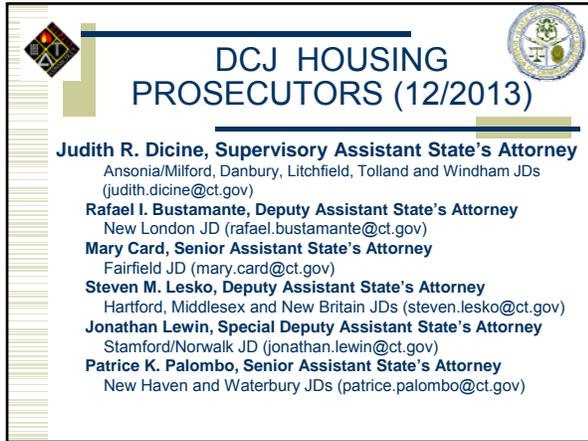




**Fire Official 2013
Enforcement Review**

The slide features a decorative header with a diamond-shaped icon containing a fire hydrant and a scale. Below the title, there are four small images: a person holding a scale, a person in a suit speaking at a podium, a person in a uniform, and a document with a pen.



**DCJ HOUSING
PROSECUTORS (12/2013)**

Judith R. Dicine, Supervisory Assistant State's Attorney
Ansonia/Milford, Danbury, Litchfield, Tolland and Windham JDs
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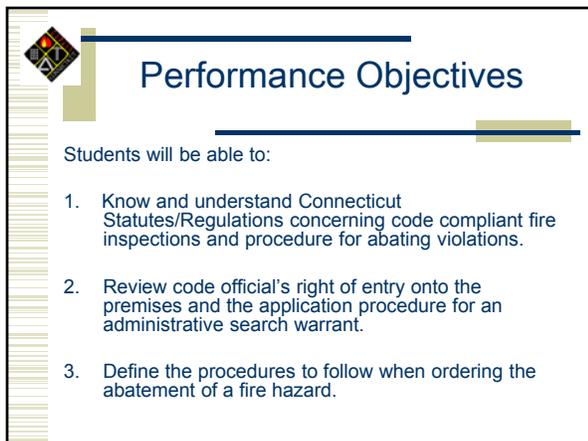
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Performance Objectives

Students will be able to:

1. Know and understand Connecticut Statutes/Regulations concerning code compliant fire inspections and procedure for abating violations.
2. Review code official's right of entry onto the premises and the application procedure for an administrative search warrant.
3. Define the procedures to follow when ordering the abatement of a fire hazard.



Performance Objectives

4. Describe the preparation of arrest warrant application and affidavit.
5. Explain the procedure for referring a case for criminal and what occurs during criminal prosecution.
6. Define the difference between civil and criminal enforcement processes.



HOW ARE WE GOING TO MEET THE OBJECTIVES?

WHAT WE ARE GOING TO COVER:

- GOALS
- AUTHORITY
- RIGHT OF ENTRY/DENIAL OF ENTRY
- INSPECTION
- ABATEMENT PROCEDURE
- REINSPECTION
- REFERRAL FOR CRIMINAL PROSECUTION
- PENDANCY OF CRIMINAL CASE
- CIVIL AND CRIMINAL COURT



GOALS OF ENFORCEMENT

1. **COMPLIANCE**
Using the abatement process.
2. **CORRECT HUMAN BEHAVIOR**
Introduce the importance of fire safety to landlords, tenants and the surrounding community.



GAINING COMPLIANCE

◆ Communication

“The single biggest problem in communication is the illusion that it has taken place.”

George Bernard Shaw

Tip: Written plan of compliance



WHERE DOES YOUR AUTHORITY COME FROM?

- ◆ Connecticut General Statutes
- ◆ Connecticut State Fire Code and Fire Prevention Code
- ◆ Office of the State Fire Marshal
- ◆ DPS Directives and Addendums



CGS § 29-298(c)

- ◆ (c) “Each certified deputy marshal, fire inspector, other inspector or investigator shall act under the direction of and supervision of the local fire marshal while enforcing the Fire Safety Code and the provisions of this chapter. The local fire marshal **may authorize, in writing**, such deputy fire marshal or fire inspector to issue any permit or order under the provisions of this part or to certify compliance with the provisions of the Fire Safety Code, on his behalf.”



CGS § 29-305 REVISED

- ◆ “Inspections by local fire marshals. Reports. Schedule of inspections.”
- ◆ PLEASE REFER TO STATUTE HANDOUT.



INSPECTION:

- ◆ Must be completed by a duly authorized code official.
- ◆ Your notes should indicate date, time and who was present when the inspection was completed.
- ◆ Your notes should be specific regarding the type of violations, where the violation occurs and include any special conditions that are present.



Before you get there...

Two fundamental questions must be answered:

- a. Do I have jurisdiction?
- b. Does the code apply?



What does this mean?

- ◆ Jurisdiction: Do I have authority here?
- ◆ Code Application: Is this the type of structure that is covered by code?



INSPECTION PROCESS ENFORCEMENT

Legal Aspects Of Entry by Code Officials:

Before entering the property to conduct a code compliance inspection:

- Public official must have authority to inspect &
- Have permission of the proper person to enter private property unless otherwise allowed by law, i.e. it is in "plain view."



INSPECTION PROCESS ENFORCEMENT

- ◆ THE LAW states you can inspect but what else is needed?

1. CONSENT

- *By person with authority.*

2. LEGAL AUTHORITY TO ENTER



INSPECTION WHERE ENTRY REFUSED

U.S. SUPREME COURT AND CT APPELLATE COURT AUTHORITY TO INSPECT:

When cooperation ceases and access to the property is denied, an administrative search warrant is required before entry and inspection can be accomplished.



INSPECTION PROCESS ENFORCEMENT

- ♦ State v. Burke (1990, CT App. Court) Admin. search warrant upheld for fire inspection. Cites Camara v. Municipal Court, (1967, U.S. Supreme Court):

"Probable cause to issue a warrant to inspect for safety code violation exists if reasonable legislative or administrative standards for conducting an area inspection are satisfied."



INSPECTION PROCESS ENFORCEMENT

An administrative search warrant is similar to a search and seizure warrant except no seizure takes place and there is no requirement to show probable cause that a violation exists. All that there is to be demonstrated to a judge is that the official has a lawful right to inspect and that the premises is within your jurisdiction.



INSPECTION PROCESS ENFORCEMENT

The administrative warrant affidavit and application is a simple form to complete. It must be signed by two co-affiants and sworn to or affirmed in the presence of a judge of the superior court.

Preparation of the affidavit is not complex, nor should it be.



INSPECTION PROCESS ENFORCEMENT

The following elements are to be written into every affidavit:

1. The two affiants' credentials and credibility.
2. The authority to inspect.
3. The locations to be inspected.
4. What the inspection is intended to determine.
5. Why are you requesting the warrant.



Review of warrant

- ♦ A state prosecutor must review all administrative search warrants before submitted to a judge.





When the application is complete,

- ◆ You will submit for review to the prosecutor.
- ◆ If the application is approved by a prosecutor, it must be taken to the judge for review.
 - Remember, both affiants must go together to apply for the warrant and to swear or affirm before the reviewing judge.



INSPECTION PROCESS ENFORCEMENT

Once the administrative search warrant is secured, have the warrant executed with assistance from your local police department.

Execution should be no later than 10 days after the warrant is issued.



CGS § 29-306 REVISED

- ◆ **“Abatement of fire hazards: Penalties. Notification. Order to vacate.”**
- ◆ PLEASE REFER TO STATUTE HANDOUT



INSPECTION PROCESS ENFORCEMENT

THE ABATEMENT PROCESS:

- ◆ Definition of abatement is compliance with the cited standard.
- ◆ Authority to abate is derived from Connecticut General Statute 29-306.



Abatement of fire hazards and penalty.

- ◆ CGS 29-306
 - (a) requires the LFM to order the remedy of enumerated fire hazards found in *any* building or premises.



INSPECTION PROCESS ENFORCEMENT

Section 29-306 fails to provide any clear guidelines for uniform and consistent application. It was challenged in court:

State of Connecticut v Richard Bucciarelli



INSPECTION PROCESS ENFORCEMENT

The court held:

- "... The specific language of Section 29-306 and the general structure of chapter 541 support an interpretation which vests substantial discretion in the enforcing official and, in particular, permit the enforcement officer to determine both if and when a purported violation will subject the responsible party to the penalties of criminal prosecution ..." and
- Chapter 541 encourages the tailoring of fire safety requirements to fit individual circumstances. The court does not quarrel with this approach, but nonetheless finds that the criminal provisions of the statute cannot constitutionally be maintained because it allows for so much flexibility and unguided direction ...
- "... The lack of definition in the statute makes it unconstitutionally vague because it encourages arbitrary and discriminatory enforcement ..."



INSPECTION PROCESS ENFORCEMENT

The decision of the superior court judge caused the Office of State Fire Marshal to:

- Establish Directive #3
- Directive 3 Addendum #1
- Directive 3 Addendum #2
- An optional case management form.



Discretion

- ♦ Given to a fire marshal by law as needed to protect the public safety.
- ♦ Must be used in reason.
- ♦ Does not permit arbitrary or illegal action.
- ♦ Should be based on all reasonably available information at the time of enforcement.
- ♦ Must be used on a case by case basis.



DIRECTIVE # 3

- ◆ Revised (MAKE SURE YOU HAVE THE RIGHT FORM)
- ◆ Provides a uniform procedure for abatement of violations.
- ◆ Includes sample forms for notification to the owners, referral for criminal prosecution, inspection report form and requests for modification and extension.



Initial Phase

- Inspection / Documentation
- Notification of Violations / Abatement Order (Send Inspection Report)
- Plan for Compliance
 1. Correction
 2. Time Extensions
 3. Modifications
- Appeal decision of FM



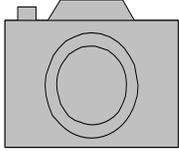
INSPECTION PROCESS ENFORCEMENT

THE ABATEMENT PROCESS:

- ◆ The ***initial inspection*** is conducted.
- ◆ A ***notice*** of fire and life safety hazards is issued to the owner or occupant.



PHOTOS



- ◆ OSFM guidelines.
- ◆ Remember to take notes, who took the photos, what they depict and the address that you are taking the photos of.



ABATEMENT:

- ◆ NOTICE – USE AS PROVIDED BY OSFM
 - MUST IDENTIFY THE VIOLATIONS WITH CODE SECTIONS AND LOCATION OF VIOLATION.
 - DATE AND TIME OF THE INSPECTION.
 - MUST CITE THE PROPERTY OWNER/OCCUPANT.
 - MUST STATE THE TIME FRAME OF ABATEMENT.
 - LAW, AUTHORITY AND PENALTY.
 - REMEDY.
 - RIGHT OF APPEAL.



ABATEMENT:

- ◆ CITING THE OWNER:
 - The identity of the owner should be found on the municipal land records ***NOT*** the assessor's card.
 - Get a certified copy of the deed for you file as proof ownership.
 - Owners should be listed with full name on order.
 - Please be aware that if the owner is a business, estate, corporation or partnership different information is required.



ABATEMENT:

POSSIBLE OWNERS OF PROPERTY:

- Persons – cite all of record.
 - DBAs (“doing business as”) – check Town Clerk
- Estates – check Probate Court
- Corporations – check CT SOS.
- Partnerships (General) – check CT SOS.
- Trusts
- Condominium Association Board of Directors (common areas only)



ADDRESSING THE ORDER

Mirror the deed...

- ◆ PERSONS: example - If deed states the grantees (owners) are John Owner and Lilly Owner, order should have both full names.

John Owner
 Lilly Owner
 123 Owner's Court
 No Name, CT 06000*

*One order is generally sufficient for multiple owners only if owners live at same address. Check with your local prosecutor for housing matters.



ADDRESSING THE ORDER

Mirror the deed...

- ◆ ESTATES:
 - The deed may contain the name of a person who is deceased, or their estate.
 - Check with the Probate Court to determine the person responsible for the estate of the deceased owner. (i.e. Executor or an heir).
 - Get certified copy of appointment document.
 - Cite responsible person for the estate.



CORPORATE AND PARTNERSHIP OWNERS

- ◆ CORPORATIONS (Corp.s and Inc.s)
- ◆ LIMITED LIABILITY CORPORATIONS (LLCs)
- ◆ PARTNERSHIPS
- ◆ LIMITED LIABILITY PARTNERSHIPS (LLPs)
 - DOMESTIC (Registered in CT)
 - FOREIGN (Registered outside of CT)

ALL CORPORATIONS DOING BUSINESS IN CT
MUST BE REGISTERED WITH THE STATE OF
CT SECRETARY OF STATE (SOS).



ABATING CORPORATIONS CGS 53a-11

- ◆ **Sec. 53a-11. Criminal liability of an individual for conduct in name or behalf of corporation or limited liability company.** A person shall be criminally liable for conduct constituting an offense which such person performs or causes to be performed in the name of or in behalf of a corporation or limited liability company to the same extent as if such conduct were performed in such person's own name or behalf.



ADDRESSING THE ORDER

Mirror the deed...

- ◆ First obtain the owner name from the deed for the property.
- ◆ If a corporation, LLC or general partnership, check the exact name with the CT Secretary of State – CONCORD SEARCH

www.concord-sots/ct.gov



ADDRESSING THE ORDER

Mirror the deed...

- ◆ CORPORATE OWNER (Ex.)
 - Deed says XYZ, Inc. is the owner.
 - Enter XYZ, Inc. in CONCORD search.
 - Identify the principal of the corporation = the PRESIDENT of the corporation.
 - Obtain residence address for service.
 - Print copy of CONCORD page for your file.



ADDRESSING THE ORDER

Mirror the deed...

- ◆ LIMITED LIABILITY CORPORATIONS
 - Deed says XYZ, LLC.
 - Enter XYZ, LLC in CONCORD search.
 - Identify the principal of the LLC = the MEMBER or Managing Member of the LLC.
 - Obtain residence address for service.
 - Print copy of CONCORD page for your file.



ADDRESSING THE ORDER

Mirror the deed...

- | | |
|--|--|
| ◆ CORPORATION (ex.) | ◆ LLC (ex.) |
| I. V. League, Pres. XYZ, Corp. 123 Corporate Ave. No Name, CT 06000 | I.V. League, Member XYZ, LLC 123 Corporate Ave. No Name, CT 06000 |



Proof of Service:

- ◆ Service is an essential element that we must prove in a criminal prosecution. It must be proved with documentation.
- ◆ Service can be proven through certified mail return receipt requested or other provable methods.
- ◆ Service can also be completed by hiring a Marshal to serve the owner/agent. Be sure to get the Marshal's service information, that is written proof who the marshal served.
- ◆ Pick a service method which gets the order to the responsible party as quickly as necessary to abate the fire hazards.



REQUESTS FOR MODIFICATION AND/OR EXTENSION

- ◆ Only the property owner or authorized person may request a modification/extension of time regarding the abatement.
- ◆ If compliance has not been reached by the date of the re-inspection it is important to know whether these requests have been made.



FOLLOW-UP PHASE:

- ◆ After the appropriate time frame has passed, you must conduct a re-inspection of the premises to determine compliance. Keep in mind, the rules of entry still apply.
- ◆ If violations not corrected, no extension of time is filed, or no modifications are filed, refer to court.



Notification

- ◆ CGS 29-306, cont.
 - (b) requires the LFM notify the prosecuting attorney if the owner or occupant fail to abate a hazard as reasonably ordered by the LFM.
 - further requires the SFM be notified of the referral to the prosecutor.



Notice of Referral For Criminal Prosecution:

- ◆ Per Directive #3.
- ◆ Prepare and Send the Notice of Referral for Criminal Prosecution to the owner certified mail return receipt requested.
- ◆ Attach notice of fire and life safety code.
- ◆ Attach latest inspection report.
- ◆ Prepare and submit an Arrest Warrant Application to the appropriate Assistant State's Attorney having jurisdiction.
- ◆ We will review and either sign it or request corrections. If signed, it will be sent to the judge for review .



Order to vacate

- ◆ CGS 29-306, cont.
 - (c) allows local fire marshal or police officer to order any building vacated, where one or more of the *enumerated violations* exist, *and* the LFM or PO determine that there exists in the building a *risk of death or injury*.
They are known as the "five deadly sins", and include:



Order to vacate, cont.

- ◆ CGS 29-306(c), cont.
 - Blocked, insufficient or impeded egress
 - Required fire protection or warning system shut off or maintenance failure
 - Un-permitted flammable or explosive material or in excess of permitted quantities
 - Un-permitted fireworks or pyrotechnics
 - Exceeding occupancy limit established by FM



Notice to State Fire Marshal

- ◆ CGS 29-306(c), cont.
 - requires notification to the State Fire Marshal if (any of the 5) conditions ordered abated cannot be abated in 4 hours or less.



Directive 10

- ◆ Policy Directive 10
 - Effective May 1, 2009
 - Restricting use of a building
 - Immediate hazard
 - 5 deadly sins
 - Correction > 4 hours
 - SFM to:
 - Uphold
 - Modify
 - Reverse
 - After hours CSP MS 1-800-842-0200



Policy Directive 10 cont'd

- ◆ Name of Establishment
- ◆ Address
- ◆ Name of official issuing the order
- ◆ Circumstances
- ◆ If an incident occurred
- ◆ Injuries/fatalities



Penalty

- ◆ CGS 29-306(c), cont.
 - any person who violates an order under this subsection faces a penalty of up to one thousand dollars, six months incarceration or both per CGS 29-295.



VACATING:

- ◆ When it has been determined the building is no longer safe to occupy an order to vacate may be issued. The occupants must be relocated.
- ◆ The town **MAY** recoup those costs through a properly placed lien.



Relocation

- ◆ CGS 8-266, et seq.
 - Uniform Relocation Act applies in circumstances involving removal of persons from use or occupancy of buildings.
 - Affixes to shut down of a premises under CGS 29-306.
 - Requires referral to Uniform Relocation Act administrator for your town, city or district for assistance to affected occupants.



LIENS: CGS 49-73b



- ◆ If the town spends money to fix a problem a lien **MAY** recoup the cost.
- ◆ Corporation counsel attaches a priority lien on the property.
- ◆ **IF AND WHEN** the property is sold the town recoups its costs.



Other laws re: Fire Emergency

- ◆ CGS 7-313b
 - authorizes the officer of a fire company or department in charge of a fire or other emergency to order any person to leave a building for purpose of protecting such person from injury.
 - allows a penalty of fifty dollars, seven days incarceration or both for wilfull refusal.



Fire Officer authority

- ◆ CGS 7-313e
 - authorizes the Fire Officer in charge broad authority to control a fire or emergency scene.



About your files:

- ◆ Discovery:
 - Procedure that allows the defense to have copies of information in our file.
 - Therefore, **EVERYTHING** may be seen by the defense.
- ◆ Consider creating a system so that anyone in your office can access the needed information.
- ◆ Maintain your files with the assumption that you and your file may have to go to court.



ARREST AND CRIMINAL PROSECUTION

*Referral should be made when:
(but not limited to)*

- ◆ Violation contributes to a fire, fatality or injury.
- ◆ Violations cause an delay in emergency response.
- ◆ Reckless conduct due to code violation.
- ◆ Lack of Abatement (most common).



FIRE DEATHS

- ◆ CRIMINALLY NEGLIGENT HOMICIDE
 - LACK OF SMOKE DETECTOR
- ◆ MANSLAUGHTER
 - ILLEGAL ATTIC DWELLING UNIT LACKING SECOND EXIT



INSPECTION PROCESS ENFORCEMENT

- ◆ ARREST AND CRIMINAL PROSECUTION:

UNDER WHAT AUTHORITY IS ARREST MADE ?



INSPECTION PROCESS ENFORCEMENT

- a. Custodial by Police
Offender taken into physical custody, later released with written promise to appear in court or posts bond.
- b. Summons by Police or Prosecutor
Ticket or notice is issued for the offender to appear at court on a different date.



INSPECTION PROCESS ENFORCEMENT

c. Arrest by Warrant

Requires application to judge which includes:

- Your name, capacity, responsibilities and your jurisdiction.
- Authority to inspect, inspection dates, and findings.
- Identification of the proper person and how that person was determined, i.e. proof of ownership.
- Notice and order issues, to whom and how the orders were issued.



ARREST BY WARRANT, cont.:

- Proof that the orders were received by the responsible person via marshal, certified mail return receipt requested or other provable method.
- Re-inspection date and findings.
- List of the violations and the code sections that are violated.
- Summary/Concluding paragraph.
- *Must be signed and sworn under penalty of perjury and submitted to the Housing Court Prosecutor or to Office of the State's Attorney of your district.*



Arrest

- ◆ Submitting an application for the arrest of an individual is very serious. Make sure this is the appropriate action to take. You are asking for the initiation of a criminal case that may result in the deprivation of the rights of another individual.



Remember,

- ◆ Referral of a case to the Office of the State's Attorney does not mean that compliance will be immediate.
- ◆ The property owner can choose take the case trial therefore, violations may not be corrected immediately.
- ◆ You should evaluate also referring the case to corporation counsel for civil options pursuant to §29-306(b).



What happens at court?

- ◆ Property owner will come to court.
- ◆ Remember, just because the owner comes to court, it does not mean compliance will be immediate.





CRIMINAL PROSECUTION:

- ◆ FIRST COURT DATE:
 - RIGHT TO COUNSEL.
 - REVIEW CHARGES AND PENALITES.
 - REFER THEM TO YOU FOR A PLAN FOR COMPLIANCE.
 - IDENTIFY A TIME FRAME FOR COMPLIANCE AND WITH THE COURT'S PERMISSION GIVE A CONTINUANCE DATE FOR THAT COMPLIANCE.



NEXT...

- ◆ While the case is pending we will ask for inspections to be completed.
- ◆ Sometimes, we will ask for written updates so that we have current information in our files.
- ◆ If ADDITIONAL violations are found on a re-inspection, abate the additional violations and notify the State's Attorney IMMEDIATELY!!!!!!



Disposition:

- ◆ This is a fancy way of saying how we end the case.
- ◆ Cases generally will not be disposed of until there is full compliance or a plan for compliance.



How do we end the case?

- ◆ NOLLE
- ◆ ACCELERATED REHABILITATION
- ◆ SUSPENDED SENTENCE
 - CONDITIONAL DISCHARGE
 - PROBATION
- ◆ JAIL



Factors in creating the Disposition

- ♦ Seriousness of the violations.
- ♦ Number of the violations.
- ♦ Owner/Occupants' criminal history and other safety code violations.
- ♦ Number of people present in the property.
- ♦ Time frame in which compliance has been reached.



SPECIAL CONDITIONS OF PROBATION OR ACCELERATED REHABILITATION

- ♦ Plan for abatement.
- ♦ Cooperate with code officials.
- ♦ All properties must be code compliant.
- ♦ Attending appropriate classes depending on the types of violations.
- ♦ Community Service.
- ♦ Charitable Contribution.



CIVIL AND CRIMINAL COURT

WHAT IS THE DIFFERENCE?



Civil:

- ◆ Town Attorney/ Corporation counsel of town.
- ◆ Method may have more immediate compliance from the property owners.
- ◆ Different requirements.

Criminal:

- ◆ Cases handled by prosecutors.
- ◆ WILL NOT have immediate compliance.
- ◆ Requires time for the owners to be brought to court.



What is Civil Enforcement?

- ◆ RELOCATION
- ◆ INJUNCTIONS
- ◆ LIENS
- ◆ CONDEMNATION



Injunctions:

- ◆ Town Attorney/Corporation Counsel.
- ◆ This process will bring the property owners to court, for you and the town to ask the court to order the property owners to abate a violation.
- ◆ Be aware the Judge may not rule in your favor.



Remember...

- ◆ Code issues do not arise just between 9:00 – 5:00, when everyone who could help you are in their offices.
- ◆ You need to have a plan for ***when*** this circumstance happens, who to contact, their emergency numbers, what the chain of supervision shall be and who makes the final determination.
- ◆ **WHY? BECAUSE IT WILL HAPPEN!!!!**



Referrals:

- ◆ Everyone is busy, become familiar with and utilize the other agencies in your town to accomplish the goal.
 - Building
 - Health
 - Planning and Zoning
 - Legal
 - Police
 - Housing
 - Animal control



Other concerns:

- ◆ Always be mindful of where you are.
- ◆ Various conditions/violations that you find may not be a result of purposeful disregard of your order. For example, there are mental health conditions that are a factor in some of the conditions you will find. For example, CGS 29-306(a) and (c) apply to excessive combustibles especially liable to fire which may be a result of hoarding; a mental health disorder.



Never, never, never...

- ◆ Tell anyone you will have them arrested.
- ◆ Tell anyone you will get an arrest warrant.
- ◆ Tell anyone you will get a search warrant.
- ◆ Tell anyone that you must be allowed on the property.
- ◆ Tell anyone what the prosecutor may or may not do with the case.
- ◆ Excuse someone from a court date.
- ◆ Tell them that you will get their case dropped.



Contact numbers for Housing Prosecutors? (as of 12/2013)

- ◆ Judith R. Dicine, Supervisor
judith.dicine@ct.gov
Tel. 203-773-6755 FAX 203 789-6459
- ◆ Rafael I. Bustamante 860-443-8444
- ◆ Mary Card 203-579-7237
- ◆ Steven M. Lesko 860-756-7810
- ◆ Jonathan Lewin 203-965-5255
- ◆ Patrice K. Palombo 203-773-6755