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## Office of the Victim Advocate 2019 Legislative Priorities

### Enforcement for Violations of Crime Victims' Rights

Constitutional Right<sup>1</sup>: The general assembly shall provide by law for the enforcement of crime victims' constitutional rights.

The Problem: When a victim's rights are violated, there is no appellate relief available to the victim because of the following language is also written into the Crime Victims' Rights Amendment: "Nothing in this subsection or in any law enacted pursuant to this subsection shall be construed as creating a basis for vacating a conviction or ground for appellate relief in any criminal case." The Connecticut Supreme Court ruled in *State v. Skipwith*, 165 A.3d 1211 (Conn. 2017), that although the victim's rights were clearly violated, there was no available remedy. The Court advised the Legislature and the Rules Committee of the Superior Court to address the matter, with Justice McDonald stating:

*This case provides a stark reminder that a constitutional right, unadorned by a remedy to enforce or vindicate that right, is a hollow one. Indeed, a victim of crime who is denied her constitutional rights by a prosecutor or the court is, in a very real sense, victimized all over again. Without understating the significance of the primary victimization, this second victimization may be in some ways more odious because it is inflicted upon her by the levers and gears of the judicial system itself, the very institutional mechanism she—and all people in civilized society—relies on to have her offender held to account. We as a state must do better than this.*

The Solution: Although the Legislature has the authority to provide enforcement mechanisms, such mechanisms will be barred due to the restrictive language in the Amendment. The OVA recommends that enforcement mechanisms be established by 1) eliminating the barring language via a Constitutional amendment, and 2) enactment of enforcement legislation.

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<sup>1</sup> Constitution of the State of Connecticut, Article XXIX(b) Rights of Victims of Crime  
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## **Crime Victims' Participatory Rights in a Violation of Probation Proceeding**

Constitutional Rights: 1) The right to attend the trial and all other court proceedings the accused has the right to attend; 2) The right to restitution which shall be enforceable in the same manner as any other cause of action or as otherwise provided by law.

The Problem: Violation of probation (VOP) hearings are technically an extension of the sentencing, yet victims do not always have participatory rights at said hearings. If the VOP is a new crime (i.e., violation of a standing criminal protective order), the victim's participatory right attaches to the new criminal case. If the VOP does not involve a new criminal matter (e.g. a violation for nonpayment of restitution), the violation is addressed as a civil matter and the victim has no statutory right to act unless they have a civil order for restitution. However, a victim cannot obtain a civil order of restitution while the criminal case is still pending.<sup>2</sup>

The Solution: Uphold victims' constitutional rights by amending C.G.S. §53a-32 to afford crime victims the same participatory rights that are granted in the early termination of probation statute C.G.S. § 53a-29.

## **Identity Theft Victims' Access to Sealed/Erased Records**

Constitutional Right: The right to information about the arrest, conviction, sentence, imprisonment or release of the accused.

The Problem: When an offender applies for the accelerated rehabilitation pretrial program, the offenders' records are sealed and a victim cannot obtain the necessary information needed to correct identity theft matters.

The Solution: Uphold victims' constitutional rights by amending CGS §54-56e to allow victims of identity theft to obtain a copy of the victim's complaint and the law enforcement agency's report to correct erroneous information concerning the victim's identity.

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<sup>2</sup> C.G.S. §53a-28a: Enforcement of orders of financial restitution. All financial obligations ordered pursuant to subsection (c) of section 63a-28 may be enforced in the same manner as a judgment in a civil action by the party or entity to whom the obligation is owed. Such obligations may be enforced at any time during the ten-year period following the offender's release from confinement or within ten years of the entry of the order and sentence, whichever is longer.

## PROPOSED LANGUAGE

### **ENFORCEMENT FOR VIOLATIONS OF CRIME VICTIMS' RIGHTS**

#### Proposed Language:

Article XXIX (b) of the Connecticut Constitution is repealed and the following is submitted in lieu thereof:

In all criminal prosecutions, a victim, as the general assembly may define by law, shall have the following rights: (1) the right to be treated with fairness and respect throughout the criminal justice process; (2) the right to timely disposition of the case following arrest of the accused, provided no right of the accused is abridged; (3) the right to be reasonably protected from the accused throughout the criminal justice process; (4) the right to timely notification of all court proceedings; (5) the right to attend the trial and all other court proceedings the accused has the right to attend, unless such person is to testify and the court determines that such person's testimony would be materially affected if such person hears other testimony; (6) the right to communicate with the prosecution; (7) the right to object to or support any plea agreement entered into by the accused and the prosecution and to make a statement to the court prior to the acceptance by the court of the plea of guilty or nolo contendere by the accused; (8) the right to make a statement to the court at sentencing; (9) the right to restitution which shall be enforceable in the same manner as any other cause of action or as otherwise provided by law; and (10) the right to information about the arrest, conviction, sentence, imprisonment and release of the accused; The general assembly shall provide by law for the enforcement of this subsection. ~~Nothing in this subsection or in any law enacted pursuant to this subsection shall be construed as creating a basis for vacating a conviction or ground for appellate relief in any criminal case.~~

*NEW Enforcement Legislation (mimics federal law 18.U.S. Code §3771 (d)(5)):*

A victim may make a motion to re-open a plea or sentence if (1) the victim has asserted the right to be heard before or during the proceeding at issue and such right was denied, (2) the victim petitions the Appellate Court for a writ of mandamus within 30 days, and (3) in the case of a plea, the accused has not pled to the highest offense charged. If a court finds that a victim's right was not considered or was denied, the court may grant the victim relief provided the remedy does not violate the constitutional rights of a defendant to be free from double jeopardy.

## **CRIME VICTIMS' PARTICIPATORY RIGHTS IN A VIOLATION OF PROBATION PROCEEDING**

### Proposed Language:

Section 53a-32(a) of the general statutes is repealed and the following is submitted in lieu thereof:

At any time during the period of probation or conditional discharge, the court or any judge thereof may issue a warrant for the arrest of a defendant for violation of any of the conditions of probation or conditional discharge, or may issue a notice to appear to answer to a charge of such violation, which notice shall be personally served upon the defendant. Any such warrant shall authorize all officers named therein to return the defendant to the custody of the court or to any suitable detention facility designated by the court. Whenever a probation officer has probable cause to believe that a person has violated a condition of such person's probation, such probation officer may notify any police officer that such person has, in such officer's judgment, violated the conditions of such person's probation and such notice shall be sufficient warrant for the police officer to arrest such person and return such person to the custody of the court or to any suitable detention facility designated by the court.

~~Whenever a probation officer so notifies a police officer, the probation officer shall notify the victim of the offense for which such person is on probation, and any victim advocate assigned to assist the victim, provided the probation officer has been provided with the name and contact information for such victim or victim advocate. The Court Support Services Division shall establish within its policy and procedures a requirement that any victim of the offense for which such person is on probation be notified whenever a Violation of Probation hearing is scheduled pursuant to this subsection. The court shall permit such victim to appear before the court for the purpose of making a statement on the record concerning such person's violation of probation. In lieu of such appearance, the victim may submit a written statement to the court and the court shall make such statement a part of the record.~~ Any probation officer may arrest any defendant on probation without a warrant or may deputize any other officer with power to arrest to do so by giving such other officer a written statement setting forth that the defendant has, in the judgment of the probation officer, violated the conditions of the defendant's probation. Such written statement, delivered with the defendant by the arresting officer to the official in charge of any correctional center or other place of detention, shall be sufficient warrant for the detention of the defendant. After making such an arrest, such probation officer shall present to the detaining authorities a similar statement of the circumstances of violation. Provisions regarding release on bail of persons charged with a crime shall be applicable to any defendant arrested under the provisions of this section. Upon such arrest and detention, the probation officer shall immediately so notify the court or any judge thereof.

## **IDENTITY THEFT VICTIM'S ACCESS TO ERASED RECORDS**

Proposed Language (Via Collaboration with the CT Sentencing Commission):

Section 54-56e of the general statutes is repealed and the following is submitted in lieu thereof:

- (1) There shall be a pretrial program for accelerated rehabilitation of persons accused of a crime or crimes or a motor vehicle violation or violations for which a sentence to a term of imprisonment may be imposed, which crimes or violations are not of a serious nature. Upon application by any such person for participation in the program, the court shall, but only as to the public order the court file sealed. Notwithstanding the order sealing the court file, the clerk of the court or any criminal justice agency having information contained in their record, upon proof of proper identification, may provide to the victim of identity theft a copy of the victim's complaint to a law enforcement agency pertaining to such allegation. The victim may disclose such information to correct erroneous information concerning the victim's identity. Any person who falsely obtains a criminal complaint or law enforcement agency report pursuant to this section shall be guilty of a class D felony.