



Legislative Testimony
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**Written Testimony Opposing Senate Bill 970,
An Act Concerning the Confidentiality of Evidence Seized in a
Criminal Investigation and Suggesting Alternative Language**

Senator Winfield, Representative Stafstrom, and distinguished members of the Judiciary Committee:

My name is David McGuire, and I am executive director for the American Civil Liberties Union of Connecticut (ACLU-CT). I am submitting this testimony in opposition to Senate Bill 970, An Act Concerning the Confidentiality of Evidence Seized in a Criminal Investigation in its current form. I encourage the committee to use this bill, instead, as a vehicle to close the civil asset forfeiture loophole and to support the amended bill.

As an organization that values government transparency and accountability, the ACLU-CT strongly opposes measures that limit the public's access to information about the work of law enforcement and criminal investigations. We, therefore, oppose Senate Bill 970, which would remove from public disclosure under the Freedom of Information Act property seized in connection with a criminal arrest or seized pursuant to a search warrant without an arrest, with limited exceptions.

It is unclear what purpose the limitation set forth in this bill would serve. Under the current police records exemption, there are already at least five ways for police to withhold information from the public. These include allowing police to withhold evidence if it violates personal privacy or hurts a law enforcement investigation. Given the existing options available to law enforcement to limit disclosure of evidence, we are unsure what harm this bill is designed to prevent.

This bill would unnecessarily expand the existing police records exemption. The bill would exempt from disclosure both property seized in connection with a criminal arrest and property seized pursuant to a search warrant without an arrest. This language would

implement an additional, permanent bar to disclosure of all records gathered by police from suspects and witnesses in almost every criminal case.

The imprecision of the bill's language would cause confusion about what falls into the disclosure exemption and potentially lead to its overuse and use in inappropriate situations. Without a clear definition of what the phrase "in connection with" means, the exemption is ripe for abuse. It is entirely possible that police could argue that any property seized that is in any way related to a criminal arrest would be exempt under this bill. Additionally, the term "seized" could easily be misconstrued to mean any taking of possession, rather than seized within the meaning of the Fourth Amendment.

The bill would exempt from disclosure critical evidence in connection with crimes committed by anyone, including crimes committed by law enforcement officers themselves. It has historically been incredibly difficult for the public to access evidence in a criminal investigation of a police officer, and this bill would further exacerbate the issue of transparency and accountability when it comes to physical harm, and even death, at the hands of those who are charged with our protection.

This broad bill threatens government accountability and transparency, and we strongly encourage the committee to oppose the current provisions of Senate Bill 970. Rather than defeating the bill altogether, however, the ACLU-CT believes the committee should use the bill as a vehicle to reform civil asset forfeiture, which allows police to take and keep someone's property, by closing a loophole allowing Connecticut law enforcement to sidestep an important state law.

In 2017, the Connecticut General Assembly unanimously passed a bill into law that allows Connecticut prosecutors to use civil asset forfeiture to get title to someone's property only after that person has been convicted of a crime, and only if that property is related to that criminal conviction. This was an incredible step forward for liberty and justice. A loophole, however, could allow Connecticut law enforcement to confiscate innocent people's property through the federal asset forfeiture program, called the equitable sharing program.

Under equitable sharing, a state agency can collaborate with the federal government in asset forfeiture in two ways. First, a state agency can ask federal law enforcement agencies to take over a seizure done under state law and then have a U.S. Attorney litigate the forfeiture under federal law. Second, a Connecticut law enforcement agency can participate in a state/federal joint task force that collaborates on seizures and then ask U.S. attorneys to litigate the forfeiture under federal law. Because federal law permits civil asset forfeiture without the conviction required by Connecticut law, Connecticut law enforcement agencies may try to circumvent Connecticut's more protective recently updated civil asset forfeiture law by using the federal government's program. Additionally, state and local agencies that participate in equitable sharing can receive up to 80% of federal forfeiture profits, which provides a financial incentive for complete runarounds of state protections.

We encourage this committee to replace Senate Bill 970's current provisions with language that would prohibit Connecticut law enforcement agencies from referring, transferring, or otherwise relinquishing possession of property seized under state law to a federal agency for the purpose of the property's forfeiture, otherwise known as federal adoption. The language should also prohibit Connecticut law enforcement agencies working in collaboration with the federal government from accepting payment or distribution of forfeiture proceeds, unless the aggregate value of the property seized in a case exceeds \$100,000, excluding the value of contraband. This threshold would allow Connecticut law enforcement to work with federal officials on large and often complex multi-jurisdictional taskforces.

Closing this loophole would bring Connecticut into line with seven other states and the District of Columbia, which have passed legislation in an effort to halt the circumvention of state asset forfeiture laws by using the federal equitable sharing program. In fact, at least three other states and the District of Columbia have banned adoption, and many other states place value thresholds on the property that can be transferred to the federal government.

With the federal government ramping up asset forfeiture, it is important for Connecticut to act this session to pass a law to close this loophole and ensure that law enforcement follows the meaningful due process protections the legislature passed in 2017. We strongly urge this committee to oppose Senate Bill 970 in its current form and replace its provisions with language to close the civil asset forfeiture loophole to protect the people of Connecticut.