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**Testimony of James Papillo, Victim Advocate
Submitted to the Judiciary Committee
Monday, March 20, 2006**

Good afternoon Senator McDonald, Representative Lawlor and distinguished members of the Judiciary Committee. For the record my name is James Papillo and I am the Victim Advocate for the State of Connecticut. Thank you for the opportunity to provide testimony in **SUPPORT** of:

Raised House Bill No. 5799, *An Act Concerning Crime Victims and the Victim Advocate*

Section 1: Grants *express* authority to the state Victim Advocate to pursue appellate relief on behalf of crime victims

Crime victims in Connecticut have been granted important state constitutional and statutory rights in the criminal justice process. These rights include the right to attend and to participate in court proceedings and to be heard at critical stages of a criminal prosecution. Additionally, crime victims have been granted numerous and important substantive rights within the context of criminal prosecutions including the right to be reasonably protected from the accused and the right to receive financial restitution from the convicted individual. Many of these rights are not being consistently enforced in our state. A question becomes: What recourse do crime victims have when one or more of their state constitutional and/or statutory legal rights have been violated?

The Legislature created the Office of the Victim Advocate (OVA) and granted the state Victim Advocate the express authority to file a limited, special appearance in any court proceeding to advocate for victims' rights (C.G.S. § 46a-13c (5)). Among its other statutory duties and responsibilities, the OVA was created to stand up for crime victims in court proceedings to ensure that their legal rights are being honored and respected by our criminal justice system. In granting the state Victim Advocate the authority to intervene in court proceedings on behalf of crime victims, the General Assembly undoubtedly recognized that crime victims on their own would be unable to take the legal steps necessary to enforce their rights or to seek a remedy when rights have been violated.

Further, once a claim is resolved in the trial court, whether for or against the crime victim, the state Victim Advocate's authority to act pursuant to § 46a-13c (5) does not necessarily end. Like any attorney, the state Victim Advocate has the authority and, indeed, the ethical obligation to competently, diligently and zealously represent the victim by pursuing further review and correction of trial court rulings that are adverse to his client's interest. Rules of Professional Conduct 1.1, 1.3, 3.1 and 3.2.

The legislative history of both the Victims' Rights Amendment and the OVA's enabling legislation support the position that the state Victim Advocate's authority to file an appearance to advocate for victims' rights in court proceedings must necessarily include the authority to seek further review of a trial court decision that a victim believes violated one or more of his or her rights. However, it has become clear, based upon two recent Connecticut Supreme Court cases, that the state Victim Advocate, as a state actor, will likely need the *express* statutory authority to take such action on behalf of crime victims.

Section 1 of Raised House Bill No. 5799 will expressly authorize the state Victim Advocate to pursue appellate review on behalf of a crime victim when his/her rights have been violated by a trial court during a criminal prosecution. Such *express* authority is necessary if the state Victim Advocate is to fully and effectively advocate on behalf of the constitutional and statutory rights of crime victims in Connecticut.

Section 2: Grants limited subpoena power to the state Victim Advocate

Section 2 of Raised House Bill No. 5799 is an extremely important addition to the powers of the Office of the Victim Advocate (OVA). C.G.S. § 46a-13c(4) authorizes the Victim Advocate to receive and review complaints from crime victims and others concerning the actions of any state or other entity providing services to crime victims and to investigate those cases where it appears that a crime victim or family of a crime victim needs assistance from the Victim Advocate. Section 2 would grant limited subpoena power to the state Victim Advocate, a tool that is essential to the important investigatory responsibility that the state Victim Advocate is authorized by statute to carry out.

This responsibility to conduct investigations into victims' complaints is nearly identical to the statutory responsibility of the Child Advocate to review complaints of persons concerning the actions of any entity providing services to children (C.G.S. § 46a-13l(3)). Indeed, the OVA was modeled after the Office of the Child Advocate (OCA) and, yet, while the legislature has charged both agencies with similar responsibilities, it has given only the OCA the necessary authority to access information to effectively carry out this responsibility (C.G.S. § 46a-13m(c)).

Additionally, the authority to issue subpoenas in the course of an investigation is common in Connecticut. For example, the Commissioner of Motor Vehicles has subpoena power to investigate complaints against licensed dealers and repairers of motor vehicles (C.G.S. § 14-65k). The Commissioner of Consumer Protection has subpoena power to investigate complaints regarding boxing exhibitions and wrestling bouts (C.G.S. § 21a-196) as well as complaints regarding home improvement contractors (C.G.S. § 20-424). The legislature has deemed it appropriate to grant subpoena power to investigate complaints in these areas. Investigations related to entities that provide services to crime victims or are responsible for enforcing victims' rights are no less important.

In an effort to ease the concerns of the Office of the Chief Public Defender, the Psychiatric Security Review Board and the Department of Mental Health and Addiction Services, the OVA worked collaboratively with those agencies to reach agreeable language addressing their respective concerns.

I strongly urge the committee to support Sections 1 & 2 of Raised House Bill No. 5799 and provide the OVA with the tools necessary to: (1) effectively advocate for the rights of crime victims in Connecticut; and (2) investigate those matters that affect the treatment and safety of crime victims in our state.

Section 3: Authorizes Superior Court judges to issue a protective order in any criminal case involving the use, attempted use, or threatened use of physical force against another where the judge determines that such an order may be necessary for the protection of the crime victim.

Crime victims in Connecticut have a state constitutional right to be reasonably protected from the accused throughout the criminal justice process. Currently, victims of domestic violence, stalking and harassment can request and receive a protective order for their protection. There are many cases before our state courts where the crimes charged do not involve domestic or family violence, stalking or harassment, yet, nonetheless, the victims of such crimes are terrified and fear for their safety and well-being. Section 3 would give criminal court judges the discretion, in appropriate circumstances, to provide all crime victims the degree of protection they are entitled to under Connecticut law.

Section 4: Grants the state Victim Advocate access to records in Youthful Offender proceedings.

Section 4 of the Bill will expressly grant the Victim Advocate authority to access records in youthful offender proceedings. Currently, the records of any youth adjudged a youthful offender are available to the victim of the crime to the same extent as the record of the case of a defendant in a criminal proceeding on the regular criminal docket (C.G.S. § 54-761 (d)). In addition, such records are also available to a court-based victim's advocate appointed by the court to assist a crime victim. In order for the OVA to effectively assist crime victims in youthful offender cases, the state Victim Advocate should be included among the list of those individuals and agencies already having access to records in youthful offender cases.

Section 6: Requires the Chief Court Administrator in collaboration with the state Victim Advocate to develop a multi-part form that would be used to provide the prosecuting authority and the court with notice of a victim's intent exercise his/her rights as a crime victim. Court-based advocates would provide such form to each crime victim they work with and assist the victim with completing the form. A copy of the form would then be provided to the prosecuting authority, the court, the court-based victim advocate, and the crime victim.

While maneuvering through a confusing and difficult-to-understand criminal justice system, crime victims would benefit from a simple, organized and streamlined method for informing the system of their intent to exercise some or all of their rights as crime victims. The form being proposed here (see attached model) would help reduce the number of violations of crime victims' rights as it would provide a clear, uniform and streamlined procedure for the crime victim to communicate with the system to indicate and specify what, if any, legal rights victims intend to assert during the criminal prosecution of their cases (e.g., to receive notification of court proceedings; to receive restitution from the offender; to be heard at plea and/or sentencing; to be reasonably protected from the accused; etc.). Such a form would facilitate notice to judges and prosecutors, in each case, of the existence of a victim who wishes to exercise rights and of those specific rights the victim wishes to exercise.

Section 7: This proposal will ensure that personally identifying information about the crime victim contained in any written notice submitted to the prosecuting authority and/or to the court, including the form proposed in Section 6 above, regarding the victim's intent to exercise his/her state constitutional and/or other statutory rights will be kept confidential and not be made available to the public or to the defendant.

Crime victims who provide any written notification of their intent to exercise rights as crime victims should be protected from having any personal identifying information contained thereon being disclosed to the public and/or to the defendant. The protection proposed here would not interfere with the rights that criminal defendants already have to obtain information about the victim under existing laws (e.g., the victim's name and contact information for the purpose of notifying the victim of the defendant's intent to apply for accelerated rehabilitation).

Section 8 & 9: Section 8 (adult criminal proceedings) and Section 9 (juvenile delinquency proceedings) would require that the prosecuting authority: (1) notify crime victims that a convicted criminal has filed a notice of appeal or other post-conviction remedy; (2) inform the victim of the significance of such proceeding; and (3) notify the victim of (a) the date time and place of any hearing in connection with the appeal or post-conviction remedy; (b) the right to attend such proceedings; and (c) the meaning of the result of the appeal or post-conviction proceedings.

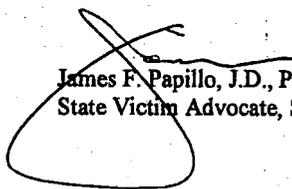
Crime victims have a state constitutional right to receive notification and to attend court proceedings. After a conviction, if the conviction is appealed, victims should be notified of the appeal, or any other type of post-conviction relief, and the outcome of the proceedings. Victims should also be informed of the date, time and location of any hearing related to the post-conviction proceedings. Such rights should be extended also to victims of juvenile crimes because, from a victim's perspective, the age of the offender is not of importance—a crime victim is a crime victim regardless of the age of the offender.

Section 10: This section will create a state-wide, automated victim notification and information system.

The Office of the Victim Advocate (OVA) has consistently documented that the most often reported complaint, received from crime victims, concerns violations of victims' state constitutional right to receive notification of court proceedings and to receive other information about criminal prosecutions. Under this proposal, registered crime victims will be able to obtain a wealth of information about their criminal cases (e.g., the date, time and location of court proceedings; any changes in parole or probation status of convicted criminals; violations of sex offender registry requirements; the release or escape of inmates; etc.). Such information would be obtained via telephone or over the internet. Notification of court proceedings and related matters would be automatically generated and sent to registered crime victims via telephone, regular mail or electronic mail, at the crime victim's choice.

This automated system for notification will go along way towards solving the most pressing problem facing crime victims in Connecticut—the receipt of timely notification and information about their cases. Violations of crime victims' state constitutional and statutory rights to receive such notification and information have been, and continue to be, the most frequent complaint filed with the OVA.

I strongly urge the committee to support these important proposals for Connecticut crime victims and I thank you for considering my testimony.



James F. Papillo, J.D., Ph.D.
State Victim Advocate, State of Connecticut

COURT LOCATION:	
DEFENDANT'S NAME:	DOCKET #:

I am the victim in the above-referenced matter and I have been informed of my rights as a crime victim in our criminal justice system. I hereby provide notice of my intent to exercise my state constitutional and statutory rights, including my right to participate in the process.

MY FORMAL REQUEST TO EXERCISE MY CONSTITUTIONAL RIGHT TO:

(CHECK ALL THAT APPLY)

- Receive notification of court proceedings (Article First, § 8(b)(4) of the state constitution)
- Communicate with the prosecution (Article First, § 8(b)(6) of the state constitution)
- Receive, in writing, the terms and conditions of any proposed plea agreement, prior to the acceptance by the court of the plea (CGS § 54-91c)
- Object to or support any plea agreement entered into by the accused and the prosecution and to make a statement to the court prior to the acceptance by the court of the plea of guilty or nolo contendere by the accused (Article First, § 8(b)(7) of the state constitution)
- Make a statement to the court at sentencing (Article First, § 8(b)(8) of the state constitution)
- Receive information about the arrest, conviction and sentence of the accused (Article First, § 8(b)(10) of the state constitution)

MY FORMAL REQUEST THAT THE COURT ISSUE THE FOLLOWING ORDERS:

(CHECK ALL THAT APPLY)

- An order of protection against the offender on my behalf and that I receive a certified copy of such order (CGS § 46b-38c(d); CGS § 54-1k; CGS § 54-64a(c)(6))
- An order of restitution for which I have or will submit documentation to substantiate my request (CGS § 53a-28)
- An order for the defendant to submit to HIV testing and/or any venereal disease examination (CGS § 54-102a & CGS § 54-102b)
- An order for the return of my personal property used to investigate a crime and/or seized by the police in connection with an arrest (CGS § 54-36a & CGS § 54-203(b)(7)(E))
- A standing criminal restraining order at the time of disposition (CGS § 53a-40e)

VICTIM CONTACT INFORMATION:

NAME		ADDRESS	
CITY, STATE, ZIP		VICTIM NAME (IF DIFFERENT)	RELATIONSHIP TO VICTIM
DAYTIME TELEPHONE	EVENING TELEPHONE	CELL PHONE	

RETAIN A COPY FOR YOUR RECORDS