



**State of Connecticut**  
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**Raised Bill No. 320**  
**An Act Concerning Time Limitations on the Filing of Appeals and**  
**Habeas Corpus Applications in Capital Felony Cases**

**Judiciary Committee Public Hearing**  
**March 10, 2008**

The Office of the Chief Public Defender strongly opposes this bill and urges the Committee to reject it as it could violate the state and federal constitutional rights of a person to effective assistance of counsel by placing unreasonably short time limits for the initiation and completion of post-conviction proceedings (habeas corpus and appeals) in capital felony cases.

**Reasons Presented for Opposing this Bill:**

- **The legislation creates unrealistic deadlines which are burdensome and which will require substantial resources.** Neither court reporters nor lawyers for either of the parties would be able to meet the deadlines as proposed. Any effort to meet the appeal deadlines would be very expensive due to the need for additional court reporters and highly experienced defense and prosecution lawyers. In addition, counsel for both parties would be required to review all transcripts -- which can exceed 10,000 pages -- exhibits and then research the numerous issues which may be presented and write briefs, all within 4 months of the sentencing. Such deadlines would make it virtually impossible for defense counsel to meet his/her constitutional or ethical standards of performance.
- **Obtaining qualified counsel to represent capital defendants on appeal or in habeas corpus cases is already extremely difficult and will be exacerbated, if not impossible, if these deadlines were passed.** Right now, there is one designated capital appellate counsel attorney in the Office of the Chief Public Defender. In capital habeas corpus cases, outside counsel (Special Public Defenders), have been

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appointed. Even if private counsel could afford to take such serious cases under these time limits, the limits are likely to deter counsel from taking the cases because they do not permit defense counsel to provide effective representation as constitutionally required or to comply with the ethical duties owed to the client.

- **The failure to provide effective assistance of counsel on appeal would result in the reversal of cases.** Counsel's failure to conduct adequate review of transcripts and exhibits, research and draft a thoughtful brief that thoroughly reviews and analyses the issues would be ineffective and inadequate pursuant to the constitutional requirement for reasonably competent counsel.
- **The deadlines contained in Section 1 are an arbitrary factor that threatens the constitutionality of Connecticut death penalty scheme.** In addition, to the extent that this legislation would limit the Supreme Court's ability to manage its own docket, it may give rise to a separation of powers issue.
- **Section 2 (b) contains an unconstitutional suspension of the Writ of Habeas Corpus as it bars the filing of certain applications for the Writ.** The constitution does not permit legislation that prohibits the courts from hearing habeas corpus petitions in peace time. U.S. Constitution, Art. I § 9, cl. 2 and Conn. Constitution, Art. I § 12
- **Sections 1 and 2 are logically inconsistent.** The time limits in Section 1 make it impossible to know all of the cognizable habeas corpus claims within 180 days of sentencing but Section 2 says that all cognizable claims be pleaded at that time.
  - \* The number of habeas corpus cases will double in capital felony cases because of the habeas claims that can not be raised until after all appeals are finished. For example, a claim of ineffective assistance of counsel is required to be raised in a habeas corpus petition.
  - \* This will double the number of habeas corpus lawyers in each affected case because Section 2 (b) makes a second petition depend on facts only within the knowledge of the first habeas corpus lawyers. As a result, the lawyers in the first habeas corpus case will be witnesses and can not also be counsel in the second habeas case. There probably are not enough qualified counsel in Connecticut to comply with this legislation as no one lawyer would be capable to handle more than one matter at a time under these rules.
- **Section 2(b) is internally inconsistent:** Section 2(b) says there is a bar to *filing* any second or subsequent habeas corpus petition and then creates exceptions to that rule based on facts and law that only could be decided in a filed case where a judge has the power to decide them. This proposed legislation can not work in practice.

- **Section 2 would multiply the number of habeas corpus cases in all capital felony convictions, not limited to cases where there is a sentence of death.** Although the appeal provisions of Section 1 would apply only to cases where there is a sentence of death, Section 2 would apply in all habeas corpus cases arising from capital felony convictions *or* a sentence of death. This means that under less favorable conditions, twice as many habeas corpus lawyers will be necessary in all habeas corpus capital felony cases. Section 2 would increase the fiscal impact of the proposed legislation beyond even its anticipated stated purpose.
  
- **Section 2 would expand the scope of habeas corpus representation under Connecticut law.** Presently, counsel is appointed for indigent petitioners in pending habeas corpus cases. The proposed legislation as drafted would require the pre-filing assistance of counsel to plead according to these standards and time frames. The language for this proposal appears to assume pre-filing assistance of counsel by setting these standards. The pre-filing right to counsel would be a significant expansion of the statutory duties, the scope of the role of counsel and the fiscal impact of which could only be ascertained over time, non of which are addressed in this legislation.

For all these reasons, we urge this Committee to reject this legislation.