



State of Connecticut  
DIVISION OF CRIMINAL JUSTICE

**TESTIMONY OF THE DIVISION OF CRIMINAL JUSTICE**

**IN OPPOSITION TO:**

**H.J. No. 336 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.**

JOINT COMMITTEE ON JUDICIARY  
March 30, 2021

The Division of Criminal Justice respectfully opposes House Joint Resolution No. 366, which proposes amending article twenty-nine (b) of the amendments to the Connecticut Constitution by removing its last sentence. This article, which is commonly known as the “victim’s rights amendment,” established that, in all criminal prosecutions, a victim, as defined by the General Assembly, shall have certain enumerated rights. Following the enumeration of such rights, the last sentence of the victim’s rights amendment provides that, “[n]othing 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 bar on appellate relief that is set forth in the last sentence of the victim’s rights amendment is essential to maintaining a proper balance between the constitutional rights that are granted victims and those that are granted criminal defendants, and to ensuring the integrity and finality of a criminal judgment of conviction. Eliminating this bar could have profound consequences if the victim’s rights amendment, and laws enacted pursuant to it, created a basis for vacating a criminal conviction or a ground for appellate relief in a criminal case. Provisions in the bill of rights granted to criminal defendants, such as due process, equal protection, and double jeopardy, may be invoked and may eliminate any opportunity for further prosecution of a conviction vacated on the basis of a violation of the victim’s rights amendment, or a law enacted pursuant to it. Ironically then, the defendant could receive a windfall, and the victim could be deprived of ever seeing justice.

Eliminating the bar on appellate relief set forth in the last sentence of the victim’s rights amendment also would have the negative consequence of opening the door to criminal defendants attempting to seek appellate relief with regard to a criminal judgment, *regardless of the victim’s wishes*, on the ground that a right enumerated in the victim’s rights amendments, or a law enacted

pursuant thereto, was violated in obtaining it. No legitimate purpose is served by opening this door.

Practically speaking, no need exists to eliminate the last sentence of the victim's rights amendment because, as the Supreme Court of Connecticut recently made clear, that sentence does *not* stand in the way of the General Assembly enforcing the rights enumerated in the victim's rights amendment through legislation. State v. Skipwith, 326 Conn. 512, 522 (2017); State v. Damato-Kushel, 327 Conn. 173 (2017). For example, in accordance with General Statutes § 46a-13c (5), the Victim Advocate is authorized to "[f]ile a limited special appearance in any court proceeding for the purpose of advocating for any right guaranteed to a crime victim by the Constitution of the state or any right provided to a crime victim by any provision of the general statutes." As the court further made clear, the bar on appellate relief set forth in the last sentence of the victim's rights amendment does *not* stand in the way of crime victims seeking to enforce their constitutional rights, and for relief unrelated to the criminal judgment, in the trial and appellate courts of Connecticut. State v. Skipwith, 326 Conn. at 522.

The bar on appellate relief set forth in the last sentence of the victim's rights amendment embodies the longstanding, necessary, and eminently sensible legal doctrine that the parties to a criminal case are only the state and the defendant, and the bar "merely prohibits [a] court from granting any relief that would directly affect the judgment in a criminal case or otherwise abridge the substantive rights of a defendant." State v. Skipwith, 326 Conn. at 524-25; State v. Damato-Kushel, 327 Conn. 184. Importantly, it "does not deprive [the Supreme] [C]ourt of its jurisdiction over writs of error arising from the victim's rights amendment." State v. Skipwith, 326 Conn. at 525.

In conclusion, the Division of Criminal Justice opposes H.J. 366 and respectfully recommends the Committee take NO ACTION. We thank the Committee for affording this opportunity to provide input on this matter and would be happy to provide any additional information the Committee might require or to answer any questions that you might have.