

THE CONNECTICUT ASSOCIATION OF PROSECUTORS

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TESTIMONY OF THE CONNECTICUT ASSOCIATION OF PROSECUTORS REGARDING LCO 3471: AN ACT CONCERNING POLICE ACCOUNTABILITY

JOINT COMMITTEE ON JUDICIARY

July 17, 2020

The Connecticut Association of Prosecutors (CAP) is the bargaining unit representing approximately 230 Deputy Assistant, Assistant, Senior Assistant and Supervisory Assistant State's Attorneys within the Division of Criminal Justice ("Division"), an independent executive agency. CAP has grave concerns about Sections 33 through 35 of LCO # 3471, as currently constituted, establishing an Office of Inspector General.

Article 4, Section 27 of the Connecticut Constitution designates the Division of Criminal Justice and the prosecutors who are employed therein as solely responsible for the investigation and prosecution of all criminal matters in the state. General Statutes Section 51-277(a) codifies this constitutional provision by granting all powers and duties regarding the investigation and prosecution of criminal matters to State's Attorneys, Assistant State's Attorneys, and Deputy Assistant State's Attorneys of the Division. Both the statutory and constitutional provisions specify that prosecutors employed by the Division are selected and appointed by the Criminal Justice Commission, which also has the power to remove or reappoint State's Attorneys, Deputy Chief State's Attorneys, and the Chief State's Attorney.

As presently drafted, Sections 33 through 35, establishing an Office of Inspector General, raises serious concerns about the separation of powers. Prosecutors duly appointed to work in the Division by the Criminal Justice Commission are executive officers with independent investigative, charging and prosecution authority. The proposed mandate that the Inspector General, who is to be chosen from among such duly appointed prosecutors, be subject to confirmation and appointment by the Judiciary Committee of the General Assembly creates a de-facto separation of powers concern, if not a technically legal one. Whichever prosecutor is appointed to the inspector general position would be answerable to the legislature, rather than to a State's Attorney, the Chief State's Attorney, or even the Criminal Justice Commission, which appointed that person in the first instance. Unlike other prosecutors, who have legal and contractual protections against termination, the Inspector General could be removed from his or her position at any time "for cause and the good of the public service," an overly broad and nebulous criteria. Moreover, the Inspector General would serve a term of only four years, after which the legislature could decide not to reappoint such person, who would then be out of a job. This has the very real potential to effectively negate prosecutorial discretion in charging decisions by causing the candidate to focus more on his or her future job prospects than the correct application of relevant

law. In short, prosecutors are already vetted through the Criminal Justice Commission before they are hired, and, as executive officers, they should not be subject to appointment or reappointment by the legislature.

Former Connecticut Supreme Court Chief Justice William Maltbie described Connecticut's prosecutors as being free "from the stress of politics and the vagaries of popular feeling" and observed that prosecutors have been "given [the] opportunity for the untrammelled exercise of independence in judgment and action." Chief Justice Maltbie observed, however, that "[w]ide powers have ... been vested in the state's attorneys, and with them has gone a high feeling of responsibility...." 1 Homer S. Cummings, *State vs. Harold Israel*, 15 J.Am.Inst.Crim.L. & Criminology 406, 406 (May 1924 to Feb 1925). Subjecting any one of us, even in these limited circumstances, to such direct and total legislative control, would undermine rather than advance the justice we are charged with seeking for all citizens of the state.

On behalf of Connecticut's Prosecutors, CAP urges the Committee to reconsider the bill as drafted regarding the position of Inspector General. 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.