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Testimony of Garvin G. Ambrose, Esq., State Victim Advocate
Submitted to the Government Administration and Elections Committee
March 10, 2014

Good day Senator Musto, Representative Jutila, and distinguished members of the Government Administration and Elections Committee. For the record, my name is Garvin Ambrose and I am the Victim Advocate for the State of Connecticut. Thank you for the opportunity to provide testimony regarding:

> **Raised Senate Bill No. 381**, *An Act Concerning the Task Force on Victim Privacy and the Public's Right to Know.*

As many of you are aware, the Office of the Victim Advocate (OVA) was an active member of the "Task Force on Victim Privacy and the Public's Right to Know" (the Privacy Task Force). In that post, the OVA worked diligently to develop a proposal that satisfied the mandate of balancing victim privacy under the Freedom of Information Act (FOIA) with the public's right to know. The clear majority vote of 14-3, including a majority of the FOIA advocates on the Task Force, speaks volume to the reasonableness of these recommendations. The OVA appreciates the Committee's willingness to raise the final recommendations of the Privacy Task Force, and largely **supports** the language and concepts in Raised Senate Bill No. 381.

Currently, there are very few exemptions under the FOIA that relate to or benefit crime victims. If enacted, with the necessary substitute proposed amendments, Raised Senate Bill No. 381 would create exemptions for crime victims by shielding the identity of certain minor witnesses of crime, regulating the manner by which images of homicide victims are disclosed, regulating the manner by which certain emergency 9-1-1 audio recordings or other calls for assistance are disclosed, and the manner by which certain operative communications among law enforcement personnel are disclosed.

Specifically, and very notably, Raised Senate Bill No. 381 would exempt from public disclosure under law enforcement and other governmental records, the identity of witnesses to a drug offense, sexual offense or a crime of violence, if the witness is under the age of eighteen at the time of witnessing such offense or crime or at the time that the witness made the statement to a law enforcement agency concerning such offense or crime. Currently, the general witness exemption under the FOIA (C.G.S. §1-210(b)(3)(A)) requires a law enforcement agency to prove that a witness would be harmed by the disclosure of their identity. The Privacy Task Force noted that disclosure of a minor witness' identity may be inherently harmful because a minor is more vulnerable than an adult

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and may not fully appreciate the significance and consequences of being a witness to a crime. If enacted, Raised Senate Bill No. 381 will assist in encouraging more minor witnesses to cooperate in the investigation and prosecution of crimes while protecting them from the harm that may otherwise result.

Additionally, Raised Senate Bill No. 381 strikes an appropriate balance between victim privacy and the public's right to know by regulating the disclosure of law enforcement and other governmental agency records containing the **images of a homicide victim, emergency 9-1-1 audio recordings or other calls for assistance** that are made by a member of the public, or **operative communications among law enforcement personnel** relating to a homicide victim. As proposed, should the disclosure of these records reasonably be expected to constitute an unwarranted invasion of personal privacy of the victim or the victim's surviving family members, then the requestor of the record would be permitted to view the image or listen to the audio at the agency rather than walking away with their own personal copy of the record.

In regulating the manner by which sensitive images and audio recordings relating to homicide victims are disclosed, this proposal respects the public's right to know whether law enforcement officers and other emergency responders are performing their jobs appropriately by permitting the public access to the sensitive records. The proposal also respects the privacy rights of the surviving family members of the homicide victim who may be harmed by any widespread dissemination of the images or audio recordings. Undoubtedly, with the technological advances of today, a single image or audio file can be reproduced countless times and be seen on twenty-four hour cable news stations, social media web-sites, and personal cell phones. Raised Senate Bill No. 381 will enable the public to view or listen to these sensitive records while protecting the surviving family members from further harm and exploitation.

It is important to note that certain images and recordings under Raised Senate Bill No. 381 would only be regulated, as described above, if the disclosure of such record could reasonably be expected to constitute an "unwarranted invasion of personal privacy." This was the standard used in the US Supreme Court decision, *National Archives and Records Administration v. Favish,* 541 U.S. 157 (2004). In *Favish,* the Court considered an exemption from the Federal Freedom of Information Act that allows the federal government to withhold disclosure of records or information compiled for law enforcement purposes if their production "could reasonably be expected to constitute an unwarranted invasion of personal privacy" (5 USC §552 (b)(7(C)). **The Court held that a person who seeks a record covered by this exemption must provide a sufficient reason for disclosure and show that the public interest sought to be advanced is a significant one.** Otherwise, disclosure would be considered an unwarranted invasion of personal privacy. [1]

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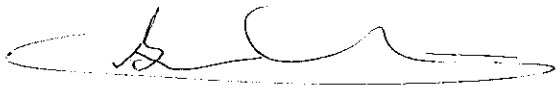
[1] For photos and other data about someone who died under mysterious circumstances, the Court stated that requesting information to show that an investigating agency or official acted negligently or improperly in performing their duties most likely satisfies the public interest requirement. But the requester must establish more than a "bare suspicion" to obtain disclosure; otherwise the exemption's protections are meaningless. After using this analysis, the *Favish* Court found no evidence to warrant a

Furthermore, contrary to some opinions, this proposal only affects the FOIA laws, and **does not** change any Connecticut Practice Book rules of the court and does not impact the manner in which public trials are conducted in Connecticut. Neither does it impact a criminal defendant's Constitutional rights during court proceedings nor the ability to obtain information through the Discovery process. Consequently, should a sensitive image or audio recording be admitted into evidence during a trial or other evidentiary proceeding, that record actually becomes a public record which can be disclosed to the public without any limitations as the court rules are separate and distinct from the FOIA.

Notably, according to the research prepared by the Office of Legislative Research (2013-R-0384), there are currently eleven states with general exemptions in their Freedom of Information laws limiting disclosure of records in order to protect personal privacy, with the majority of these states protecting against unwarranted invasions of privacy. [2] Thus, Connecticut would not be alone if it too adopted this standard for law enforcement records containing certain images and audio recordings.

For these reasons, the OVA **supports** Raised Senate Bill No. 381, with the necessary proposed amendments that lessen the burden on the victims of crime, and urges this Committee's approval. We also strongly urge the Committee, and the entire Legislative Body, should this proposal be adopted, to apply these necessary changes **prospectively** so as to continue the infinite protections for minor witnesses and images of homicides currently provided within Public Act 13-311. **It is the OVA's belief, shared by other Task Force members, that this recommended proposal from the Privacy Task Force is not intended to provide access to any records of the minor witnesses or any images of homicides that occurred prior to the effective date of this proposal, should it become law.** I thank you again for your time and consideration.

With gratitude,



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belief by a reasonable person that alleged government impropriety might have occurred to balance against the family's privacy interests.

[2]Seven states **(Hawaii, Illinois, Kansas, Kentucky, Maryland, Massachusetts, and Michigan)** limit disclosure where it would be an unwarranted invasion of privacy. All but two of these states **(Maryland and Massachusetts)** require that it be a "clearly" unwarranted invasion of privacy. **New Jersey** places an obligation on agencies to safeguard personal information when disclosure would violate a citizen's reasonable expectation of privacy. **South Dakota** exempts records from disclosure when it would be an unreasonable release of personal information. **Utah** allows agencies to designate records as private if they contain data which, if disclosed would be a clearly unwarranted invasion of privacy. **Iowa** allows a court to prohibit disclosure of records when disclosure is not clearly in the public interest and would substantially and irreparably injure a person. (Source OLR Report dated October 1, 2013 (2013-R-0384))