



# State of Connecticut

## DIVISION OF PUBLIC DEFENDER SERVICES

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**Testimony of Christine Perra Rapillo, Chief Public Defender  
Attorney Lauren Weisfeld, Chief Legal Service Unit  
Office of Chief Public Defender  
Judiciary Committee  
March 21, 2018**

### **Senate Bill 505, An Act Concerning the Jurisdiction of the Courts**

OCPD strongly opposes Raised Bill SB 505 for the following reasons:

**The federal court and every state except 3 (Ark., La., SC) allow appellate review of errors not raised in the trial court.** This proposal would put Connecticut in the minority.

**The changes significantly increases risk of wrongful convictions.** By limiting appellate review to "issues of law" and stating that superior court has "exclusive jurisdiction" to "find facts based upon the evidence submitted," the bill eliminates appellate courts' ability to remedy even clearly erroneous trial court factual findings. This would be unconstitutional when there was insufficient evidence to convict, and when First or Fourth Amendment claims are involved.

**The proposal as written violates Constitutional principles of separation of powers AND due process.** The bill creates an unconstitutional interference with judicial decision making. Criminal defendants are entitled to constitutional protections; this bill bars appellate courts from being able to fully and properly decide the constitutional right at issue, raising due process concerns. The legislature cannot and should not interfere with the Supreme/ Appellate Courts' decision on whether an issue is reviewable on appeal, including whether there was constitutional error and/or plain error, and errors requiring supervisory authority.

**This proposal is unnecessary.** The decision on which issues are properly raised or sufficiently briefed by the parties is already made by the Appellate and Supreme Court and already necessary to get appellate review. The appellate courts already defer to the trial courts' factual findings.

**Review of a trial court's fact finding is essential to a thorough and fair resolution of the appeal.** The bill precludes courts from upholding a conviction on alternate grounds not properly noticed or raised by the state. Currently, the court has the discretion to – and does with some frequency – consider alternate grounds for affirmance even if not properly raised by the state. **This bill may bar full and fair determination of legal issues if the court is can't get supplemental briefing where appropriate.** Sometimes the issue isn't really clear until oral argument, and the court will ask the parties for more briefing on an issue that comes up – often in light of very new case law.

**Forcing criminal defendants to get relief for constitutional violations which will become unavailable on direct appeal, in a habeas proceeding or in federal court causes undue delay, which harms all parties and interested persons, including victims.** Despite passage of this bill, habeas jurisdiction will remain the same, and federal jurisdiction will remain the same. Both will remain available avenues of relief for constitutional violations not addressed by our state appellate courts. The Office of Chief Public Defender urges this Committee to reject this proposal.