



**Natasha M. Pierre, Esq.**  
**State Victim Advocate**

## Office of the Victim Advocate 2023 Legislative Priorities

The Office of the Victim Advocate (OVA) 2023 legislative priorities seek enforcement of crime victims' rights; continued protection for crime victims; and the strengthening of participatory rights of crime victims.

The OVA anticipates that it will also address numerous criminal justice reform proposals by requesting that the Legislature consider and eliminate any negative impacts its proposals may have on crime victims' constitutional and statutory rights. Reform strategies should serve not only the interests of the accused; but must also serve those personally harmed by crime and maintain public safety. Criminal and juvenile justice system reforms must include meaningful protection of the interests and rights of crime victims to avoid harmful, unintended consequences.

### **RESOLUTION PROPOSING A CONSTITUTIONAL AMENDMENT TO REMOVE A PROHIBITION AGAINST CONSTRUING THE CONSTITUTION OR STATUTE TO CREATE A BASIS FOR A CRIMINAL CONVICTION TO BE VACATED OR APPEALED IF A VICTIM IS NOT AFFORDED HIS OR HER RIGHTS IN COURT.**

The Problem: When crime victims' rights are violated, there is no appellate relief available to the victim because of the following language written into the Crime Victims' Rights Amendment<sup>1</sup>: "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*

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<sup>1</sup> Constitution of the State of Connecticut, Article XXIX(b) Rights of Victims of Crime

*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.

Previous Proposal: 2021 House Joint Resolution No. 366

Proposed Language: See HJR No. 366 (2021)

## **AN ACT CONCERNING THE PROTECTION OF CRIME VICTIMS.**

Constitutional Right: The right to be reasonably protected.

The Problem: The Board of Pardons and Paroles may accept an application for a pardon, even in cases where there is an active standing criminal protective order. If the applicant is granted a pardon, the standing criminal protective order is automatically vacated.

The Solution: Uphold crime victims' constitutional rights by amending C.G.S. § 54-130a to ensure the Board of Pardons and Paroles does not accept an application for a pardon when there is an active standing criminal protective order. Instead, the Board shall be required to inform the applicant of the procedures to request that the standing criminal protective order be vacated.

Previous Proposal: None

Proposed Language:

Section 54-130a of the general statutes be repealed and the following be substituted in lieu thereof (Effective upon passage):

Sec. 54-130a. (Formerly Sec. 18-26). Jurisdiction and authority of board to grant commutations of punishment, releases, pardons and certificates of rehabilitation. (a) Jurisdiction over the granting of, and the authority to grant, commutations of punishment or releases, conditioned or absolute, in the case of any person convicted of any offense against the state and commutations from the penalty of death shall be vested in the Board of Pardons and Paroles.

(b) The board shall have authority to grant pardons, conditioned, provisional or absolute, or certificates of rehabilitation for any offense against the state at any time after the imposition and before or after the service of any sentence.

(c) The board may accept an application for a pardon three years after an applicant's conviction of a misdemeanor or violation and five years after an applicant's conviction of a felony, except that the board, upon a finding of extraordinary circumstances, may accept an application for a pardon prior to such dates.

**(d) The board may not accept an application for a pardon if the applicant's conviction for which a pardon is sought resulted in the issuance of a standing criminal protective order that remains in effect at the time of the application. The board shall notify the applicant of the procedures to request that the standing criminal protective order be vacated.**

**(e)[(d)]** Whenever the board grants an absolute pardon to any person, the board shall cause notification of such pardon to be made in writing to the clerk of the court in which such person was convicted, or the Office of the Chief Court Administrator if such person was convicted in the Court of Common Pleas, the Circuit Court, a municipal court, or a trial justice court.

**(f)[(e)]** Whenever the board grants a provisional pardon or a certificate of rehabilitation to any person, the board shall cause notification of such provisional pardon or certificate of rehabilitation to be made in writing to the clerk of the court in which such person was convicted. The granting of a provisional pardon or a certificate of rehabilitation does not entitle such person to erasure of the record of the conviction of the offense or relieve such person from disclosing the existence of such conviction as may be required.

**(g)[(f)]** In the case of any person convicted of a violation for which a sentence to a term of imprisonment may be imposed, the board shall have authority to grant a pardon, conditioned, provisional or absolute, or a certificate of rehabilitation in the same manner as in the case of any person convicted of an offense against the state.

## **AN ACT CONCERNING A CRIME VICTIM'S PARTICIPATORY RIGHTS IN A VIOLATION OF PROBATION OR CONDITIONAL DISCHARGE HEARING.**

Constitutional Rights: The right to communicate with the prosecution; the right to be informed of any proposed disposition; the right to be heard regarding the disposition; and the right to restitution.

The Problem: Violation of probation (VOP) hearings are technically an extension of the original sentencing, yet crime victims are not always afforded the opportunity to participate at a VOP hearing. If the VOP involves a new crime (i.e., violation of a standing criminal protective order), the victim's participatory rights are attached to the new criminal case, along with the VOP. 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 participate.

The victim may have a direct interest in the outcome of the VOP and to protect that interest, the victim must have the ability to participate at the VOP hearing.

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.

Previous Proposals: 2022 House Bill No. 5470

Proposed Language: *see HB No. 5470 (2022)*