

**OFFICE OF CHIEF PUBLIC DEFENDER
TEJAS BHATT, Assistant Public Defender**

Public Safety and Security Committee

Public Hearing March 1, 2016

Raised Bill No.124

AN ACT REQUIRING SMOKE DETECTORS IN RESIDENTIAL BUILDINGS

Although not opposed to the idea that residential buildings be required to have smoke detectors and other equipment that are reliable and up to standards issued by the American National Standards Institute or Underwriters Laboratories, the Office of Chief Public Defender objects to this bill because it would permit fire marshals to enter residences to conduct checks to see if those residences are up to code. The Office is concerned that giving fire marshals a statutory right to enter private residences would circumvent the general federal and state constitutional prohibitions against state actors entering residences absent a warrant based upon probable cause.

Generally speaking, law enforcement agencies are not permitted to enter residences absent a warrant issued by a neutral magistrate or the existence of a strict exception to that warrant requirement. The United States Supreme Court has held in Michigan v. Tyler, 436 U.S. 499 (1978) that the fourth amendment protection against unreasonable search and seizure applies to fire officials as well as other governmental agents. The Connecticut Supreme Court has agreed with this in State v. Eady, 249 Conn. 431 (1999).

Once government agents such as fire officials are within a residence, they are not only permitted to seize evidence related to an arson under the plain view doctrine, Michigan v. Clifford, 464 U.S. 287 (1984), but also evidence of crimes other than arson. State v. Eady, 249 Conn. 431 (1999). This is, of course, not objectionable when the fire officials are there responding to a fire or other emergency, but the Office of Chief Public Defender is concerned that this proposal would provide a loophole for them to enter to check fire codes and seize anything they might find within, without any cause to believe evidence of illegality exists. Therefore, the Office of Chief Public Defender urges this Committee to reject this proposal and take no action. Thank you.