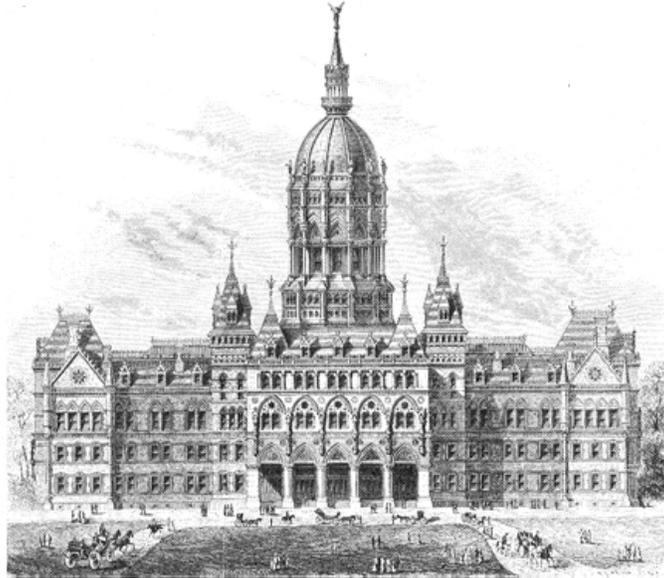


STATE OF CONNECTICUT

OFFICE of the VICTIM ADVOCATE

Michelle Cruz, Esq., State Victim Advocate



**2006 OVA STUDY
SUMMARY**

**COMPLIANCE WITH LAW (C.G.S. § 54-85g) REQUIRING SUPERIOR COURT
JUDGES TO ADVISE CRIME VICTIMS OF THEIR STATE
CONSTITUTIONAL RIGHTS AT ARRAIGNMENT PROCEEDINGS**

To the Governor and the Connecticut General Assembly



M. Jodi Rell, Governor

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August 11, 2008

Honorable M. Jodi Rell
Governor, State of Connecticut

Connecticut General Assembly
State of Connecticut

This study originated at the direction of the State Victim Advocate, James Papillo, in March of 2006. A draft report was distributed to the membership of the Office of the Victim Advocate Advisory Board on May 23, 2007. However, the report was not completed before the end of the appointed term of James Papillo.

Michelle Cruz, Esq. was appointed the new State Victim Advocate by Governor M. Jodi Rell on November 5, 2007, and assumed her duties on November 16, 2007. State Victim Advocate Michelle Cruz reviewed all outstanding projects, investigations and studies that remained open at the time of her appointment. State Victim Advocate Michelle Cruz directed that a summary of the study be issued in lieu of the incomplete draft report.

This report does not identify the names of the individual judges who performed the advisement of rights on any one of the sampling days of the study. The sampling was small, concentrated and the duration, short. The OVA does not assume that the sampling was a complete and accurate representation of the state of Connecticut courts, but rather, a sampling of what is happening in Connecticut courts on any given day. The State Victim Advocate considers the importance of a collaborative system's approach to resolve the issues that plague our criminal justice system with regard to the rights of crime victims. The anticipation is that the study will educate and encourage full participation with the advisement of rights by our Superior Court judges, rather than shame, ridicule or embarrass any individual judge.

At this time, State Victim Advocate Michelle Cruz releases this summary of the study to the Governor and the General Assembly for information only.

BACKGROUND

The Office of the Victim Advocate (OVA) was created in 1998 to protect and promote the constitutional and statutory rights afforded crime victims in Connecticut by the Victims' Rights Amendment to our state constitution (Article 1, § 8(b)). Pursuant to C.G.S. §46a-13c(3), the Victim Advocate has a responsibility to review the procedures established by any state agency or other entity providing services to victims with respect to the constitutional rights of victims. Additionally, pursuant to C.G.S. §46a-13c(7), the Victim Advocate may recommend changes in state policies concerning crime victims.

Despite amending our state constitution in 1996 to give crime victims important substantive and procedural rights in the criminal justice process, the OVA receives many complaints from crime victims alleging one or more violation(s) of their rights.

In 2001, the State Victim Advocate submitted a legislative proposal to the Connecticut General Assembly that would require Superior Court judges to advise crime victims of their rights in open court and on the record, just as the judge is required to advise criminal defendants of their rights at an arraignment proceeding.

On May 31, 2001, after passing unanimously in both the House and Senate chambers, the Governor signed into law Public Act No. 01-35, *An Act Concerning the Advisement to Crime Victims of Their Constitutional Rights*. This important law for crime victims went into effect on October 1, 2001.

This new law, which has since been codified at Connecticut General Statutes (C.G.S.) §54-85g, reads as follows:

In order to ensure that any victim coming before the court has been advised of the victim's constitutional rights, any judge of the Superior Court shall, at the daily commencement of the regular criminal docket at which accused persons are arraigned, issue the following advisement:

“If you are a victim of a crime with a case pending before this court, you are advised that you have the right: (1) To be treated fairly and with respect throughout the criminal justice process; (2) to timely disposition of the case; (3) to be protected from the accused; (4) to be notified of and attend court proceedings; (5) to speak with the prosecutor; (6) to object or support any plea agreement; (7) to make a statement to the court before the court accepts a plea agreement and at sentencing; (8) to restitution; and (9) to information about the arrest, conviction, sentence, imprisonment and release of the accused.” (Emphasis added.)

OVA STUDY

In the more than four years since C.G.S. §54-85g has become law, the OVA has received inconsistent, mostly anecdotal information regarding whether Superior Court judges were complying with the requirement to issue the advisement of rights to crime victims from the bench during arraignment proceedings. This information, coming from crime victims, advocates, prosecutors, OVA staff and others, seemed to indicate that although judges were gradually, over time, improving their compliance with requirements under C.G.S. §54-85g, some judges were not issuing the advisement at all or were not fully complying with the statute.

In early 2006, the OVA decided to conduct an assessment to examine whether and to what degree Superior Court judges in Connecticut were complying with the advisement of crime victims' rights law.

The study was conducted in two phases. Phase I involved ordering the transcript of the arraignment proceeding that occurred in each of the twenty (20) G.A. courts throughout the state on a particular day—Monday, March 20, 2006. The transcripts received were analyzed for content to assess the degree of compliance with the statutory requirement to advise crime victims' of their rights during arraignment proceedings.

Phase II involved a member of the OVA staff attending arraignment proceedings at each G.A. court on two separate occasions and analyzing compliance based on observation and notes taken as well as on an analysis of the written court transcript of each proceeding as in Phase I.

C.G.S. §54-85g provides a script to be read by the judge at the opening of arraignment court. At the time of this sampling, the OVA accepted full compliance of the advisement of rights when *all key elements* of the victims' constitutional rights were advised, regardless of whether there was a verbatim recitation of the statute or whether the advisement was in the judge's own words.

RESULTS

Nearly sixty percent (60%) of the G.A. courts fully complied with the advisement of rights during arraignment proceedings. Interestingly, after the OVA's initial request for the transcript of the March 20, 2006 proceeding, the percentage for full compliance with the advisement during the subsequent visits went down just slightly, while the percentage for partial compliance of the advisement increased by ten percent (10%).

Figure 1 illustrates the percentage of G.A. courts (regardless of judge) who fully complied (Full), partially complied (Partial) or demonstrated no compliance (None) with

C.G.S. §54-85g, for each of the three arraignment proceedings examined (March 20, 2006, 1st Visit, and 2nd Visit).

Figure 1

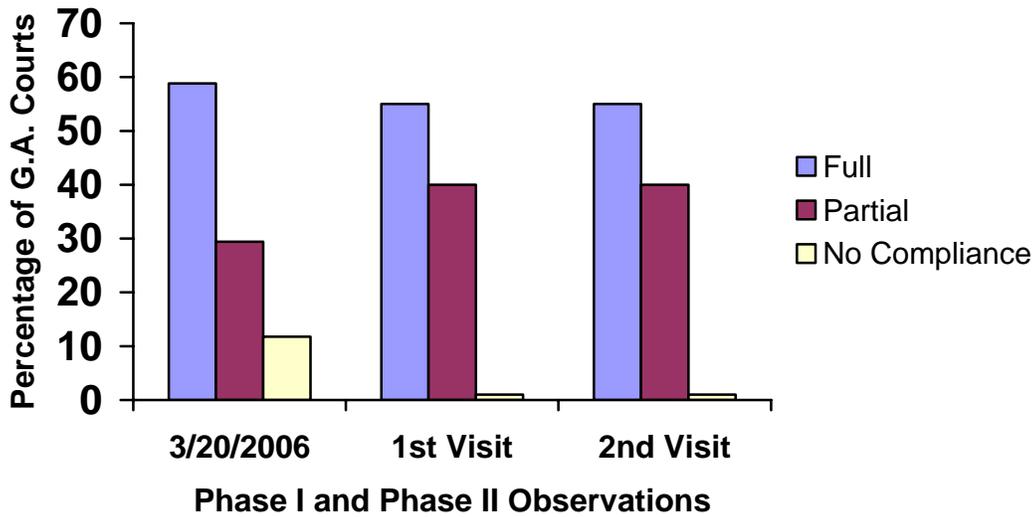
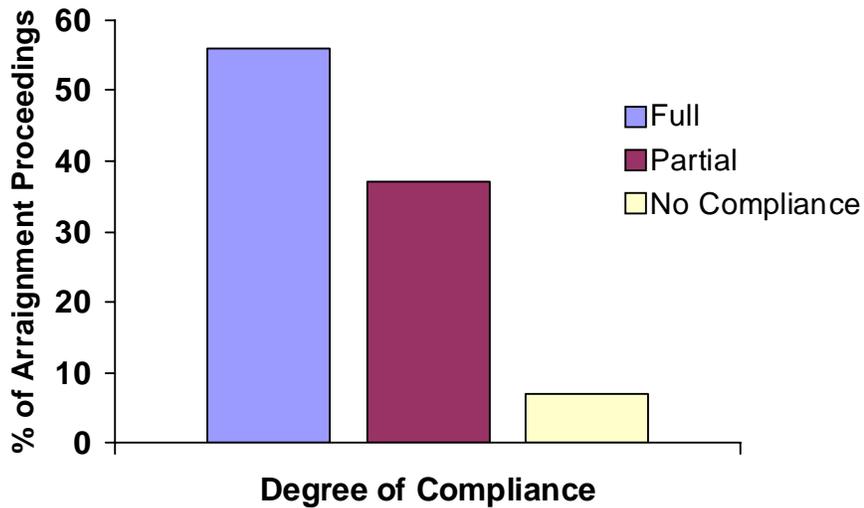


Figure 2 shows, for all 57 arraignment proceedings analyzed, the percentage of proceedings where there was observed Full (56%), Partial (37%) or No (7%) compliance with the legal requirement of C.G.S. §54-85g.

Figure 2



CONCLUSION

Notification of rights and the availability of services to crime victims continue to be the number one complaint that the OVA receives. The OVA will continue to monitor the progress of compliance with C.G.S. § 54-85g by Superior Court judges with an eye toward 100% compliance.

C.G.S. § 54-85g clearly defines the advisement that Superior Court judges are required to perform. The importance of the advisement during arraignment proceedings is not only for the benefit of a crime victim that may be present, but also for all others, including witnesses, defense attorneys, marshals, clerks, prosecutors and the general public. An advisement of rights that is inconsistent with the litany within C.G.S. § 54-85g has the potential to mislead a person hearing the advisement for the first time. For example, a judge advises that a crime victim has a right to address the court at the sentencing, but neglects to advise of the right to address the court at the plea. Both opportunities to address the court are very different from each other and are equally important for a crime victim's participation.

Moreover, the advisement of rights during arraignment court is especially important for victims of "property crimes." Currently, crime victims that do not sustain physical injury are not afforded the services of a victim advocate. It is foreseeable that the advisement during arraignment court may very well be the only opportunity the victim has to learn about their rights.

Full compliance with the advisement of rights equals a *verbatim recitation* of the rights, as enumerated C.G.S. § 54-85g. Although at first blush this task may appear insurmountable when considering all of the tasks a judge must complete at the opening of court. However, just as one would not expect a judge to summarize elements of a crime to a jury during the jury instruction nor a defendant's colloquy in a plea, the OVA does not accept a summarization of victims' rights during arraignment court as appropriate.

Crime victims, just as defendants, are entitled to the upholding of their constitutional rights; until there is full compliance with C.G.S. § 54-85g, the State of Connecticut's judicial system will continue to fail crime victims. Further, the advisement of rights to crime victims during arraignment court reaffirms the court's dedication and commitment to uphold the rights of crime victims throughout the criminal justice process and reassures crime victims, and others, that these constitutional rights are taken seriously by the court.

The OVA understands and appreciates the difficulties often associated with the implementation of new policies and procedures. In light of that, the OVA is available to collaborate with any agency, department or other entity through education, training or other means, to support full compliance with this very important advisement of crime victims' rights.