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Testimony of Susan O. Storey, Chief Public Defender

Task Force to Study Converting Legislative Documents from Paper to Electronic Form

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The Office of Chief Public Defender is opposed to the proposed recommendation which would eliminate the creation of a verbatim transcription of the public testimony presented during the public hearings of the Joint Committees of the Connecticut General Assembly. This recommendation, if adopted as proposed by the *Joint Committee on Legislative Management's Task Force to Study Converting Legislative Documents from Paper to Electronic Form*, would deprive the public and the legal community of a valuable tool in interpreting laws debated and passed by the General Assembly.

Legal disputes will often involve a question of statutory interpretation. Resolution of a controversy depends upon the court determining whether to choose to adopt one party's analysis over another's of how a statute was intended to be applied. Lawyers routinely utilize the

legislative history to advocate as to the intent of the legislature when it passed a particular statute.

Current statutes and case law dictate what a court can consider when analyzing legislative intent. The plain meaning rule provides:

“The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered.”

Conn. Gen. Stat. §1-2z - Plain meaning rule; *State v. Koczur*, 287 Conn. 145, 152-53 (2008).

Extratextual evidence consists primarily of legislative history material. This includes the debate on the floor of the House and Senate by the legislators and the public testimony presented before the legislative committees at the public hearings on individual bills which the Committees have raised. The transcripts are critical to lawyers when advocating how a law should be interpreted and to the court in determining what the legislature intended to accomplish when it passed a bill into law.

The transcript of the public hearing testimony is routinely relied upon by lawyers and the courts in determining legislative intent. For example, in *State v. Juan L.*, 291 Conn. 556 (2009), the Supreme Court relied primarily on public hearing testimony before the Judiciary Committee when it determined that the adult competency statute could be applied to the juvenile accused. It would be virtually impossible for the courts and the legal community to effectively rely on public hearing testimony to interpret legislative intent without a transcript.

The current recommendation proposes to substitute MP3 files for a transcribed copy of the hearings and debate. However, there are issues that arise if such a substitution is permitted. First, bills are not debated in any certain sequence at the public hearings before the Committees.

State officials of state agencies and the public testify either in the order they sign up or as selected in a lottery. Without a transcript of the proceedings, it will be impossible for the public to locate testimony on any individual bill. Currently, the General Assembly's website allows a search by bill number that takes a researcher directly to the appropriate transcript page where that particular bill is discussed.

Secondly, referencing public hearing testimony in a brief or a court decision requires the ability to vouch for its accuracy and cite to specific pages of the testimony. If the General Assembly does not maintain an official transcript of the hearings and House and Senate debates, no consistent citation for such will exist. Uniform citation is critical for reference in court decisions.

Third, if a lawyer or judge wants to rely on the public hearing testimony or the debates, he/she must prepare his/her own transcript. Doing so, however, will not ensure uniformity. Courts require that transcripts of such proceeding be authenticated before being admitted into evidence. However, without an official transcript which has been authenticated, this will be impossible.

Public Defenders representing defendants in criminal cases utilize these transcripts. This is so especially in capital felony cases where attorneys must review the transcripts of public hearings to argue effectively the legislative intent concerning the death penalty statutes. The Connecticut Supreme Court has described the important role of testimony before legislative committees, particularly when there is little else in the way of legislative history to assist the Court in discerning legislative intent.

“[I]n recent years we have repeatedly approved references to testimony before legislative committees in order to shed light on legislative intent . . . This is fully consistent with the general principle of statutory construction that we look, in part, to the problem or issue that the legislature sought to resolve, and the purpose

it sought to serve, in enacting a statute . . . Often that problem, issue or purpose is disclosed by reference to the testimony before a legislative committee.”

State v. Ledbetter, 240 Conn. 317, 337 (1997).

The Connecticut Supreme Court has considered the testimony before the Judiciary Committee to resolve important statutory interpretation issues concerning the reach of the death penalty. Such testimony featured prominently in *State v. Courchesne*, 296 Conn. 622 (2010), the Court’s most recent death penalty decision. The testimony was cited extensively in both the majority and dissenting opinions to support differing views of legislative intent with regard to the common law “born alive” rule in Connecticut.

Lastly, state agencies that currently use these transcripts to advocate for individual citizens represented by this agency or the state when represented by the Division of Criminal Justice or the Office of the Attorney General will now have to bear the cost to have the MP3 recordings transcribed at the current market rate as charged by private transcribing businesses. Doing so will necessarily result in not only the additional cost to various state agencies and the private bar but a delay in the proceedings. In these current economic times, it would be more fiscally prudent to maintain the current process and have one resource to rely upon for official transcript.

The Office of Chief Public Defender therefore respectfully urges this Committee not to adopt this recommendation and to leave the current process in place.