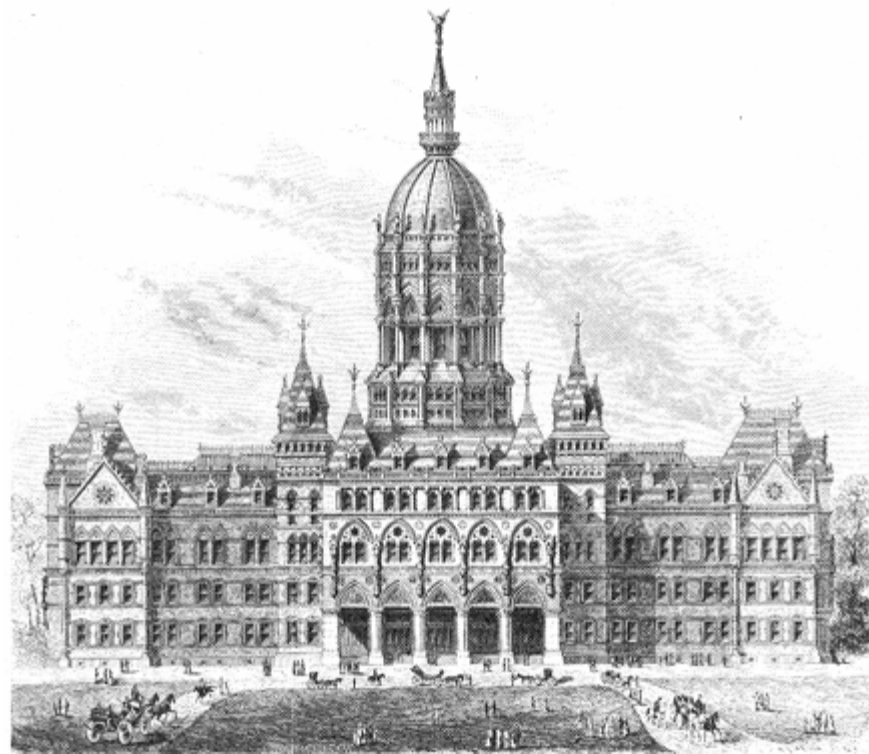


State of Connecticut

Office of the
Victim Advocate

James F. Papillo, Victim Advocate



COMBINED 2002-2003 ANNUAL REPORT

To the Governor and the Connecticut General Assembly



John G. Rowland, Governor

Office of the Victim Advocate · 505 Hudson Street · Hartford, Connecticut 06106
Telephone (860)550-6632 · Toll Free (CT) 1-888-771-3126 · Fax (860)566-3542
Website: www.ova.state.ct.us

THE OFFICE OF THE VICTIM ADVOCATE

505 Hudson Street · Hartford, Connecticut 06106
Telephone (860) 550-6632 · Toll Free (CT) 1-888-771-3126 · Fax (860) 566-3542

Email to: james.papillo@po.state.ct.us

Visit the OVA on the web at www.ova.state.ct.us

The Office of the Victim Advocate (OVA) was established as an independent state agency to protect and promote the legal rights of crime victims in Connecticut.

Among its many responsibilities, the OVA provides oversight and advocacy when the criminal justice system fails crime victims.

The OVA may receive and review complaints of persons concerning the actions of any state or other entity providing services to crime victims and investigate those where it appears that a victim or family of a victim may be in need of assistance from the Victim Advocate.

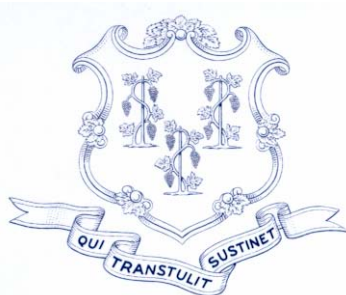
The Victim Advocate is authorized by law to file an appearance in any court proceeding for the purpose of advocating for the rights of crime victims.

In addition, the OVA conducts programs of public education, undertakes legislative advocacy and recommends changes in state policies concerning the treatment and protection of crime victims, including changes in the system of providing direct services to victims.

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

Merit Lajoie, Complaint Officer

Pamela Young, Secretary



CONSTITUTION of the STATE of CONNECTICUT

Article XXIX - Rights of Victims of Crime

In all criminal prosecutions, a victim, as the General Assembly may define by law, shall have the following rights:

- The right to be treated with fairness and respect throughout the criminal justice process;
- The right to timely disposition of the case following arrest of the accused, provided no right of the accused is abridged;
- The right to be reasonably protected from the accused throughout the criminal justice process;
- The right to notification of court proceedings;
- The right to attend the trial and all other court proceedings the accused has the right to attend, unless such person is to testify and the court determines that such person's testimony would be materially affected if such person hears other testimony;
- The right to communicate with the prosecution;
- The right to 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;
- The right to make a statement to the court at sentencing;
- The right to restitution which shall be enforceable in the same manner as any other cause of action or as otherwise provided by law;
- The right to information about the arrest, conviction, sentence, imprisonment and release of the accused.

The General Assembly shall provide by law for the enforcement of this subsection. Nothing in this subsection or in any law enacted pursuant to this subsection shall be construed as creating a basis for vacating a conviction or ground for appellate relief in any criminal case.

Office of the Victim Advocate
505 Hudson Street
Hartford, Connecticut 06106
Toll Free (CT) 1-888-771-3126 · (860) 550-6632

For more information, you can check our website on the internet at www.ova.state.ct.us



**2002-2003 COMBINED ANNUAL REPORT
THE OFFICE OF THE VICTIM ADVOCATE**

JANUARY 15, 2004

By: James F. Papillo, J.D., Ph.D.
Victim Advocate, State of Connecticut
505 Hudson Street
Hartford, Connecticut 06106

Telephone: (860)550-6632
Toll Free (in Connecticut): 1-888-771-3126
Facsimile: (860)566-3542

Website Address: <http://www.ova.state.ct.us>

E-mail: james.papillo@po.state.ct.us

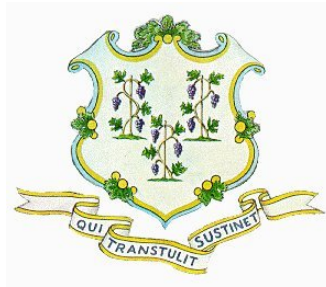


TABLE OF CONTENTS

Introduction		4
Overview of Office of the Victim Advocate Statutory Responsibilities and Accomplishments		8
I.	Evaluate Connecticut’s Victim Service Delivery System.	8
II.	Coordinate and cooperate with other private and public agencies concerned with the implementation, monitoring and enforcement of the constitutional rights of crime victims and enter into cooperative agreements with public or private agencies for the furtherance of the constitutional rights of crime victims.	8
III.	Review the procedures established by any state agency or other entity providing services to crime victims with respect to the constitutional rights of crime victims.	8
IV.	Receive and review complaints of persons concerning the actions of any state or other entity providing services to victims and investigate those where it appears that a victim or family of a victim may be in need of assistance from the Victim Advocate.	11
	• Summary of OVA Case Statistics for 2002-2003	11
	• Significant Formal Investigations Conducted by the OVA during 2002-2003	16
	○ The Death of Jenny McMechen	16
	○ State v. Anthony Iannone	18
	○ State v. Paul Curioso	20

o	The Death of Barbara Eckert	23
o	State v. Edward Benitez	24
V.	File a limited special appearance in any court proceeding for the purpose of advocating for any right guaranteed to a crime victim by the Constitution of the state or any right provided to a crime victim by any provision of the general statutes.	25
•	Appearances in Criminal Court Proceedings	25
•	Appearances in Civil Proceedings	26
•	Actions Before the Connecticut Supreme Court	28
o	In Re: Jonathan S.	28
o	Jennifer F. v. James A. McCahill, et al.	31
	The Issue Regarding the Victim Advocate’s Authority to File a Writ of Error on Behalf of Crime Victims	33
VI.	Ensure a centralized location for victim services information.	34
VII.	Recommend changes in state policies concerning victims, including changes in the system of providing victim services.	34
VIII.	Conduct programs of public education, undertake legislative advocacy, and make proposals for systemic reform.	35
•	Legislative Initiatives	35
•	Other OVA Initiatives/Activities	38
IX.	Take appropriate steps to advise the public of the services of the Office of the Victim Advocate, the purpose of the office and procedures to contact the office.	40
•	Creation and Distribution of an OVA Brochure	41
•	Office of the Victim Advocate Web Site	41
	OVA Budget	41
	Challenges and Priorities for 2004	42

INTRODUCTION

The State of Connecticut has, and continues, to make great strides in the area of victims' rights. As a result of the victims' rights movement seen in American jurisprudence over the last two decades, Connecticut has joined almost every other state in enacting laws intended to provide a means for crime victims to effectively participate in the criminal justice process and to require that victims' concerns are addressed by all professionals within the criminal justice system.

The principal objectives of such laws have been twofold. First, to promote respect for crime victims, including their safety, privacy and the interest they have in seeking justice. Second, to foster administrative and judicial sensitivity to the difficulty experienced when crime victims are unexpectedly drawn into an often indifferent but always confusing criminal justice system often at the very time they are trying to cope with injury and personal loss.

In Connecticut, those objectives were served in 1996 when Connecticut voters overwhelmingly approved passage of a Victims' Rights Amendment to our state Constitution. Connecticut's Victims' Rights Amendment affords crime victims the same protection and status of rights provided to those accused of committing crimes. These constitutional rights, along with the many other statutory rights afforded Connecticut crime victims, represent a formal acknowledgment on the part of our state lawmakers that crime victims have an important participatory role in Connecticut's criminal justice system.

Legislative comments made during House and Senate debates on the proposed Victims' Rights Amendment amply demonstrate that the state legislature intended to affect a fundamental change in the criminal justice system, rethinking the traditional *State v. Defendant* paradigm, leveling the playing field between the accused and the crime victim, and requiring that courts consider and honor victims' rights.

Representative Radcliffe, one of the principal authors of the Amendment, described its purpose as follows:

What this amendment does is it will level the playing field in our Constitution. It will say in the same section of our Constitution that the accused can look to for the protection of certain rights, that victims will also have certain rights which courts must recognize, which courts must respect and which this General Assembly must implement by appropriate legislation.

39 H.R. Proc., Pt. 9, 1996 Sess., p. 2827.

Representative Lawlor echoed the broad sweep of Representative Radcliffe's remarks, stating:

Mr. Speaker, this, as I understand it, the thought behind this amendment is to establish a benchmark in our state's Constitution, guaranteeing for all time rights of victims of crime and requiring the legislature to enact specific statutes seeking to honor the spirit of the Constitutional Amendment, which we are proposing.

Id., at 2834-35.

Later in the debate, Representative Godfrey described the proposed Victims' Rights Amendment:

...as a way for the people of the State of Connecticut to say these are our courts, this is the justice we want to see. Victims are not pieces of evidence, they are citizens with us. Society's rights are at stake here too.

Id., at 2909.

These sentiments were echoed by Senator Upson, one of the measure's co-sponsors, who noted that:

Victims feel that they are not treated equally in the system with criminals and that their rights are not paid much attention to. Certainly, by making these rights into the Constitution of the State of Connecticut will guarantee everyone who is a family of a victim or victim, that they will have the utmost rights throughout our judicial system.

39 S. Proc., Pt. 6, 1996 Sess., p. 1980.

Subsequent to incorporating victims' rights into our state constitution in 1996, our state lawmakers have continued to demonstrate their strong support for and commitment toward protecting and expanding the rights of crime victims in Connecticut.

For example, sensing the need for an *independent* "watchdog" agency to oversee the enforcement of victim rights in Connecticut, our legislature in 1998 created the Office of the Victim Advocate (OVA), to help enforce, protect and further crime victim rights. The first Victim Advocate, the undersigned, was appointed by Governor John G. Rowland in September, 1999. The Victim Advocate has broad authority to, among other things: monitor the provision of services to crime victims by state agencies and private entities; receive and investigate victim complaints regarding their treatment by the criminal justice system; intervene in court proceedings to advocate for victims' rights when their rights have been violated; and make recommendations to the legislature, victim service providers and criminal justice professionals for changes in state policies and laws to help further and protect crime victim rights in Connecticut.

The OVA's independence from the executive, legislative and judicial branches of government is a vitally important feature of the office, one that is necessary for achieving

satisfactory results from agencies and providing redress for crime victims. If the Victim Advocate is to be effective, s/he must be free to criticize, in appropriate situations, governmental agencies, officials, public employees and other professionals involved in the criminal justice system. The need for independence is readily apparent given the Victim Advocate's broad oversight jurisdiction, which includes all crime victims, criminal justice agencies, victim service providers and victim advocacy groups.

The public has responded enthusiastically to the creation of the OVA. Since its inception, OVA clients have sought and received a variety of OVA services including information, support, investigation, and in-court advocacy. The OVA has received strong support from Connecticut lawmakers. The OVA has worked effectively with many members of the Connecticut General Assembly on legislation to further and enhance victims' rights for Connecticut citizens.

Specific accomplishments include:

- The Victim Advocate has effectively intervened in numerous criminal cases to protect crime victims' rights, including the appeal of two cases to the Connecticut Supreme Court to address alleged violations of victims' constitutional rights.
- The Victim Advocate has formally investigated several serious criminal matters that highlighted the failure of criminal justice and law enforcement professionals to enforce laws and take action to protect victim and public safety.
- As a result of the Victim Advocate's investigative efforts, more attention is being paid to the handling of domestic and family violence matters; the penalties for violating restraining and protective orders have been enhanced; there is now in place a state-wide, centralized enforcement unit to ensure that those who are the subject of restraining and protective orders comply with the requirement to transfer or surrender guns within two business days.
- Connecticut is the first state in the country to have a law requiring Superior Court judges to advise crime victims of their state constitutional rights in open court just as judges are required to advise criminal defendants as to their rights at the time of arraignment.
- Connecticut is one of the few states in the country to provide employment protection to crime victims so that they can attend court proceedings or secure an order of protection in family violence cases without worrying about retaliation from employers.
- Connecticut laws regarding restitution for crime victims have been significantly enhanced. In each case where the victim requests restitution and can document loss, Courts are now required to issue a written order of restitution and set appropriate terms of payment. Even where the convicted individual has no financial resources at the time, Courts are still required to issue a written order of restitution that can be entered as a civil judgment in a civil court that can later be executed if and when the criminal no longer is indigent.
- Connecticut law now protects crime victims during the pendency of the criminal case from civil lawsuits brought by criminal defendants to harass and intimidate their victims. Upon motion by a crime victim, the court has the authority to stay

any civil action brought by the defendant against the victim until the criminal matter has been completed.

- Victim notification requirements have been greatly improved so that crime victims receive notice of court dates and important events related to their cases (e.g., when a convicted individual applies for a modification of sentence; escapes or is released from incarceration; applies for exemption from the sex-offender registration requirements, etc.). Victims are now provided with an opportunity to be heard during any hearing related to these events.
- The authority of the Victim Advocate to file a limited special appearance in court proceedings to advocate for victims' rights has been expanded.

Beyond the specifics, there is a growing sense among the Victim Advocate, his staff and others as well that, throughout the state of Connecticut, victims' rights and the many issues affecting crime victims have received more attention of late from criminal justice and law enforcement officials. Further, this greater attention to victims' rights is beginning to make a difference for crime victims throughout Connecticut in terms of their meaningful participation in the criminal justice process. But there is clearly much more work to be done.

Our state lawmakers too have responded in a new and important way to the growing awareness of victims' rights in Connecticut. At a recent public hearing to confirm seven new Superior Court judges appointed by the Governor, the one area of inquiry that was asked by the Judiciary Committee of each and every candidate pertained to his or her understanding of victims' rights, the role of the crime victim in criminal proceedings, and how s/he would ensure that crime victim rights would be honored and respected in his/her courtroom. That the fair and just treatment of crime victims by the criminal justice system served as a sort of "litmus test" for new judges has been hailed by crime victims and victims' rights organizations throughout Connecticut and attests to the effectiveness of recent efforts on the part of the OVA and others to further and promote victims' rights in our state.

The OVA continues to be a unique and effective voice for Connecticut citizens who have been victimized by crime and advocates solely on behalf of crime victims' statutory and constitutional rights, and the provision of victim services, when the criminal justice system or victim service delivery system fails crime victims. The OVA will continue to help ensure that the rights afforded crime victims in Connecticut are honored, respected and enforced throughout the criminal justice system; effectively monitor and evaluate services available and rendered to crime victims; and work to advance and further policies throughout the state that promote the fair and just treatment of crime victims throughout the criminal justice process.

Overview of Office of the Victim Advocate Statutory Responsibilities and Accomplishments

Pursuant to Connecticut General Statutes (C.G.S.) Section 46b-13c, the Victim Advocate may:

- I. Evaluate Connecticut's victim service delivery system [C.G.S. § 46b-13c(1)];**
- II. Coordinate and cooperate with other private and public agencies concerned with the implementation, monitoring and enforcement of the constitutional rights of crime victims and enter into cooperative agreements with public or private agencies for the furtherance of the constitutional rights of crime victims [C.G.S. § 46b-13c(2)];**
- III. Review the procedures established by any state agency or other entity providing services to crime victims with respect to the constitutional rights of crime victims [C.G.S. § 46b-13c(3)].**

Within available appropriations, the OVA may evaluate the delivery of services to crime victims by state agencies and those entities that provide services to crime victims, including the delivery of services by Connecticut's Witness Protection Program and the Office of the Chief Medical Examiner [See, C.G.S. 54-82t; §§ 46b-13c(1)].

Due to limited budget and staff resources, the OVA decided to monitor and evaluate the criminal justice system's enforcement of victims' rights and the provision of services by Connecticut's victim service delivery system based upon the accumulation of complaints received by the OVA over time. The OVA simply does not have the resources necessary to conduct an intensive, comprehensive and systematic evaluation of services to crime victims and at the same time carry out its other statutory responsibilities. The OVA has requested and received extensive policy and procedure materials from major victim services providers in Connecticut and OVA staff has comprehensively reviewed such materials. Policy and procedure materials have also been requested and received from numerous criminal justice agencies, including state and local police departments, which also have been comprehensively reviewed by OVA staff with respect to safeguarding the constitutional and other rights afforded crime victims.

OVA review of such materials has led to meetings and discussion with various agencies and entities regarding the enforcement and furtherance of victims' rights and victim services. In necessary and appropriate circumstances, the OVA has attempted to address specific problems facing Connecticut crime victims, as determined from complaints filed with the OVA and reviews of various agencies' policies and procedures, through legislative change.

The OVA has systematically examined and evaluated the delivery of services provided by Connecticut's Witness Protection Program (based within the Office of the Chief State's Attorney) and the Office of the Chief Medical Examiner. The OVA continues to work closely with the Witness Protection Program (WPP) to monitor the provision of services to witnesses/crime victims and receives on a regular, periodic basis

detailed information regarding each WPP participant. This information is entered into a database developed by the OVA as it is received by OVA staff. In addition, the Victim Advocate wishes to note that the WPP and the OVA have developed a strong, cooperative working relationship to service crime victims eligible for WPP services. On numerous occasions, the OVA has been able to procure expedited WPP services for crime victims in emergency situations, even when such situations arise well beyond normal working hours. On behalf of all Connecticut crime victims, the Victim Advocate wishes to express his sincere appreciation to the WPP staff for their willingness to cooperate with the OVA on a range of victims' issues and specific cases and for their dedication and hard work in servicing all Connecticut citizens in need of witness protection services.

The OVA has received many complaints from crime victims alleging violations of the right to address the court, either at the time the court accepts or rejects a plea agreement or at the time of sentencing. To better document the precise nature and scope of the problem, the OVA ordered a number of court transcripts involving cases in courts throughout the state.

Based on the complaints received and OVA's review of court proceeding transcripts, the Victim Advocate was able to enter into a cooperative agreement with one Judicial District to help remedy the problem. The Honorable Francis J. Foley, Administrative Judge for the Windham Judicial District, agreed to help rectify this problem for crime victims in the Windham Judicial District by promulgating a written directive, to be posted on the bench in every criminal court in the district, reminding judges of their responsibility to inquire on the record about the victim's presence in the courtroom and the victim's desire to address the court prior to the court accepting or rejecting a plea agreement and again prior to sentencing a convicted individual. These rights to participate in the criminal justice process are rights afforded crime victims under our state constitution and the general statutes. Although the OVA had no information indicating that this problem was any greater for victims within the Windham Judicial District than elsewhere in Connecticut, the Victim Advocate is grateful to Judge Foley for taking the initiative to help make certain that crime victims' rights are more consistently being honored and respected within his particular jurisdiction.

After being informed by the Chief Court Administrator that he did not have the authority to implement a similar directive in all of the Judicial Districts in the state, the OVA succeeded in getting legislation passed during the 2003 legislative session (P.A. No. 03-179¹) to address this specific problem. The OVA will continue to monitor compliance with crime victim rights on the part of the judges, prosecutors, defense attorneys and other professionals within the criminal justice system.

¹ P.A. No. 03-179 requires that the court inquire on the record in open court whether any crime victim is present for the purpose of making an oral statement to the court or has submitted a written statement and if no victim is present and no written statement has been submitted, the court shall require on the record whether an attempt was made to notify the victim of the proceeding.

The Victim Advocate has and continues to work cooperatively with the Judicial Branch and the Department of Correction to improve notification and information to crime victims of rights and available services. The OVA has established a strong working relationship with the Victim Services Unit at the Department of Correction which provides timely notification to crime victims who request to be notified of any change in status (e.g., release, escape) of incarcerated individuals.

The Victim Advocate continues to work with the Judicial Branch to provide a designated area in every criminal court building in the state to display an informational brochure stand so that crime victims can be easily directed to important and critical information regarding the criminal justice process, their rights as crime victims and procedures for asserting those rights. The OVA and the Judicial Branch have preliminarily agreed to work cooperatively on the creation and distribution of a Crime Victim's Handbook to be authored as a collaborative effort between the OVA and the Office of Victim Services. This handbook will describe the criminal justice system in layman's terms; detail victims' rights and describe how best to exercise those rights; and provide forms that can be used in the exercise of rights. The Judicial Branch has agreed to pay for the costs of publishing the Handbook.

The OVA has worked closely with the Department of Social Services (DSS) as issues have arisen regarding the treatment of crime victims. In one such case, a victim of domestic violence was contacted by DSS regarding the cost of an in-patient treatment program that the court ordered her ex-husband to participate in. DSS had placed a lien on the victim's property to secure the cost of the program. The Victim Advocate intervened on behalf of the victim and worked cooperatively with the Commissioner of DSS and other DSS officials to successfully resolve the issue.

As a result of numerous complaints received by the OVA since its inception in 1999, and as a result of three formal investigations conducted by the Victim Advocate, The Death of Josephine Giaimo, the matter of State v. Iannone and The Death of Jenny McMechen, the OVA worked collaboratively with representatives from the Governor's Office, the Judicial Branch, the Department of Public Safety and the Office of the Chief State's Attorney to provide greater protection for victims of crime, specifically victims of domestic and family violence. The findings of the Victim Advocate in the aforementioned investigative reports documented, among other problems and issues, the lack of enforcement of current laws regarding the requirement to surrender or transfer firearms within two business days of becoming the subject of a restraining or protective order. These reports, and the Victim Advocate's efforts at lobbying key state agencies, have resulted in the creation of a state-wide, centralized enforcement unit within the Connecticut State Police to monitor and assure enforcement of these laws uniformly across the state. Further, as a direct result of the findings from these three investigative efforts, the OVA has successfully proposed and Connecticut lawmakers have passed legislation that strengthens the laws regarding restraining and protective orders and enhances information provided by criminal justice professionals to victims of domestic and family violence.

As the OVA has done following previous legislative sessions, the OVA sent letters to all agencies affected by 2002 and 2003 legislative changes to monitor and evaluate any written policies, procedures and/or directives that an agency has established to implement the requirements of new legislation affecting crime victims, including any forms created as may be required under such new legislation.

The OVA will continue to work closely with representatives from the criminal justice system and Connecticut's victim services deliver system to further and enhance victims' rights and to further improve the delivery of services to crime victims in Connecticut.

IV. Receive and review complaints of persons concerning the actions of any state or other entity providing services to victims and investigate those where it appears that a victim or family of a victim may be in need of assistance from the Victim Advocate.

Crime victims may contact the OVA in writing, via telephone or through email, to complain that they have been denied any of the rights afforded them by Connecticut law or that they are having problems with the level or quality of services being rendered by one or more victim service providers. The OVA is empowered to investigate such complaints and take appropriate action on their behalf to help remedy violations of rights or to procure victim services. In deciding upon the appropriate manner in which to respond to such complaints, the OVA may:

- a. Make inquiries and obtain information considered necessary from criminal justice agencies or victim service providers;
- b. Contact and meet with criminal justice professionals or victim service providers in an attempt to remedy rights violations or victim service issues;
- c. Conduct a more formal investigation of complaints representing systemic problems pertaining to an alleged violation of victims' rights or to alleged deficiencies in the delivery of victim services.

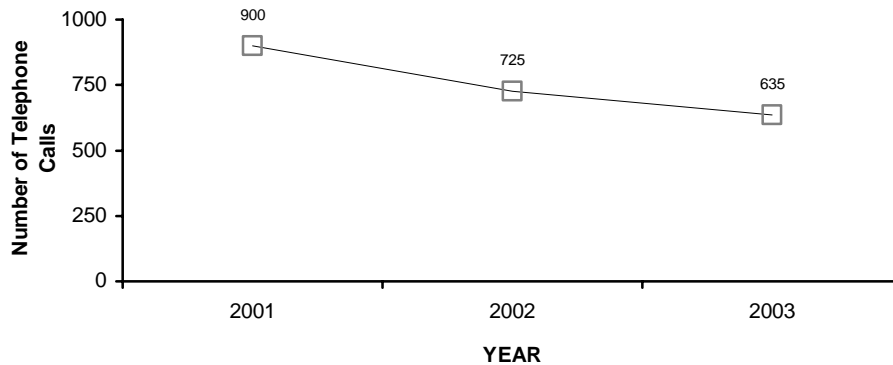
SUMMARY OF OVA CASE STATISTICS FOR 2002-2003

Number of Contacts

The OVA receives many telephone calls from crime victims and others with questions, requests and complaints. The OVA makes every effort to respond appropriately to each contact. As shown in Figure 1, the number of telephone calls to the OVA declined somewhat in 2002-2003 as compared to 2001. It must be noted, however, that the percentage of calls to the OVA from crime victims with *active* cases has greatly increased over this time period. During the first two years of operation, the OVA received many calls from crime victims registering various complaints about their cases long after their cases had been resolved and were no longer active. It is likely that most of the decrease in the number of calls to the OVA being reported here, in comparison to the numbers published in previous reports, is due mostly to this phenomenon. Regardless

of the precise cause of the decrease, it is encouraging that crime victims are contacting the OVA when their cases are active so that the OVA can take timely action to help resolve the problems or concerns they are experiencing with the criminal justice system.

FIGURE 1.
Number of Telephone Calls to the OVA



Nature of Complaints

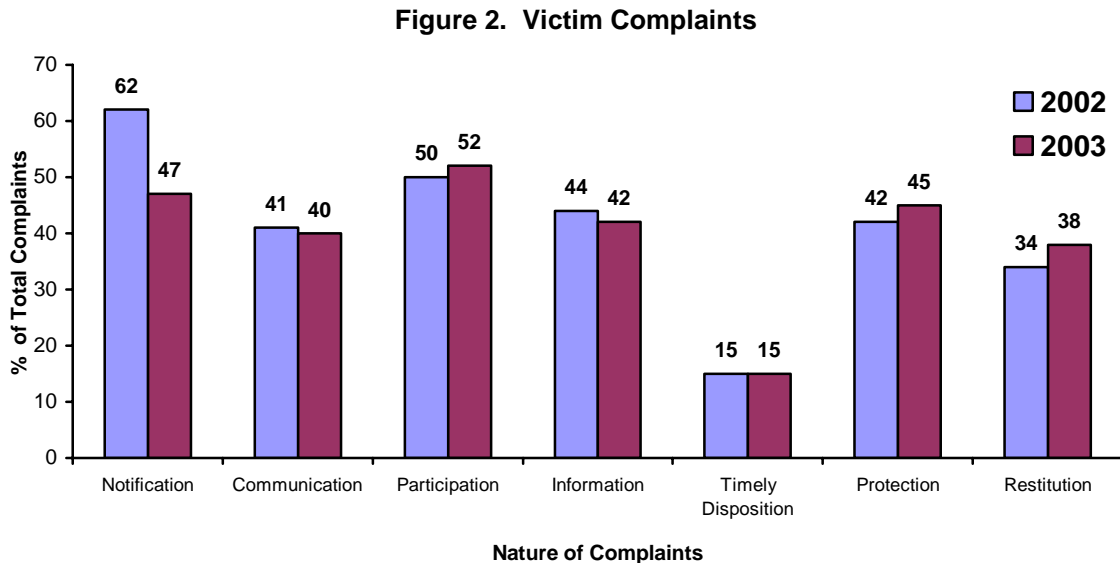
In 2002, of the 725 calls to the OVA received, 378 (or 52%) were categorized as complaints. In 2003, of the 635 calls received, 343 (or 54%) were categorized as complaints. For purposes of comparison, in 2001 47% of the 900 calls to the OVA were categorized as complaints.

Notification to crime victims of victims' rights and the availability of victim services continues to be the most frequent complaint received from crime victims during 2002-2003.

First, most crime victims contacting the OVA continue to indicate that they were not provided the information card from the local police department that is statutorily required to be given to certain crime victims by law enforcement officials (OVA staff regularly asks this question of victims contacting the office). It should be noted that data related to this failure to provide statutorily required notification to crime victims is not included in the data presented in Figure 2, below.

Many crime victims complain that they don't receive adequate or timely information from criminal justice personnel. If victims are informed of their rights by court-based victim service advocates, they are informed of only some of their rights—usually, they are informed of their right to attend the sentencing hearing and the right to submit or present a victim impact statement to the court at the sentencing hearing. Victims often report not being advised about, and in some cases claim to be discouraged from exercising, their right to attend other court proceedings. Victims also often report not being advised of their right to address the court before the court accepts or rejects a plea agreement reached between the state and the defendant. Additionally, crime victims contacting the OVA often report not being fully informed of their right to seek a written order of restitution from the criminal court and not being informed of, or even dissuaded

from exercising, their right to discuss the case with the prosecution. Figure 2 below shows the nature of the complaints filed with the OVA during the 2002 and 2003 reporting periods.



The pattern in terms of the nature of complaints filed with the OVA during the 2002 and 2003 reporting periods is clearly similar between those years. Further, this pattern is similar to the pattern observed and reported in OVA’s previous annual reports. However, it is important to note that the for the categories: “Notification”, “Communication”, “Participation and “Information” the absolute percentages during 2002-2003 were lower than those reported in the OVA’s 2001 Annual Report for the same categories. It is also interested to note that between 2002 and 2003, the percentage of complaints filed with the OVA indicating that “Notification” was an issue decreased from 62% to 47%. While it may be too early to determine precisely whether this trend is real and will continue into the future, it is tempting to speculate that the OVA’s efforts to focus attention on notification issues, both with criminal justice professionals and at the state legislature, may be achieving positive results.

Disappointing, however, is the finding that despite the OVA’s past success in working with the legislature to strengthen the laws pertaining to restitution for crime victims (P.A. No. 01-211), the percentage of complaints from crime victims related to restitution has essentially remained steady in 2001 (38%), 2002 (34%) and 2003 (38%).

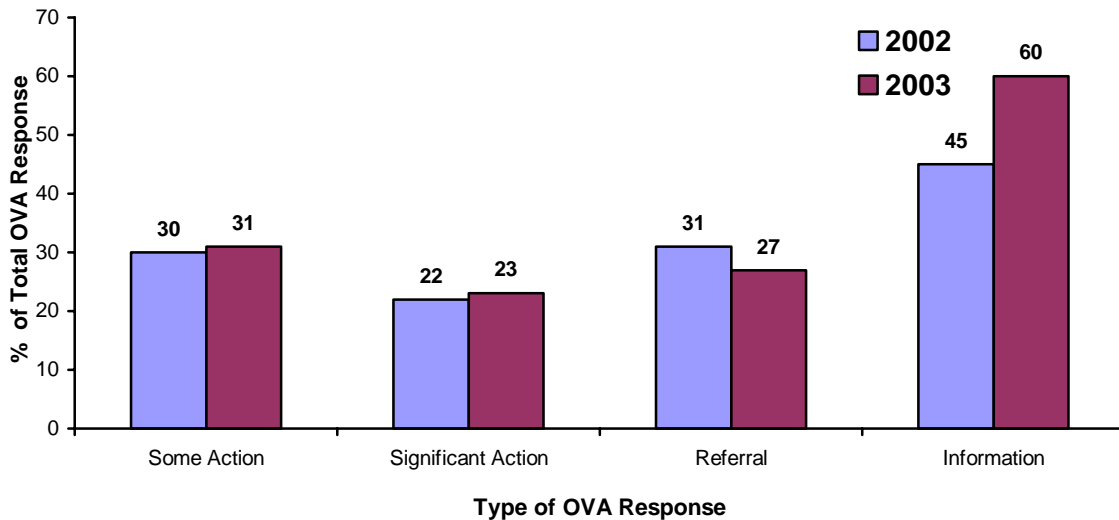
OVA Response to Contacts

Approximately one half of the calls to the OVA results in some level of action being taken by the Victim Advocate or a member of his staff (See, Figure 3, below). In appropriate cases, the caller is referred to a direct victim service provider (e.g., a court-based victim services advocate; local or regional victim services organization; etc.). In each such case, the victim is strongly encouraged to contact the OVA in the future if s/he

has any trouble either contacting the service provider or has any problems or concerns with respect to the level or quality of services provided. Often, time is spent with such callers providing them an overview of their rights as crime victims and of available services, prior to making the referral. An OVA information brochure is mailed to each such caller.

In Figure 3, the category labeled “Some Action” refers to those calls that result in some, relatively minimal activity being taken by the OVA to help resolve the issue(s) or complaint(s) the caller registers with the OVA. This level of activity typically involves a phone call or two on behalf of the crime victim to someone in the criminal justice system, law enforcement agency, or direct victim services provider organization involved in the case. The category labeled “Significant Action” refers to those calls that result in the OVA creating a physical, office file for the complainant. Typically, such cases require much more involvement on the part of the OVA to help the crime victim. This may involve ordering and reviewing court and other records and transcripts of court proceedings. Such level of OVA involvement may also include attendance at court proceedings with the crime victim, scheduling and attending meetings with criminal justice and law enforcement officials, etc. Formal investigations conducted by the OVA are also included in this category.

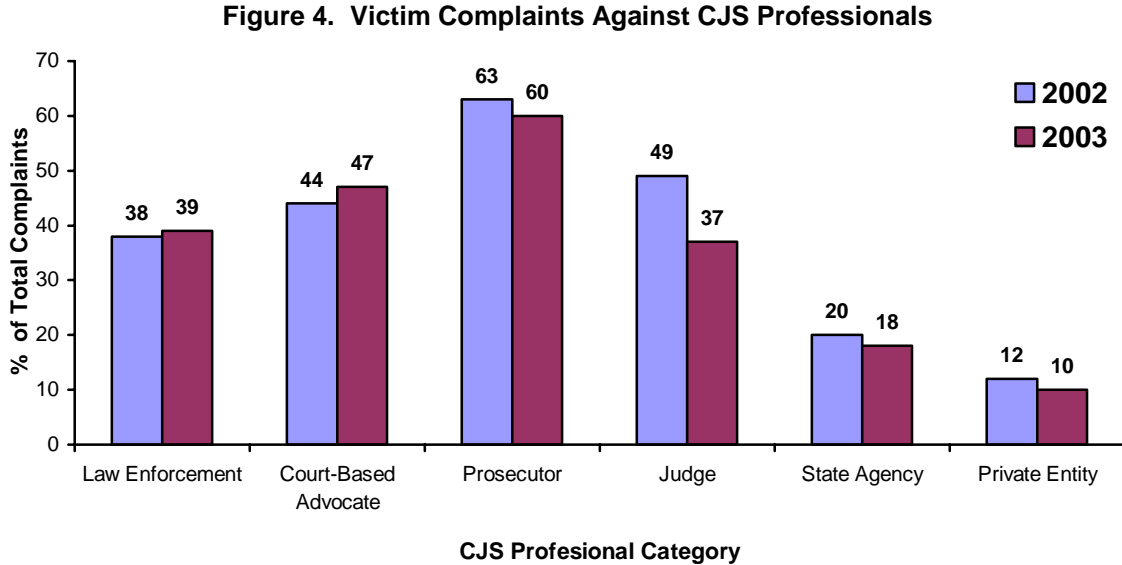
Figure 3. OVA Response to Calls and Complaints



As the data in Figure 3 show, the percentage of calls where OVA staff provide information to crime victims about their rights and available services has increased over time. Such information is provided to the victim regardless of whether the victim contacts the OVA for a simple referral, for specific information about an issue, or to register a formal complaint. Not included in the data presented in Figure 3 are the many calls where OVA staff simply responds by making a referral or answering a specific question and the OVA sends the caller, via mail, an OVA information brochure which contains information about rights and services.

Complaints Against CJS Professionals and Service Providers

Figure 4 shows, for each of several categories of criminal justice and law enforcement professionals, as well as state and private victim service providers, the percentage of all complaints received directed at those categories.



The general pattern in the data across categories is similar for the years 2002 and 2003. Further, the patterns presented here are very similar to those presented in prior OVA annual reports. Interesting, however, is the decline in the actual percentages of complaints filed for “Court-Based Advocate”, “Prosecutor”, and “Judge”. While it would be tempting to speculate as to the cause of these reductions, particularly with respect to the possible causal role played by the OVA carrying out its “watchdog” function, there exists no clear explanation for this observation based upon data collected by the OVA.

OVA Database Development

The Victim Advocate has finished developing and testing a computer database system to log, in detail, all incoming complaints registered with the OVA. A separate database system has also been created to log all other calls, letters and email not involving a complaint made to the OVA. Effective January 2, 2004, these databases will become fully implemented and, henceforth, the OVA will have the ability to store, process and analyze detailed information about each registered complaint and each non-complaint contact from the public. Future annual reports will present much more detailed and sophisticated data and data analyses regarding the nature of complaints and other systemic variables of interest in monitoring and evaluating victim rights and victim services in Connecticut.

SIGNIFICANT FORMAL INVESTIGATIONS CONDUCTED BY THE OVA DURING 2002-2003

Based on complaints received by the OVA, the Victim Advocate initiated five formal investigations during the 2002-2003 reporting period (see brief description of each below). The purposes for conducting such investigations include: (1) to evaluate the delivery of services to crime victims by agencies and other entities that provide or should have provided services to crime victims; (2) to review the procedures established by agencies and other entities that provide services or should provide services to crime victims; (3) to review complaints of persons concerning the actions or inactions of agencies and other entities that provide services to crime victims; (4) to recommend changes in policies concerning the delivery of services to crime victims; and (5) to make proposals for systemic reform. All of these purposes are statutory mandates of the OVA (See, C.G.S. § 46a-13c).

The text of any formal investigative report released by the Office of the Victim Advocate is available by contacting the OVA or by visiting OVA's website at www.ova.state.ct.us.

The Death of Jenny McMechen

In January 2002, the Victim Advocate announced his investigation of the facts and circumstances surrounding the death of Jenny McMechen, which occurred in Plainfield, Connecticut on December 31, 2002. Jenny McMechen died New Year's Eve, 2001 as a result of gunshot wounds while at a friend's house. At the time of her death, Jenny was thirty-six weeks pregnant. On January 2, 2002, Jenny's ex-boyfriend, Michael Latour, was arrested by the Connecticut State Police and charged with her murder. Michael Latour had an extensive criminal history that was known to many in the local law enforcement and criminal justice communities. Latour's criminal record clearly demonstrated a strong propensity toward violence and, in particular, violence toward women. Yet, as events unfolded, law enforcement and criminal justice professionals took insufficient action in response to this information to protect Jenny McMechen. Sufficient, appropriate action, had it been taken, could have served to better protect Jenny McMechen and her unborn child.

The Victim Advocate initially focused his investigation on two issues. First, Jenny reportedly died as a result of gunshot wounds inflicted by a handgun and she had at one time obtained a restraining order against Michael Latour. Accordingly, the OVA sought to determine whether the provisions of Connecticut's gun restriction laws had been adequately enforced. Specifically, the Victim Advocate investigated whether C.G.S. § 29-36k, which renders persons who are the subject of a restraining or protective order ineligible to possess a pistol or revolver and requires them to transfer or surrender such weapons within two business days of becoming subject to the order, was enforced with respect to Michael Latour. Second, at the time of Jenny's death, there was an active warrant for Latour's arrest for allegedly committing against Jenny the crime of assault in the second degree, a class D felony, in violation of C.G.S. § 53a-60. The assault

allegedly occurred on November 16, 2001; Jenny reported the crime to the Plainfield Police Department on November 17, 2001; and the warrant was not executed until January 2, 2002, after Latour's arrest for Jenny's murder. The Victim Advocate investigated the 46-day delay from the date Jenny reported the assault to the Plainfield Police Department to the date that Latour was arrested on the warrant.

As the Victim Advocate conducted his investigation, additional issues regarding services that either were or should have been provided to Jenny McMechen by agencies or other entities that provide services to crime victims, were identified and investigated. Viewed in its entirety, the results of the Victim Advocate's investigation into the death of Jenny McMechen revealed that a number of actions could have and should have been taken by various agencies that either provided services to Jenny or should have provided services to her. Furthermore, the Victim Advocate's investigation revealed that, had such actions been taken, Michael Latour may very well have been incarcerated well before the date he allegedly murdered Jenny thereby better protecting Jenny and her unborn child.

Of course, the ultimate responsibility for Jenny McMechen's murder lies with the perpetrator. The death of Jenny McMechen, however, has highlighted the need for agencies and entities that provide services to crime victims, particularly those professionals in our justice and public safety systems, to implement new safeguards and/or improve existing safeguards in order to prevent this kind of tragedy from occurring again.

The Victim Advocate fully recognizes that, in many cases, perhaps especially in domestic violence cases, what seems self-evident in retrospect may not always be so clear prior to tragedy. In this case, however, there existed many clear signs of impending danger leading up to the death of Jenny McMechen and, thus, law enforcement and criminal justice professionals could have and should have taken action to better protect Jenny based upon that information. Numerous opportunities were presented to various members of law enforcement to apprehend Michael Latour and to charge him with serious crimes long before the night of December 31, 2001. The sheer number of arrests, coupled with the fact that Latour continued to be arrested for committing crimes while his prior arrests were still pending in the court system, along with knowledge of his prior criminal history, should have set off red flags to the judges and prosecutors that Latour was a very dangerous person and that victim and public safety required that he be subject to strong penal sanctions for his criminal conduct. Such actions, had they been taken, could have served to better protect Jenny McMechen and her unborn child.

The Victim Advocate's independent investigation into the death of Jenny McMechen revealed that a number of individuals who had professional contact with Jenny McMechen could have, and should have, done more to protect Jenny McMechen. These failures, detailed more fully in the body of the report, demonstrate that a major problem for victims of domestic violence concerns the failure of law enforcement officials to enforce laws that are currently on the books to enhance victim safety, and the failure of justice officials and others in the justice system to respond appropriately to situations that clearly represent serious danger to victims of domestic violence. The

nature and scope of these failures illustrate the critical need for comprehensive reforms in our criminal justice system and in the delivery of services to victims of domestic violence and threatened domestic violence.

Additionally, delays in obtaining and executing arrest warrants of the magnitude seen in the present case can be a huge problem for victim and public safety. The OVA has received many complaints and has reviewed many published reports concerning excessive periods of time in obtaining and executing arrest warrants around the state. Without additional data, however, it cannot be determined with certainty whether delays in the warrant process, like those observed in the McMechen case and elsewhere are relatively isolated events or, instead, are evidence of a larger, more systemic problem. Accordingly, the Victim Advocate has recommended that our state legislature commission a study to assess the state of the arrest warrant system in Connecticut. Collecting and evaluating statistical information is critical to assessing the present system and for determining whether changes need to be implemented to eliminate unnecessary delay in the arrest warrant process.

On July 25, 2002, the Victim Advocate held a press conference to release his independent investigative report and the results of his investigation. In his report, the Victim Advocate made numerous recommendations for improving the protection of victims of domestic violence and the general public as well. As a direct result of the Victim Advocate's investigation into the death of Jenny McMechen, legislation was passed enhancing the penalties for violating a restraining order (now a misdemeanor crime) and for violating a protective order (now a felony crime). This legislation also requires the superior court to provide any person who applies for a restraining order in a domestic violence situation with information on domestic violence counselors and services. During the 2003 legislative session, state lawmakers passed P.A. No. 03-21, otherwise known as "Jenny's Law," which enhances the criminal penalty against those convicted of assaulting a pregnant woman.

The Victim Advocate continues to work with representatives of the agencies involved in the McMechen matter to address these and related recommendations to further and enhance victim and public safety.

State v. Anthony Iannone

In February of 2002, the Victim Advocate announced his investigation into the facts and circumstances surrounding a domestic violence matter in Shelton, Connecticut involving the reported failure of Anthony Iannone, while the subject of an *ex parte* restraining order, a restraining order after hearing, and a protective order, to transfer or surrender his handguns as required by state law.

Pursuant to C.G.S. § 46a-13c, the Victim Advocate investigated the Shelton Police Department's enforcement of the handgun transfer/surrender requirements of C.G.S. § 29-36k with respect to Anthony Iannone. A victim of domestic violence reported to the OVA that she had obtained an *ex parte* restraining order, a restraining

order after hearing, and a protective order against her ex-boyfriend, Anthony Iannone. At all relevant times, Iannone held a local and state pistol permit and he was a registered owner of eight handguns. The issuance of each of the restraining orders and the protective order rendered Iannone ineligible to possess pistols and revolvers and he was required to transfer or surrender his handguns within two business days of becoming subject to the orders. See, C.G.S. § 29-36k (a).² His failure to do so subjected him to a fine of up to five thousand dollars or imprisonment of up to five years or both. See, C.G.S. § 29-36k (c). Also, the continued possession of handguns after the issuance of the restraining order after hearing subjected Iannone to prosecution for criminal possession of a pistol or revolver, a Class D felony, in violation of C.G.S. § 53a-217c (a)(5).

Notwithstanding the transfer/surrender requirements of C.G.S. § 29-36k, and a protocol created by the Commissioner of the Department of Public Safety and others for law enforcement agencies to follow to determine whether the subject of a restraining or protective order has complied with the above-mentioned transfer/surrender requirements (hereinafter “public safety protocol”), on January 17, 2002, a citizen reportedly found a loaded handgun registered to Anthony Iannone on top of a fire call box on the same street where the victim resided. After an investigation by the Shelton Police Department, Anthony Iannone was arrested and charged with criminal possession of a pistol or revolver, carrying a pistol without a permit, reckless endangerment and criminal violation of a protective order for his acts on January 17, 2002. Criminal justice professionals had taken no action in response to Anthony Iannone’s non-compliance with the gun transfer/surrender law between the issuance of the orders and the January 17, 2002 incident.

The specific focus of the Victim Advocate’s investigation was on the victim issues set forth above. The Victim Advocate’s investigation revealed a complete failure by the Shelton Police Department to ensure compliance with the transfer/surrender requirements of C.G.S. § 29-36k until after Anthony Iannone was arrested and charged with various offenses for leaving a loaded handgun on the street where the victim resided. This failure, which fortuitously did not have tragic consequences for the victim or the public, once again highlighted the need for a statewide enforcement mechanism to ensure compliance with the transfer/surrender requirements of C.G.S. § 29-36k. (See, the Victim Advocate’s independent report investigating the death of Josephine Giaimo [hereinafter “The Giaimo Report”],³ which occurred on the East Haven green in 2000 and was the first OVA report to expose and highlight the nature and scope of this important victim and public safety issue).

Moreover, this investigation further highlighted that the public safety protocol, as developed, approved and adopted by the Commissioner of Public Safety and others, was insufficient to ensure that persons who become ineligible to possess handguns comply with the transfer/surrender requirements of C.G.S. § 29-36k. After the Victim Advocate

² The General Assembly amended C.G.S. § 29-36k during the 2002 legislative session to extend the transfer/surrender requirement to include all firearms. Public Act No. 02-120 (7).

³ The complete text of the Giaimo report, and all other OVA reports, can be obtained from the OVA’s website at www.ova.state.ct.us, or upon request from the OVA.

announced his investigation into the Iannone matter, and before the public issuance of his investigative report, the Victim Advocate worked with representatives of agencies and others to effectively address the problems with enforcement of the handgun transfer/surrender laws highlighted in both the Iannone and Giaimo reports. Those efforts succeeded. In response to the concerns raised by the Victim Advocate in these reports, the Department of Public Safety (DPS) with the cooperation and assistance of the Judicial Branch has implemented a centralized enforcement mechanism for the state-wide enforcement of the gun transfer/surrender and gun seizure laws. The Victim Advocate strongly believes that this new enforcement mechanism, operating within DPS's Special Licensing and Firearms Unit, will serve to help resolve the major problems identified by the Victim Advocate.

It is important to emphasize that the new procedures now in force, like any set of operational procedures or laws, cannot guarantee victim and public safety in every case. Full implementation of these newly formulated procedures should, however, play an important role in reducing gun violence and the threat of such violence in domestic and family abuse cases throughout Connecticut. Consistent enforcement of Connecticut's gun transfer/surrender and gun seizure laws should serve to enhance trust and confidence in our justice system among the countless victims of domestic violence and family violence in Connecticut who turn to that system for protection from their assailants. Such enforcement will undoubtedly send a strong message to victims of domestic and family violence that law enforcement officials will respond and seize the guns of those persons who are subject to restraining and protective orders and who fail to transfer or surrender their guns within two business days from becoming subject to such orders. It is equally important that individuals who possess guns and become the subject of a restraining or protective order also receive that important message.

On June 17, 2002, the Victim Advocate held a press conference to release his independent investigative report into the Iannone matter. The Victim Advocate continues to work with the representatives of the agencies involved in this matter to address all recommendations made by the Victim Advocate in his report.

State v. Paul Curioso

In October of 2002, the Victim Advocate publicly announced his intention to investigate the facts and circumstances surrounding the alleged violation of a victim's state constitutional right to address the court regarding the acceptance of a plea agreement in the New London Judicial District.

The defendant in the case had been charged, in a substitute information, with kidnapping in the first degree with a firearm (C.G.S. § 53a-92a), sexual assault in the first degree (C.G.S. § 53a-70(a)(2)), sexual assault in the fourth degree (C.G.S. § 53a-73a), reckless endangerment in the second degree (C.G.S. § 53a-64), threatening (C.G.S. § 53a-62), and risk of injury (C.G.S. § 53-21). The crimes were alleged to have occurred on or about September 14, 2001 at the defendant's apartment located in an apartment complex in Pawcatuck, Connecticut and were alleged to have been committed against an

eight-year-old girl who resided in the same apartment complex. On August 19, 2002, the defendant pleaded nolo contendere to a substitute information charging him only with felony coercion, in violation of C.G.S. § 53a-192. All other charges were nolle. On October 4, 2002, the defendant was sentenced to five years in jail, suspended after time served (approximately 10 months), and a conditional discharge.

On the evening of October 3, 2002, the night before the defendant was scheduled to be sentenced, the Victim Advocate was contacted by the mother of the minor child victim alleging that certain of her rights as a crime victim had been violated by the prosecutor and the court-based victim advocate.⁴ Specifically, the victim's mother indicated to the Victim Advocate that:

- (1) Although she had many contacts with the prosecutor and the court-based victim advocate between the time the defendant was arraigned on the charges (December 3, 2001) until he entered his plea of nolo contendere (August 19, 2002), the mother was never informed of alternative ways of taking testimony from a minor victim of sexual assault in a criminal trial such as videotaped testimony or some other means of providing testimony short of having to face the defendant in the court room;⁵
- (2) Her attempts to inquire about alternative ways of taking testimony from a minor child victim of sexual assault with the prosecutor and court-based advocate were met with resistance and hostility;
- (3) The prosecutor had not arranged to have the child come to the courthouse to help prepare the child to testify until the Friday before the Monday (August 19, 2002) when the defendant's nolo plea was tendered and accepted by the court;

⁴ After playing phone tag with a reporter from The New London Day in the late afternoon of October 3, 2002, the Victim Advocate was contacted at home by the reporter. The Day reporter informed the Victim Advocate of the details of the situation and that sentencing in the matter was scheduled for the next morning. In response to the reporter's question regarding what, if anything, the Victim Advocate was prepared to do about the situation, the Victim Advocate indicated that he would have to be contacted by the victim's mother before any action could be considered. The reporter then arranged for the victim's mother to contact the Victim Advocate that evening. The reporter for the Day also indicated to the Victim Advocate that he had already prepared a story regarding the situation that was to be published the next morning. No mention was made by the reporter to the Victim Advocate of the fact that the name of the mother would be included in the published story. Subsequently, the victim's mother did indicate to the Victim Advocate that she had, in fact, given her permission to The Day reporter to publish her name in the story.

⁵ The child had alleged that while inside the defendant's apartment, the defendant displayed a gun to her and threatened and said, "If you tell anyone, I'll kill you. I'll kill everyone in your family." The state's attorney's office claims, and the mother does not dispute, that three days before an offer was made to and accepted by the defendant the child was brought into the courtroom a second time to get accustomed to the environment and expressed her unwillingness to "talk about it."

- (4) Although she was informed by the prosecutor and court-based victim services advocate of what was likely to *ultimately* happen in the case, she was not informed that the defendant would enter a guilty plea on August 19, 2002 (she was told that “it would be a quick appearance by the defendant as only a next court date would be scheduled”) and that she was never informed of her state constitutional right to object to a plea agreement and to make a statement to the court concerning any plea agreement prior to the court’s acceptance of the agreement.
- (5) That sometime after the defendant’s nullo plea had been accepted by the court (August 19, 2002) and before sentencing on October 4, 2002, the victim’s mother consulted with an attorney in the Attorney General’s Office and was informed of alternative ways of taking testimony from a minor victim of sexual assault in criminal trial proceedings. Upon learning this, the victim’s mother then “marched” into the New London State’s Attorney’s Office and asked the prosecutor and court-based victim advocate why they had not mentioned the possibility of having her daughter testify on videotape and outside of the presence of the defendant. In response, the victim’s mother claimed to have been treated rudely (verbally) by the court-based victim advocate.

Based upon the complaints presented by the victim’s mother, the Victim Advocate decided that it would be appropriate to bring these allegations before the court so that the court could: (1) address the alleged violation of the victim’s state constitutional right to object to the plea agreement and to address the court regarding her disagreement with the plea; and (2) bring to the attention of the court the issues surrounding the alleged failure of the prosecutor and court-based victim advocate to discuss alternative means of taking testimony from a minor victim of sexual assault and, if appropriate, to request that the court take whatever action s/he deemed appropriate, such as order a counseling professional to interview the child to determine the propriety of having the child testify and under what circumstances or conditions the child could safely testify.

The investigation into this matter, while essentially complete, has been temporarily halted due to the Governor’s proposed elimination of the OVA and, in particular, the layoff of the principal attorney in the OVA. It should be noted, however, that during the 2003 legislative session, the Victim Advocate did propose legislation to address the foundational issue faced by the victim in the Curioso matter—an issue frequently brought to the OVA’s complaint line. Pursuant to Public Act No. 03-179, effective October 1, 2003, judges are now required to make an inquiry on the record, before accepting a plea agreement and at sentencing, regarding victim input into the process to enforce the right of crime victims to participate in the criminal justice process

and to be heard. Further, this new law requires court-based victim advocates to formally advise crime victims of their rights by providing notice of their rights in writing on a form developed by the Office of the Chief Court Administrator. This form is then signed by the victim and the court-based victim advocate and placed in the court's file. In addition, the court-based victim advocate's duty to provide information and advice to crime victims has been expanded to provide that information and advice to enable crime victims to exercise their constitutional and statutory rights throughout the criminal justice process.

The Death of Barbara Eckert

In October of 2002, the Victim Advocate announced his intention to investigate the facts and circumstances surrounding a murder/suicide that occurred in Watertown, Connecticut on September 29, 2002. The victim, Barbara Eckert, was murdered by her ex-boyfriend, Mark Tannenbaum, who was a convicted felon and someone who had been arrested four times for domestic violence during the 9-month period leading up to this tragedy. On three previous arrests of Mark Tannenbaum, the victim alleged that Tannenbaum had threatened to kill her and on two of the previous arrests, the victim also alleged that Tannenbaum threatened to kill himself. The relationship was highly tempestuous—both parties had been arrested in the past for domestic violence against each other.

The Victim Advocate initially focused his investigation on two issues. The first issue concerned actions that should have been taken by the Watertown police department to remove guns from Mark Tannenbaum in view of the fact that Tannenbaum was a known convicted felon and had been the subject of restraining and protective orders in the past. As a convicted felon, Mark Tannenbaum could not lawfully possess a firearm. Second, on the night of the murder, Tannenbaum had been arrested for a domestic violence incident and was charged with domestic violence crimes but was released on a promise to appear. Shortly before being released, Tannenbaum submitted to an Intoxilyzer test, which revealed his blood alcohol concentration to be .059 per cent—below the legal limit to operate an automobile. However, the arresting office then drove Tannenbaum to the victim's house and permitted him to drive away on his motorcycle. Barbara Eckert was shot in the head with a .44 caliber handgun. A short time later, Tannenbaum committed suicide using the same handgun that he had used to murder Barbara Eckert.

Although the investigation into this tragedy has been completed by the Victim Advocate, and a report has been partially prepared, the OVA has been unable to make further progress due to events at the State Capitol, including the layoff of the principal attorney in the OVA and the proposed elimination of the OVA. Completion of the report has therefore been delayed and the Victim Advocate anticipates completing the investigative report in the near future.

State v. Edward Benitez

In April of 2003, the Victim Advocate began an investigation into the facts and circumstances surrounding the continued harassment of a crime victim by Edward Benitez, as well as the apparent inaction on the part of the criminal justice system and law enforcement officials to the situation. The Victim Advocate had particular interest in the case because of similarities in the difficulties the victim appeared to be experiencing and those that Jenny McMechen had experienced before her tragic murder. Specifically, Edward Benitez is an individual with a fairly extensive history of committing violent crime, mostly against women; failing to appear in court; and violating protective orders. Benitez's criminal history dates back to February, 2001. He has been arrested numerous times in several judicial districts. Benitez had been given suspended sentences, conditional discharges and probation. During this time period, Benitez was never violated on his probation for new arrests. Arrest warrants were issued for the arrest of Benitez that took a long time to execute. In fact, at the time the victim contacted the Victim Advocate, there was an active arrest warrant for Benitez still outstanding from May 30, 2001, although he has been arrested 9 times since then. At times, while the subject of restraining and protective orders, Benitez was arrested for domestic violence and never charged with violating the protective order when he should have been. Benitez failed to appear for several court dates without consequence. Benitez was reported by one of his victims to have a gun. Many of the domestic violence crimes were committed against the same victim. Benitez continued to use the system to avoid any real consequences for his criminal misconduct.

One significant difference between this case and that of Jenny McMechen, detailed above, is that the victim of Edward Benitez's violence had learned of the existence of the OVA and contacted the Victim Advocate for assistance.

On December 30, 2002, the victim contacted the Victim Advocate complaining that she had received a telephone call from Edward Benitez from prison. At the time, there was a protective order in place prohibiting Benitez from having any contact with the victim, including any third party contact. The victim contacted the Department of Correction (DOC) regarding the phone call and was later informed by DOC that Benitez did not make any telephone calls to anyone at the time the victim claimed to have received the call. Because the victim was so certain that the call came from Benitez, the Victim Advocate sent a letter to DOC requesting that DOC provide the OVA with copies of telephone records for specified dates and times. On February 7, 2003, DOC contacted the Victim Advocate to confirm that Benitez did in fact make the telephone call in question. DOC had determined that Benitez used a fellow inmate's telephone pin number to place the call so as to avoid the call being traced to him. When the Victim Advocate received written confirmation of DOC's discovery, the Victim Advocate contacted the Wethersfield Police Department and the state attorney's office to notify them of the alleged violation of the protective order.

At the time of the telephone incident, Benitez was incarcerated on a prior sentence. At the urging of the Victim Advocate, the Wethersfield Police Department

placed a warrant as a detainer on Benitez. On June 2, 2003, Benitez was scheduled to be released from prison; however, the warrant was executed and a \$5,000 bond was set by the police and then posted by Benitez. Benitez failed to appear on June 10, 2003 and a re-arrest warrant was ordered with bond set at \$500,000.

The Victim Advocate has been in close contact with the prosecutor handling the matter in the New Britain Superior Court. The Victim Advocate, or a member of his staff, has attended several court proceedings in the case since June 2, 2003, the time of his latest arrest. Benitez remains incarcerated as of the time of this writing. The Victim Advocate has informed the court of the history of the defendant, of the outstanding warrant and of the continued violations of probation, restraining and protective orders, without consequence. The court appears to have finally taken notice of the serious nature of this matter and has ordered that the outstanding warrant be served on Benitez while incarcerated and that steps to violate Benitez's probation be undertaken. The OVA will continue to closely monitor the progress of this criminal matter.

V. File a limited special appearance in any court proceeding for the purpose of advocating for any right guaranteed to a crime victim by the Constitution of the state or any right provided to a crime victim by any provision of the general statutes.

To accomplish the goal of assisting crime victims and of giving force to their Constitutional and statutory rights in Connecticut, the Victim Advocate was empowered by the state legislature to advocate in court proceedings with respect to an alleged violation of any right afforded crime victims under Connecticut law. Public Act No. 01-211, Section 12 greatly expanded the Victim Advocate's authority to file an appearance in court proceedings to advocate for victims' rights by specifically authorizing the Victim Advocate to file a limited, special appearance to advocate on behalf of crime victims with respect to *any and all rights* granted to crime victims by Connecticut law. Prior to the enactment of P.A. No. 01-211, the authority of the Victim Advocate to advocate in court proceedings was limited to only a prescribed subset of rights afforded crime victims. During the 2002-2003 reporting period, the OVA has appeared before a number of state criminal and civil courts to advocate for victims' rights—always at the request and with the prior consent of the victim.

APPEARANCES IN CRIMINAL COURT PROCEEDINGS

Since its inception in September 1999, the Victim Advocate or a member of his staff has effectively assisted many crime victims in criminal court proceedings. Often, attending court proceedings with the crime victim, making formal introductions to key criminal justice professionals, scheduling and attending meetings with the crime victim and taking the time to educate the victim about the criminal justice process, their rights as crime victims and the types and availability of victim services will effectively rectify a complaint registered with the OVA. Other cases require more extensive involvement, such as the Victim Advocate filing his formal appearance to address the court to advocate for a crime victim's rights or to file a motion to require the court to address an issue

relating to an alleged violation of a particular victim's constitutional and/or statutory rights.

The Victim Advocate has filed his appearance in criminal court proceedings to successfully advocate for, among other things: an increase or a revocation of bond or to establish conditions of release of the defendant that provide greater victim and public safety; get the court to appoint a family member of a deceased victim as the representative entitled to attend trial proceedings and not be subject to sequestration, as provided by law; prompt a juvenile court judge to re-do both an adjudication and disposition in a matter in which the victim had originally been excluded from attending and participating, in order to permit the victim to attend and to be heard; and to obtain a court order denying a criminal defendant access to records in the possession of the Office of the Victim Advocate.

In cases where the Victim Advocate or a member of his staff has attended court proceedings with victims to help ensure that their rights would be honored and respected, the court has: ordered restitution after hearing from a victim; ordered a standing criminal restraining order for the continued protection of the victim; denied a defendant's program application after hearing from a victim; and imposed strict conditions to a defendant's probation after hearing from a victim.

In every case where the Victim Advocate takes some form of action on behalf of a crime victim, the OVA routinely sends a request for notification letter to the court. This letter serves to provide the court, the state's attorney and the defendant's attorney with notice that: (1) the victim has been informed of their constitutional and statutory rights, (2) their intention to participate in the criminal justice process, (3) the statutory obligations of the state's attorney to provide notification to the victim, and, in some cases, (4) their intention to seek restitution from the defendant. Although this notification letter should improve the problem of notification to victims, victims continue to inform the OVA that they do not receive notification throughout the criminal justice process.

APPEARANCES IN CIVIL PROCEEDINGS

Motion for Expedited Stay of Proceedings

On March 14, 2002, the Victim Advocate filed his appearance and a motion for expedited stay of proceedings in a civil action brought against a crime victim by the defendant, the subject of two pending criminal prosecutions involving the victim. In his civil action, filed while the criminal cases were on the firm jury list, the defendant sought monetary damages and an injunction based upon the victim having reported allegations that the defendant engaged in various criminal behaviors. The Victim Advocate moved to stay all proceedings pursuant to P.A. No. 01-211, Section 15, legislation the OVA previously proposed and lobbied for. A hearing was held on the Victim Advocate's motion on March 19, 2002. The Court issued a temporary stay pending the court's determination of the Victim Advocate's motion. The Court released its written decision

on June 18, 2002. The Court agreed with the arguments proffered by the Victim Advocate in full and granted the Victim Advocate's motion for a stay of proceedings.

Expedited Motion for Order Seeking Use of Pseudonym, Sealing of the File & Excluding the Public from all Proceedings & Sanction

On July 17, 2002, the Victim Advocate filed his appearance and a motion in the Superior Court, Judicial District of New Haven at New Haven, in a pending civil action. A defendant incarcerated on statutory rape convictions involving two minor victims filed a lawsuit against the victim and their parents seeking damages based upon a claim that the minor victims misrepresented their ages to the criminal defendant. The criminal defendant's attorney filed a complaint that used a pseudonym for the criminal defendant but listed the full names of the minor victims and their parents and the towns in which they resided. The summons prepared by counsel for the criminal defendant listed the full names and full addresses of the victims and their parents. As a result, the victims' names and addresses were available to the public by accessing the court's file and via the Internet. Also, the criminal defendant's attorney, also employed by the Connecticut Law Tribune, gave an interview with the Connecticut Law Tribune in which the newspaper disclosed the full names of the minor victims. The Victim Advocate filed an appearance in the civil action and an expedited motion pursuant to the confidentiality provisions of C.G.S. § 54-86e seeking the use of pseudonyms for the victims and their parents, sealing of the file and the exclusion of the public, including the media, from all court proceedings. The motion also sought sanctions against the criminal defendant's counsel for disclosing the names and addresses of the minor victims and their parents without an order of the court as required by C.G.S. § 54-86e. On August 26, 2002, the Court heard oral arguments on the motion and granted the OVA's motion for use of pseudonym, sealing of the files and exclusion of the public, including the media, from all proceedings. The court reserved decision on the OVA's motion for sanctions against the criminal defendant's attorney.

On October 25, 2002, the court released a written decision on the OVA's motion for sanctions against the criminal defendant's attorney. The court found several factors in deciding whether to issue sanctions. First, there has been no prior case law to put the defense attorney on notice that C.G.S. § 54-86e could form the basis for sanctions in a civil case. Second, there is no evidence that the defense attorney solicited the newspaper article revealing the names of the victims. Third, there had been no prior court order regarding disclosure of the victims' names. Fourth, it is standard procedure to place the addresses and names of the defendants in the initial court filing to effectuate services of process. Finally, at the hearing, the defense attorney did not oppose those portions of the motion that sought to seal the file and amend the complaint with fictitious names at the time of oral arguments.

ACTIONS BEFORE THE CONNECTICUT SUPREME COURT

In Re: Jonathan S. (SC 16452)

On January 9, 2002, the Connecticut Supreme Court heard oral arguments in the matter of Jonathan S.—an appeal (writ of error) filed by the Victim Advocate alleging violations of state constitutional rights afforded to crime victims. The case of Jonathan S. originated in the Superior Court, Juvenile Matters in Torrington wherein the juvenile was charged with committing sexual assault in the first degree; risk of injury to a child; and threatening. On behalf of the minor victim and the victims' parents, the Victim Advocate had filed his appearance in the case, on March 16, 2000, to advocate for their rights as crime victims.⁶ Specifically, the victims complained to the Victim Advocate that their attempts to attend court hearings had been repeatedly denied. In the opinion of the Victim Advocate, such allegations, if true, would be violative of Article First, Section 8(b) of the Connecticut Constitution (the Victims' Rights Amendment).

The victims specifically complained that:

- (1) On October 1, 1999, the mother of the child victim was denied access to the hearing scheduled for that day. Her request to attend the hearing was conveyed to the judge by the probation officer while the mother remained outside the courtroom;⁷
- (2) On each of the dates: December 2, 1999; December 17, 1999; December 23, 1999; and January 20, 2000, the mother was similarly denied access to the hearings scheduled for those dates and that, on those occasions, she requested permission to attend from either the probation officer or the state's attorney but was simply informed that the judge had denied her requests.⁸

Because juvenile court proceedings are not open to the public and are "closed proceedings," the victim's mother was never afforded an opportunity to physically enter the courtroom herself to make her requests to attend the proceedings directly to the judge on any of the aforementioned hearing dates.

⁶ C.G.S. § 1-1k provides that, "[e]xcept as otherwise provided by the general statutes, "victim of crime" or "crime victim" means an individual who suffers direct or threatened physical, emotional or financial harm as a result of a crime and includes immediate family members of a minor, incompetent individual or homicide victim and a person designated by a homicide victim in accordance with section 1-56r." Therefore, pursuant to this statutory definition, the minor child and his parents are considered "victims" and all of the rights afforded to crime victims in our state constitution apply to the parents as well as the child.

⁷ The probation officer merely stated to the court: "Your Honor, first of all, I just want to report to the court that the victim is here today requesting to be present in the hearing for today."

⁸ It should be noted that at the earliest stage of the case, at the juvenile's arraignment, a different judge presiding over the matter had not only allowed the mother and father of the minor victim to attend the arraignment proceeding but also allowed the mother to make a statement to the court at that time. Further, this judge informed the victim's parents that that they were "entitled" to attend future court proceedings and would be allowed to address the court on those occasions as well.

The victim's mother contacted the Victim Advocate for assistance in the matter only after a date for the disposition of the case had been scheduled. At the request of the victim and his parents, the Victim Advocate filed a limited special appearance in the case (March 16, 2000) and argued to the court that the victims' state constitutional rights to attend court proceedings had been violated and that the victims should be allowed, as a matter of law, to attend and participate in future proceedings related to the matter. In response to the Victim Advocate's oral argument, the presiding judge asked that the attorneys representing the parties to the matter, including the Victim Advocate, provide written briefs addressing the legal arguments raised orally by the Victim Advocate in court.

The juvenile court judge ultimately ruled, on May 19, 2000, that the provisions of the Victims' Rights Amendment to the state constitution do not apply in juvenile delinquency proceedings as such proceedings are not "criminal proceedings." Instead, the judge ruled that the victim and his mother had been denied access to the courtroom based upon a statute⁹ and practice book rule¹⁰. Further, in deciding to allow the victim and his parents to attend the dispositional hearing and to make a statement regarding the proposed disposition of the case, the judge then cited a different statute giving judges presiding over juvenile court matters the discretion to keep persons out of juvenile hearings.¹¹

The Victim Advocate filed a writ of error with the Connecticut Supreme Court challenging the juvenile court judge's ruling that the Victims' Rights Amendment to the state constitution does not apply to juvenile court proceedings and further alleging that denial of access to the hearings in the case violated the victims' state constitutional right to attend court proceedings.

On June 25, 2002, the Supreme Court officially released its written decision (SC 16452) in the matter. The Court dismissed the victims' writ of error. With respect to the October 1, 1999 hearing, the Court held that the victim's mother did not adequately advise the juvenile court of the basis for the request to attend that court proceeding. Not being allowed to enter the courtroom because of the closed nature of juvenile proceedings, the victim was forced to rely on the probation officer to convey her request to attend the hearing. As footnote 7 reveals, the probation officer failed (not

⁹ C.G.S. § 46b-138b provides: "In any proceeding concerning the alleged delinquency of a child, any victim of the alleged delinquent conduct, the parents or guardian of such victim, an advocate for such victim, appointed under section 54-221, or such victim's counsel shall have the right to appear before the court for the purpose of making a statement to the court concerning the disposition of the case."

¹⁰ Connecticut Practice Book § 31-9 provides: "Whenever a victim of an alleged delinquent act...exercises the right to appear before the judicial authority for the purpose of making a statement to the judicial authority concerning the disposition of the case...[n]o statement shall be received unless the alleged delinquent has signed a statement of responsibility, confirmed a plea agreement or been convicted as a delinquent."

¹¹ C.G.S. § 46b-122 provides in relevant part: "...Any judge hearing a juvenile matter shall, during such hearing, exclude from the room...any person whose presence, in the court's opinion, not necessary, except that in delinquency proceedings any victim of the delinquent act, the parents or guardian of such victim and any victim advocate appointed pursuant to section 54-221 shall not be excluded unless the judge specifically orders otherwise."

unexpectedly) to provide any legal basis whatsoever for the mother's request when he communicated that request to the judge. The Court further ruled that because no proper legal basis was presented, the trial court reasonably assumed that the victim's mother was seeking access to the courtroom pursuant to statute and practice book rule. The Court then went on to state that "[t]he victim has the responsibility to present such a claim clearly to the trial court so that the trial court may consider it and, if meritorious, take appropriate action."

With respect to the other court hearing dates, the Court ruled that because the record failed to reveal that the victim requested and was denied access to those court proceedings, the victim was not aggrieved with respect her rights. Finally, the Court noted that the record did not contain any reference to the victim being denied access to any hearing after a March 16, 2000 request to attend all future court proceedings made to the court by the Victim Advocate.

Because the victim's writ of error was dismissed by the Court for the reasons cited above, the Court failed to address some fundamental issues of great import to crime victims in Connecticut. For example, left undetermined is the question regarding the issue of victim standing to file an appeal when a violation of a fundamental constitutional right is alleged. Additionally, at least in the view of some within the criminal justice system, there remains uncertainty as to whether the protections afforded by the Victims' Rights Amendment to the Connecticut Constitution apply to victims of juvenile crimes to the same extent as those protections apply to victims of adult crimes.

On the more practical side, the Court's ruling that it is the responsibility of crime victims to provide an appropriate legal basis to the court when requesting to attend juvenile court proceedings is extremely problematic. Given the "closed" nature of juvenile proceedings, victims of juvenile crime are often precluded from entering the courtroom to even make the request directly to the judge, let alone provide a proper legal basis for the request. For those judges of a mind to exclude victims from proceedings in juvenile court, the standard set by the Connecticut Supreme Court in its decision can be applied to effectively render victims' rights in juvenile proceedings, to the extent such rights exist, a nullity. Victims should not have to rely on probation officers (who work with juvenile defendants) or the state's attorney (whose job it is to represent the interests of the state) to make legally sufficient requests on behalf of crime victims to attend hearings. This problem may need to be addressed legislatively.

It was and remains the position of the Victim Advocate that the Victims' Rights Amendment to our state constitution should apply to juvenile court proceedings just as it does in adult criminal court cases. It seems illogical, from a public policy perspective, to contend that the overwhelming concern for the rights of crime victims would disappear if the victim happens to have been victimized by a juvenile offender rather than an adult offender. The important issues to our state legislators, and to the drafters of Article First, Section 8(b) of the Connecticut Constitution was not the age of the defendant, but rather the legal and moral imperative that *all* crime victims be treated with dignity and respect by the criminal justice system. The sociological and public policy impulses that gave rise

to Connecticut's Victim's Bill of Rights exist just as strongly in juvenile court as in adult court (e.g., the victim still feels the same sense of helplessness; the same need for protection; the same expectation that justice will be done; and the same desire for closure). In short, a victim of crime is no less a victim simply because the victimizer happens to be a juvenile. Therefore, *all* crime victims should be afforded the rights contained in the Connecticut Constitution.

It should be noted that there exists great inconsistency among juvenile court judges throughout the state regarding the enforcement of victims' rights in juvenile court proceedings. Some judges allow victims to attend all proceedings but only allow the victim to address the court at disposition. Other judges not only allow victim attendance but also victim participation throughout the process. Still others deny victims access to all proceedings except for the dispositional hearing. This problem of inconsistency in the enforcement of victims' rights in our courts is greatly compounded by the fact that all juvenile courts in Connecticut send a form letter to crime victims notifying them of their rights to attend court proceedings and to participate in those proceedings.

Jennifer F. v. James A. McCahill, et al. (SC 16574)

On May 23, 2001, defendant James A. McCahill was found guilty, following a trial by jury, of two felony crimes: burglary in the first degree and sexual assault in the first degree. The state requested the defendant be held without bail pending sentencing, in accordance with Public Act No. 00-200(5), which prohibits the release of violent criminals pending sentence and pending appeal of their convictions. After hearing arguments from the parties, the trial court set bond and the defendant was released from custody. On August 9, 2001, the trial court sentenced the defendant to twelve years, execution suspended after six years. The defendant again requested to be released on bail pending his appeal. The state objected again referring to Public Act 00-200(5). After hearing arguments from the parties and the Victim Advocate, the trial court released the defendant on bond ruling that Public Act 00-200(5) is unconstitutional in that it violates the separation of powers doctrine.

On August 10, 2001, the state filed a petition for review in the Appellate Court challenging the trial court's order to release a defendant on bail following imposition of his sentence. On August 23, 2001, at the request of the victim, the Victim Advocate filed a writ of error in the Supreme Court on behalf of the crime victim.¹² In his writ, the Victim Advocate sought to reverse the trial court's rulings that released the defendant on bond pending sentence and pending appeal and, further, asserted that the trial court, in releasing McCahill on bond post-conviction, violated the victim's state constitutional right, under the Connecticut Constitution, to be reasonably protected from the accused

¹² The Victim Advocate decided to file his writ of error only after reviewing the state's petition and supporting documentation. At the trial level, the Victim Advocate had briefed the issues and had proffered what he believed to be a strong argument, based upon Public Act No. 00-200(5) and the Victims' Rights Amendment, to support overturning the decision of the trial court releasing McCahill on bond post-conviction. However, the Victim Advocate's position and argument was not included in the state's petition for review. For this reason, the Victim Advocate felt compelled, in pursuing the legal interests of the crime victim, to file his writ of error.

throughout the criminal justice process. The Supreme Court transferred the state's petition for bail reviews to itself pursuant to C.G.S. § 51-99(c) and ordered that it be consolidated with the Victim Advocate's writ of error.

Oral arguments before the Connecticut Supreme Court took place on November 27, 2001. On August 20, 2002, the Court officially released its written decision in the case (SC 16574). In its decision, the Court dismissed the victim's writ of error as moot. Further, the Court upheld the trial court's ruling that Public Act No. 00-200(5) is unconstitutional as it violates the separation of powers doctrine.

In finding that the victim's writ of error and the state's petition for review raised the same ultimate issue (i.e., whether the trial court correctly ruled that P.A. No. 00-200, Section 5, is constitutional on separation of powers grounds), the Court then held the victim's writ moot and dismissed the writ. In dismissing the victim's writ as moot, the Court did not have to resolve some fundamental issues concerning victims' rights. For example, the Court did not have to decide whether the victim or the Victim Advocate has the right to bring a writ of error for a purported violation of a right contained the Victims' Rights Amendment. In the Court's own words, "Because we may resolve the issue of whether P.A. No. 00-200, § 5, violates the separation of powers provision without also addressing the constitutional question of whether the victim's rights amendment permits her appellate review, we leave the latter issue for another day and proceed with an examination of the former."

With respect to the ultimate issue raised by the state and the victim, the Court held that P.A. No. 00-200 Section 5, violated the separation of powers doctrine because it significantly interferes with the orderly functioning of the Superior Court's judicial role. In essence, the Court found that P.A. No. 00-200, § 5, could, for example, destroy or seriously hamper a convicted criminal's right to appeal his conviction; it could require incarceration before sentencing even in circumstances where the appropriate punishment may be a fine; and it could interfere with the trial court's power to vacate a conviction or to impose an alternative sentence.

On August 30, 2002, in response to the Court's decision, the Victim Advocate, upon the request and with the permission of the victim, filed a motion with the Court for reconsideration of its dismissal of the victim's writ of error. In the victim's motion for reconsideration, the victim took issue with the Court's ruling that the victim's writ of error is moot because: (1) her writ required different practical relief than the state petition for review; and (2) the Court incorrectly failed to address the victim's chief and unique substantive argument in favor of the constitutionality of P.A. No. 00-200, § 5, namely, that because the legislature enacted it pursuant to an express grant of constitutional authority,¹³ P.A. No. 00-200, § 5, cannot, by definition, violate the separation of powers

¹³ There can be little doubt that P.A. No. 00-200, § 5, was a measure reasonably directed to the end of enforcing Article First, Section 8(b), the Victims' Rights Amendment. The legislative history clearly states that this was its purpose. According to Representative Michael Lawlor, one of P.A. No. 00-200's co-sponsors, P.A. No. 00-200 "is one of the most recent in a series of efforts on behalf of this General Assembly to give greater clarity to the rights that crime victims have in our courts...[§8(b)] obligates the

doctrine, thereby bringing its opinion into conflict with the Supreme Court's prior decision in *State v. Rollinson*, 203 Conn. 641, 526 A.2d 1283 (1987).

On November 19, 2002, the Connecticut Supreme Court officially released insertion pages to its prior decision wherein it addressed the issues raised in the victim's motion for reconsideration. These pages acknowledge that the state did not make the argument, detailed above, that was included in the victim's writ of error. However, in reiterating the Court's finding that the victim's writ was moot, the Court went on to hold that the language in the Victims' Rights Amendment granting the legislature the authority to "provide by law for the enforcement" of the enumerated victims' rights too general in nature to abrogate or override the separation of powers doctrine.

It should be noted that the Attorney General for the State of Connecticut and the National Center for Victims of Crime filed *amicus curiae* briefs supporting the victim's positions in the case. The Victim Advocate wishes to publicly express his thanks for their wisdom and their support.

The Issue Regarding the Victim Advocate's Authority to File a Writ of Error on Behalf of Crime Victims

In addition to the issue raised by the parties in both the In Re: Jonathan S. and Jennifer F v. James A. McCahill matters as to whether crime victims have "standing" to challenge a trial court's decision claiming a violation of victims' rights, the Supreme Court itself raised the additional issue as to the Victim Advocate's authority to file a writ of error on behalf of crime victims. Because the writs in both cases were dismissed, the Court did not decide the "victim standing" issue. To protect the victim's legal interest in the matter, the Victim Advocate decided to obtain the services of private counsel, Attorney Wes Horton, to represent the victim. This strategy was taken to remove the issue of the Victim Advocate's authority to file a writ of error on behalf of crime victims from the court's consideration. However, to avoid the issue surrounding the Victim Advocate's authority in future cases, it is imperative that the legislature provide the Victim Advocate with the express authority he very likely will need to seek appellate review when a crime victim believes that a trial court has violated his or her state constitutional or statutory rights.

In order for the Victims' Rights Amendment and laws enacted to effectuate that Amendment to receive definitive and authoritative construction that justice requires, there must be a means for its intended beneficiaries— crime victims—to pursue the appropriate relief from improper interpretations and for the Victim Advocate to pursue such review in appellate courts on behalf of crime victims.

General Assembly from time to time to elaborate on how those rights are to be enforced in our courts and *this is an effort to do just that.*" 43 H.R. Proc., Pt. 13, 2000 Sess., p. 4319. (Emphasis added). In addition, the effect of § 5 of P.A. No. 00-200 is clearly to give greater protection to the victim throughout the criminal justice process; it is designed to ensure that victims of violent crime do not have to fear further violence from the person convicted of harming them while that person's appeal is pending or while they await sentencing.

In both cases, the writ of error filed by the Victim Advocate was the extension of and continuation of his lawful advocacy on behalf of the victims commenced in the trial court. C.G.S. § 46a-13c (5) authorizes the Victim Advocate to file “a limited special appearance in any court proceeding for the purpose of advocating” for the rights of crime victims. Although the legislature did not expressly grant the Victim Advocate the authority to seek appellate review when crime victims believe that a trial court has violated their rights, the Victim Advocate believes that the spirit of the Victims’ Rights Amendment does contemplate the Victim Advocate having such authority.

The legislative history of the Victims’ Rights Amendment and of the Office of the Victim Advocate’s enabling legislation supports the Victim Advocate’s authority to file a writ of error. During the debate on the Victims’ Rights Amendment in the House of Representatives, one of its co-sponsors, Representative Michael Lawlor, stated that “the remedy for a violation of a victim’s rights under the Victims’ Rights Amendment would be for an appellate court or a trial court to decide what the state’s obligation is [sic] under the terms of the Constitutional Amendment. In other words, a victim of crime would take his or her case to court and the courts would decide.” 39 H.R. Proc., Pt. 9, 1996 Sess., p. 2837 (Emphasis added). During the debates on the legislation that created the Office of the Victim Advocate, Representative Lawlor stated that the Victim Advocate would “speak for crime victims whenever they’re dealing with a state agency or a court and they feel that their rights are in effect being ignored.” 41 H.R. Proc., Pt. 16, 1998 Sess., p. 5413. Thus, the legislature intended that crime victims would be able to have the court system, including appellate courts, address and vindicate their claims that their rights under our state constitution have been violated.

Further, the legislature undoubtedly recognized that crime victims would be unable on their own to pursue further review of court decisions that they believed violated their rights under the Victims’ Rights Amendment because of cost or other considerations, authorized the Victim Advocate to advocate on behalf of crime victims. In furtherance of this recognition, the legislature authorized the Victim Advocate to file an appearance and advocate on behalf of the rights of crime victims in court. In order to fully effectuate the spirit of the Victims’ Rights Amendment and to make those rights more than “paper rights,” the Victim Advocate’s authority must necessarily include the authority to file a writ of error to seek appellate review of a trial court’s decision that the victim believes violated his or her constitutional rights.

Furthermore, the legislature did not expressly preclude the Victim Advocate from filing a writ of error on behalf of crime victims. If it had intended such limitations on the Victim Advocate’s authority, the legislature easily could have done so. See C.G.S. § 46a-13g (limitation on Victim Advocate’s filing appearance in misdemeanor and infraction cases).

- VI. Ensure a centralized location for victim services information;**
- VII. Recommend changes in state policies concerning victims, including changes in the system of providing victim services;**

VIII. Conduct programs of public education, undertake legislative advocacy, and make proposals for systemic reform.

LEGISLATIVE INITIATIVES

During the 2002 legislative session, the Victim Advocate submitted sixteen separate legislative proposals for the Connecticut General Assembly to consider. Among those were legislative proposals designed to enhance notification requirements to crime victims; provide greater protection for the safety and well-being of crime victims; enhance the Victim Advocate's powers and authority to investigate alleged violations of victims' rights; and improve the delivery of services to crime victims. From those proposals, the Judiciary Committee raised four bills for consideration:

Raised Bill 5515, An Act Concerning Protection for Victims of Crime

Raised Bill 5517, An Act Concerning Notification to Crime Victims

Raised Bill 5520, An Act Concerning Victim Services

Raised Bill 5523, An Act Concerning the Victim Advocate

Throughout the session, the Victim Advocate worked collaboratively with representatives of the victim service organizations, members of the general assembly and victims of crime, to draft, support and pass legislation that provides victims, particularly victims of domestic violence, with greater protections. The following laws were enacted:

Public Act No. 02-127, An Act Concerning Restraining and Protective Orders and the Reporting and Investigation of Suspected Abuse of Delinquent Children Committed to the Commissioner of Children and Families.

Effective October 1, 2002, the penalty for violating a restraining order was increased from a civil penalty (an offender can be held in contempt of court) to a criminal penalty (Class A misdemeanor). P.A. No. 02-127 also increases the penalty for violating a protective order from a Class A misdemeanor to a Class D felony. This legislation also requires the superior court to provide any person who applies for a restraining order in a domestic violence situation with information on domestic violence counselors and services.

Enhancing penalties for violating orders of protection and providing timely information to victims of domestic violence regarding victim services should work to greatly improve the safety of victims and the general public as well. Prosecutors and law enforcement officials have informed the Victim Advocate that they believe enhancing the penalties for violating orders of protection gives the criminal justice system more clout over those who are the subjects of such court orders and decide to violate such orders. Victims appreciate receiving information about services, rights and advocacy at points in time—early on in the process—that can serve to make an impact on their safety.

Public Act No. 02-136, An Act Concerning Employment Protection for Crime Victims and Persons Whose Criminal Records Have Been Erased.

Effective October 1, 2002, this legislation makes it unlawful for employers to terminate, penalize, threaten or otherwise coerce an employee who is a crime victim who takes time off from work to attend court proceedings or participate in a police investigation related to a criminal case for which s/he is the victim. Further, this legislation provides the same employment protections to those victims of family violence who secure a restraining or protective order. This protection is needed to protect family violence victims from unfair treatment by employers who incorrectly perceive such victims as representing a threat to workplace safety.

This legislation now gives crime victims the same employment protection provided to those under an order of subpoena to appear in court. In addition, it allows crime victims to pursue a real remedy in the event the employer discharges, penalizes or threatens, or coerces the employee by bringing a civil action for damages, for reinstatement of the employee, for rescission of retaliatory action, and recoup attorney's fees.

Connecticut is now one of a few states that provide protection to employee crime victims when they exercise their constitutional right to attend court proceedings or, in family violence cases, secure an order of protection from the court. The Victim Advocate wishes to thank State Senator Kevin Sullivan, Senate Pro Tem, for taking the initiative on this legislation and for allowing the Victim Advocate to work with him and his staff in formulating and drafting an important piece of legislation that furthers protection for crime victims.

During the 2003 legislative session, the Victim Advocate submitted fifteen, separate legislative proposals for the Connecticut General Assembly to consider. Among those were legislative proposals again designed to further enhance notification requirements to crime victims; enhance the Victim Advocate's powers and authority; improve the delivery of services to crime victims; and refine and enhance the duties of the court-based victim service advocates who are employed by the Judicial Branch's Office of Victim Services. From those proposals, the Judiciary Committee raised four bills for consideration:

Raised Bill No. 6491, An Act Concerning Notification to Victims of Crime

Raised Bill No. 6492, An Act Concerning Victim Services

Raised Bill No. 6493, An Act Concerning the Victim Advocate

Raised Bill No. 1066, An Act Concerning Victims' Rights in Court Proceedings

Throughout the session, the Victim Advocate worked collaboratively with those agencies affected by the OVA's legislative proposals to reach a compromise to improve the delivery of services to crime victims. Effective October 1, 2003:

Public Act No. 03-179, An Act Concerning Victims' Rights in Court Proceedings and Duties of Victim Advocates

This legislation requires that for each case that comes before the court, the court must inquire on the record whether the crime victim is present for the purpose of making a statement to the court or, if not, whether the victim has submitted a written victim impact statement for the record. If no crime victim is present and no victim impact statement has been submitted for the record, the court is required to inquire on the record whether an attempt had been made to notify the victim.

In addition, P.A. No. 03-179 greatly enhances the duties and responsibilities of the court based victim advocates to allow them to better assist and advocate for crime victims. Court-based victim services advocates are now required, pursuant to P.A. No. 03-179, to formally advise crime victims of their rights by providing victims with a form, developed by the Office of the Chief Court Administrator that lists victims' state constitutional rights. Court-based advocates and victims each sign the form attesting that the victim has been informed of their rights. This form is then placed in the court file by the court-based advocate. Further, court-based victim services advocates are required to provide information and advice to crime victims to assist victims in exercising their rights throughout the criminal justice process.

In addition to improving the provision of notification and information to crime victims, it is crucial that we also make improvements to the provision of advocacy on behalf of crime victims in the courts by court-based victim advocates. Victims have an expectation that a "victim advocate" will advocate on their behalf in the courtroom to protect their state constitutional and statutory rights to participate in the criminal justice process. This often does not happen and can be a major source of frustration for crime victims. Based on complaints that the OVA receives from crime victims, court-based victim advocates who work for the Office of Victim Services (a Judicial Branch agency) are often viewed as a part of the "system" and, more particularly, an extension of the prosecutor's office. A court-based victim advocate's ability to help crime victims assert their legal rights, or even to be fully informed of their rights, seems to depend, at least to some extent, on the particular prosecutor or judge assigned to the case.

The main problem is that the duties and responsibilities of these "victim advocates," which are defined in C.G.S. § 54-220(a), do not contain what most would agree constitutes genuine advocacy, at least not with respect to the legal rights of crime victims. The duties and responsibilities of these "advocates" as delineated in C.G.S. § 54-220(a) include: assisting crime victims in the preparation of a victim impact statement; providing assistance with completing application forms for victim compensation; making referrals to other agencies for services; and providing emotional support. While these are extremely important services that benefit crime victims greatly, they are not what most crime victims expect from someone who is referred to as his/her "advocate."

Public Act No. 03-129, An Act Concerning Compensation of Crime Victims and Authorizing Crime Victims to Make a Statement Before the Sentence Review Division

In addition, the Victim Advocate worked collaboratively with Senator Win Smith on a legislative proposal that provides crime victims with notice and an opportunity to be heard at any sentencing hearing; not only the original sentencing hearing but also any subsequent hearing regarding sentencing including hearings before the Sentence Review Division of the Superior Court where crime victims will be allowed to make a statement (in person or in writing) expressing their position as to whether the challenged sentence should be increased, decreased or remain the same as that imposed by the original sentencing court. The result of this collaborative effort was Public Act No. 03-129.

The Victim Advocate also strongly supported several other important legislative proposals that were passed, including:

- Public Act No. 03-200, An Act Concerning an Address Confidentiality Program**
- Public Act No. 03-156, An Act Concerning Identity Theft**

The Victim Advocate entered into an interagency agreement with the Judicial Branch and the Department of Correction (DOC) to greatly improve the availability of information to crime victims of rights and available services. Raised Bill No. 6492 proposed establishing a crime victim assistance center in every criminal court in the state of Connecticut. Prior to its passage, the Judicial Branch agreed to make space available in every criminal court for the placement of a fixture that will be stocked with information and brochures for crime victims. The Judicial Branch also agreed to pay for the fixtures. DOC agreed to supply the fixtures to the Judicial Branch for a reasonable cost. The Victim Advocate will continue to monitor the progress of this important interagency agreement.

OTHER OVA INITIATIVES/ACTIVITIES

The Victim Advocate participates on a number of legislative committees and commissions for the improvement of services to crime victims. Among those are:

- Member, Commission on Racial and Ethnic Disparity in the Criminal Justice System
- Member, Hate Crime Task Force
- Member, CT Helps Oversight Council
- Member, Advisory Commission on Wrongful Convictions
- Member, Fatality Review Panel Working Group, Instituted by the Connecticut Coalition Against Domestic Violence (CCADV)
- Member of Governing Board, Criminal Justice Information System Commission
- Member, Domestic Violence Confidentiality Study Committee
- Member, Dual Arrest, Domestic Violence Study Group, Instituted by the Connecticut Coalition Against Domestic Violence (CCADV)

- Member, Sex Offender Policy Advisory Committee
- Member, Commission to study the CT process for granting pardons and erasing criminal records
- Member, Criminal Justice Collaborative

Other activities include:

- Testified before the state legislature's Commission to Study the Death Penalty regarding that commission's final report
- Met with members of the Firearms Unit to monitor the implementation of the Centralized Enforcement Unit
- Met with the Judicial Branch regarding a variety of victims' rights issues and concerns
- Planning committee for the Melanie Rieger Conference Against Violence
- The Victim Advocate submitted testimony and testified at several public hearings before a variety of legislative committees regarding legislative proposals
- The Victim Advocate worked collaboratively with the Children's Center of St. Francis Hospital on a federal grant to provide money for a victim advocacy network with the Hartford Police Department
- The Victim Advocate was contacted by U.S. Senator Joe Lieberman's office for input and advice regarding Senator Lieberman's anti-domestic violence proposals. Several suggestions made by the Victim Advocate (e.g., criminalizing violations of restraining orders and providing a mechanism for obtaining an order of protection around the clock) were included in the official release of Senator Lieberman's plan.
- The Victim Advocate provided a requested letter of support to U.S. Congressman Rob Simmons (R-2nd) supporting his legislative proposal to eliminate the federal cap on the amount of money that can be spent from the Victims of Crime Act (VOCA) fund.

The Victim Advocate and members of the OVA staff attended and participated in a number of seminars, conferences and other programs. Among those are:

- 2002 National Victim Assistance Academy
- 2002 Crime Victim Law & Litigation Conference
- Freedom of Information Liaison Training Program
- President's White House Conference on Abducted, Missing, and Exploited Children
- Domestic Violence Conference
- 2003 Crime Victim Law & Litigation Conference, Invited panel speaker and workshop presenter

IX. Take appropriate steps to advise the public of the services of the Office of the Victim Advocate, the purpose of the office and procedures to contact the office.

The Victim Advocate makes every attempt to advise the public about victims' rights and available services in the state. Through the daily work of the OVA, victims are informed and educated about their rights and available services. Many referrals are made to those agencies that provide direct services to crime victims. Through the legislative initiatives of the Victim Advocate, the OVA has been successful in communicating identified systemic issues facing Connecticut crime victims and has proposing legislative changes to effectively address many of these issues. The Victim Advocate has had many opportunities to inform and educate the public about victims' rights and available services. Among those opportunities are the following:

- The Victim Advocate attended a press conference with Governor Rowland and DCF to address the issue of abducted and missing children
- The Victim Advocate and OVA staff manned an information booth at the Big E in 2002 and 2003
- The Victim Advocate co-sponsored a debate on the death penalty held at the University of New Haven
- The Victim Advocate was a guest speaker on WINY Radio in Putnam on several occasions to discuss victims' rights issues and to take phone calls from the public respecting those issues
- The Victim Advocate gave opening remarks at the 2003 OVS Institute for Advanced Victim Advocacy sponsored by Connecticut's Office of Victim Services and the University of New Haven
- The Victim Advocate attended a memorial services at Sherwood Island State Park for the victims of the September 11th attacks in 2002 and 2003
- The Victim Advocate attended an ecumenical service at Saint Joseph Cathedral for the victims of the September 11th attacks
- The Victim Advocate was a co-sponsor and participant of the Melanie Rieger Conference Against Violence
- The Victim Advocate and Senator Donald Williams were guest speakers on WINY Radio in Putnam to discuss victims' rights and related issues
- The Victim Advocate participated, along with the Director of the Office of Victim Services, Linda Cimino, on a radio interview with WTIC to discuss victims' rights and services
- The Victim Advocate was an invited guest on a half-hour radio program called *Vantage Points* and discussed the state of victims' rights in Connecticut (August 9, 2003)
- The Victim Advocate was interviewed twice on the Brad Davis Morning Program, WDRC radio, to discuss issues of importance to crime victims
- The Victim Advocate participated in a local public access program for Channel 13 in Waterbury

- The Victim Advocate was interviewed by all major television stations regarding his investigative report on the death the death of Jenny McMechen and other investigative efforts of the OVA
- The Victim Advocate was a guest on a Channel 61 program to discuss the victim issues surrounding the trial of former Waterbury Mayor, Phil Giordano
- The Victim Advocate was an invited speaker at a meeting of the Bloomfield Women's Club to discuss the role of the crime victim in criminal court proceedings
- The Victim Advocate taped 3 public services announcements to air on WINY radio to be aired *non gratis*
 - The Victim Advocate conducted several newspaper interviews on a variety of victims' issues
 - The Victim Advocate co-sponsored and participated in a march and rally against crime and violence in Hartford on Saturday, November 8, 2003

Creation and Distribution of an OVA Brochure

The Victim Advocate designed a two-fold, color information brochure that highlights victims' rights; the role of the OVA and contact information for the OVA. To date, the Victim Advocate has printed and distributed approximately 5,000 copies of the brochure.

Office of the Victim Advocate Web Site

In an effort to serve crime victims throughout the state, the Victim Advocate designed and developed an OVA web site that can be accessed at <http://www.ova.state.ct.us>. It was designed to provide the user with easy access to information about victim rights and victim rights laws (constitutional and statutory); the services provided by other state agencies and private entities of interest to crime victims; links to state and national advocacy organizations; biographical information about the Victim Advocate and his staff; and the full text of all OVA investigative reports and annual reports. The OVA receives many calls from crime victims claiming to have learned of the OVA and its services from the OVA web site. The OVA also receives frequent calls from individuals across the country for general information about victims' rights.

OVA BUDGET

During the legislative session, the Governor presented his proposal for the state's budget for the next two years. Included in the budget, the Governor proposed the elimination of the Office of the Victim Advocate. The Victim Advocate attended several public hearings and meetings on this issue. Ultimately, the Appropriations Committee included the OVA in its budget proposal. The Victim Advocate will continue to closely monitor the progress of future budget proposals and negotiations at the General Assembly and the State Capitol.

For fiscal years 2002 and 2003, budget details can be found in the table presented immediately below.

	Fiscal Year 2002 (Actual)		Fiscal Year 2003 (Estimated)	
Total General Fund	\$226,370		\$286,923	
<i>Expenses:</i>				
Personal Services	\$190,846		\$247,800	
Other Expenses	\$32,599		\$38,123	
Equipment	\$2,925		\$1,000	
Additional Funds (Bond):	\$4,674	\$4,674	-0-	-0-
<u>Totals</u>	<u>\$231,044</u>	<u>\$231,044</u>	<u>\$286,923</u>	<u>\$286,923</u>

For administrative purposes only, the OVA is in the Freedom of Information (FOI) Commission, pursuant to C.G.S. §46a-13b(b). C.G.S. §4-38f details the respective duties and responsibilities of the OVA and the FOI Commission under this relationship.¹⁴

CHALLENGES AND PRIORITIES FOR 2004

Despite the achievements the State of Connecticut has made over the years in terms of enacting laws that provide rights to crime victims, and despite the high level of services generally available to crime victims, far too many crime victims never become aware of rights and services. Having afforded rights to crime victims, especially rights having constitutional stature, the State of Connecticut should take steps necessary to help inform and educate the general public and, in particular those victimized by crime, about

¹⁴ Sec. 4-38f. "Administrative purposes only", defined. Agencies assigned to departments for administrative purposes only; agencies' powers; departments' duties. (a) An agency assigned to a department for administrative purposes only shall: (1) Exercise any quasi-judicial, rule-making or regulatory authority, licensing and policy-making functions which it may have independent of such department and without approval or control of the department; (2) prepare its budget, if any, and submit its budgetary requests through the department; and (3) hire its own personnel or enter into contracts, if authorized by law, or if the general assembly provides or authorizes the expenditure of funds therefor.

(b) The department to which an agency is assigned for administrative purposes only shall: (1) Provide record keeping, reporting, and related administrative and clerical functions for the agency to the extent deemed necessary by the department head; (2) disseminate for the agency any required notices, rules or orders adopted, amended or repealed by the agency; (3) provide staff for the agency subject to the provisions of subdivision (3) of subsection (a) of this section; and (4) include in the departmental budget the agency's budgetary request, if any, as a separate part of said budget and exactly as prepared and submitted to the department by the agency.

victims' rights. The Victim Advocate will work with the state legislature and others to accomplish this important goal.

As the public continues to learn about the OVA and the services it provides, and in view of the fact that OVA's caseload has continued to expand over the years, there is a great need for additional staff positions within the agency. Currently, the OVA is comprised of the Victim Advocate, a complaint officer and a secretary. The Victim Advocate hopes to reacquire the position of staff attorney in the OVA; a position that was lost in 2003 due to state employee layoffs. There was a concomitant reduction in OVA's budget associated with this loss. To accomplish its many mandates, the OVA will also need an additional staff member to take a lead role in systematically evaluating Connecticut's victim services delivery system.

With full implementation of the OVA "complaint" and "new contact" databases, slated to begin January 2, 2004, the OVA will be positioned to more effectively collect and analyze data regarding victim complaints filed with the OVA. These databases will store a wealth of information for each call and complaint that comes to the OVA so that, over time, the Victim Advocate will be able to more accurately define and assess patterns of problems and issues faced by Connecticut crime victims, both in terms of victim's rights and victim services. It is anticipated that future annual reports will benefit from this technology by presenting more detailed data and analyses regarding the nature of complaints and other systemic variables of interest in monitoring and evaluating the enforcement of victim rights and the provision of victim services in Connecticut.

Finally, the OVA will continue its efforts to seek effective ways to educate and advise the public not only with respect to the existence and purpose of the agency, but also as to the nature and extent of the constitutional and statutory rights afforded crime victims in Connecticut and the availability of victim services.