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New England First Amendment Coalition

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SUBMITTED VIA EMAIL TO JUDTESTIMONY@CGA.CT.GOV

Joint Committee on Judiciary

c/o Sen. Gary A. Winfield

Rep. Steven J. Stafstrom

Legislative Office Building

Room 2500

Hartford, CT 06106

March 6, 2019

RE: Bill No. 970, "An Act Concerning the Confidentiality of Evidence Seized in a Criminal Investigation"

Dear Sen. Winfield and Rep. Stafstrom,

I'm writing on behalf of the New England First Amendment Coalition, the region's leading advocate for press freedom and open government.

NEFAC, a non-partisan non-profit organization, is led by some of the most esteemed attorneys, journalists and publishers in New England. Its Board of Directors includes Lynne DeLucia of the Connecticut Health Investigative Team; Dan Barrett, legal director of the ACLU of Connecticut; Barbara T. Roessner, formerly of the Hearst Connecticut Media Group; and Mike Stanton, former reporter for the Providence Journal and now a professor at the University of Connecticut.

Our coalition strongly opposes Bill No. 970, "An Act Concerning the Confidentiality of Evidence Seized in a Criminal Investigation." This legislation is written too broadly and ambiguously. It's scope isn't clear and could, as a result, give unilateral authority to law enforcement to keep secret all records gathered in nearly every criminal case. Even when interpreted narrowly, this legislation is unnecessary given the state's existing police records exemption to the Freedom of Information Act. There is simply no reason for this bill other than a strong preference by law enforcement and prosecutors not to be supervised by the public.

The bill covers "[p]roperty seized in connection with a criminal arrest or seized pursuant to a search warrant without an arrest" and exempts this "property" from disclosure under the state's FOIA. It's not clear, however, whether the term "property" refers to just those physical items seized or whether it also includes any record describing that property, such as an inventory. Both definitions are problematic.

Without access to the inventories of property seized pursuant to a search warrant, citizens will lack information crucial to the well-being of their communities. In September 2016, for example, city inspectors shut down a West Haven daycare center after they were denied access to a fenced-in area of the property's backyard.¹ Police later executed a search warrant and found 600 marijuana plants. Under Bill No. 970, the West Haven Police Department could have kept that information secret leaving residents in the dark about why city officials shut down a local daycare center and what danger children who attended that center may have encountered. This

MAJOR SUPPORTERS INCLUDE



type of crime is “just not heard of on this street,” one surprised neighbor told the New Haven Register. If a similar incident occurs again at a local daycare, Bill No. 970 will prevent that information from being heard at all.

Even with an inventory of seized property, the public can still be left wanting. As the Hartford Courant’s effort to obtain documents from the Sandy Hook shooting investigation showed, more information than an inventory is often needed. If a law allowed inventories to be shared under FOIA but exempted the release of the property itself, the Courant would have had nothing more than the word “journal” on an inventory to report. Instead, it is through the *contents* of Adam Lanza’s journals that the Courant was able to “bring into sharper focus the dark worldview” he possessed and to provide insights helpful in preventing future shootings.²

Bill No. 970 exempts from FOIA property seized “in connection with a criminal arrest” as well as property taken by warrant without an arrest made. The breadth of this legislation could conceivably prevent the disclosure of all records gathered by law enforcement from suspects and witnesses in nearly every criminal case.

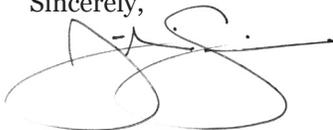
The words “in connection to” could be interpreted by law enforcement to mean “in any way related.” The word “seized” could simply mean “taking possession” of property, whether or not the materials were taken as is commonly understood under the Fourth Amendment or voluntarily surrendered. Under this interpretation, Bill No. 970 would give police unreasonably broad discretion to shield from the public records it now has the right to view. This could make it near impossible for Connecticut residents to monitor the activity of police and hold its law enforcement accountable.

Consider the following: In February 2018, a Meriden SWAT team entered a first-floor apartment on a search warrant for a drug suspect.³ During the raid, police witnessed drugs being thrown out of a second-floor apartment window and later detained five members of a family who lived on the first floor. No charges were ultimately filed against them and now the family is suing Meriden police for the trauma and injuries it claims were experienced during the raid. In this case, no arrest was made. But because a search warrant was executed, Bill No. 970 would have allowed Meriden police to keep secret any materials collected during the misguided raid until the lawsuit was filed against them — all to the detriment of Meriden residents who deserve to quickly know what happened and why.

The Connecticut FOIA currently provides sufficient protections to law enforcement and police investigations. Section 1-210(b)(3) allows police to keep secret any documents that could jeopardize an investigation, identify a witness, or reveal investigatory techniques, among other things. These exemptions are adequate. Bill No. 970 would add unnecessary secrecy to how law enforcement operates and should be opposed.

Thank you for the opportunity to submit these comments on behalf of the New England First Amendment Coalition.

Sincerely,



Justin Silverman
Executive Director

¹ <https://www.nhregister.com/connecticut/article/West-Haven-police-600-marijuana-plants-found-11327562.php>

² <https://www.courant.com/news/connecticut/hc-news-sandy-hook-lanza-new-documents-20181204-story.html>

³ <http://www.myrecordjournal.com/News/Meriden/Meriden-News/Family-evacuated-from-Puerto-Rico-sues-after%2%AoSWAT-raid-on-their%2%AoMeriden-apartment-yields-no-arrests.html>

