



James F. Papillo, J.D.
Victim Advocate

STATE OF CONNECTICUT

OFFICE OF VICTIM ADVOCATE
505 HUDSON STREET, HARTFORD, CONNECTICUT 06106

**Testimony of James Papillo, Victim Advocate
Submitted to the Judiciary Committee
Wednesday, February 28, 2007**

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 Bill No. 7235, *An Act Concerning Crime Victims And The Authority of 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 ruling has been made by the trial court respecting alleged violation of a victim's right, 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 Bill No. 7235 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 Bill No. 7235 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 crime victims' rights are no less important.

In an effort to address concerns expressed by 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 Bill No. 7235 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: Requires probation officers who violate an offender's probation to notify registered crime victims.

Section 3 requires probation officers to notify crime victims when offenders are charged with violating probation or conditional discharge and allows the crime victim to address the court regarding the disposition of the case at the hearing if such violation is established.

Connecticut crime victims have a state constitutional right to participate in criminal prosecutions and to be heard at critical phases of a criminal prosecution, such as at the sentencing of the offender. Often, as part of an offender's sentence, s/he will be placed on a period of probation with terms and conditions of probation set by the Court. Such terms and conditions may include an order to pay restitution to the crime victim and/or an order of protection. Therefore, crime victims often have a sustained interest in the terms and conditions ordered as part of the original, underlying sentence and should have a right to protect those interests at the disposition of the violation of probation charge. Section 3 provides that registered crime victims must be provided with notice of the violation of probation charge and the date, time and place of the hearing on the violation charges. In addition, Section 3 provides that the crime victim may be heard by the court regarding the disposition of the matter.

Section 4: Expands authority of Superior Court Judges to Issue Protective Orders

Section 4 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 [Connecticut Constitution, Article 1st, Section 8(b)(3)]. 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 4 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.

I strongly urge you to support extending this important protection to *all* victims of crime in Connecticut by supporting this proposal.

Section 5: Requires the court, rather than the defendant, notify crime victims when a defendant applies for the accelerated rehabilitation (AR) program.

Under Section 54-56e of the Connecticut General Statutes (C.G.S.), when a criminal defendant applies for the accelerated rehabilitation (AR) program, s/he must send notice to the crime victim by registered or certified mail at the time of application. Crime victims have a right to attend the hearing on the application for AR and have a right to be heard regarding whether the AR program should be granted by the Court.

The OVA has received a number of complaints from crime victims concerned about being contacted directly by the defendant. Criminal defendants often obtain the crime victims address from the court clerk or from the prosecutor's office. Particularly where the defendant and crime victim are strangers, crime victims are understandably concerned that the defendant who caused them harm now knows where the crime victim resides.

Crime victims have a state constitutional right to be reasonably protected from the accused throughout the criminal justice process. Crime victims often sense that they are being re-victimized by the judicial system when the victim's contact information is disclosed to the defendant. Section 5 of the Bill would require that the court clerk rather than the defendant send the required notice of the AR application to the crime victim.

Section 6: Grants the state Victim Advocate access to records in Youthful Offender proceedings.

Section 6 of the Bill will expressly grant the Victim Advocate authority to access records in youthful offender proceedings. Currently, such records are accessible to any person appointed by the Court to assist a crime victim (C.G.S. § 54-761 (b)). Further, current law provides that 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)).

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 7: Provides that, upon request and prior to the sentencing hearing in a criminal case, the crime victim be provided with a copy of that portion (and only that portion) of the pre-sentence investigation report (PSI) which contains statements given by the crime victim to the probation officer as part of the pre-sentence investigation.

As part of a pre-sentence investigation (PSI), the probation officer conducting such investigation is required to interview the crime victim and to include statements from the crime victim in the PSI report submitted to the Court.

The OVA has received complaints from crime victims regarding the accuracy of the victim's statements contained in the PSI report. Crime victims in Connecticut have a state constitutional right to address the court at sentencing. Section 7 of the Bill proposes providing the crime victim with a copy of the victim portion (only) of the PSI report so that if there are any discrepancies in the report from the victim's perspective, the crime victim will have an opportunity to correct the "record" at the sentencing hearing.

Section 8: Requires the Judicial Branch to create and maintain a "Crime Victim Assistance Center" at each court site to provide crime victims with information about rights and services.

Crime victims in our state are not being adequately informed of their rights and/or how to assert their rights. Not all courts have court-based victim advocates (employees of the Judicial Branch). In addition, court-based victim advocates are mandated to serve only victims who sustain physical injury as a result of crime. Many victims are uninformed about their rights, how to assert their rights, and the availability of victim services.

The majority of crime victims who contact the OVA for assistance indicate that they were either not informed of their rights at all or were misinformed about their rights to participate in the criminal justice system.

One way to effectively address this situation would be for the Judicial Branch to hire more court-based victim advocates to service crime victims. An alternative, less costly, approach is proposed in Section 8 of the Bill. I am proposing that the Judicial Branch create a centrally located, unmanned, area within each court throughout the state where crime victims can obtain information and materials about their rights, how to assert their rights and victim services. In addition, I am proposing that the OVA and the Judicial Branch work collaboratively on developing a resource guide for crime victims that would include: (1) information about the criminal justice process; (2) information about victims' rights; information about how to assert victims' rights; and forms that may be used to assert victims' rights.

Such an effort would represent a significant improvement on educating Connecticut crime victims regarding their rights, the availability of services, and how to assert victims' rights and avail themselves of services.

Section 9: Creation and Distribution of a Form to Notify Court and Prosecutor of Intent to Assert Victims' Rights

Section 9 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 to 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 form) 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 10 & 11: Notice to Crime Victims of an Appeal of Conviction in Adult Criminal and Juvenile Delinquency Proceedings

Section 10 (adult criminal proceedings) and Section 11 (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.

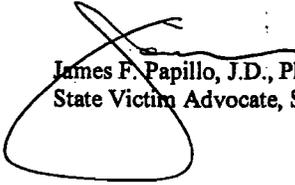
Crime victims have a state constitutional right to receive notification and to attend court proceedings. After a conviction, if the conviction is appealed, victims should be notified of the appeal, or any other type of post-conviction relief, and the outcome of the proceedings. Victims should also be 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 12: Confidentiality of Victim Information

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 9 of the Bill, 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 legal rights that criminal defendants already have to obtain information about the victim under existing law.

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



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

NOTICE OF INTENT TO EXERCISE CRIME VICTIM RIGHTS

STATE OF CONNECTICUT
 OFFICE OF THE VICTIM ADVOCATE
 NOTICE OF INTENT TO EXERCISE VICTIM RIGHTS - OVA-VR-05

- INSTRUCTIONS:
 1. COMPLETE FORM & SIGN
 2. PROVIDE COPY TO THE CLERK OF THE COURT
 3. PROVIDE COPY TO THE STATE'S ATTORNEY

ORIGINAL FORM SUPPLEMENTAL FORM REPLACEMENT FORM

COURT LOCATION:	DATE
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.

FORMAL REQUEST TO BE PROVIDED WITH THE FOLLOWING NOTICES

(CHECK ALL THAT APPLY)

- Any judicial proceedings relating to the case (CGS § 51-286e)
- Suspension of prosecution (CGS § 17a-696)
- Application for pretrial family violence education program (CGS § 46b-38c)
- Failure of defendant to return to treatment facility (CGS § 54-56d)
- Date, time and place of plea and sentencing hearing (CGS § 54-91c)
- Terms and conditions of proposed plea agreement, in writing (CGS § 54-91c)

FORMAL REQUEST FOR THE FOLLOWING COURT 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))
- A written order of restitution for which I have submitted 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	

. KEEP A COPY FOR YOUR RECORDS