LAVERY and DRANGINIS, Js., dissenting from the order. We dissent from the order of the court dismissing the motions to stay the execution. We agree with the majority that the plaintiffs in error, the office of the chief public defender and Dan Ross, Michael Ross' father, lack standing to raise claims on behalf of the defendant, Michael Ross. We nevertheless would grant a stay of execution, sua sponte, because we disagree with the majority that an individual defendant can waive the benefit of any potential relief resulting from the disposition of the pending consolidated habeas corpus litigation that questions whether the administration of Connecticut's death penalty system comports with the state constitution, which consolidated litigation was ordered by this court in *State* v. *Reynolds*, 264 Conn. 1, 233, 836 A.2d 224 (2003), cert. denied, U.S. , 124 S. Ct. 1614, 158 L. Ed. 2d 254 (2004), to be litigated on behalf of all death sentenced defendants. Although the defendant is free to waive possible claims of error specific to his own prosecution, it does not follow that he should be permitted to waive the public's overriding interest in a system of capital punishment that is fairly, justly and evenly imposed. We conclude that this court's supervisory authority over the administration of justice empowers it to issue a stay when, as here, there is an active systemic challenge implicating the reliability of the most final of sentences. We further conclude that the statutory mandate that this court review all capital sentences to determine whether they are the product of passion, prejudice or any other arbitrary factor; see General Statutes § 53a-46b (b) (1); requires us to issue a stay until this court has reviewed the conclusions reached by the habeas court.

As fully explicated in Justice Norcott's dissent, Connecticut's death penalty statutes require mandatory review of all capital sentences, regardless of whether any individual defendant takes a direct appeal from his or her conviction for a capital offense. See id.; see also *Whitmore* v. *Arkansas*, 495 U.S. 149, 174 n.1, 110 S. Ct. 1717, 109 L. Ed. 2d 135 (1990) (Marshall, J., dissenting) (listing Connecticut's statute among those that provide for mandatory review of capital sentences); *State* v. *Webb*, 238 Conn. 389, 394 n.9, 680 A.2d 147 (1996) (''defendant . . . also seeks review of the sentence of death pursuant to General Statutes § 53a-46b, which provides for mandatory review by this court of any sentence of death.''); 23 H.R. Proc., Pt. 9, 1980 Sess., p. 2768, remarks of Representative Richard D. Tulisano (''[Our death penalty statute] also mandates that there be an automatic review by the Connecticut Supreme Court in order to affirm any death sentence which may be imposed on anybody''). Included in the court's mandatory review is the obligation to determine whether

the "sentence was the product of passion, prejudice or any other arbitrary factor . . . ." General Statutes § 53a-46b (b) (1). This court previously has stated that this subsection, insofar as it provides for meaningful appellate review, is one of the features of our statutory scheme that brings it in accord with the federal constitution. *State* v. *Cobb*, 251 Conn. 285, 478, 743 A.2d 1 (1999), cert. denied, 531 U.S. 841, 121 S. Ct. 106, 148 L. Ed. 2d 64 (2000), citing *Gregg* v. *Georgia*, 428 U.S. 153, 96 S. Ct. 2909, 49 L. Ed. 2d 859 (1976). The claims ordered to be litigated in the consolidated habeas corpus proceedings arise under this subsection and, therefore, are subject to mandatory review.

Through our evolving death penalty jurisprudence, it has been established that a claim of systemic unconstitutional bias or arbitrariness in the administration of Connecticut's death penalty should be raised under § 53a-46b (b) (1); *State* v. *Cobb*, 234 Conn. 735, 738, 741, 663 A.2d 948 (1995) (raising claim that "the death penalty scheme has been disproportionately applied to black defendants or to defendants whose victims were white"); and, further, that the sole appropriate forum in which to make this claim is in one consolidated habeas corpus proceeding to be litigated "on behalf of *all* defendants who have been sentenced to death." (Emphasis added.) *State* v. *Reynolds*, supra, 264 Conn. 226-28, 232-34 (raising claim that "the influence of race and other arbitrary factors on the imposition of capital punishment [throughout] Connecticut" resulted in sentences that were the product of prejudice and other arbitrary factors in violation of § 53a-46b (b) (1) and the equal protection and due process provisions of our state constitution). This litigation thus has evolved into a systemic challenge to the alleged unconstitutional application of our death penalty statute, thereby implicating society's right in the fair administration of justice.

Although his inclusion clearly is contemplated by the order in *Reynolds*, the defendant in this matter has expressed his willingness to waive participation in the consolidated habeas proceeding. Although criminal defendants routinely are permitted to waive various constitutional rights intended for their personal protection, it nevertheless is fundamental that no one individual is entitled to waive the interests of the public as a whole.[1] "[W]aiver, from its nature, applies ordinarily to all rights or privileges to which a person is legally entitled, *provided such rights or privileges belong to the individual and are intended solely for his benefit.* A waiver is not, however, allowed to operate so as to infringe upon the rights of others, or to transgress public policy or morals.

"The public interest may not be waived. Where a law seeks to protect the public as well as the individual, such protection to the state cannot, at will, be waived by any individual, an integral part thereof. The public

good is entitled to protection and consideration and if, in order to effectuate that object, there must be enforced protection to the individual, such individual must submit to such enforced protection for the public good.'' (Emphasis added.) 28 Am. Jur. 2d Estoppel and Waiver § 161 (1966) (citing cases). Accordingly, a statutory ''right conferred on a private party, but affecting the public interest, may not be waived or released *if such waiver or release contravenes the statutory policy*.'' (Emphasis in original; internal quotation marks omitted.) *New York* v. *Hill*, 528 U.S. 110, 116, 120 S. Ct. 659, 145 L. Ed. 2d 560 (2000), quoting *Brooklyn Savings Bank* v. *O'Neil*, 324 U.S. 697, 704, 65 S. Ct. 895, 89 L. Ed. 2d 1296 (1945); see also *Hatch* v. *Merigold*, 119 Conn. 339, 343, 176 A. 266 (1935) (''[o]ne cannot waive a public obligation created by statute''); *Haggerty* v. *Williams*, 84 Conn. App. 675, 681, 855 A.2d 264 (2004) (''[b]ecause of the combined private and public interests involved, individual parties are not entirely free to waive [a statute of limitations defense]''). Further, the institutional interest of a court in reaching just verdicts through fair processes justifies its disallowance of knowing and voluntary attempts to waive purportedly personal constitutional rights. See, e.g., *United States* v. *Scalzitti*, 578 F.2d 507, 511–12 (3rd Cir. 1978) (disallowing defendant's waiver of requirement of unanimous jury verdict); *State* v. *Crocker*, 83 Conn. App. 615, 631, 852 A.2d 762, cert. denied, 271 Conn. 910, 859 A.2d 571 (2004) (disallowing defendant's waiver of his counsel's conflict of interest).

It is beyond question that *all citizens* of this state share an interest in a constitutionally administered system of capital punishment, uninfluenced by factors such as race, and, by extension, in any proceeding raising systemic challenges based on the racially biased application of that system. As noted by the New Jersey Supreme Court in a case mandating that a death sentenced prisoner pursue an expedited individualized postconviction relief application and, further, requiring that his execution be stayed until the resolution of a systemic constitutional challenge to that state's death penalty system brought by another prisoner, ''[t]he public has an interest in the reliability and integrity of a death sentencing decision that transcends the preferences of individual defendants.'' *State* v. *Martini*, 144 N.J. 603, 605, 677 A.2d 1106 (1996); see also *Massie* v. *Sumner*, 624 F.2d 72, 74 (9th Cir. 1980) (noting state's ''strong interest in the accuracy and fairness of all its criminal proceedings'' in disallowing death sentenced prisoner's request to waive statutorily mandated direct appeal); *People* v. *Stanworth*, 71 Cal.2d 820, 834, 457 P.2d 889, 80 Cal. Rptr. 49 (1969) (holding state ''has an indisputable interest [in death penalty appeal] which the appellant cannot extinguish''); *State* v. *Koedatich*, 112 N.J. 225, 332, 548 A.2d 939 (1988) (''[i]t is self-evident that the state and its citizens have an over-

whelming interest in insuring that there is no mistake in the imposition of the death penalty'').

The public's interest in ensuring that Connecticut's death penalty is administered in a manner that comports with our constitution is embodied in the mandatory sentence review requirement of § 53a-46b. Our jurisprudence has established that claims of systemic bias are cognizable under § 53a-46b (b) (1) and that the sole forum in which these claims will be considered is the consolidated habeas corpus proceeding ordered by this court in *State* v. *Reynolds*, supra, 264 Conn. 233. By ordering this proceeding to be held on behalf of all death sentenced prisoners, we have conferred upon the defendant the personal rights both to participate therein and to benefit from any potential relief that might issue. The defendant's personal stake in the outcome of this proceeding is clear; the public's interest and independent stake in this proceeding is equally apparent. If this proceeding leads to a determination that Connecticut's death penalty system has been administered prejudicially or arbitrarily, all prisoners sentenced thereunder would have their sentences commuted to life imprisonment. See General Statutes §§ 53a-46b (a) and (b) and 53a-35a (1). In a case involving life and death, prematurely permitting an individual defendant to waive the benefit of such a proceeding could lead to irreversible damage to the public interest in the fair administration of society's ultimate penalty. In light of the public's independent interest, the defendant's waiver of his private interest is legally irrelevant. ''In this regard we are not concerned with the defendant's welfare, but rather [with] the operation of our system.'' *Commonwealth* v. *McKenna*, 476 Pa. 428, 445 n.7, 383 A.2d 174 (1978) (Nix, J., concurring).

Accordingly, we respectfully dissent from the court's order dismissing the motions to stay the execution.

[1] This analysis of an individual's inability to waive a public right, or a right in which the public is intricately invested, is distinct from but supplements the conclusion that Justice Norcott reaches in determining that § 53a-46b provides for mandatory sentence review which, by its nature, is not subject to waiver.