



## THE OFFICE OF THE VICTIM ADVOCATE

### 2016 LEGISLATIVE PRIORITIES

#### 1. AN ACT CONCERNING A VICTIM'S RIGHT TO BE REASONABLY PROTECTED FROM THE ACCUSED

##### SECTION 1:

**Purpose:** Require the Commissioner of Emergency Services and Public Protection to provide written notification to a person, who is protected under an order of protection, that the respondent of the order has complied with the requirements to surrender, deliver or transfer any firearms as a result of the issuance of an order of protection.

**Justification:** Victims have a state constitutional right to be reasonably protected from the accused. The issuance of an order of protection can be a trigger to increased violence against the victim. Victims provide critical information to the court regarding a defendant's possession of firearms, especially when the firearms are long guns, that may not require registration, or other firearms that are not registered. However, victims do not receive any notification regarding a defendant's compliance with the requirement to surrender, deliver or transfer those firearms. This notification will provide victims with a small measure of safety knowing the defendant has complied with the firearm requirements.

**Barrier:** Currently, when victims contact law enforcement to determine compliance with the firearm requirements, they are told this information is confidential. Although the name and address of any individual holding a firearms permit or eligibility certificate is confidential, the confirmation of compliance with the firearm restrictions of an order of protection is not protected information by statute, and therefore, compliance information may be provided to victims.

##### SECTION 2:

**Purpose:** Require the defendant to surrender, deliver or transfer any firearms in the possession of the defendant when a defendant is granted entry into the Supervised Diversionary Program.

**Justification:** Victims of crime have a state constitutional right to be reasonably protected from the accused. The Supervised Diversionary Program allows defendants who have psychiatric disabilities, or who are veterans with a mental health condition, the chance to get treatment rather than face prosecution. Eligibility is determined after an assessment of the defendant's treatment needs, supervision and services. If the defendant successfully completes the program, the charges against the defendant are dismissed. During this period of time, defendants should not have access to or possess any firearms.

**Barrier:** The surrender, delivery or transfer of firearms is limited to specific circumstances—the issuance of an order of protection; a person at risk to self or others, etc. As the program is specific to individuals with a psychiatric disability or other mental health condition, it is critical to ensure victim and public safety that those individuals, while participating in treatment, not access or possess any firearms.

### SECTION 3:

**Purpose:** Require the court, rather than the defendant, to provide notice to any victim of a crime when a defendant makes an application for the Accelerated Pretrial Rehabilitation Program.

**Justification:** Victims of crime have a state constitutional right to be reasonably protected from the accused. In many cases where a defendant makes an application for the accelerated pretrial rehabilitation program, the name and address of the victim are provided to the defendant in order for the defendant to provide the required notification of the defendant's application to the victim. This causes victims additional anxiety and fear because the defendant obtains the victim's address, especially in cases where the defendant and victim were not previously known to each other.

**Barrier:** None

## 2. AN ACT CONCERNING A VICTIM'S RIGHT TO COMMUNICATE WITH THE PROSECUTION

**Purpose:** Allow the victim to communicate directly with the State's Attorney in the Judicial District where the crime occurred whenever a prosecutor, after the investigation of the circumstances of a death, has declined to prosecute any person in connection with the death.

**Justification:** Victims have a state constitutional right to communicate with the prosecution. Currently, if the prosecutor declines to prosecute any person in connection with a death, the victim may file a written complaint to the Chief State's Attorney or the Chairperson of the Criminal Justice Commission. The victim is entitled to a response within thirty days. However, the Chief State's Attorney and/or the Chairperson of the Criminal Justice Commission are not going to possess the information regarding a particular criminal matter, including the reasons why a State's Attorney

declines to prosecute in a case. The proposal allows the victim to go directly to the source of the information and receive a response in a timely manner.

**Barrier:** None

### 3. AN ACT CONCERNING A VICTIM'S RIGHT TO OBJECT TO OR SUPPORT ANY PLEA AGREEMENT AND TO MAKE A STATEMENT TO THE COURT CONCERNING ANY PLEA AGREEMENT

**Purpose:** Eliminate the language that limits a victim's right to address the court regarding a plea agreement when the defendant pleads to a lesser offense than the offense originally charged.

**Justification:** Victims have a constitutional right to object to or support any plea agreement and to make a statement to the court regarding any plea agreement. Inherent in a plea agreement is that some or all of charges may be reduced or substituted. Therefore, victims should not have to rely on a defendant's plea to "original" charges to exercise their right to be heard.

**Barrier:** Plea agreements resolve more than 90% of criminal matters<sup>1</sup>. If technically applied, victims would be excluded from being heard in most cases involving plea agreements.

### 4. AN ACT CONCERNING A VICTIM'S RIGHT TO INFORMATION ABOUT THE ARREST, CONVICTION, SENTENCE, IMPRISONMENT AND RELEASE OF THE ACCUSED

**Purpose:** To ensure that crime victims are notified of and provided information about the arrest of an accused.

**Justification:** Victims have a state constitutional right to information about the arrest, conviction, sentence, imprisonment and release of the accused. It is imperative that victims are notified when an offender is arrested and provided information about the offender's arrest so that the victim may then engage in the criminal justice process. Absent this information, it is possible that critical decisions in the criminal matter will be made, at arraignment, without the knowledge of or participation of the victim.

**Barrier:** Connecticut is an "opt-in" system when it comes to the criminal justice process. If victims are not notified when an accused is arrested, the victim may not "opt-in" the system until after some critical decisions are made, especially during the first court appearance of the accused.

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<sup>1</sup> Judicial Branch Biennial Report 2012-2014

## AN ACT CONCERNING A VICTIM'S RIGHT TO BE REASONABLY PROTECTED FROM THE ACCUSED

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

**Section 1:** Section 29-36n of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2016*):

(a) The Commissioner of Emergency Services and Public Protection, in conjunction with the Chief State's Attorney and the Connecticut Police Chiefs Association, shall develop a protocol to ensure that persons who become ineligible to possess a pistol or revolver or other firearm or ammunition have, in accordance with section 29-36k, transferred such pistol or revolver or other firearm or ammunition to a person eligible to possess such pistol or revolver or other firearm or ammunition or have delivered or surrendered such pistol or revolver or other firearm or ammunition to said commissioner. Such protocol shall include provisions to ensure that a person who becomes ineligible to possess a pistol or revolver or other firearm because such person is subject to a restraining or protective order or a foreign order of protection, as defined in section 29-36k, transfers such pistol or revolver or other firearm, or delivers or surrenders such pistol or revolver or other firearm, pursuant to arrangements made with an organized local police department or the Division of State Police in advance of such transfer, delivery or surrender.

(b) The Commissioner of Emergency Services and Public Protection, in conjunction with the Chief State's Attorney and the Connecticut Police Chiefs Association, shall update the protocol developed pursuant to subsection (a) of this section to reflect the provisions of sections 29-7h, 29-28, 29-28a, 29-29, 29-30, 29-32 and 29-35, subsections (b) and (g) of section 46b-15, subsections (c) and (d) of section 46b-38c and sections 53-202a, 53-202l, 53-202m and 53a-217 and shall include in such protocol specific instructions for the transfer, delivery or surrender of pistols and revolvers and other firearms and ammunition when the assistance of more than one law enforcement agency is necessary to effect the requirements of section 29-36k.

**NEW (c) The Commissioner of Emergency Services and Public Protection shall send written notification of compliance with the provisions of section 29-36k to the protected person on a restraining or protective order or a foreign order of protection. Such notice shall be provided within one week of the issuance of any such order of protection.**

**Section 2:** Subsection (g) of section 54-56l of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2016*):

(g) Any person who enters the program shall agree: (1) To the tolling of the statute of limitations with respect to such crime or violation; (2) to a waiver of such person's right to a speedy trial; [and](3) **to immediately surrender, deliver or transfer any firearms in such person's possession; and (4)** to any conditions that may be established by the division concerning participation in the supervised diversionary program including conditions concerning participation in meetings or sessions of the program.

**Section 3:** Subsection (b) of section 54-56e of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2016*):

(b) The court may, in its discretion, invoke such program on motion of the defendant or on motion of a state's attorney or prosecuting attorney with respect to a defendant (1) who, the court believes, will probably not offend in the future, (2) who has no previous record of conviction of a crime or of a violation of section 14-196, subsection (c) of section 14-215, section 14-222a, subsection (a) or subdivision (1) of subsection (b) of section 14-224 or section 14-227a, and (3) who states under oath, in open court or before any person designated by the clerk and duly authorized to administer oaths, under the penalties of perjury, (A) that the defendant has never had such program invoked on the defendant's behalf or that the defendant was charged with a misdemeanor or a motor vehicle violation for which a term of imprisonment of one year or less may be imposed and ten or more years have passed since the date that any charge or charges for which the program was invoked on the defendant's behalf were dismissed by the court, or (B) with respect to a defendant who is a veteran, that the defendant has not had such program invoked in the defendant's behalf more than once previously.], provided the defendant shall agree thereto and provided notice has been given by the defendant,] **The court clerk shall provide notice of the defendant's application,** on a form approved by rule of court, to the victim or victims of such crime or motor vehicle violation, if any, by registered or certified mail and such victim or victims have an opportunity to be heard thereon. Any defendant who makes application for participation in such program shall pay to the court an application fee of thirty-five dollars. No defendant shall be allowed to participate in the pretrial program for accelerated rehabilitation more than two times. For the purposes of this section, "veteran" means any person who was discharged or released under conditions other than dishonorable from active service in the armed forces as defined in section 27-103.

## AN ACT CONCERNING A VICTIM'S RIGHT TO COMMUNICATE WITH THE PROSECUTION

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

Section 51-277d of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2016*):

Whenever a prosecutorial official, after the investigation of the cause and circumstances of a person's death, declines to criminally prosecute any person in connection with such death, a member of such deceased person's immediate family may file a written complaint with the [Chief State's Attorney or the Criminal Justice Commission] **State's Attorney of the Judicial District where the crime was committed**. Not later than thirty days after the receipt of such complaint, the [Chief State's Attorney or the chairperson of the Criminal Justice Commission] **State's Attorney** shall respond in writing to the complainant informing the complainant of the action, if any, said [Chief State's Attorney or chairperson] **State's Attorney** has taken or intends to take concerning such matter.

## AN ACT CONCERNING A VICTIM'S RIGHT TO OBJECT TO OR SUPPORT ANY PLEA AGREEMENT AND TO MAKE A STATEMENT TO THE COURT CONCERNING ANY PLEA AGREEMENT

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

Subsection (b) of section 54-91c of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2016*):

(b) Prior to the imposition of sentence upon any defendant who has been found guilty of any crime or has pleaded guilty or nolo contendere to any crime, and prior to the acceptance by the court of a plea of guilty or nolo contendere made pursuant to a plea agreement with the state [wherein the defendant pleads to a lesser offense than the offense with which such defendant was originally charged], the court shall permit any victim of the crime to appear before the court for the purpose of making a statement for the record, which statement may include the victim's opinion of any plea agreement. In lieu of such appearance, the victim may submit a written statement or, if the victim of the crime is deceased, the legal representative or a member of the immediate family of such deceased victim may submit a statement of such deceased victim to the state's attorney, assistant state's attorney or deputy assistant state's attorney in charge of the case. Such state's attorney, assistant state's attorney or deputy assistant state's attorney shall file the statement with the sentencing court and the statement shall be made a part of the record at the sentencing hearing. Any such statement, whether oral or written, shall relate to the facts of the case, the appropriateness of any penalty and the extent of any injuries, financial losses and loss of earnings directly resulting from the crime for which the defendant is being sentenced. The court shall inquire on the record whether any victim is present for the purpose of making an oral statement or has submitted a written statement. If no victim is present and no such written statement has been submitted, the court shall inquire on the record whether an attempt has been made to notify any such victim as provided in subdivision (1) of subsection (c) of this section or, if the defendant was originally charged with a violation of section 53a-167c for assaulting a peace officer, whether the peace officer has been personally notified as provided in subdivision (2) of subsection (c) of this section. After consideration of any such statements, the court may refuse to accept, where appropriate, a negotiated plea or sentence, and the court shall give the defendant an opportunity to enter a new plea and to elect trial by jury or by the court.

# AN ACT CONCERNING A VICTIM'S RIGHT TO INFORMATION ABOUT THE ARREST, CONVICTION, SENTENCE, IMPRISONMENT AND RELEASE OF THE ACCUSED

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

Section 54-222a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2016*):

(a) Whenever a peace officer determines that a crime has been committed, such officer shall: (1) Render immediate assistance to any crime victim, including obtaining medical assistance for any such crime victim if such assistance is required; (2) present a card prepared by the Office of the Chief Court Administrator to the crime victim informing the crime victim of services available and the rights of crime victims in this state; and (3) refer the crime victim to the Office of Victim Services for additional information on rights and services. A peace officer shall not be liable for failing to present an informational card to any crime victim as provided in subdivision (2) of this subsection or for failing to refer any crime victim to the Office of Victim Services as provided in subdivision (3) of this subsection. For the purposes of this subsection, "crime victim" has the same meaning as provided in section 1-1k.

**(b) Whenever a peace officer effectuates an arrest, either an on-site arrest or an arrest by warrant, and there is an identified crime victim, the peace officer shall immediately, without undue delay, notify the crime victim of the arrest, the name of the arrestee, the criminal charges of the arrestee, the designated bond of the arrestee or if the arrestee is being released without the posting of a bond, any conditions of release imposed by the court or arresting agency, the date of the arrestee's first court appearance and the location where the arrestee will first appear in court.**

**(c)[(b)]** The Commissioner of Emergency Services and Public Protection shall adopt regulations in accordance with chapter 54 to implement the provisions of subsection (a) **and subsection (b)** of this section.