

Legislative History for Connecticut Act

HB 5344	PA 341	1983
House	4847-4849	(3)
Senate	3367-3368, 3420-3421	(4)
Judiciary	2061-2073	(13)
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CONNECTICUT
GEN. ASSEMBLY
HOUSE

PROCEEDINGS
1983

VOL. 26
PART 14
4688-5225

House of Representatives

Tuesday, May 17, 1983

I'd like to ask you before you vote on this, when you traded your car in for another automobile, did you tell the truth? Did you tell them what was wrong with it? Now you vote.

SPEAKER STOLBERG:

Will you remark further on the amendment?

Will you remark further?

If not, will all members please be seated.

Will staff and guests come to the well of the House.

The machine will be opened.

The House of Representatives is voting by roll at this time, will all the members return to the Chamber immediately.

The House of Representatives is voting by roll at this time.

Will all the members return to the Chamber immediately.

Have all the members voted?

Have all the members voted?

If so, the machine will be locked.

The Clerk will take a tally.

Will the Clerk please announce the tally.

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CLERK:

House Amendment Schedule "A" to Senate Bill 511.

Total number voting 146

Necessary for adoption 74

Those voting yea 47

Those voting nay 99

Those absent and not voting 5

SPEAKER STOLBERG:

The amendment fails. Will you remark further on the bill?

REP. VAN NORSTRAND: (141st)

Mr. Speaker.

SPEAKER STOLBERG:

Rep. Van Norstrand.

REP. VAN NORSTRAND: (141st)

Mr. Speaker, I just have one question. Through you, Mr. Speaker, a question of Rep. Mosley.

SPEAKER STOLBERG:

Yes. Just a minute, Rep. Van Norstrand. May we have your attention please? Rep. Van Norstrand, please frame your question.

REP. VAN NORSTRAND: (141st)

Yes. Down in line 23 and running over to the next

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page for one word is, among the, I gather, over-reaching that's occurred that's forcing you to take cars that are difficult to sell. Through you, who makes that judgment?

SPEAKER STOLBERG:

Rep. Mosley, do you care to reply?

REP. MOSLEY: (72nd)

Through you. Could the Minority Leader repeat his question? Or Mr. Speaker, could you have the Assembly quiet down a little bit, so I can hear what he's saying?

SPEAKER STOLBERG:

I'll do my best, Rep. Mosley. Rep. Mosley has asked all of his colleagues to please quiet down so he can hear the question being framed by Rep. Van Norstrand.

REP. VAN NORSTRAND: (141st)

Mr. Speaker, just to repeat it, through you. Down on the bottom of line, on line 23 at the bottom of the page and running over to the next, are among the examples of the kinds of things which I gather have constituted over reaching or the like from at least put upon dealers. There is this language about cars, they are difficult to sell. I'm trying to find out who

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account for grants of funds made available by the United States, the state, foundations, corporations and other businesses, agencies or individuals to implement such a program. I'd move if there is no objection that this Bill be placed on Consent.

THE CHAIR:

Is there any objection to placing the item on the Consent Calendar? Hearing no objection, it will go on Consent.

THE CLERK:

Calendar 688, File 744, 926, Substitute for House Bill 6383, AN ACT CONCERNING PROCEDURES AND JUDGMENTS AGAINST BUSINESSES LICENSED BY THE STATE, as amended by House Amendment, Schedule A, Favorable Report of the Committee on Judiciary.

THE CHAIR:

Senator Owens.

SENATOR OWENS:

I move acceptance of the Joint Committee's Favorable Report as amended by House Amendment A.

THE CHAIR:

Will you remark on House A?

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If there is no objection, I'd move it to the Consent Calendar.

THE CHAIR:

Any objection to placing on Consent? Hearing no objection, the matter will go on Consent.

THE CLERK:

Calendar 687, File 765, Substitute for House Bill 5344, AN ACT CONCERNING ASSISTANCE OF VICTIMS BY THE CRIMINAL INJURIES COMPENSATION BOARD, Favorable Report of the Committee on Judiciary.

THE CHAIR:

Senator Owens.

SENATOR OWENS:

Mr. President, I move acceptance of the Joint Committee's Favorable Report and passage of the Bill.

THE CHAIR:

Remark on the Bill, Senator?

SENATOR OWENS:

Yes, under existing law, the Criminal Injuries Compensation Board may implement programs to assist witnesses and victims of crimes. This Bill would authorize the board to apply for and receive, allocate, disburse and

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will call for the Governor to return them to the last chamber that passed them. Are we ready for the Consent Calendar? The Clerk will make an announcement for the Consent Calendar to be taken by Roll Call and then we'll go through the list which is rather lengthy.

THE CLERK:

An immediate Roll Call has been called for in the Senate. Will all Senators please take their seats. An immediate Roll Call has been called for in the Senate. Will all Senators please be seated.

THE CHAIR:

Please give your attention to the Clerk who will go through the list of Consent items.

THE CLERK:

On page 3, Calendar 56; on page 4, Calendar 295; on page 5, Calendar 510; on page 7, Calendar 606, 621, and 629. On page 8, Calendar 637, 657; on page 9, Calendar 658, 661. On page 10, Calendar 669, 670, 671, 672. Page 11, Calendar 673, 674, 675, 680, 681. On page 12, Calendar 684, 687, 688. On page 21, Calendar 177, 229, 323, 400. On page 22, Calendar 424, on page 23, Calendar 559, 173. That completes the list on today's Consent Calendar.

SB788, SB794,
SB915, HB7042,
HB5557, HB6384,
HB5598,
HB6817, HB7190,
SB1149, SB1151,
SB1154, SB690,
SB928, SB932,
SB926, SB486,
SB904, HB6046,
HB5344, HB6383,
SB850, SB396,
HB5448, SB752,
SB925, HB5364,
SB267

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THE CHAIR:

Senator Reginald Smith.

SENATOR REGINALD SMITH:

Yes Mr. President. I'd like to request that one of the items be removed from the Consent Calendar.

THE CHAIR:

What's the item Senator?

SENATOR REGINALD SMITH:

Page 8, Calendar 637, File 244, Substitute House Bill 6573.

THE CHAIR:

The matter will be removed from Consent. We'll vote on it immediately after the Consent Calendar. Are there any other requests to make an alteration in the Consent Calendar? If not, the machine is open on the Consent Calendar. The machine will be closed and locked.

TOTAL VOTING 36

YEAS 36

The Consent Calendar is adopted. The Clerk will call Calendar 637.

THE CLERK:

Calendar 637, on page 8, File 244, Substitute for

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SEN. OWENS: Some people might think it is relevant, that's the problem.

DR. JAMES: Well, yes, that's right. That's an important question about the whole thing.

SEN. OWENS: So you're becoming the judge then, you're becoming your own judge and jury on this thing and maybe there should be some third--maybe there should be someone like the FOI to look at it and make a decision on it, that's all I'm saying to you.

DR. JAMES: It comes up fairly often and it's a very classic instance. This problem of privacy is one which the physicians of Connecticut have been very much concerned about, as you know, with third party payments and all of the ORC's and those things that we're very much concerned as physicians as well as members of the commission.

SEN. OWENS: Any questions of the doctor? Thank you, doctor. Sherry Haller.

MS. SHERRY HALLER: My name is Sherry Haller and I'm Executive Director of the Criminal Justice Education Center and I'm here this evening to speak in support of House Bill 5344 and Senate Bill 611.

However, I have recommended changes in both pieces of legislation. In House Bill 5344, in the original proposal, I believe the intent is slightly different than the Raised Judiciary Committee Bill. In its original form, the purpose of the Bill is to allow the criminal injuries compensation board to obtain money for the purpose of hiring victim advocates and providing victim services. In the Raised Judiciary Committee Bill, it appears as though this intent has slightly changed.

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The Raised version establishes an Office of Victim Services within the Judicial Department not within the Compensation Board. As far as I can tell in the enabling legislation, in the enabling legislation for the Criminal Injuries Compensation Board, it was placed within OPM and if the concern is that the Board itself cannot get funds on its own, clearly OPM can and if it is already under OPM for administrative services, I don't

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MS. HALLER: (continued)

see why an Office of Victim Service itself should not go within the Compensation Board and should not be within and administered through the Office of Policy and Management. I don't understand why the Judicial Department would take over the function.

The second issue or the second Bill that I would like to mention to you is Senate Bill 611, An Act Concerning Crime Victims Bill of Rights. It's my understanding that the victim's advocate groups such as CONVO have some question about the language in Section 3 of that Bill that pertains to protection of victims and citizens against harassment by the accused.

MR. I am in support of that legislation. I understand that there is federal legislation that talks about harassment by the accused in a much cleaner way. I've seen it and it appears that it may be something that the Committee might want to look at. But the Bill that I am most concerned about is House Bill 5344. I don't understand the Judicial Department taking over that function.

SEN. OWENS: 5344?

MS. HALLER: Yes. An Act Concerning the Establishment of an Office of Victim Services or victim rights.

REP. SHAYS: I have a question.

SEN. OWENS: Yes, Chris.

REP. SHAYS: I don't understand why it should be under OPM.

MS. HALLER: Well, my understanding is that when the criminal injuries compensation board was first established, they placed the board under OPM for administrative purposes only. When they issue checks to victims--

REP. SHAYS: But I don't understand, so what? I mean, you know, it seems to me OPM should be an office that overlooks other departments. It begins to take on so many administrative functions I think--I just--well, it's a small point--I think it's silly to put it in OPM.

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MS. HALLER: Well, the only suggestion that I could say would be to do something slightly different which is to add language into the victim--criminal injuries compensation board, a section that--I think the Department of Corrections has a variety of other agencies which says that they are allowed to obtain grants and monies from outside sources for the purpose of developing victim services. But I don't see the need for having a separate Office of Victim Services within the Judicial Department at this point when the Criminal Injuries Compensation Board should take that function on. It's already there for that purpose.

REP. SHAYS: I see that part.

SEN. OWENS: Any questions? Okay. Gil Salk.

MR. GILBERT SALK: Good evening. My name is Gilbert Salk. I'm on the Board of Directors of the Connecticut Victim Organizations as well as the National Organization for Victim Assistance and I'm here to speak in favor of two Bills that Sherry Haller just spoke on, 611 and 5344.

I'd like to address 611 first. That's An Act Concerning Crime Victim's Bill of Rights. I think that the issues that are addressed in this Bill are extremely important to victims in our society. Section 1 calls for an investigation on crimes of the impact of that crime on the victim prior to sentencing. As a part of pre-sentence investigation, where pre-sentence investigations would normally be performed and when pre-sentence investigations would not be performed, that the investigation into the extent of injuries that the victim suffered be conducted nonetheless.

There is an important reason for this. Crimes that sound from initial police reports or legal descriptions as being roughly similar may in fact, be extremely different. For example, a mugging, where the victim was knocked down and had a wallet stolen containing \$50.00, two cases. One of those could be a 25 year old man who had a scrape on his knee and walked away from it and he goes back to work the next day.

The second victim could be someone in their 80's who broke a hip as a result of that, had to give up their

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MR. SALK: (continued)

private home and go into some kind of nursing facility and is going to be on crutches or in a wheelchair the rest of their lives. That's obviously a much greater impact.

This Committee and this state legislature has examined issues of crimes against the elderly before. This is the kind of thing that a judge needs to understand so he or she can come to some conclusion about the type of sentencing that would be in order for that crime. That information particularly when a case is plea bargained or plead out, and there's no trial, the information does not normally come before the judge and it is important.

Section 2 of this has to do with the Criminal Injuries Compensation Board. And very simply, it gives them a slight amount of discretion on some language that leaves no room for discretion now, so that in some cases where they feel they ought to be able to make an award of compensation, in spite of some restrictive language in the current law, they can make exceptions. And it gives them some room to act in the interest of justice when they deem that necessary.

Sherry suggested some problems with the language in Section 3 of this Bill and I would want to support her objections and in my disagreement with it, really comes out of discussions about this language that I had with Richard Tulisano last year, which he called to my attention. This language comes almost verbatim from National District Attorney Association's model legislation. It was part of a much larger Bill and as we were drafting that particular Bill, we were so delighted to find something that seemed to fit our needs, we did not do our homework on it as well as we should have.

There are, as Richard pointed out, some conflicts with existing State legislation. Additionally, since that time, the federal prisons commission on victim issues has come up with some other legislation regarding intimidation. I would strongly recommend this Committee to delete this section from the existing Bill, but earmark the issue for some very close study and reintroduction next year, trying to merge the language in this District

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MR. SALK: (continued)

Attorneys Association language with federal language and existing legislation so that it will be cleaner.

Our feeling is that this just would create as many problems as it would attempt to solve, though the issue is extremely important.

Section 5 has to do with confidential communications between victim counseling organizations and the victims that they're working with. There is precedent for this kind of language. Certain school personnel are given privileged communications with regard to drug issues. Specifically so that students will have someone to go to for help, without fear that there will be immediately faced with prosecution.

In the same way, a victim of crime has just gone through a traumatic experience, particularly in the more serious physical crimes, need somebody to talk to, frequently has a lot of ambivalence about what happened, why it happened and so on and needs to talk some of those feelings out. But could not do so freely if there was a danger that those records about those conversations were subpoenaed. I think it's very important to note that this does not provide privilege for any direct evidence. It has to do with hearsay evidence only and it's very important within the counseling kind of environment, that this kind of communication be allowed to take place.

REP. TULISANO: How do you determine who is a legitimate organization?

MR. SALK: I think what we're talking--what the language here says is a state or a corporate agency which has as its purposes--if you want to tighten that up and I know you've had some discussion with Rusty Post last year and came up with some language that you found acceptable--I have no brief for maintaining this exact language.

REP. TULISANO: Would you view that as a rape crisis center, basically--I think that's what we talked about originally. That's another Bill and it's not part of this one and they are basically people who have some sort of approved standards--(inaudible) standards of some governmental

REP. TULISANO: (continued)
agency for this?

MR. SALK: As of right now, no, but if we talk about the next Bill, 5344, maybe we'll develop a mechanism to do that because I think that's one of the things that an Office of Victim Services could do if you wanted it to.

Let me restate, I don't have a strong brief for the particular language in that section. I think the issue that it addresses is very important. If it needs to be changed to meet some concerns you have about credibility of the agencies, I would not argue against that, but I think the issue does need some attention.

SEN. OWENS: Representative Onorato has a question.

REP. ONORATO: In Section 5, Section 5, Definition of Professional Communication, communication made privately and in confidence by a victim or survivor to victim service counselor acting as a member of the service program and then it goes on to Section (b) that can't be released unless you get the written permission from the victim. Suppose the victim gives you some exculpatory information, where are we then?

MR. SALK: Suppose you're dealing with someone in a case that gives you some information when you're in a privileged situation, where are you then?

REP. ONORATO: I'm not here to answer your question.

MR. SALK: Well, no, I'm trying to--

REP. ONORATO: Just tell the Committee, that's all.

MR. SALK: Okay. Let me say this--

REP. ONORATO: If you can't, then go on to something else.

MR. SALK: I think a parallel exists here. Yes, it is a fair question and I think it's a difficult question. It's a difficult question not only in this situation, but in situations of attorney-client communication, physician-patient communication. What a counselor would get in

MR. SALK: (continued)

this kind of situation would be hearsay, not direct evidence, so it would not be exculpatory. So what a counselor would be dealing with here--

REP. ONORATO: If the victim says, look, I'm not really sure that this guy did it, I'm not really--you know, I've got a lot of problems here and I'm not sure that this guy done it and--but, you know, I think so, where are we at that stage when the defendant gets arrested on a positive identification?

MR. SALK: Where we are there is in a dilemma.

REP. ONORATO: I'm sorry, I didn't--

MR. SALK: Where we are there is in a dilemma, which I will admit exists. However, I think that it is the role of the justice system to establish the truth of what someone says under oath on the stand, from that individual's testimony and other testimony that is presented, that is different from the kind of exploration of feelings that goes on in the counseling environment, which needs, by its very nature, needs to explore doubts, questions, fears, and so on, and encourages calling into question things of that type.

REP. ONORATO: Notwithstanding that the individual may be more comfortable with the counselor, maybe more truthful, than in a court proceeding, where perhaps parties of the court proceeding may not know of any other statements being made and let's face it, when you go into court and testify, it's presumed that you testified truthful unless something else comes up and that's the way it goes in court. It doesn't go any other way.

In section 1, Mr. Salk, did I understand you to say that I believe you gave two examples of pre-sentence reports of muggings of a 25 year old or an 80 year old?

MR. SALK: Yes.

REP. ONORATO: Did I understand you to say that this information is not delivered in a pre-sentence report to the State's Attorney?

MR. SALK: The extent of injuries may not be presented, is what I said. I think it's important that a judge understand the extent of injuries.

REP. ONORATO: Well, it seems to me that I misunderstood your testimony or I understood you to say that it was not presented and now you're saying that it may not be presented. Are you telling us that when the police make the initial report, they do not put in that the individual was injured; they do not include followup reports to the prosecutor so the prosecutor can make a determination on how the charge will be prosecuted; is that what you're telling this Committee?

MR. SALK: Quite often, that's the case. The police certainly include the evidence that they get at the scene. They do not always follow up to see what happens, if the victim is transported to the hospital, to find out when the victim left the hospital and in what condition.

And particularly in a relatively--with quotes around it--relatively minor crime such as a mugging.

REP. ONORATO: In a probation report, do you know if the probation officer seeks out the victim to get his side of the story?

MR. SALK: If a pre-sentence investigation is done, yes they attempt to do that.

REP. ONORATO: And in felonies they're always ordered; are they not?

MR. SALK: Unless--under the statutes, unless one has been done within the past, I believe it's five years, in which case there is none--

REP. ONORATO: Past three years--it is waived and he's not eligible for sentence review?

MR. SALK: Right.

REP. ONORATO: The kind of felony that you're talking about it's ordered; is it not?

MR. SALK: No, not necessarily, particularly if there has been one done within the past three years and when you have a case where--

REP. ONORATO: All I'm trying to ask you is does the probation officer talk to the victim; that's all I'm trying to get.

MR. SALK: Sometimes, yes, an attempt is made to do that communication.

REP. ONORATO: Do you know of any case, Mr. Salk, where the probation officer does not talk to the victim and if so, please present that to the Committee because I know of no case where they do not talk to the victim and we would appreciate it, really, if you have that information, that they do not contact the victim.

MR. SALK: I do not know of cases where pre-sentence investigations have been conducted that there has not been an attempt to communicate with the victim. I do know of cases where that communication has been limited, well, what do you think ought to happen to this defendant? Which is not what is being asked for in this. We're not asking for a statement of vengeance from the victim in this. What we're saying is that there should be some factual information given to the judge to let the judge know what happened to the victim and that is not routinely included in pre-sentence investigations currently.

REP. ONORATO: What you're saying is that the victim does not say what his injuries were, does not say what happened to him, does not tell of any financial loss that he may have suffered. What you're saying is that the probation officer goes in there and says, you think we ought to let this guy go? And the victim says, hell, no, he crippled me up. He doesn't say that and he doesn't say sure, let him go. He says well, I don't know?

MR. SALK: Sometimes they're woefully inadequate.

REP. ONORATO: Thank you, sir.

MR. SALK: You're welcome.

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REP. TULISANO: I would like to know what--I've struggled on the battered women, rape crisis one for a year and a half and in 15 minutes to do your victim counseling is not going to be so easy. What training is there for victim counselors, any?

MR. SALK: It varies considerably from center to center, but from counseling center to counseling center. Some of them have fairly complex curricula that they have their counselors go through that involve sixty or more hours. Others are relatively short, twenty hour kinds of programs. There is no standard situation right now.

REP. TULISANO: What's your suggestion to the Victim Compensation Board?

MR. SALK: For the Compensation Board section--you're talking about Section 2 now, yeah, I would strongly support that section. I think that it provides a small amount of discretion where there is none at this point and I feel that discretion would benefit.

REP. TULISANO: Would you modify that?

MR. SALK: There was some modification last year. But the discretion I feel, is still important. If I may, for a moment, comment on 5344.

REP. TULISANO: Representative Shays has a question.

MR. SALK: Oh, I'm sorry.

REP. SHAYS: I just first want to thank you for coming before this Committee and having and showing concern about the victims and it seems to me in some cases, you're a victim right at this very moment.

It really is true, isn't it, that when they do a pre-sentence report, that there is no established criteria that has to be included in this report and therefore, the reports can vary significantly from individual to individual, in terms of the probation officer who is asking the questions and obviously in terms of the victim who has no real idea of what's to be included in this report; isn't that true?

MR. SALK: It's true for the victim. There are very distinct criteria in many parts of it. But basically what is asked for of the victim that there be a victim statement and that is interpreted by each individual probation officer on an individual basis.

Some of them do that job very conscientiously, others really feel that all that means is, I should ask the victim what they think should happen in the case.

REP. SHAYS: Are you concerned that the only time the victim is really consulted or asked in many cases is after they have established a plea and you may have gone through a plea bargaining arrangement where the end result is that the sentence imposed cannot be a very significant one because they have plea bargained the case down. Would you like sometime to see a situation where the victims are able to report to the court sooner than after a sentence has been -- after a plea has been accepted?

MR. SALK: You are talking about an ideal world situation and I think if I started getting into a definitive answer on that I could lead us all over the place. I spent two years studying the issue, and came up with a lot of recommendations, some of which I think were good, some of which I think probably were not so good.

I would be more than happy to spend some time talking with you about, but I'm reluctant to do it as part of my testimony.

REP. SHAYS: Let me just make one point. I think you are going to lose 611 unless we are able to fix it up. And we only have three days, we have Thursday, Friday and Monday, and we all have 250 bills to deal with and I would think it would be incumbent upon you to come in with specific recommendations of how you would want this bill amended. And the reasons why. And it seems to me in some cases you are just suggesting to us that we take out the guts of the bill because you don't know how to make it any better.

MR. SALK: No. the only place that I am suggesting that there be a change of any substances in Section 3, I feel that that section would best be deleted, not because I oppose the direction of it or the rationale for it, because I

MR. SALK: (continued)

think that because it came out of a model statute and was not messed with state law, it would set up some conflicts. And I am not prepared and I don't know anyone who is prepared to fix that in three days.

REP. SHAYS: It is too bad.

MR. SALK: I agree with you. But I think it ought to be something that is earmarked for next year's session.

REP. SHAYS: Thank you.

MR. SALK: The rest of the bill I would support as it stands. Okay. If I may briefly comment on 5344. Again I support the concept of the bill. I feel there is a tremendous need for some formal recognition of victims as a class, not necessarily in opposition to defendants and defenders. But as a group of people whom we have failed to protect and to whom we have some obligation.

I don't see the victim issue necessarily as an anti-offender issue and I think that is important to understand in understanding the role of victim advocates.

I do, however, probably because of this, object to placing this office in and exclusively under the control of the Judicial Branch. I think it builds in a conflict of interest. There are times when the victims interests are directly opposed to the interests of the judicial branch.

REP. TULISANO: Aren't some of them there now though?

MR. SALK: There are some victim programs there now. That is very different from setting up an office which is going to be charged as this one is with gathering data which may be critical of the judicial branch and which the judicial branch doesn't like to hear, of creating and coordinating state supported victim programs and services. Some of which may be advocacy services which would be in opposition to judicial --

REP. TULISANO: Remove the prosecutors from the judicial department, have a commission -- (speaker inaudible).

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MR. SALK: I think there is someone in the Executive Branch who might like to do that.

REP. TULISANO: (speaker inaudible)

MR. SALK: No I'm not here to talk about the prosecutors.

REP. TULISANO: No, but the conflict may be between those two things. There may be a conflict between the prosecutor and that. If you didn't have the prosecutor there, would this still be accomplished in some other area, that's all I'm asking. Do you think there might be?

MR. SALK: I think there would be less conflict. I would recommend first that it go back to the original concept of being placed under the criminal injuries compensation board.

REP. TULISANO: I don't know how it got changed.

MR. SALK: I don't know how it got changed either. It seems to me that that would be the most logical place to go because that is the one state agency that is currently charged with responding in some way to victim services.

If not there, I would suggest as alternatives either the Attorney General's Office or the Consumer Protection Department. Because in a very real sense, victims are consumers in the criminal justice system. And if the criminal justice system is not responding to their needs, they have a right to complain as consumers about what is happening.

Within that same line, I think that there ought to be some broadening of the appointing authority in Section 2 for the Executive Director of this office. It should not just be judicial personnel who make that appointment. It should be representatives from other state agencies and possibly also from some victim organizations. Thank you very much for your attention.

REP. TULISANO: Linda Hastings to be followed by White, Christian Community Action. Franklin White. You're next after Ms. Hastings.