new information for any who is new to the committee process that you will see members going in and out. You will see members who are missing from their seats. It's not because they're at home or uninterested in the testimony here. There are many committee meetings going on at the same time and the time sometimes overlaps so that's why you'll members going in and out.

We have now exceeded the first hour of testimony so we'll begin to rotate back and forth between the public officials and the general public so that would make our next speaker Sue Larsen from ROVAC.

REP. BECKER: Putting aside the absentee ballots.

SUE W. LARSEN: Hmm?

REP. BECKER: Not counting the absentee ballots.

SUE W. LARSEN: No, not counting the absentee ballots.

REP. BECKER: So the calculation would still have to be done for absentee ballots.

SUE W. LARSEN: You know, the thing -- the thing that you've got to remember, too, is you know, when you're talking about the number of people that leave their ballots behind in the bin is usually very small. You have ones and twos. The absentee ballots, that's probably a bigger issue, but then again, the numbers still are much smaller than your polling places so the calculations you could always do in your head when you're talking about absentee ballots in the polling places because you'll end up with such small numbers.

REP. BECKER: Thank you.

Thank you, Mr. Chairman.

REP. JUTILA: Thank you, Representative.

Other questions from members of the committee?  
Any other questions?

Thank you, Sue, for your testimony.

SUE W. LARSEN: Thank you.

REP. JUTILA: Our next speaker will be Colleen Murphy, executive director of the Freedom of Information Commission.

COLLEEN MURPHY: Good afternoon, Senator Cassano, Representative Jutila and members of the GAE Committee. I'm Colleen Murphy, the executive

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director and general counsel of the Connecticut FOI Commission. Thank you for the opportunity to testify today in connection in five bills on your agenda today. Some of my testimony is very, very short and we didn't even submit formal statements on it and I think given the dialogue with our chief state's attorney I'm going to reverse the way I was going to do this and end with the most significant bill to us, which will be 6750. So let me start out with the least significant bills to the commission but still have some in for it. First, regarding Senate Bill 877, which is the act concerning revisions to the statutes concerning DAS. I just want to say that the commission was consulted on Section 4 of that proposal and it is correct, as the commissioner said earlier, that we have no objection to that change. With regard to Senate Bill 27, AN ACT PROHIBITING THE INTERNET PUBLICATION OF VOTER INFORMATION, with respect to that proposal prohibiting the online publication of voter registration, the commission is concerned potentially of an unintended consequence of such propose will be to eliminate public access to such information. We ask the committee be mindful of the fact that voter information including voter lists maintained by registrars should remain accessible to the public.

Next I want to speak in opposition to Raised Bill 876, AN ACT CONCERNING THE NONDISCLOSURE OF THE RESIDENTIAL ADDRESS OF SWORN MEMBERS OF A LAW ENFORCEMENT UNIT. This bill is very similar to a bill that came before the committee last year and also encompasses a bill that came before this committee the year prior. The FOI Commission objects to the proposal of addition to the list of employees contained in Section 1-217 whose addresses of exempt from disclosure in limited circumstances because the language in the bill we feel is overly broad and wide ranging regarding its application. There is still uncertainty as to whom it applies. We believe the intent is for it to apply to POST certified individuals, but we

legislative appointees leads to the appearance that an FOI commissioner might be beholden to the appointing authority. The FOIC doesn't believe this is a good thing in terms of public perception and agency independence. So for these reasons, the FOIC believes that all of the commissioner's terms should be of the same duration.

And now with regard, Raised Bill 6750, AN ACT EXPANDING THE REQUIREMENT FOR DISCLOSURE OF ARREST RECORDS UNDER THE FOI ACT, again, we thank the committee for raising this bill. We feel it's very important to the commission. I also want to thank the LCO staff for taking on this sticky wicket. It's not easy to address a remedy in this situation. So as has been discussed, the purpose of the bill is to reverse the recent Supreme Court decision in Commissioner of Public Safety versus FOI and restore the standard for disclosure of law enforcement records during a pending prosecution to what had been the FOIC's interpretation of the law for just about two decades and that interpretation occurred following an amendment to 1-215 that was passed in the aftermath of an earlier court decision that was referenced, Gifford versus FOI Commission. So in that earlier Gifford case, the court had ruled that the language in 1-215, which at that time had less in it than it has now, the court said that that was a ceiling for disclosure. This is how we talk about it in terms of ceilings and floors and the court imported into the law where it really isn't in our statute, this pending prosecution analysis and the court said, well, during a pending prosecution, 1-215 rules and the public is entitled to nothing else.

So the Legislature amended 1-215 and as you can imagine, that was quite a prospect because some of the same issues we were talking about now were bantered about then and as you could also imagine, there were a lot of cooks in the kitchen. So there was a lot of discussion,

compromise, debate on the floor of both chambers, but after that -- after that amendment, the commission felt pretty secure in how to interpret the language in 1-215. And we went along that way, maybe there weren't a bunch of cases, I think the number six is probably case, but we heard no objection to the way we were interpreting that, no entities told us they had an issue with it, nobody appealed any of those decisions and then public safety comes along, the court interpreted the current version that we have and ruled that during a pendency of a criminal prosecution, a law enforcement agency must disclose no more than the basic police blotter information and one other piece of information that you have talked about today. And that was the addition that the Legislature made when it amended 1-215 in -- in 1994. So originally, what constituted the record of arrest was a little bit less and the Legislature didn't like what happened in Gifford so it added this language about this other piece of information. It must be a press release, the arrest or incident report, or other similar report of the arrest of a person. Thus the court held that the law enforcement's disclosure obligations during a pending prosecution are exclusively governed by 1-215 so basically the same outcome as in Gifford but ruling that as long as an agency exercised its discretion and provided a little more potentially just a news release then it would have satisfied 1-215 and nothing else needed to be disclosed. But this interpretation permits the police at their discretion to avoid public scrutiny of many aspects of an arrest, such as mug shots showing an arrestee's appearance at the time of arrest or videotapes or other recordings made at the scene or in the police station, for example.

The law enforcement agency could withhold whether the person sits in a position of public trust, immigration status, minority status and the like. You can think of many things probably that could be withheld under that.

The decision raises the question should the police have this absolute discretion to decide whether the public can learn this very important information.

And remarking on a proposal to amend 1-215 back in 1993 after that Gifford case, a proposal came before the Senate and it did not include the discretionary language we have today allowing the police to decide which piece of information to provide or the language about a news release and then Senator Jepsen, now our attorney general, stated the following, "By closing off arrest records, we open up arrest itself as an avenue of abuse of civil rights because it will no longer be necessary for the police to defend an arrest on the basis of information that would be immediately available to public scrutiny. Raised by 6750 restored the FOIC's time tested interpretation of 1-215 and requires that during the pendency of a criminal prosecution, a law enforcement agency must disclose at least that basic police blotter information and the one other piece of information that I can choose without redaction and then all other records must be disclosure unless there is -- there is a big "unless" there -- unless they fall within the FOI Act's law enforcement exemption, which if you look at the law enforcement exemption, it's several exemptions contained in one. That exemption provides for confidentiality when disclosure would for example prejudice a prospective law enforcement action, endanger witnesses or reveal investigatory techniques. So if there is a witness who potentially is in jeopardy, that may be withheld under 1-210(b)(3).

What we would recommend with this proposal is that at least the law enforcement agency must point to what piece of information is exempt, what would harm the prosecution, what might harm a witness, what might harm an informant and then if there is a provision in (b)(3) then you can withhold it. I believe that 1-215 was first enacted and I'm not sure if it was at the

beginning of time in terms of FOI or in 1984 I think when there was a change in the FOI Act, but I think that provision about record of arrest was put in there to make sure -- it wasn't an exemption to disclosure. It was put in there to make sure that we don't have secret arrests in this country. So it was saying this is the floor. No matter what else is in operation, this will always be available from the time of arrest. Now the court's read it as an exemption to our statute and gives that exclusive authority to the police to decide what the public can have and when.

So Raised Bill 6750 would establish the minimum, not the maximum that a police department is required to disclose to the public while a criminal prosecution is pending. By reversing that public safety decision and restoring broader disclosure requirements of law enforcement records after an arrest, the proposal strikes an appropriate balance between protecting transparency in government and preserving the integrity of pending prosecutions. The Supreme Court expressly left this significant policy issue to the Legislature's judgment. The court said both of these arguments presented are important, both are plausible. The court looked at the legislative history and came out the same it did, but I believe the court did invite this Legislature to revisit this issue and I hope that you do so. We strongly urge you to adopt this carefully crafted bill. Thank you.

REP. JUTILA: Thank you, Colleen.

Senator Cassano.

SENATOR CASSANO: Yes. I had some intriguing discussions about this bill recently. We talk about the various court decisions, but they all basically stem from earlier court decisions where it said basically you are innocent until proven guilty. And for the innocent, the concern I have is that you can get all this

kind of type of information, once you're innocent you still get all this time of information and it assumes this or assumes that. So you are guilty whether you're innocent or not. You may be proved innocent in the system. You might not have committed the crime, but your displayed in the press or in your neighborhood or in your school system or whatever it might be, how do you rectify that? How do you justify that?

COLLEEN MURPHY: Well, I think to some degree that's the price of a free and open government. On the flip side of that, by allowing access to this information, you're shining light on police and law enforcement who possess the most significant of public trust and it's a fragile public trust and you know, I think like everything else it's a balance and we cannot erase history as much as we might try. If something happens, if somebody is arrested, it's a matter of public interest and the public is entitled to know with a lot of exemptions what happened when somebody's liberty was taken away.

SENATOR CASSANO: But again, I go back to that -- you're still innocent until proven guilty and you can't get rid of that. We have TV shows on every night at seven o'clock that have all kinds of people accused of all kinds of things that half the time weren't even near the place. I mean, it's just -- it is just -- it is a TV fiasco and it seems like an awful indictment on -- you're talking about the system and public trust, I would think we would lose public trust if innocent people are continuously found innocent but they've been smeared because of what was alleged as opposed to what might have taken place. And so that's a tough one to follow. I'm more concerned about (inaudible) citizens and having the protections that were supposed to guaranteed in the constitution for them, but it seems we've eaten way at some of those constitutional rights by availing more than we perhaps need to in a process. There is

a trial somewhere -- there is going to be a trial where all of this will become public information and so for those that don't go that far, for those that are innocent, that they find this person wasn't even in the neighborhood, that's an injustice and -- that's the difficulty I have with this bill.

COLLEEN MURPHY: Right. I'm not suggesting that it's easy by any means. You know, John Q citizen -- let's say John Q citizen alleges that he was beat up by the arresting officers and if the police are able to withhold the video or the mug shot, the person has to wait two, three, I don't know, how many years until his case gets resolved so that's why there is this balance and I think the law that we have been applying struck that balance appropriately and we think that this bill will restore that balance. Thank you.

REP. JUTILA: Other questions?

Senator McLachlan.

SENATOR MCLACHLAN: Thank you, Mr. Chairman.

My favorite (inaudible) is here.

COLLEEN MURPHY: That's right, Senator. Thank you.

SENATOR MCLACHLAN: I have to always tell everybody that you're from my district even though you don't live there anymore.

I thank you especially for bring a (inaudible) Friday afternoon at the legislative office building and I guess you and the chief state's attorney will enjoy a round of golf to discuss this at some point in the future, but it -- dating back to -- to the old decisions in the Supreme Court, this has been a problem for a long time, but it does appear, at least I'm hearing from the chief state's attorney and in communication with the Connecticut Chiefs of Police, that they share a concern that there

should be uniformity and may I ask, how do you feel about that because more regulatory versus statutory?

COLLEEN MURPHY: Well, first I would say I was heartened to some degree to hear that because I think that's one of the -- the big issues. You have some law enforcement agencies -- some police departments that are extremely pro-access and others that quite simply are not so in -- in one town, you might get a portion of the arrest report released or maybe the whole arrest report and in another town, you might not get the similar arrest report. Perhaps there is a law enforcement agency that likes one media outlet, but isn't that thrilled with another media outlet so that law enforcement agency can kind of pick and choose which outlet to give the information to. I think that's problematic as well. But to have a uniform policy, I think would be better, but I think a statutory basis is clearly the best approach since policies can so easily change, new officials in charge can forget why we did this in the first instance and just easily retreat to where we started from. So while I think that's -- that's a positive step that they're looking at that, I think that the statutory basis is clearly the way to go.

SENATOR MCLACHLAN: Thank you. And through you, Mr. Chairman, would you agree that in both court decisions the court saw the challenge of every case is different and the court saw as I believe the chief state's attorney talked about a bit today that there are sometimes occasions where it's not appropriate for a blanket release of information. Could you share your thoughts on that?

COLLEEN MURPHY: I have no disagreement with that thought -- that thought or analysis and I think that the law as we had interpreted it and the laws that we're advocating for now allows for that. You have a very broad provision in our exemptions for law enforcement records that

says if anything is going to prejudice a future law enforcement action -- and believe me if somebody comes in -- if a member of the law enforcement community comes in and makes that representation to us, we don't really second guess it unless as long as there is a -- any kind of basis for it. So that's a pretty strong sword for law enforcement to say this is going to jeopardize a pending prosecution. Okay. It's exempt under that 1-210(b)(3) or there is a witness that -- there is a witness statement -- those are exempt under the Freedom of Information Act. There might be somebody who might be harmed if their identity was known. There is an exemption for that. You know, we feel that the law currently provides the exemptions where necessary, but that law enforcement must at least come in and say what those reasons are and strike that balance between disclosure and confidentiality.

SENATOR MCLACHLAN: Thank you.

Thank you, Mr. Chairman.

REP. JUTILA: Representative Smith.

REP. SMITH: Thank you, Mr. Chairman.

As (inaudible) myself, welcome.

COLLEEN MURPHY: Thank you. Welcome to you, too.

REP. SMITH: I feel perhaps maybe we should rename Hartford the hat city. Right? I think you were here when I asked Attorney Kane some of my questions.

COLLEEN MURPHY: Yes.

REP. SMITH: So I'm looking at the proposed language, line 17 to 23 -- and I don't know if you have the bill in front of you, but if you do, I'm wondering how that language actually helps you other than I guess clarification from

the recent Supreme Court decision. Could you expound on that for me?

COLLEEN MURPHY: I apologize that I don't have the lines on my -- I do have the bill before --

REP. SMITH: Subsection b, then.

COLLEEN MURPHY: Subsection B. So your question is how does that help us?

REP. SMITH: Yes.

COLLEEN MURPHY: That restores the balance, if you will. That makes clear what we thought had been clear before, but the court said it was not clear. So B says that in addition to that record of arrest, that basic information and notwithstanding the fact that -- if there is a pending prosecution any other record that pertains to the arrest of any person shall be disclosed --

REP. SMITH: Well, let me stop you there because I read it state any other public record so to me --

COLLEEN MURPHY: Yeah.

REP. SMITH: -- a public record is something that's already out there so it's not something you're seeking disclosure of. Am I misconstruing that?

COLLEEN MURPHY: Yeah. A public record as defined in the Freedom of Information Act and that, too, is very broad. A record basically created, maintained in the possession of a public agency is a public record. So I think that that reference is back to the definitions in the FOI law. So any other public record that pertains to the arrest of any person shall be disclosed in accordance with 1-212 and 1-210(a), which those are the disclosure provisions of the FOIA law unless exempt -- and

that's a long way of saying unless exempt under 1-210(b)(3).

REP. SMITH: And then you're saying if it is exempt they have to tell you why it is exempt. Is that correct?

COLLEEN MURPHY: Right. Show us where in 1-210(b)(3) the exemption applies.

REP. SMITH: All right. And I'm sorry to interrupt you. So what if the -- you go to the police and they make an arrest and they come back to you and say well it's exempt because this may compromise a witness.

COLLEEN MURPHY: Uh-huh.

REP. SMITH: What more do they have to show you or tell you, if anything, other than that?

COLLEEN MURPHY: What more? Not much, really. If the case -- if the -- initially a case would come to us through a complaint and we would try to mediate that complaint and we're very successful at doing that and then ultimately if it went to a hearing, say, the complaining party didn't buy it, the law enforcement would come in and they would under oath testify and give us a claim about that. I mean, witnesses is pretty clear. You know, perhaps jeopardizing a pending prosecution isn't quite as clear to those of us who don't do that work, but we put a lot of faith in what's told to us. So we're just saying show it to us.

REP. SMITH: So excuse my ignorance for this area because this is all new to me so I'll probably be saying that for about two years going forward until I catch up this, but these hearings that you're referring to, are they in camera or in private or are they made public?

COLLEEN MURPHY: The hearings themselves are public. If there are records at issue -- so this is a hearing before the Freedom of Information

Commission, typically before one commissioner and a staff member and the complaining party can come in and make his or her case and then the agency comes in and defends why it's not disclosing a record and this applies not just in law enforcement, in all other cases. We have an in camera process, though, so when a record is at issue that any agency is claiming is confidential pursuant to law enforcement exemption or any other exemption in the statute and there are many, we can take that record in camera or confidentially. It kind of runs counter to what we do, but that is what we do. We take it. We look at it in camera, much like a court would and then we look at the exemption and apply the law and those records stay confidential. They're locked up in our office. We've never disclosed one until the court process is concluded, if there is one.

REP. SMITH: Okay. So I'm happy to hear that because otherwise it would seem to be that it would defeat the very purpose of this statute if you have a public hearing to determine whether this should or should not be exempt, you're kind of defeating the purpose because one it's out there, it's out there. Right?

COLLEEN MURPHY: Right. Right. This process is in place for that.

REP. SMITH: You heard -- I believe you heard my questions in the testimony from Attorney Kane about his opinion as to how 210 currently applies and that is really after the fact now once an arrest is made and a matter is concluded if the public wants further information on that issue, they can go to 210 and get it. Is that your understanding as well?

COLLEEN MURPHY: After the public safety decision, yes, I believe that's that case. It's based on something that I think is unusual, though. The court that pending criminal prosecution language into the statute and it's not there at

all. So 1-210(a), you know, prior to this decision would have applied, but for the court's pronouncement and following up on Gifford that during pending prosecutions 1-215 solely governs. It's not in the statute.

REP. SMITH: That's interesting. You know, I love judicial decision making from the bench that is a legislative function, but I'll leave that for another time. So if I were to -- and I just read 215 about ten times since I've been sitting here, but I kind of assume that language is in there, but you are telling me as I sit here today, there is no pending prosecution language in 215?

COLLEEN MURPHY: No.

REP. SMITH: Okay. Thank you. I don't have any further questions for you. I would just like to make a comment in response to the good Senator Cassano to my left. I share some of the same concerns about the fact that, you know, when someone is accused, especially in today's society, everything is so public. You know, with the Internet being what it is, you know, if -- if Rich Smith gets arrested on the way home for driving too fast, it's going to be on the news tonight. It just happens that fast and whether I was speeding or not speeding, it doesn't matter, it's going to be out there that I was speeding. So it doesn't go away -- the stigma doesn't go away if somebody's charged with a child molestation, whether that person every did it or every thought about it, or never did it, I mean that stigma is out there once it hits the public so I think we have to be very, very careful in what we do, but I think that on the one hand I'm concerned about the fact that everything is so public. On the other hand, I do appreciate the fact that we do need to hold everyone accountable and that we allow and history has proven that if we allow people to exercise what they choose to do private, they can become abusive and have become abusive, and that's not to say that it's

to point -- point fingers at any particular police department. I think they've all made mistakes and I think they all act in good conduct.

But what a public disclosure can do for us as a society in my opinion is that when there is a bad arrest, there is a false arrest made, it puts light on it and in my mind, it would also have the advantage of making sure that the police now know that they're being watched and they need to do a better job at what they're doing. So it can be -- this law can certainly be helpful and that's one of the reasons I'm sure you advocate so strongly on behalf of it is to make sure that we as a society hold those that we hold most dear to protect us to make sure that they in fact are protecting us and not abusing us. So it's a long way of going -- of saying that I think this law has some -- certainly does have some strong advantages and can be, if used properly, put light -- it can put a light on bad situations and make sure they don't happen again. So with that, I'll turn my mic back over to our good chairman.

Thank you for your testimony.

COLLEEN MURPHY: Thank you.

REP. JUTILA: Thank you, Representative.

Representative Alexander.

REP. ALEXANDER: Thank you, Mr. Chair.

And I wasn't planning on speaking on this issue today, but I just wanted to respond to some of the comments you're making and I appreciate your testimony. I actually really hold police officers in high regard. I actually -- Mr. Chair, the reason I'm late for this hearing is I had to attend a funeral for a retired police chief in Enfield who I was very close to and I read the reading at the mass and my grandfather was a police officer in my town and the two of

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them were really good friends and they really did a lot of great things to help people and empower in my town and I really feel that way about the police force in general in the state. But there has been a discussion, obviously, about arrests and the stigma of somebody being arrested, and you know, you're obviously innocent until proven guilty and how this goes down range and can be problematic for people. But conversely, I want to bring something up on the other side. In Enfield, this year, we had an issue dealing with police brutality and to be honest, the Enfield Police Department handled it really, really well. I'm critical of the town council in some ways and what they did on this, but they really handled it well.

And one reason really this story went forward was what was coming out in the journal enquirer, what was coming out in the Hartford Courant about a situation with an arrest and the actual arrest video ended up on the Hartford Courant being published and that really moved the ball forward on what was going on. And when you look at, you know, balancing public/private, living in a free society, victims' right, people who are arrested and their rights, I think this discussion in this bill strikes a good balance for that and also for the police offices because this was a situation with numerous police officers at the scene and a couple bad actors and 99 percent of the police officers on the Enfield police force that day were really great upstanding people, but it was that 1 percent that was incredibly out of line and the fact that the media and the press were allowed to publish this story also helped those police officers that were there to clear their record and make sure that there was no stigma for their behavior. So when we talk about this, I think you know it is balance and we live in a free society where there's going to be a negative side and a positive side and I do appreciate the sentiment about people who were arrested and wrongly accused and their

rights, but when you balance everything, I kind of go more in your favor on this.

And this is a very complicated issue and I think just listening to the questions with some of the members of this committee, maybe this bill will have to be tweaked and worked on because it's a complicated issue. But I think going forward and finding a way to get this information out there without disturbing the police process and the prosecutor's process to bring justice to victims is the right thing. And the final thing I'll submit, you know, as somebody who did go to law school just knowing criminal procedure, if you look at the way the framer that set up the Bill of Rights in criminal procedure in general and I think they were worried about hidden arrests and you know, a government that could be overly oppressive. I think that was part of the framer's mindset in the period of the enlightenment where they came out of. So I think that goes towards this direction. But at the same time, I don't mean that in any that it's against any law enforcement because I come from a family of a lot of police officers and what you have and really admire their work so that's just kind of my comment I wanted to say and as we move forward. So I thank you for your testimony. So I thank you.

COLLEEN MURPHY: Thank you.

REP. ALEXANDER: Thank you, Mr. Chair.

COLLEEN MURPHY: If I might say, perhaps I -- perhaps I focused too strongly on potential negative conduct, but I think the point you raise is a very good one that also it sheds light on good conduct and increases the public trust in our public officials when there is disclosure.

REP. JUTILA: Thank you.

Other questions from members of the committee?

Go ahead, Senator. Senator Cassano.

SENATOR CASSANO: Yes, I had indicated that we had quite a conversation about this and one of the things that was brought up that I didn't bring up that I'm going to ask you, let's assume this passed and we're really serious about disclosure here, juveniles, we have first degree murder, first degree sexual assault, all these other kinds of things and protections built in for the juvenile as opposed to the right of disclosure, is there any thought in those types of serious crimes to -- I know we've made some changes, but it's a -- it's a real tough issue with the same general public who wants to know what's going on with adult crimes as to why are we providing so much protection if we're serious about disclosure.

COLLEEN MURPHY: Right. Well, right now, the law enforcement exemption encompasses the confidentiality for juvenile arrest records, but I certainly think that that -- that's an appropriate question in terms of disclosure. Right now, that same exemption I'm talking about recognizes whatever those confidentiality provisions are pertaining to juvenile arrest records so there is an exemption for them as well in (b) (3).

SENATOR CASSANO: (Inaudible.)

COLLEEN MURPHY: Agreed.

REP. JUTILA: So I have a couple of thoughts and questions here to try to kind of pull this all together. I certainly believe strongly in the public's right to know. I also come from a strong public safety background so when the chief state's attorney testifies before us and says that if we pass this bill that witnesses may be threatened. They may be harmed or people could die. I mean that certainly gets my attention and I'm sure it gets the attention of all the members of this committee. So we

don't want to make any mistakes with this. At least, I don't want to make any mistakes with it. So I want to get a little bit of clarity on -- on your position and that begins with 215(b), which correct me if I'm wrong, but again, your original interpretation of 215(b) was that that provided the floor for what law enforcement agencies are required to produce when the public requests production of a public document and that the exemptions in the other parts of the Freedom of Information Act would not apply to that at all. Wasn't that your original interpretation before the Supreme Court ruled?

COLLEEN MURPHY: I think so with the limitation that we would recognize that say the law enforcement agency said we're not -- we didn't prepare a news release. We're going to give you the arrest report here, but we're going to redact from the arrest report information that was exempt under (b)(3), that would be perfectly appropriate under our old analysis, under the proposal that we have so maybe the answer is not quite a yes, but it's -- you know, we would have allowed the agency to incorporate the exemptions from (b)(3) into the arrest or incident report, as well. So would never have said you must disclose in its entirety if that's the record you're choosing to disclose. You could rely on (b)(3) then, too.

REP. JUTILA: Okay. So it's not a quite a floor. It wasn't quite a floor in your view going into this Supreme Court decision, I guess, is what you're saying because you would let them redact certain things that you would consider to fit within the exemptions of FOI from the arrest report?

COLLEEN MURPHY: Yes.

REP. JUTILA: Okay. So -- and then with the ceiling -- so now, post-Supreme Court decision, you view this as a ceiling. Correct?

COLLEEN MURPHY: Yes.

REP. JUTILA: Okay. But does that mean -- to me, a ceiling means you can't go any higher than that. Does that mean that a public agency couldn't produce some other records that they're not required to even though they agree to it.

COLLEEN MURPHY: It's a ceiling in terms of mandatory disclosure. So then the answer to your question is that yes, an agency could disclose more at its discretion. It could choose for whatever reason for some of the reasons, you know, referenced by the state's attorney, we want this mug shot out there for whatever reason we might have. We want the public to know about this situation so -- so the ceiling when we refer to that, we're referring to it in terms of mandatory required disclosure under the law. But yes, an agency could disclose more.

REP. JUTILA: Okay. And then the final question again, just to get clarity on -- on your position on this bill, I think it's your position that if we pass this bill, we should not be concerned with the concerns that -- that the chief state's attorney raised about potential harm or threats because the exemptions in the existing FOI provisions would take care of that.

COLLEEN MURPHY: Yes. I haven't heard anything raised that doesn't appear in my opinion to be covered under (b)(3). I certainly take notice when somebody talks about that type of harm coming to somebody if there is disclosure, but I think that the provisions in (b)(3) already provide for the -- at least for the examples raised. If there is something beyond that, then I certainly would like to speak to that, but the ones that I've -- the examples I've heard of I think are addressed in (b)(3) already.

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REP. JUTILA: Okay. Thank you very much for your testimony.

COLLEEN MURPHY: Thank you.

REP. JUTILA: Oh, hang on. Yeah, Representative Smith.

REP. SMITH: Thank you for the second time.

Again, reading through Subsection (b) and I'm trying to reconcile it with Subsection -- which would be the new subsection (c), so as I read the language -- proposed language for (b), it says the police would have to disclose the record of arrest and that's defined in (c) as to what that is, which is, you know, the name and address, time and date of arrest, et cetera, and at least one of the following. It talks about police reports, arrest reports, incident report, news release or other, and then it also goes on to say in (b) and any public record which you testified earlier would be, you know, any record that's been made or given to that agency so the police department. So I'm reading this now it seems to me this has really broadened the scope of what's required to be disclosed in the sense that they have to provide the record of arrest, which is defined as one and two under subsection (c) plus any other public record. Is that how you read it as well?

COLLEEN MURPHY: Plus any other public record except if exempt under (b)(3), which in our dialogue has been about what's exempt under there.

REP. SMITH: Okay. I understand that exemption part. So if it's not exempt, they have to disclose it. So a public record would also consist of an arrest report subject to any exemptions. Is that right?

COLLEEN MURPHY: Yes.

REP. SMITH: Same thing for an incident report?

COLLEEN MURPHY: Yes.

REP. SMITH: Same thing for the news release would be whatever they decide to release and a similar report would be whatever report they come up with perhaps in the future if they have -- you know, a new policy in place, they may use that.

COLLEEN MURPHY: Yeah.

REP. SMITH: So basically what you're proposing is unless its exempt under 210 I think Subsection (c) or whatever it is or Section (3), whatever it is under 210, unless it's exempt, it has to be disclosed?

COLLEEN MURPHY: Right.

REP. SMITH: Okay. Thank you.

REP. JUTILA: Thank you again.

COLLEEN MURPHY: Thank you again.

REP. JUTILA: Okay. Our next speaker is going to be Don Romoser.

DON ROMOSER: Good afternoon, Chairman Jutila, members of the committee. Thank you for your time and consideration today. My name is Don Romoser. I'm appearing in my capacity as president of the Connecticut Parent Teacher Association, PTA to testify on Raised Bill 6748, nonpartisan membership on boards of education. Connecticut PTA is a membership association dedicated to advancing the quality of education of all children in Connecticut and we have approximately 44,000 members. Connecticut PTA strongly supports HB-6748. You have my written testimony so I'll just give you some highlights.

Connecticut is one of the very few states that require partisan boards and the only one in New

Anyone else?

All right. We appreciate your testimony.

DON ROMOSER: Thank you very much.

SENATOR CASSANO: Chief Paul Fitzgerald. Following Paul will be Glenn Terlecki.

PAUL FITZGERALD: Good afternoon, Senator, and members of the committee. Thank you for the opportunity to speak this afternoon. I represent the Connecticut's Police Chief Association. The Connecticut's Police Chiefs support the right of the people to have information about individuals we arrest. We don't want secret arrests anymore than anyone else does. And it can happen, you know, with pressures and I think the existing law provides for that. The police chiefs are also concerned about protected victims, witnesses and the rights of the accused. The chiefs respectfully oppose House Bill 6750 as written. The language is overly broad and vague when it states any other public record and you heard some dialogue back and forth about what is a public record. A public record would be anything that my officers or a police department's officers would have pertaining to an arrest or an investigation. It could be video, audio, 9-1-1 calls, the new talk with body cameras, the mug shots, all of that would be in play under this language and it's -- as it reads, public records that pertains to an arrest of any person shall be disclosed. Such language will contribute to confusion and increase appeals and litigation based upon individual interpretation.

The existing freedom of information law provides for the release of information and protects victims and witnesses. The existing law also protects the rights of the accused by allowing for information to be disclosed at trial. Information is eventually going to be out there. When it comes to the trial, it's

all out in the open. Many situations require detailed and in-depth investigations even after an arrest. An arrest can be something that happened that was so traumatic that action was taken immediately by the officer at the scene. Well there still needs to be an in-depth investigation based upon the facts, witnesses and whatever is documented at that scene. Premature release of information may harm an ongoing investigation, the state's criminal prosecution or adversely tarnish a person's reputation if they are later exonerated. And it's for those reasons, the Connecticut Police Chiefs oppose this bill as written. Thank you.

SENATOR CASSANO: Senator McLachlan.

SENATOR MCLACHLAN: Thank you, Mr. Chairman.

Thank you, Chief, for you spending the afternoon with us. It's much appreciated that you would share the concerns. We've had some discussion earlier on this topic about the Connecticut Chiefs of Police Association working with the chief state's attorney in sort of a uniform policy. And my question to the Freedom of Information was are you comfortable with a statewide policy versus a statutory change to what we have now.

PAUL FITZGERALD: Yes, I would be comfortable with that. But the issue is so complex as your dealing with it now. So a policy that would make that floor, I think would be very good rather than statute-wise because obviously statute carries more weight than a policy does so a policy if it were some unimaginable thing that I can't even create now in my head, maybe in consultation with FOI and the state's attorney's office, that policy could be meant for that one situation, but it should be with the involvement of the parties. Police departments are making these decisions totally in a void. Most cases when this is an issue is because it's a serious case. It's a case that's being already in the media. I do not

get freedom of information requests about every arrest that we make in my community. But the sensational case, that's where this seems to come in to play. And many of the chiefs what they do when they get this request is they call the state's attorney. We have a FOI request on this particular case. What is your advice? And so we're already involving the state's attorney in that and to my understanding, it's working very well as it is right now.

SENATOR MCLACHLAN: And -- thank you. And so to expand a bit on that process that you have now where a high profile case you're in regular communication with the state's attorney's office to get their opinion so to speak on how to deal with an FOI and more specifically what is appropriate to release at this point. We heard the state's attorney -- chief state's attorney say that in many cases a full police report disclosure is not appropriate, certainly mug shots are not appropriate and he had some other specifics to share, too, but what -- to what degree do you think that a policy that you try to formulate among chiefs of police and the chief state's attorney can flesh out sort of all of those things or is it too complicated to really do that?

PAUL FITZGERALD: Well, one of the committees mentioned, you know, we have the news release now which can be as brief or as detailed as the department determines. Well, in discussion of the chiefs together with the state's attorney, we can come up with all right, if you're going to provide that news release or that press release, that it can contain, obviously if it's required currently by statute and at least this much more. Now, this much more is the issue that we're struggling with. What is that this much more? Is it the location of the arrest -- was the person arrested at the scene of the crime? Was the person arrested at their residence? You know, there are other issues that we may say all right, that appears to be safe to release and it won't interfere with the

prosecution of the case down the road. So I think the discussion is definitely going to happen and I think it definitely will come up with more than what we're getting now because it is each department's choice right now what to do.

SENATOR MCLACHLAN: Thank you. One last question, through you, Mr. Chairman, it seems -- I'm not a law enforcement expert by any stretch of the imagination, but it seems as a casual observer, if you will that when a law enforcement agency releases lots of information about a particular case early, quickly, almost instantly, it seems to be that the -- the prosecution side of that case is wrapped up in a bow ready to go to court. You know, that's my sense is that when you know a lot so quickly, it sounds like they've got a pretty tough case against the accused and maybe not. So the case when you have more difficult investigations that are continuing, you may have an arrest, but there could be many other parties involved and all of that, so as a casual observer, am I sort of assessing that correctly that, you know, that's part of your problem when you're not wanting to disclose a lot of information it's because it's an ongoing investigation that's -- that could be impaired by full disclosure.

PAUL FITZGERALD: That definitely is a factor. The smoking gun, you know, you get the person there, there's the body, he's holding the gun, domestic violence situations are many times like that. The information you put out will be more than the long-term investigation where more details have to be learned. And sometimes that's just to calm the community. You know, you don't want people thinking that there is a serial murdered in the neighborhood when you know that this was -- or you appear to know at this time because the innocent until proven guilty that this was what we found at the scene, the person may or may not have admitted it so you can relieve the fears of the

community and release more information than you would normally.

SENATOR MCLACHLAN: Thank you.

Thank you, Mr. Chairman.

SENATOR CASSANO: I just assume that means a simple statement like it appears to be domestic is broad enough that provides that piece of mind for the community.

PAUL FITZGERALD: Many times because most homicides are people who know each other and you don't want neighbors panicking and locking their kids away and all that because it was a family incident.

SENATOR CASSANO: Right. Thank you very much. Thank you for your testimony.

PAUL FITZGERALD: Thank you.

SENATOR CASSANO: Glenn Terlecki.

GLENN TERLECKI: Good afternoon, Senator Cassano and members of the GAE Committee. My name is Glenn Terlecki. I'm the president of the Connecticut Police and Fire Union. I'm here today to respectfully request that your committee approve Senate Bill 876. This same proposal was unanimously approved last session in front of the same committee and that was Senate Bill 273, but was unfortunately not called for a vote in front of the Senate. This bill extends the residential address exemption to sworn members of a law enforcement unit as defined by Connecticut General Statutes 7-294(a), who are POST certified. The current statute protects the release of personal residential addresses of every police officer in Connecticut with exemption of most of my police members. All police officers in my union are employers of the state of Connecticut and because the existing statute only exempts police officers who are members of a municipal police

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I just wanted to clarify one thing. I did get some information in the few minutes that we've had.

SENATOR HWANG: You have a laptop.

REP. BECKER: I do. I have my laptop here and from our regulation review administrator, I confirmed that the committee does, in fact, get an OFA report for each and every proposed reg that comes before us and I pulled up a copy of one and included in that report, it says -- there are a couple of boxes, agency estimate of state impact reasonable, and it's answered yes. Is agency estimate of municipal impact reasonable, yes? So in terms of trying to get that consensus as you alluded to earlier, apparently that is done. We have OFA following up and double-checking with the agency it's sent through so there is that and there are the public hearings held by the agency. So just -- just to kind of share with everybody -- because I know this is something -- again, I had no idea until I got there so I just wanted everybody to be aware of it.

And again, I thank you very much, you know, for raising the issues and I couldn't agree with you.

SENATOR HWANG: Thank you, Representative Becker.  
Good work as usual, sir.

SENATOR CASSANO: Thank you, Senator.

SENATOR HWANG: Thank you very much for your time.

SENATOR CASSANO: David McGuire I believe is next and then Beverly Blackwell -- wait a minute -- David McGuire, Senator Fasano and then -- excuse me -- David McGuire, Senator Fasano and then Beverly Blackwell.

DAVID MCGUIRE: Thank you, Senator Cassano, Representative Jutila, and members of the committee. My name is David McGuire. I'm an

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attorney with the ACLU of Connecticut and I'm here to support House Bill 6750, AN ACT EXPANDING THE REQUIREMENT FOR DISCLOSURE OF ARREST RECORDS DURING A PENDING PROSECUTION UNDER THE FREEDOM OF INFORMATION ACT. I'm not going to get into the Supreme Court decision from last year that Attorneys Kane and Murphy spoke to. I just want to tell you our position generally. That decision in our mind reversed years of precedency of the FOI Commission. Essentially, the commission applied a gloss that worked to provide meaningful access to arrest documents while allowing police and prosecutors to maintain and trade secrets and witnesses and all sorts of meaningful exemptions that are under 201(b)(3).

It's important to keep in mind that the ACLU ourselves as well as organizations we know of access these documents routinely and never had a problem or concern from law enforcement. In some cases, they've claimed an exemption and in every case, we yielded to that. We trust that they're going to use the exemptions properly. When requestors do go to the commission, almost always, the commission will grant that exemption. Very rarely have I seen the commission question a department's sincerity in using one of those exemptions. It's really, really important in this case to take the invitation that the Supreme Court offered and take this bill up and restore that balance. We really do believe it's important to the judicial process and the public's interest in determining if police are doing their job correctly, which most certainly are. So I'm happy to answer any questions. You know, we're just really hopefully that this committee will clarify the law and put it the way it was working for two decades.

SENATOR CASSANO: Senator McLachlan then Representative Smith.

SENATOR MCLACHLAN: Thank you. Thank you for your testimony and for waiting all afternoon.

DAVID MCGUIRE: No problem.

SENATOR MCLACHLAN: Your point about preserving the pre-decision, the July 14th decision, I think, of 2014, to preserve that way that we were operating in Connecticut before that decision, you believe this bill actually does that, mirrors that pre-decision we were operating because we keep hearing that this bill doesn't really do that, it does much more.

DAVID MCGUIRE: I think it does mirror it. I think that those same exemptions in 210(b)(3) would apply so I think essentially taken with the -- the great discussion that is happening here and I would think in future committees that this gets referred to would make clear to both law enforcement in Connecticut as well as the FOI Commission that that's what we're attempting to do. I think that language that's proposed on the Legislature's page does do that, but you know, we're not looking for -- for the ACLU, looking for anything extra. We're just trying to make sure that the public has access to the documents they did before that 2014 decision.

SENATOR MCLACHLAN: Thank you.

Thank you, Mr. Chair.

REP. SMITH: Thank you, Mr. Chair.

Just one question hopefully that I forget to ask Chairman Murphy while she was here. How many of these requests end up before the FOI Commission where there is an actual hearing?

DAVID MCGUIRE: My sense is not many like Commissioner Murphy talked about. Many of these get resolved through the informal process where an ombudsperson or -- I don't know what the name is, but they assign an attorney to try to work it out. Most of time when we have an FOI dispute with a police department, that is the process that works. Several times I've not

been able to get those responsive documents and then we've gone on to a hearing. Almost always right on the eve of the hearing there will be another informal dialogue between myself and the attorney for the police department and figure something out not to waste the commission's time or our own. You know, I think that -- I think that most attorneys that are using this process have a rapport with the departments. Most reporters certainly do because they're making these requests more than anyone else and trying to get to -- get to the bottom of a story. I think there are sometimes a pro -- you know, nonattorneys that are just citizens just trying to get information. They're more likely to get to the -- get to the hearing stage in my estimation.

REP. SMITH: Well, we haven't heard from the press yet, I don't think, at least, I don't think we -- I don't think I heard it so I suspect they're on the list somewhere. Is it fair to say in your opinion then the system prior to the Supreme Court decision worked fine?

DAVID MCGUIRE: I wouldn't go that far. We have some real issues with compliance with FOI in terms of law enforcement requests that we make. It's important that watch dog groups like the ACLU are able to get documents and we do have relationships with some departments where we don't even need to file a request. We just call and ask and they're very open and transparent. There are other departments, which I won't name, that are much less transparent and those are the ones that wait until the eve of trial -- eve of a hearing to give the documents over and there are, in my mind, some that are less open than others, but generally it works pretty well. My biggest criticism of the system is that they FOI Commission does not have the resources to expedite hearings quickly because a lot of the times, time is truly of the essence and it takes several months to go through the mediation process and get a hearing date and

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sometimes the information you've requested is no longer relevant at that point, but the -- (inaudible) FOI see applied on these arrest records I think did work well.

REP. SMITH: I always say I have one question and I end up with three. Sorry, Mr. Chairman.

Do you feel the FOI process being somewhat lengthy, although two months in the scheme of things is pretty short as far as hearings are concerned, but I guess if the information is fresh and you want to make sure you have quick access to it, two months can be a long time, do you feel that's being used as a tool by various departments in order to delay giving out this information?

DAVID MCGUIRE: Absolutely. I don't think many departments use it that way, but that's definitely the case. And two months is on the short side. We've had times where it has taken much longer than that. You know, we often will send a request and then we'll send a follow-up request because we're not rushing to get to the commission. We want to get the documents without burdening them. But there are unfortunately some departments that don't -- that don't do what they're supposed to. And you know, the vast majority are very upfront and open and understand that transparency is credibility for them.

REP. SMITH: No, and I would agree with you and I certainly don't wish to malign the police departments across Connecticut. Just like any business, the great majority do a wonderful job and they're outstanding in what they do and just like in every professional you have some that you know, you wish were a little better. Thanks for your testimony.

DAVID MCGUIRE: Thank you for the questions.

SENATOR CASSANO: Thank you very much.

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Thank you, Eric.

ERIC BROWN: Thank you for your time. Thank you for staying around.

SENATOR CASSANO: Jim Smith:

JAMES SMITH: Well, Senator Cassano, and Senator McLachlan and Representative Jutila, Representative Smith, and committee members, that's for your stamina today. I represent the Connecticut Council on Freedom of Information. We've been around for 60 years advocating for open government. Just so you know, I was a newspaper reporter and editor in Connecticut for many years. We are here today to support 6750 and to oppose SB-27 and to support 6746. Just a quick couple of words before I begin. I'm really glad some of committee members brought up constitutional issues because I think it's -- especially in the law enforcement area, we have to remember that we are a constitutional democracy. We have been since 1776 or at least 1791 when we adopted the bill of rights. We don't have secret police making secret arrests. We don't have secret trials. We are guaranteed a fair and open trial by a jury of our peers and every defendant has the right to confront the witnesses against them. I think those are our bedrock principles and we should never -- we should never forget them.

On SB-27, the Internet publication of voter information, CCFI simply feels that it's just a prior restraint, an unconstitutional restraint. You can't stop the publication of information on the Internet. As the Connecticut Constitution says no law shall ever be passed to curtail or restrain the liberty of speech or the press.

On 6746, extending the terms of the FOIC members, in my written testimony, I made an error. I suggested 7 years, the superior court terms. Actually, superior court judges are appointed for 8 years. I would suggest that

FOIC commissioners are -- should be appointed for 8 years. Okay. On 6750, we simply ask the General Assembly to resolve an ambiguity that the Supreme Court recently identified in 1-215 to restore the twenty year interpretation of the Freedom of Information Commission that resolved the ambiguity in favor of greater openness and transparency. HB-6750 makes clear that records of arrests including basic blotter information must always be released following an arrest, but a blanket exemption covering all documents except police blotter or a record of arrest, information while a prosecution is pending is contrary to the public's interest. There -- in 210(b)(3), there are eight exemptions and they're very clear and they're legitimate exemptions. You're not going to release the name of a minor witness. You're not going to publish police investigative techniques that are private to them.

There are eight exemptions. After that, everything else needs to go to the people. Thanks for your time.

SENATOR CASSANO: Senator McLachlan.

SENATOR MCLACHLAN: Thank you.

Briefly, Jim, thank you for staying and sharing your testimony. You've -- you've heard me ask questions of several about the thought process of the Connecticut Chiefs of Police working with the Chief States Attorney trying to make sure that there is some uniformity in release of materials of information and so I'd like your thought on that, number one. And whether or not that policy is acceptable versus statute, if you can't have statute the way you want it. That's number one. Number two, is there really pre Supreme Court decision of July 14, 2014 -- I hope I have that date right -- is this bill proposed really bringing us back to that because I keep sensing that it's going beyond what was the modus operandi prior to that decision.

JAMES SMITH: I think this bill brings us back to 210(b)(3) being the ceiling, as Ms. Murphy referred to, that beyond the eight exemptions, it's public information. And the eight exemptions are legitimate exemptions. We can debate whether there should be more exemptions, but those eight have been time tested and fair trials have resulted from the legislation. We believe the Supreme Court got it wrong to go back to 215 and say the police can decide what they can release. If it's up to the police, the people won't get what they need to know, how the police departments are operating. I really like your point, Senator, about policies. I'm old enough to have been around when there was a judicial law enforcement press committee coming up with how the press and the police work together at crime scenes. I mean, we had a 25-page document, everything from what photographers can do, where the yellow tape goes, we sat down and we hammered out a policy. Now, unfortunately, that policy has been lost in time, but there is no question that a -- reasonable people can sit down in the same room. My God listening to Kevin Kane and Colleen Murphy right here this afternoon, it was a symphony of democracy. It was wonderful, you know.

I happen to agree more with Ms. Murphy than with Mr. Kane, but Mr. Kane knows that. But certainly there can be working documents between the press and the police and the courts on how things ought to happen, but there certainly needs to be -- this general assembly needs to say here what the law is.

SENATOR MCLACHLAN: Thank you.

Thank you, Mr. Chairman.

SENATOR CASSANO: Representative Jutila.

REP. JUTILA: Thank you.

HB 6746

HB 6746

Just a question on the terms for the commission members, so the bill that we were requested to raise would just to be to just make the two-year terms of the legislative appointees equivalent to the others, the four year terms. So you're suggesting we go beyond that to eight-year terms. Why is that? Why do we need eight-year terms and do many commission members actually stay on the commission that long? I know it's a lot of hard work and maybe kind of a thankless job so I'm just curious.

JAMES SMITH: Oh, I know some wonderful FOI commissioners who served for 20 years, dedicated public servants. I'm sort of tongue in my cheek about the eight years, but I'm (inaudible) they are adjudicators just like superior court judges. They have to interpret law and it's not just the FOI law. There are dozens and dozens and dozens of exemptions throughout every statute in the land and -- and those commissioners have to sit there and listen to the arguments and go with one side or the other. You're just learning after two years. Two years is way too short. At least four years, please.

REP. JUTILA: Thank you.

JAMES SMITH: Thank you.

SENATOR CASSANO: Representative Smith.

HB 6750

REP. SMITH: Thank you.

To my brother, Jim Smith -- just kidding. Actually, I have no relatives -- no male relatives by the name of Smith, so how about that. Go figure that one out.

You know, it was interesting your comment about the old days when you had some agreements and policies in place with the police in terms of what the press should and could do at crime scenes. And as you know, I mean today's crime scene can become public instantaneously just by

someone walking by with a cell phone in their hand and taking a video of what's going on. I'm wondering and this could be a little bit off topic of what we're talking about here today, but I'm just wondering how that works in terms of how the press reacts to all of that and how are there still defined rules of what should and shouldn't be done because it seems like anything goes these days.

JAMES SMITH: Yes, there are rules. The police can corner off a crime scene. They can keep everyone or anyone away including -- including the press. We're going to shortly have an issue on what drones can do, but I would come down in favor of the more information the public has on how the -- how the police are investigating the crime the better off society is. Yes, it's a lot faster. That's -- that's just the times we live in. You know, there used to be a time when -- when the country was being formed that the press would come out -- once a week, you know, or once a month, and then by God, then we went to dailies, and then we went to morning papers and afternoon papers, and then all of a sudden radio came along, and then television came along, you could watch the news in motion. You can't stop technology. You simply need to -- you need to have the principles of democracy.

We -- I think there have been abuses, no question about it, but we are still the envy of the world in how a society should govern itself and in my own mind whether it's a crime scene or whether it's a legislative hearing, it's democracy and the people ought to be able to see how it's happening and what the results are.

REP. SMITH: And just kind of asking the same question I've asked a few others that came before you, it seems like people from your side of the ledger, FOI, they're happy with the way things were prior to the Supreme Court

decision, they thought that the system worked.  
Is that fair to say?

JAMES SMITH: Well, mostly, although there are  
police departments who wouldn't give  
information even under the law.

REP. SMITH: But for the most part, the system  
worked?

JAMES SMITH: Yeah. Can I answer it this way, sir?  
As an editor, I would tell my police reporters,  
these are folks who make their living covering  
crime and the police, what you need to do as a  
reporter is develop personal relationships and  
sources within a police department because  
you're never going to get the answers that the  
public needs from the hierarchy. You're going  
to get the answers from cops who trust you with  
information and so it is ever so between  
responsible journalists and dedicated public  
servants. Often times it's a trusting  
relationships and that's partly how our  
democracy works.

REP. SMITH: Understood. And those situations where  
you cannot come to an agreement between  
yourselves and the police departments and how  
often did you end up before the commission  
before the hearing, was it a regular scenario  
or was it one in every 50?

JAMES SMITH: It would have been more except that  
the -- if you're in the news business and you  
want to get information out to the public,  
ending up before the FOIC hardworking,  
wonderful people that they are, it would take  
months and months and months, and by then, the  
news is gone, you know. People have moved on.  
A quick example, just a few years ago, somebody  
dumped 250-gallon barrels of hazardous waste in  
the woods in Burlington and the Governor said  
she was going to find the perpetrator and so we  
-- as was with the Bristol Press at the time  
and went to the DEP and we said what's in the  
barrels, and they said no, we can't tell you

that. So I'm on the phone with a lawyer from the DEP, and I said, there is no exemption on what's in hazardous waste barrels. You've got to tell us that. And so we ended it up -- she finally gave us the information so we could inform the public what was dumped in the woods in Burlington, but they wouldn't -- they wouldn't have told the public that if we didn't push them. Luckily, it didn't go to the month's long process before the FOIC.

REP. SMITH: Well, I appreciate your passion on this issue. It's -- you know, it's certainly -- makes us think a little bit especially on a late Friday so thanks for your effort and for staying here today and for your testimony.

JAMES SMITH: Thanks for your stamina again.

SENATOR CASSANO: Thanks very much. And I will tell you that probably -- it must be ten years ago or 12 years ago, we actually had an incident management task force and they have, in fact, a couple of meetings on the role of the press on the incident with police, fire and so on, but of course, that went (inaudible) just like everything else. But there was an attempt to do that.

JAMES SMITH: If you want to have another conversation, we'll be there. Thank you.

SENATOR CASSANO: You're welcome.

Beverly Blackwell, Shannon Kief, then it's going to be Betsy Gara, Deb Demette, Alyson Heimer and the frosting on the cake, Jared Milfred.

BEVERLY BLACKWELL: Good evening. My name is Beverly Blackwell and I am a resident of Stratford, and vice president of Stratford PTA Council. I strongly support HB-6748, nonpartisan membership on boards of education. A nonpartisan board of ed can prevent candidates that may be better qualified from

**CONNECTICUT POLICE CHIEFS ASSOCIATION**

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9-26

**Testimony to the Government Administration and Elections Committee****February 13, 2015****Chief Paul Fitzgerald, Connecticut Police Chiefs Association**

The Connecticut Police Chiefs supports the right of the people to have information about individuals we arrest. The Police Chiefs also are concerned about protecting victims, witnesses and the rights of the accused.

The Chiefs respectfully oppose HB 6750 as written. The language is overly broad and vague when it states, "any other public record that pertains to the arrest of any person shall be disclosed...." Such language will contribute to confusion and increase appeals and litigation based upon individual interpretation.

The existing Freedom of Information law provides for the release of information and protects victims and witnesses. The existing law also protects the rights of the accused by allowing for information to be disclosed at trial.

Many situations require detailed and in-depth investigation after an arrest. Premature release of information may harm the ongoing investigation, the state's criminal prosecution or adversely tarnish a person's reputation if they are later exonerated.

CTSPJ  
PO Box 5071  
Woodbridge, CT 06525



Feb. 13, 2015

**CTSPJ Urges Passage of H.B. 6750:  
Testimony for the General Administration and Elections Committee**

The Connecticut chapter of the Society of Professional Journalists represents journalists across the state. Typically, our members write about your towns and observe your hearings, but today we submit testimony asking you to vote in favor of H.B. 6750.

The bill is needed because of a recent Supreme Court decision which changed the 20-year-old interpretation of state law. We urge a return to the original meaning that was more open and more transparent.

Please clarify that your predecessors in the General Assembly wanted the requirement that police departments disclose police blotters and records of arrest to be a minimum obligation, not a maximum. Law enforcement have a number of FOIA exemptions and we can debate and disagree on their merits. This bill is much more clear cut. Passage will simply require police departments to use the same exemptions they have relied on to keep sensitive information safe for the past two decades. Without this bill, police activity will become less open, which comes at great risk.

Sincerely,

The board of directors for the Connecticut chapter of the Society of Professional Journalists

6-10

**FREEDOM OF INFORMATION COMMISSION STATEMENT IN SUPPORT OF  
RAISED BILL 6750, AN ACT EXPANDING THE REQUIREMENT FOR DISCLOSURE OF ARREST  
RECORDS DURING A PENDING PROSECUTION UNDER THE FREEDOM OF INFORMATION ACT.  
February 13, 2015**

The Freedom of Information Commission **SUPPORTS** RB 6750, An Act Expanding the Requirement for Disclosure of Arrest Records during a Pending Prosecution under the Freedom Of Information Act. The purpose of the bill is to reverse the recent Connecticut Supreme Court decision in Commissioner of Public Safety v. FOI Commission, 312 Conn. 513 (July 14, 2014), and restore the standard for disclosure of law enforcement records during a pending prosecution to what had been the FOIC's interpretation of the law for many decades.

In Public Safety, the Supreme Court interpreted Gen. Stat. §1-215 as it now stands, and ruled that during the pendency of a criminal prosecution, a law enforcement agency must disclose *no more than* basic police blotter information and one other piece of information, designated by the law enforcement agency: either a press release, the arrest or incident report, or other similar report of the arrest of a person.

RB 6750 reflects, instead, the FOIC's time-tested interpretation of §1-215, which is based on the principle that arrests must not be shrouded in secrecy. The proposed bill requires that during the pendency of a criminal prosecution, a law enforcement agency must disclose *at least* basic police blotter information and one other piece of information, without redaction. All other records must be disclosed unless they fall within the FOI Act's "law enforcement exemption" (Conn. Gen. Stat. §1-210(b)(3)), which protects nondisclosure of law enforcement records where disclosure would, for example, prejudice a prospective law enforcement action, endanger witnesses, or reveal investigatory techniques.

In other words, RB 6750 would establish the minimum, not the maximum, that a police department is required to disclose to the public while a criminal prosecution is pending.

Many state and local police departments have long followed this standard without difficulty. During a pending prosecution, the police need only disclose the basic information required by Conn. Gen. Stat. §1-215 (blotter information and one other designated piece of information), and either disclose in full other records associated with the arrest or articulate a reason why any additional disclosures would prejudice a pending prosecution or otherwise fall into one of the several exemptions available under Conn. Gen. Stat. §1-210(b)(3).

Conn. Gen. Stat. §1-215 as it now stands -- i.e., requiring disclosure of no records other than blotter information and a press release -- permits the police, *at their discretion*, to avoid public scrutiny of many aspects of an arrest, such as mug shots showing an arrestee's appearance at the time of arrest, videotapes or other recordings made at the scene or in the police station, and records indicating an arrestee's immigration status or whether the arrestee held a position of public trust, for example. Should the police have unchallengeable discretion to decide whether the public can learn this very important information, or should this decision be vested in the FOIC, as it had been for many decades prior to the Court's ruling? The Supreme Court expressly recognized in Public Safety "numerous salutary effects of requiring greater disclosure" than that established by the current version of Conn. Gen. Stat. §1-215, but stated that "articulating a coherent policy on this matter [is] a uniquely legislative function."

By reversing Public Safety and restoring broader disclosure requirements of law enforcement records after an arrest, RB 6750 strikes an appropriate balance between promoting transparency in law enforcement and preserving the integrity of pending prosecutions. The FOIC strongly urges the legislature to adopt this carefully crafted bill.

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.

2-26



State of Connecticut  
DIVISION OF CRIMINAL JUSTICE

**TESTIMONY OF THE DIVISION OF CRIMINAL JUSTICE**

IN OPPOSITION TO:

**H.B. NO. 6750: AN ACT EXPANDING THE REQUIREMENT FOR DISCLOSURE OF ARREST RECORDS DURING A PENDING PROSECUTION UNDER THE FREEDOM OF INFORMATION ACT**

JOINT COMMITTEE ON GOVERNMENT ADMINISTRATION AND ELECTIONS  
February 13, 2015

The Division of Criminal Justice opposes H.B. No. 6750, An Act Expanding the Requirement for Disclosure of Arrest Records During a Pending Prosecution under the Freedom of Information Act and respectfully recommends the Committee take **NO ACTION** on this bill.

By its own statement of purpose, this bill seeks to "reverse the recent Connecticut Supreme Court decision in *Commissioner of Public Safety v. FOIC*." What it would really do is expand the statute enacted by this legislature in 1994. For the reasons herein stated, the Division believes this is not necessary or wise, since all that the Supreme Court did was to apply the law properly as enacted by the General Assembly.

The Division understands and appreciates the need for the existing law, which imposes upon the government the obligation to inform the public of the arrest of a citizen. Presently, General Statutes § 1-215 imposes "the exclusive [public] disclosure obligation under the [Freedom of Information Act] for law enforcement agencies with respect to documents relating to a pending criminal prosecution." *Commissioner of Public Safety v. FOIC*, 312 Conn. 513, 525 (2014). Section 1-215 provides that:

"(a) Notwithstanding any provision of the general statutes to the contrary, and except as otherwise provided in this section, any record of the arrest of any person, other than a juvenile, except a record erased pursuant to chapter 961a, shall be a public record from the time of such arrest and shall be disclosed in accordance with the provisions of section 1-212 and subsection (a) of section 1-210, except that disclosure of data or information other than that set forth in subdivision (1) of subsection (b) of this section shall be subject to the provisions of subdivision (3) of subsection (b) of section 1-210. Any personal possessions or effects found on a person at the time of such person's arrest shall not be disclosed unless such possessions or effects are relevant to the crime for which such person was arrested.

“(b) For the purposes of this section, “record of the arrest” means (1) the name and address of the person arrested, the date, time and place of the arrest and the offense for which the person was arrested, and (2) at least one of the following, designated by the law enforcement agency: The arrest report, incident report, news release or other similar report of the arrest of a person.”

In the wake of the *Commissioner of Public Safety* decision, the Division on its own initiative has teamed with the Connecticut Police Chiefs Association to conduct a survey of Connecticut police chiefs regarding compliance with section 1-215. That effort is underway, but not complete. Specifically, the Division is attempting to determine what information, beyond the basic blotter information set forth in 1-215 (b)(1), law enforcement agencies already disclose to the public pursuant to 1-215 (b)(2). The Division is concerned that the existing version of 1-215 (b)(2) may not provide sufficient concrete direction regarding what information beyond the basic blotter information must be made available to the public at the time of an arrest. Based upon the results of the survey, the Division may adopt a policy requiring that, in addition to the basic blotter information relating to an arrest, law enforcement agencies also make publicly available a brief narrative setting forth the circumstances leading up to the arrest.

H.B. No. 6750 seeks to amend section 1-215 by amending subsection (b) to require that, “[i]n addition to the disclosure of any record of arrest of any person required under this section, and notwithstanding the existence of a pending prosecution, any other public record that pertains to the arrest of any person shall be disclosed in accordance with the provisions of section 1-212 and subsection (a) of section 1-210 unless such record is exempt from disclosure pursuant to the provisions of subdivision (3) of subsection (b) of section 1-210.” General Statutes § 1-210 (b)(3) is the “law enforcement” exception to the FOIA, which exempts certain records from disclosure under the Act.

The Division respectfully must oppose H.B. No. 6750 for a number of reasons:

The bill suffers from a lack of clarity because it fails to define what is meant by “any other public record that pertains to the arrest of any person ....” The lack of specific language defining this phrase will lead to uncertainty, individual interpretations and a lack of consistency and uniformity in applying the statute. For example, the phrase may arguably include police booking photos (mugshots). Assuming it does, a blanket policy making mugshots publicly available at the time of the arrest is unwise because of the potential corrupting influence that publicizing mugshots may have on subsequent eyewitness identifications. An example may be found in *State v. Johnson*, 312 Conn. 687 (2014), a case in which the defendant moved to suppress his identification by an eyewitness based on the fact that, prior to formally identifying the defendant, the witness had viewed photographs of him on the Internet.

The phrase “any other public record that pertains to the arrest” also may arguably include records that depict or relate to evidence against the accused, such as a confession; photographs of persons, places and things; and the results of scientific tests or forensic analyses. Making this information available publicly at the time of the arrest is unwise because of the potential corrupting influence that publicizing such information may have on a defendant’s right to a fair trial free of prejudicial pretrial publicity. Examples of such claims may be found in the pending appeals of death row inmates Steven Hayes and Joshua Komisarjevsky, and in the cases of *State*

*v. Kelly*, 256 Conn. 23 (2001); *State v. Crafts*, 226 Conn. 237 (1993); *State v. Marra*, 215 Conn. 716 (1990); and *State v. Pelletier*, 209 Conn. 56e (1989). The importance of a criminal defendant's right to a fair trial free of prejudicial pretrial publicity is embodied in Rule 3.6 of the Rules of Professional Conduct, which forbids lawyers generally from disseminating information that will likely impact a litigant's right to a fair trial, and in Rule 3-8, which specifically requires prosecutors to take steps to prevent investigators, law enforcement personnel and employees from disseminating such information. It would be anomalous to have a freedom of information law which mandates that a law enforcement agency make publicly available at the time of the arrest the very same information that a prosecutor would be ethically obligated to prevent the officer from disclosing to the public.

Expanding the public disclosure mandate of 1-215 also is inconsistent with the state's erasure statute, General Statutes § 54-142a et seq., the purpose of which is "to protect innocent persons from the harmful consequences of a criminal charge which is subsequently [resolved in favor of the accused]." *State v. Morowitz*, 200 Conn. 440, 451 (1986). "The consequences of a criminal arrest are wide-ranging and long-lasting, even where an individual is subsequently found not guilty or the charges as dismissed." *Martin v. Hearst Corporation*, \_\_\_ F.3d \_\_\_ (2nd Cir. 2015) (2015 WL 347052). For arrested persons who ultimately are not convicted of any crime, the harmful consequences of a criminal charge will be needlessly exacerbated if significant amounts of information regarding the arrest are made available to the public at the time of the arrest. Once such information is disclosed, it is there forever because the erasure statute "cannot undo historical facts or convert once true facts into falsehoods." *Martin*, at\*4.

The provision in newly proposed subsection (b), which subjects "any other public record that pertains to the arrest" to the 1-210 (b)(3) law enforcement exception, does not adequately ensure the integrity of a pending prosecution. The two most important exceptions from the point of view of safeguarding the integrity of a pending prosecution are (b)(3)(A) – "the identity of informants not otherwise known or the identity of witnesses not otherwise known whose safety would be endangered or who would be subject to the threat of intimidation if their identity was made known"; and (b)(3)(D) – "information to be used in a prospective law enforcement action if prejudicial to such action."

One need look no further than *State v. Peeler*, 271 Conn. 338, 349-54 (2004), to find a horrifying reminder of the grave danger potentially faced by any witness to a serious crime. In that case, Leroy Brown, Jr., an eight-year-old witness to a murder was himself murdered in his home in Bridgeport to prevent him from testifying against the defendant. Brown's mother, Karen Clarke, was murdered at the same time simply because she was home. Today's version of 1-210 (b)(3), which exempts from mandatory disclosure the identity of a minor witness, did not exist at the time of *Peeler*, and it is doubtful whether the state could, then or now, have demonstrated that the safety of Brown, and especially Clarke, who witnessed nothing, "would be endangered" if their identities were made public. This remains true today; very few defendants make known in advance their intention to harm, threaten or intimidate a witness, making it difficult, if not impossible in most cases, for the state to prove for purposes of 1-210 (b)(3)(C) that a witness "would be" subject to harm if his or her identity was made known. The same is true with respect to 1-210 (b)(3)(D) – it is difficult, if not impossible, for the state to prove the prejudicial effect that the public disclosure of information would have on a future prosecution, especially given

that such proof must be offered under H.B. No. 6750 at the very early stage of the arrest. In many cases, the arrest does not signal the end of the criminal investigation and it is impossible for the state to predict with accuracy what may occur thereafter.

Subjecting "any other public record that pertains to the arrest" to the 1-210 (b)(3) law enforcement exception at the time of the arrest, while the prosecution is pending, is also likely to be extremely time consuming and resource draining given that it will effectively force prosecutors to intervene in every case in which a request is made for information relating to an arrest that goes beyond the blotter information and basic circumstances that led to the arrest, in order to defend the integrity of a pending prosecution.

The Division also would call the Committee's attention to the potential fiscal impact of the legislation. One can easily surmise that H.B. No. 6750, particularly with the aforementioned vagueness and lack of clarity, would result in additional appeals to the Freedom of Information Commission and the courts at considerable expense to both the state and municipal law enforcement agencies.

In sum, the Division fully recognizes the public's right to receive information regarding the arrest of a citizen. In our view, that right is adequately implemented by 1-215 as presently written which makes public the basic blotter information and some additional information regarding the circumstances that led to the arrest. The disclosure of information beyond this amount should not be mandated by statute and should rest in the hands of law enforcement agencies, who are in the best position to protect the integrity of a pending prosecution and the safety of witnesses.

At best H.B. No. 6750 is premature, given the ongoing and as yet-incomplete initiative under way by the Division and the Connecticut Police Chiefs Association to document current practices and examine potential areas for refinement. This process at the very least should be given the opportunity to continue and to come to completion. At worst, H.B. No. 6750 is a dangerous attempt to recklessly override a well-reasoned decision of our Supreme Court resulting in potentially deadly consequences.

In conclusion, the Division respectfully requests the Committee take NO ACTION on H.B. No. 6750. We would be happy to provide any additional information or to answer any questions the Committee might have.



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**Testimony in Support to House Bill No. 6750, An Act Expanding the Requirement  
For Disclosure Of Arrest Records During a Pending Prosecution Under The  
Freedom Of Information Act;**

**February, 13, 2015**

Good afternoon Senator Cassano, Representative Jutila, and distinguished members of the Committee on Government Administration and Elections. My name is David McGuire. I am the Staff Attorney for the American Civil Liberties Union of Connecticut (ACLU-CT) and I'm here to testify in support of House Bill 6750, An Act Expanding the Requirement for Disclosure Of Arrest Records During a Pending Prosecution Under the Freedom of Information Act.

In 2014, the Connecticut Supreme Court interpreted § 1-215 of the Connecticut General Statutes, holding that law enforcement agencies need not disclose full incident reports in response to Freedom of Information Act requests. Instead, the Supreme Court ruled that agencies need only to release basic police blotter information about active criminal cases. This holding came with a significant invitation to the Connecticut legislature:

"We deem balancing the various interests and articulating a coherent policy on this matter to be a uniquely legislative function. The General Assembly retains the prerogative to modify or clarify § 1-215 as it sees fit."<sup>1</sup>

The ACLU-CT urges this committee to accept this invitation from the Connecticut Supreme Court and make arrest reports and other law enforcement records transparent and available to the public.

House Bill 6750 would restore the status quo that existed before the 2014 Connecticut Supreme Court decision. This holding is contrary to twenty years of Freedom of Information Commission (FOIC) precedent. For years, the FOIC has interpreted §1-215 to require that both basic blotter information and all other information and records pertaining to the investigation must be disclosed unless the law enforcement agency provides a compelling reason that disclosure is not in the public's best interest.

Law enforcement transparency is an essential aspect of a democracy and there is a substantial interest in allowing the public, press and watchdog groups, like the ACLU-CT, to monitor police activity through access to these public records. This bill would make clear that additional records regarding a police

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<sup>1</sup> Comm'r of Pub. Safety v. Freedom of Info. Comm'n, 312 Conn. 513, 550 (Conn. 2014)

investigation, which had been routinely given to reporters for decades, must be disclosed absent an established law enforcement exemption. These exemptions adequately safeguard certain sensitive information such as the identity of informants and minor witnesses and information that, if disclosed, would be prejudicial to prospective law enforcement action.

If this legislature does not pass this bill, the Connecticut Supreme Court's decision will prevent meaningful law enforcement transparency. If the Court's decision is allowed to stand, important information regarding arrests can be held from the public and press even if it does not prejudice a law enforcement investigation. When considering how to vote on this proposal please remember that law enforcement agencies have been releasing this type of information for two decades and the members of the press have been professional when using this sensitive information to report on crimes.

We urge this committee to support this legislation and restore meaningful and necessary law enforcement transparency.

17-18

I am here to show my support for Bill No. 6750, An act expanding the requirement for disclosure of arrest records during a pending prosecution under the Freedom of Information Act.

The Connecticut Supreme Court's decision last year stemmed from my original complaint to the Freedom of Information Commission following a nearly fatal attack on Route 8 in Derby. The state police issued a bare bones press release on the incident, in which a man named Toai Nguyen was charged. State police refused to release their full report on the case, and it took several months for the New Haven Register to get it. Once it was finally released, we learned important information and details of legitimate public interest, including how the defendant was in the country illegally at the time of the attack.

The New Haven Register, Middletown Press and Torrington Register Citizen did an investigation last spring, in which reporters posed as private citizens and asked for arrest reports at every police department in the state. We encountered a wide range of responses, from departments like South Windsor which provided a full arrest report, to New Haven, which refused at the time to even show a reporter a basic arrest log. We have many police departments who interpret the current law as the Freedom of Information Commission does and who are committed to transparency. We unfortunately also have police departments who interpret the law as the courts did, using perceived vagueness as an excuse to hide police reports from the public.

As for any argument that arrest reports shouldn't be made public until after a prosecution is over, there are adequate protections in place within the court system to prevent jurors from being swayed by media coverage. During any trial, a judge consistently reminds jurors to avoid any stories in the media on the case in question.

As the New Haven Register wrote in an editorial following the Supreme Court's decision, it could have serious implications on the public's right to know and ability to hold law enforcement accountable. It would allow police to selectively withhold information and avoid scrutiny after arrests. If the media, or the public, does not gain access to detailed information until a case has been disposed of, it allows police to not only pick and choose what to release, but to have enough time to hide any potential errors or mistakes that may have been made in the course of the investigation, our editorial asserted.

Again, I urge the committee to support this bill and transparency in government.

Thank you,

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**Government, Administration and Elections Committee**  
**Feb. 13, 2015**  
**Testimony of James H. Smith, President in favor of HB 6750**  
**Connecticut Council on Freedom of Information**

Sen. Cassano, Rep. Jutila, Sen. McLachlan, Rep. Smith, and committee members, The Connecticut Council on Freedom of Information is a nonprofit association in its 60th year advocating for open government for the people. I am James H. Smith, CCFOI president. We support HB 6750.

CCFOI asks the General Assembly to resolve an ambiguity that the Supreme Court recently identified in General Statutes 1-215 and to restore the twenty-year interpretation of the Freedom of Information Commission that resolved the ambiguity in favor of greater openness and transparency. HB 6750 makes clear that "records of an arrest" — including basic blotter information — must always be released following an arrest. But a blanket exemption covering all documents except "police blotter" or "record of arrest" information while a prosecution is pending is contrary to the public interest.

This legislation makes clear that other records concerning police investigations must be disclosed unless they fall within 1-210(b)(3), the so-called eight law enforcement exemptions, which includes protecting certain information about a pending case if that information is prejudicial to the case. The courts have ruled that an evidentiary hearing is required to show that information is prejudicial.

Because government gives its law enforcement agencies monopoly power over the use of force and incarceration, they pose one of the greatest threats to a democratic form of government, if and when that power is misused or abused. Consequently, a meaningful Freedom of Information law must provide the greatest measure of transparency.

Thank you

Jim Smith  
President, CCFOI