



# House of Representatives

General Assembly

**File No. 780**

January Session, 2009

Substitute House Bill No. 6670

*House of Representatives, April 21, 2009*

The Committee on Judiciary reported through REP. LAWLOR of the 99th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

***AN ACT CONCERNING THE RIGHTS OF CRIME VICTIMS AND THE DUTIES OF THE OFFICE OF THE VICTIM ADVOCATE.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 1-200 of the general statutes is amended by adding  
2 subdivision (12) as follows (*Effective October 1, 2009*):

3 (NEW) (12) "Invasion of personal privacy" means the public  
4 disclosure of any matter that (A) would be highly offensive to a  
5 reasonable person, and (B) is not of legitimate concern to the public.

6 Sec. 2. Section 1-210 of the general statutes is amended by adding  
7 subsection (f) as follows (*Effective October 1, 2009*):

8 (NEW) (f) Whenever a public agency receives a request from any  
9 person for the disclosure of any records described in subdivision (2) of  
10 subsection (b) of this section under the Freedom of Information Act,  
11 the disclosure of which could constitute an invasion of the personal  
12 privacy of a crime victim, as defined in 1-1k, the public agency shall

13 withhold such records from such person and shall promptly notify  
14 such crime victim of such request. If such person appeals the denial of  
15 the right to inspect or copy such records to the Freedom of Information  
16 Commission pursuant to section 1-206, the crime victim may intervene  
17 as a party in the proceedings on the matter before the commission.

18 Sec. 3. Subsection (a) of section 54-220 of the general statutes is  
19 repealed and the following is substituted in lieu thereof (*Effective*  
20 *October 1, 2010*):

21 (a) Victim advocates shall have the following responsibilities and  
22 duties: (1) To [provide initial screening of each personal injury case; (2)  
23 to] assist victims in the preparation of victim impact statements to be  
24 placed in court files; [(3)] (2) to notify victims of their rights and  
25 request that each victim so notified attest to the fact of such notification  
26 of rights on a form developed by the Office of the Chief Court  
27 Administrator, which form shall be signed by the victim advocate and  
28 the victim and be placed in court files and a copy of which form shall  
29 be provided to the victim; [(4)] (3) to provide information and advice  
30 to victims in order to assist such victims in exercising their rights  
31 throughout the criminal justice process; [(5)] (4) to direct victims to  
32 public and private agencies for service; [(6)] (5) to coordinate victim  
33 applications to the Office of Victim Services; and [(7)] (6) to assist  
34 victims in the processing of claims for restitution. For the purposes of  
35 this section, "victim" means "victim of crime", as defined in section 1-  
36 1k.

37 Sec. 4. (NEW) (*Effective October 1, 2009*) (a) For the purposes of this  
38 section, "minor" means any person under eighteen years of age.

39 (b) In any criminal proceeding involving an alleged sexual assault of  
40 a minor or in which a minor is expected to testify as a witness, the  
41 court shall take action to expedite the proceeding and the trial of such  
42 case shall have precedence over other cases with respect to the order of  
43 trial, except cases of the same type. Nothing in this subsection shall be  
44 construed to require that the proceeding be expedited if such  
45 expedited proceeding would not be in the best interests of the child.

46 (c) Upon a request by a defendant for a continuance in such  
47 proceeding, the prosecuting authority shall file with the court an  
48 impact statement, on a form prescribed by the Office of the Chief Court  
49 Administrator, that specifies (1) whether the state agrees to the request  
50 for a continuance, (2) whether the minor or the minor's representative  
51 agrees to the request for a continuance, and (3) the effect, if any, that  
52 granting the continuance may have on the minor. The court shall  
53 consider and give weight to any possible adverse impact that a delay  
54 of the proceeding may have on the minor. If the court grants such  
55 continuance, it shall state, in open court and on the record, the reasons  
56 for its decision.

57 Sec. 5. Section 18-87j of the general statutes is repealed and the  
58 following is substituted in lieu thereof (*Effective October 1, 2009*):

59 There is established a Criminal Justice Policy Advisory Commission  
60 which shall be within the Office of Policy and Management for  
61 administrative purposes only. The commission shall consist of the  
62 undersecretary of the Criminal Justice Policy and Planning Division  
63 within the Office of Policy and Management, the Chief Court  
64 Administrator, the Commissioner of Correction, the Commissioner of  
65 Public Safety, the Chief State's Attorney, the Chief Public Defender, the  
66 Commissioner of Mental Health and Addiction Services, [and] the  
67 chairperson of the Board of Pardons and Paroles and the Victim  
68 Advocate, or their designees, the executive director of the Court  
69 Support Services Division or other designee of the Chief Court  
70 Administrator and the following members, each of whom shall be  
71 appointed by the Governor: Three government officials, a police chief,  
72 two persons representing offender and victim services within the  
73 private community and two public members. In addition, the Labor  
74 Commissioner and the Commissioner of Social Services, or their  
75 designees, shall be members of the commission with authority to  
76 deliberate and vote on matters concerning employment and  
77 entitlement programs available to adult and juvenile offenders who  
78 are reentering the community, and the Commissioner of Children and  
79 Families and the Commissioner of Education, or their designees, shall

80 be members of the commission with authority to participate and vote  
 81 on matters concerning juvenile justice. The undersecretary of the  
 82 Criminal Justice Policy and Planning Division shall serve as  
 83 chairperson of the commission. The commission shall meet at such  
 84 times as it deems necessary.

85 Sec. 6. Section 53a-46d of the general statutes is repealed and the  
 86 following is substituted in lieu thereof (*Effective October 1, 2009*):

87 A victim impact statement prepared with the assistance of a victim  
 88 advocate to be placed in court files in accordance with subdivision [(2)]  
 89 (1) of subsection (a) of section 54-220, as amended by this act, may be  
 90 read in court prior to imposition of sentence upon a defendant found  
 91 guilty of a crime punishable by death.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2009</i>	1-200
Sec. 2	<i>October 1, 2009</i>	1-210
Sec. 3	<i>October 1, 2010</i>	54-220(a)
Sec. 4	<i>October 1, 2009</i>	New section
Sec. 5	<i>October 1, 2009</i>	18-87j
Sec. 6	<i>October 1, 2009</i>	53a-46d

**Statement of Legislative Commissioners:**

In section 4(c), language was added to clarify that the impact statement is prepared when the request for a continuance is made by a defendant, and section 6 was added to make a conforming change.

**JUD**      *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

## **OFA Fiscal Note**

### **State Impact:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 10 \$</b>	<b>FY 11 \$</b>
Freedom of Inf. Com.	GF - Potential Cost	Minimal	Minimal
Judicial Dept.; Comptroller Misc. Accounts (Fringe Benefits)	GF - Cost	Less than 100,000	Less than 100,000

Note: GF=General Fund

**Municipal Impact:** None

### **Explanation**

**Sections 1-2** requires state agencies to notify crime victims of any request for the disclosure of any records that would constitute an invasion of the personal privacy of a crime victim. Various state agencies would incur minimal annual costs under this provision.

**Sections 1-2** could result in an increase in appeals and hearings before the Freedom of Information Commission (FOIC) when a person is denied disclosure of certain records and chooses to appeal. Increased costs to the FOIC would result in per diem payments for commissioners to preside over hearings as well as notification and transcription expenses.

**Section 3** eliminates the requirement for victim services advocates<sup>1</sup> to provide initial screening for personal injury cases, but expands the duties of these victim advocates to assist any victim of threatening crimes. There were over 5,000 charges of threatening filed with the Superior Court in 2008. It is anticipated that the Judicial Department

<sup>1</sup> Victim Services Advocates: (1) advise victims of their constitutional rights; (2) provide information about the criminal justice system and specific case updates; (3) advocates for victims in court; (4) helps victims prepare and deliver victim impact statements; and (5) provide referrals for social services.

would require one additional victim advocate to accommodate this potential caseload increase, net any potential workload decrease related to elimination of the requirement to provide initial screening for personal injury cases.

**Section 3** conforms statute to current practice and therefore has no fiscal impact.

**Section 4** places the Victim Advocate on the Criminal Justice Policy Advisory Commission, which has no fiscal impact.

**Section 5** makes a conforming change that has no fiscal impact.

***The Out Years***

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

*Sources: Judicial Department's Quarterly Criminal / Motor Vehicle Files*

**OLR Bill Analysis****sHB 6670*****AN ACT CONCERNING THE RIGHTS OF CRIME VICTIMS AND THE DUTIES OF THE OFFICE OF THE VICTIM ADVOCATE.*****SUMMARY:**

This bill codifies the test established in *Perkins v. FOI*, 228 Conn. 158 (1993), for determining whether personnel, medical, or similar files are private and may be exempt from disclosure under the Freedom of Information Act (FOIA). This means that personnel, medical, or similar files are exempt if disclosure (1) would be highly offensive to a reasonable person and (2) the records are not of legitimate public concern.

It expands the notice requirement when the disclosure of personnel, medical, or similar files would invade the personal privacy of a crime victim; mandates that agencies deny access to these records; and allows the crime victim to “intervene as a party” if the denial is appealed to the Freedom of Information Commission (FOIC).

The bill eliminates the requirement for victim advocates to provide initial screening for personal injury cases. By law, victim advocates are employees of the Office of Victim Services and appointed by courts to represent the needs of and assist crime victims.

The bill defines “victims” for purposes of the record exemption under FOIA and the duties of victim advocates as (1) people who suffer direct or threatened physical, emotional, or financial harm from a crime; (2) their immediate families when the victim is deceased, incapacitated, or a minor child; or (3) the designated decision maker of a homicide victim.

The bill (1) gives cases of sexual assault involving minor victims and

criminal cases in which a minor is expected to testify as a witness priority over other types of criminal cases; (2) requires courts to take action to expedite these cases if doing so would be in the child's best interest; and (3) establishes a procedure for handling requests for continuances.

It makes the victim advocate a member of the Criminal Justice Policy Advisory Commission.

Lastly, the bill makes a technical change.

EFFECTIVE DATE: October 1, 2009

### **FOIA EXEMPTIONS**

By law, personnel, medical, and similar files may be exempt from disclosure under FOIA if disclosure would constitute an invasion of personal privacy. An agency that receives a request for any one of these files notifies the subject of the file of the request and then decides whether to release it. If the agency denies the request and the requestor appeals, FOIC will determine if the agency had the authority to deny the request by applying the *Perkins* test, which the bill codifies. The subject of the file may request to intervene in the case before FOIA or ask to be added as a party to the action.

When someone asks a public agency for access to a personnel, medical, or similar file that could invade a crime victim's personal privacy, the bill requires the agency to notify the (1) victim; (2) immediate family of a deceased, incapacitated, or a minor child victim; or (3) the designated decision maker of a homicide victim. It requires, rather than allows, the agency to withhold the record. It allows crime victims to "intervene as a party" if the denial is appealed to FOIC. Under the Uniform Administrative Procedures Act, there is a difference between an "intervenor" and a "party." The former status is given to someone who demonstrates that his or her participation is in the interest of justice and will not impair the orderly conduct of the proceeding. The latter status is given to someone who demonstrates that his or her legal rights, duties, or privileges would be specifically

affected by the agency's decision (CGS § 4-177a). Thus, it is unclear how someone "intervenes as a party."

## **PRIVILEGED CASES**

Whenever a person under age 18 is the victim of a sexual assault or expected to testify as a witness in a criminal case, the bill requires the court to expedite the case and give it precedence over other types of cases if expedition is in the minor's best interests.

If a defendant asks to continue the case, the bill requires the prosecutor to file an impact statement with the court that specifies (1) whether the state and the minor or his or her representative agree to the request and (2) any effect the continuance might have on the minor. The court must weigh any possible adverse impact a continuance might have on the minor. If the court grants the continuance, it must state the reason for the decision on the record in open court.

## **BACKGROUND**

### ***Victim Advocates***

Victim advocates are employees of the Office of Victim Services and appointed by courts to represent the needs of and assist crime victims. Their duties include preparing victim impact statements for court files, providing information and advice to individual victims, coordinating victim applications to the Office of Victim Services, and helping victims process claims for restitution.

### ***Criminal Justice Policy Advisory Commission***

The commission (1) develops and recommends policies to prevent prison overcrowding, (2) examines the impact of statutes and administrative policies on overcrowding and recommends legislation, (3) researches and gathers data and information on efforts to prevent overcrowding and makes it available to criminal justice agencies and legislators, (4) advises the Office of Policy and Management's Criminal Justice Policy and Planning Division (CJPPD) undersecretary on policies and procedures to promote more effective and cohesive

criminal and juvenile justice systems and to develop and implement the reentry strategy, and (5) assists the undersecretary in developing recommendations in reports and presentations.

The commission consists of the CJPPD undersecretary, chief court administrator; commissioners of correction, public safety, and mental health and addiction services; chief state’s attorney; chief public defender; Board of Pardons and Paroles chairman; Judicial Branch’s Court Support Services Division executive director; eight members appointed by the governor including a police chief, representatives of offender and victim services, and government and public members; the labor and social services commissioners who can deliberate and vote only on matters concerning employment and entitlement programs available to adult and juvenile offenders reentering the community; and the children and families and education commissioners who can deliberate and vote only on juvenile justice matters.

**Relate Bills**

HB 1152, favorably reported by the Government Administration and Elections Committee, also codifies the *Perkins* test.

sHB 6709, favorably reported by the Judiciary Committee, prohibits the Department of Correction commissioner from disclosing personnel, medical, or similar files to inmates or people confined to Whiting Forensic Division, except pursuant to a court order.

**COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute

Yea 41 Nay 0 (04/03/2009)