



State of Connecticut
DIVISION OF PUBLIC DEFENDER SERVICES

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Testimony of
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Judiciary Public Hearing – March 20, 2015
Bill No. 1105

An Act Concerning Minor Revisions to the Criminal Justice Statutes

While not opposing Bill *1105, An Act Concerning Minor Revisions to the Criminal Justice Statutes* in its entirety, the Office of Chief Public Defender is opposed the addition of language in sections 9, 10 and 11 which would amend C.G.S. §53a-151, Tampering with a Witness; C.G.S. §53a-151a, Intimidating a Witness; and, C.G.S. §53a-155, Tampering With or Fabricating Physical Evidence, respectively. The proposal adds the term “investigation” without defining it. As such this is a substantive change to the statutes.

Investigations of a criminal offense routinely take place without any criminal charges being lodged against anyone or the existence of a criminal proceeding. This proposal provides no safeguards for the constitutional rights of persons, including the parents of minor witnesses, creating a risk that the term investigation will be loosely applied. By including “investigation”, is it possible that the mere questioning of anyone, including a minor, by law enforcement or a prosecutor, is an investigation or an investigation “about to be instituted”? Such questioning can occur under various circumstances and just about anywhere including a street corner, inside or outside a school, a place of business, a home, a police station, or a prosecutor’s office. For example, if law enforcement stops a person on the street and asks for your identification, should you assume there is an investigation or that one will be instituted? Is this “investigation” documented by law enforcement anywhere? Or is there documentation only if an investigation results in an arrest and the witness’ information was utilized?

Assume for instance the following facts: a child age 15 attends a school where there was a confrontation between other students. The 15 year old was not involved but may have observed

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the confrontation. The 15 year old is walking home from school, is stopped by the police and asked what he saw. The 15 year old is afraid to talk to the police and does not provide any information. When he goes home and tells his parents what transpired, the parents tell him not to speak with anyone about the incident until they consult with an attorney. Are the parents telling this “witness” to withhold information and therefore can be charged with tampering with a witness? What if there wasn’t any confrontation at the school, but the police ask whether there were any fights at the school in the last week? Is this an investigation? Is the 15 year old being compelled to speak with the police?

In addition, who bears the burden of proving that a person “believed” that an investigation was pending or “about to be instituted”. And how is that burden met if not memorialized? What is the time frame for the phrase, “about to be instituted”, a week, a month, six months?

The addition of this language widens the net under the statutes and permits law enforcement to question or investigate anyone or anything, without having to document such, much like an investigative subpoena. However, at least with an investigative subpoena, you at least have a piece of paper, although an investigative subpoena should never be allowed either. As drafted, this bill would penalize conduct that is truly not tampering or intimidating in the sense that the drafters intend. For these reasons, the Office of Chief Public Defender opposes Sections 9, 10 and 11 and asks this Committee not to act favorably.