

# **TESTIMONY OF THE CONNECTICUT ASSOCIATION OF PROSECUTORS**

## **IN OPPOSITION TO:**

### **S.B. No. 653 (COMM) AAC OPEN FILE DISCLOSURE IN CRIMINAL CASES**

**JOINT COMMITTEE ON JUDICIARY**

March 29, 2019

The Connecticut Association of Prosecutors (CAP) is the bargaining unit representing 248 Deputy Assistant, Assistant, Senior Assistant and Supervisory Assistant State's Attorneys within the Division of Criminal Justice. Charged with the responsibility for the investigation and prosecution of criminal matters in the State of Connecticut, under the supervision of the Chief State's Attorney and the thirteen state's attorneys, Connecticut's prosecutors handle thousands of cases per annum. The Connecticut Association of Prosecutors strongly opposes the concept of S.B. No.653 (COMM) AAC Open File Disclosure in Criminal Cases, and respectfully recommends the Committee take no action on this bill. CAP has worked with DCJ management, legislative leaders, OPM, and Governor Lamont's office in an effort to bring front line input to this legislation, the subject matter of this bill is already appropriately addressed in the Connecticut Practice Book, the rules promulgated by the Judicial Branch to establish criminal court procedure. It is the position of CAP that this legislation, if enacted, will place significant and unnecessary burdens on prosecutors throughout the state who endeavor each day on behalf of the citizens of this state.

By law prosecutors are subject to a variety of rules and regulations in their work. Like all attorneys, we are subject to the Rules of Professional Responsibility, and the Connecticut Practice Book which governs practice in Connecticut courts. The Rules Committee of the Superior Court establishes rules that govern attorneys and which are incorporated into the Practice Book. Prosecutors are subject to the policies and procedures of the Division of Criminal Justice. We are subject to the Connecticut General Statutes. Additionally, as prosecutors we are subject to the special rules for prosecutors within the Rules of Professional Responsibility. We are charged with upholding the state and federal Constitutions. We are charged with upholding the rights of both criminal defendants and victims of crime while endeavoring each day to make our communities safer. It is important to note, that we are charged with the responsibility of bringing both inculpatory and exculpatory evidence to the attention of the court and the accused. Prosecutors collect and gather a variety of information in order to fulfill our discovery obligations; an obligation of which we are both obligated and dedicated. This bill add unnecessarily to the above rules, contradicts several Practice Book Rules and places undue time burdens on all ready overworked and understaffed prosecutorial offices.

There are several provisions of this bill which, as written, give CAP great concern.

Section 1 of this bill requires prosecutors to obtain “any of the following items that that are within the possession, custody, or control of the prosecutorial official, the state or any agent of the state, including a person under contract with the state.” Assuming this applies to groups doing business with executive Branch agencies and the Judicial Branch, it would make the prosecutor responsible for obtaining records from groups ranging from Family relation counselors within the Judicial Branch to Domestic Violence Victim Advocates under contract with the Judicial Branch to private agencies advocating on behalf of abused children to sexual assault victims. While this provision does allow for a prosecutor to apply to the court for a protective order to seek to protect such records, it creates an additional burden upon prosecutors in presenting their cases by seeking such an order if he prosecutor believes the records should be sealed. The bill also fails to recognize the privacy rights of such individuals and would have a chilling effect upon victims of sexual assault or domestic violence or violent crime and their willingness to talk to a counselor or a victim advocate. In fact, there should be a concern that attorneys may advise victims to not rely on their advocates for fear that information may be required to be turned over to the defense. The language of this bill proposes that anyone who has a contract with the state, not necessarily the Division of Criminal Justice, must provide such records absent a protective order. It is significant to note that this burden is placed entirely upon a prosecutor without any corresponding legislation directing these “contract” groups to comply. Notwithstanding the legal, privileged and inherently private nature of this information, the language of this bill creates a claim for defendants that this information must be supplied and that a prosecutor has this responsibility “without requiring an order of the court”.

Current Connecticut Practice Sections and rules regulate discovery practice from the state to the defense. While prosecutors provide full discovery (documents, videos, etc) to defense attorneys, the rules provide that attorneys maintain possession of these items and can only provide redacted copies of documents to defendants if the state opposes. The court can decide if there is a disagreement. The rules also provide that copies of sensitive audio/ video recordings can be provided to attorneys, but not directly to defendants and that defense attorneys cannot provide copies to defendants. An attorney, who is subject to the Rules of Professional responsibility and to court rules are aware of this obligation to maintain custody of these recordings. Defendants can review and observe these recordings with their attorney. Section 1b of this proposed bill would require a prosecutor to provide copies directly to the defendant; an individual not subject to the rules applicable to attorneys. Providing copies of sensitive audio video recordings, such as forensic interviews of sexual assault victims or videos depicting undercover police officers or sensitive witnesses is fraught with danger. Such items can be posted to the internet or social media, by a defendant or others, without recourse.

Section 1e requires the prosecutorial official provide to the defendant itemized list of information provided to the defense. While this is practical and necessary in serious felony cases, cases that are not easily resolved and in cases that are proceeding to trial, it is impractical and time consuming in every case. Without additional prosecutors and staff, it would be a herculean task to do so in every case. This bill treats every type of case the same from murder to disorderly conduct without opportunities to resolve prior to this requirement.

Section 3 as delineated, expands exculpatory obligations beyond the case at hand to any criminal case for which a peace officer knows or should know such investigation is relevant. Such an expansive requirement, far beyond the particular case at bar or a case an officer is directly involved in, is insurmountable. By requiring a peace officer to know of any investigation conducted by a variety of law enforcement agencies, including ongoing sensitive investigations, would impede a necessary law enforcement function. Additionally, the requirement that a prosecutor represent that each police officer in a case has been contacted about potential exculpatory evidence that the officer may or may not have, in any criminal investigation, is unworkable. In one recent homicide investigation in a major city, over 70 officers, detective and supervisors were involved in supervising a crime scene and subsequent investigation.

As previously indicated, the rules of the Superior Court and the Connecticut Practice Book, and the Rules committee of the Superior Court have promulgated rules governing criminal discovery. Questions or concerns should be addressed in that forum as opposed to this legislation. On behalf of Connecticut's Prosecutors, CAP urges the Committee to take no action on this bill. We thank the Committee for affording this opportunity to provide input on this matter and would be happy to provide any additional information the Committee might require or to answer any questions that you might have.