

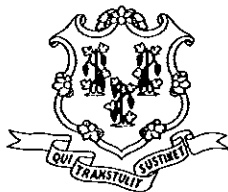
The Connecticut General Assembly

Task Force on Victim Privacy and the Public's Right to Know

Co-Chairs:

Rep. Angel Arce, State Representative, Hartford

Don DeCesare, President and General Manager of
WLIS-AM in Old Saybrook
and WMRD-AM in Middletown



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Tuesday, December 17, 2013, 9:30 am, Legislative Office Building, Room 1B Meeting of:

Task Force on Victim Privacy and The Public's Right to Know

Members present: Rep. Angel Arce, Co-Chair; Don DeCesare, Co-Chair; Garvin Ambrose; Reuben Bradford; Sen. Eric Coleman; Klarn DePalma; William Dunlap; Sen. Len Fasano; Kevin Kane; Antoinette Webster (associate of Commissioner Bradford); Brian Koonz; Colleen Murphy; Jim Smith; Andrew Woods; Rep. Debra Lee Hovey; Susan Storey; Jillian Knox

Member absent: Jodie Mozdzer-Gil

- I. Co-Chair DeCesare convened meeting at 9:50 am. Noted absence of Jodie Mozdzer-Gil due to her being ill with the flu, wished her well. Brian Koonz will vote Jodie Mozdzer-Gil's proxy. Atty. Ambrose has Jillian Knox's proxy, she is delayed due to traffic.
- II. Motion to approved minutes of November 27, 2013 meeting by Sen. Fasano, seconded by Atty. Kane.
- III. Discussion re: Sections 2 & 3 of Mr. Ambrose' Overview of Conceptual Recommendations Regarding FOI law. Discussion also included 4 proposals already submitted and condensed in a comparative study by OLR.

Rep. Hovey offered a motion, seconded by Sen. Fasano, to accept language of the November 17, 2013 draft, re: Section III B – the identification of a minor witness.

Comments by Susan Storey; Kevin Kane; Professor Dunlap and Sen. Fasano. Concern voiced by Professor Dunlap that law would restrict ability of defense lawyers to obtain information. Chair DeCesare stressed that goal is to look for a path of agreement.

Mr. Smith commented that state should not pass laws that are unconstitutional. Sen Fasano responded that this is not an unconstitutional law; law that was passed states that the identification of a minor is protected.

Chair DeCesare reminded members that Task Force is only making recommendations not law.

Atty. Storey proposed amendment that would allow for identification of a minor witness to be made available at the request of counsel.

Five minute recess was granted by Chair to allow discussion among members.

Discussion followed on Atty. Storey's amendment, which was seconded by Mr. Smith. Motion is to add to Section III B: identification of a minor witness be made available at the request of counsel for a defendant in a criminal case, delinquency action, or habeas corpus.

Atty. Kane said there already are exceptions in FOI. Main purpose is to protect witnesses. Prisoner might get information this way and not be restricted.

Mr. Smith said that the Constitution gives the right to have a witness face a defendant.

Further discussion from Atty. Kane and Colleen Murphy.

Roll call on Storey amendment:

2 Yeah

15 Nay

Motion Failed

Professor Dunlap offered an amendment which would change the language to age at the time the witness made a statement, not when event occurred. Seconded by Mr. Koonz.

Discussion: Rep. Hovey; Atty. Webster; Amendment edited to read "declaration" instead of "statement".

Further discussion. Clerk called roll:

3 Yeah

14 Nay

Amendment failed.

Sen. Fasano offered an amendment changing "crime" with "declaration". Seconded by Rep. Hovey. Friendly amendment: "who at the time of the crime or declaration..."

Discussion: Mr. Koonz; Atty. Webster

Vote on original motion by Rep. Hovey with friendly amendment by Sen. Fasano.

Clerk called roll:

14 Yeah

3 Nay

Motion passed as amended.

Sections II and III will be treated together in further discussion.

Chair thanked OLR for all of its research.

IV. Discussion re: crime scene photos, videos and intraoperative audio created on-scene by first responders communication with each other.

Re: Repository: CT would create a place or vehicle by which materials would repose for public view, not distribution.

Atty. Murphy said that in contested cases records are transferred to FOI and records are usually copies.

Discussion: Rep. Hovey; Chair DeCesare. Question of expanding beyond "homicide".
Discussion: Atty. Webster; Mr. Smith

Majority of states have rejected Favish ruling which gives most protection to victims. Chair DeCesare said the press for the most part has been responsible for years.

Atty. Kane said that there is a wide variety of homicides. No restriction on viewing information and materials.

Sen. Fasano stated that it is not unique for CT to be passing this law.

Atty. Storey questioned how a repository would work.

Mr. DePalma stated that at Ch. 3 TV public can make an appointment to view whatever records they wish to see; copies on public file can then be purchased.

Mr. Smith said that the Perkins test is CT's standard or good balance. Favish standard is not a good balance.

Mr. Koonz defended the media saying the 911 tapes from Sandy Hook were handled respectfully and in a well-controlled fashion. Mr. Smith said the concern of FOI is to present society as it is.

Atty. Kane said that photos infringe on people's privacy, government must be sensitive to how photos and tapes are used, i.e. unwarranted invasions of privacy. Task Force is trying to strike a balance.

Chair DeCesare offered a lunch break at 12:10 pm after which the issue of inter operative audio will be discussed.

Meeting resumed at 1:15 pm.

Discussion re: inter operative situations where law enforcement officers and first responders are speaking with one another.

Atty. Kane suggested that 911 calls and inter operative calls be treated the same.

Discussion: Mr. Smith, Rep. Hovey.

Atty. Kane offered that the repository would not really change the procedures at all.

Discussion: Commissioner Bradford, Atty. Webster who offered willingness to be a repository at State Police Headquarters but said it would require funding.

Mr. Smith proposed that issue be about the Newton/Sandy Hook tragedy only. Mr. DeCesare said there needs to be more study about other crimes.

Discussion: re: Perkins standard; Atty. Kane, Sen. Fasano said there needs to be a good reason to obtain information from the repository or keeper of records.

Comments: Mr. Smith, Professor Dunlap, Atty. Kane and Rep. Hovey.

Mr. DePalma suggested taking a vote on the issue of repository. Discussion: Atty. Kane, Mr. Ambrose re: 911 calls. 911 Calls depicting suffering of victims is the same as photos.

Sen. Fasano said there are websites which are horrible. Discussion: Professor Dunlap, Rep. Hovey.

Atty. Kane offered motion that concepts introduced in numbers II and III be adopted as written.

Chair declared recess at 2:40 pm.

Meeting resumed at 2:50; Mr. Kane withdrew motion.

Professor Dunlap offered motion, seconded by Mr. Smith that age be determined to be factor at time of request not time of crime.

Discussion followed.

Clerk called roll for vote on motion.

8 Yeah

9 Nay

Motion failed.

Sen. Fasano introduced motion; seconded by Atty. Ambrose.

Chair agreed to brief recess.

Recess at 3:30

Reconvened at 3:37

Motion and seconded withdrawn by Sen. Fasano and Atty. Ambrose.

Vote on Mr. Smith's amendment to refer to homicide in Newton exclusively; seconded by Atty. Murphy.

Clerk called roll
5 Yea
12 Nay
Motion failed

Jodie Modzer-Gil emailed Mr. Koonz after the vote and expressed that she wished to have her vote recorded in the affirmative on the aforementioned motion.

Atty. Kane offered motion; seconded by Commissioner Bradford, to accept paragraphs II and II as originally written. Sen. Fasano offered a friendly amendment to insert after "public" or inter operative recordings, among emergency and law enforcement personnel.

Discussion followed: Professor Dunlap, Atty. Kane, Atty. Webster and Mr. DePalma.

Atty. Murphy questioned what consensus referred to regarding the legislative process in drafting the bill. Sen. Fasano responded that it included legislators and lawyers. He also responded that he would request a fiscal note for expenses incurred by keepers of record, specifically, the State Police.

Atty. Murphy stated her feelings of resentment as the inference that FOI was following anything but proper protocol. Mr. Smith offered that in the history of CT people calling police for help have never been made secret. FOI has been weakened since 1975, this is wholesale destruction of FOI. Mr. Smith says he understands about Newtown, but is astounded at the scope of the motion. He expressed feeling that the Task Force is stacked.

Sen. Fasano noted that Alaska, North Dakota, North Carolina among many prohibit or restrict broadcasting of 911 calls, Minnesota as well.

Recess at 4:07
Meeting reconvened at 4:15
Recess at 4:15; reconvened at 4:24

Motion and second withdrawn by Atty. Kane and Atty. Ambrose.

Sen. Fasano offered motion to keep existing language in overview; second by Rep. Hovey. Friendly amendment by Atty. Ambrose to add "crime of violence or sexual offense" to "homicide"; seconded by Atty. Kane.

Discussion: Professor Dunlap, Sen. Coleman, Sen. Fasano, Andrew Woods, Chair DeCesare and Rep. Hovey.

Atty. Ambrose withdrew amendment.
Clerk called roll.
14 Yeah
3 Nay
Motion passed.

Rep. Hovey offered motion to request Program Review to do thorough analysis of victims needs and privacy. Seconded by Sen. Fasano.

Comments by Sen. Coleman who is a member of Program Review and cautioned there is no guarantee issue would be taken up by Review Board.

Clerk called roll.

14 Yeah

3 Nay

Motion passes.

Comments: Atty. Story and Sen. Fasano.

- V. Chair announced there will be a final report written by OLR to be approved by Task Force members but individuals will be able to submit options.

Mr. Smith recalled that Task Force had voted to issue a majority report and a minority report plus individual reports. Discussion followed. Atty. McCarthy explained that OLR in conjunction with Legislative Counsel will create a narrative on motions on sections of the Overview, with recorded votes. Will include narrative of pro and con votes.

Any member may add opinion to be attached to report.

Comments: Mr. Smith, Sen. Fasano, Commissioner Bradford.

Mr. Smith questioned OLR staff as to whether this task can be accomplished. Reply was they believe it can be done.

Chair DeCesare stated every effort will be made to produce report in time allotted; can go to January 1, 2014. Thanked members and clerks.

- VI. Meeting adjourned at 5:34 pm., by motion of Rep. Arce, seconded by Sen. Fasano.

Respectfully submitted:

Ken Neal
Clerk

Barbara Gordon
Asst. Clerk