



State of Connecticut
DIVISION OF CRIMINAL JUSTICE

A. Hochmeier

**Testimony of the Division of Criminal Justice
Joint Committee on Judiciary – March 26, 2009**

In support of:

- **H.B. No. 6705 An Act Concerning Habeas Corpus Reform**

The Division of Criminal Justice respectfully requests the Committee's Joint Favorable Report for H.B. No. 6705, An Act Concerning Habeas Corpus Reform. This bill provides much-needed and long-overdue reform of the process for the filing and disposition of petitions for a writ of habeas corpus. The Division has submitted additional information to the Clerk of the Committee as attachments, which are listed at the end of this testimony.

The purpose of this act is to make post-conviction review in Connecticut more efficient and less costly while continuing to provide a venue for relief from unconstitutional convictions. The act does not create a new remedy or abolish the writ of habeas corpus. Rather, it codifies the procedures to be followed upon the filing of a writ in which an inmate challenges (1) a conviction or sentence and the resulting custody, including incarceration, probation or parole or (2) an insanity acquittal and resulting custody by the Psychiatric Security Review Board (PSRB). The adoption of these procedures will permit inmates to challenge their convictions but require that they bring all of their claims in one proceeding and in a timely manner. This will eliminate the current waste of resources through piecemeal litigation.

With the adoption of H.B. No. 6705, Connecticut's post-conviction procedures will be brought into harmony with those of the majority of states. For example, 30 of the 50 states impose a statute of limitations for the bringing of such claims. Likewise, the vast majority of states prohibit repetitive filings by mandating that all claims be brought in the first petition, absent good cause.

The adoption of the procedures proposed in H.B. No. 6705 simply recognizes that a balance must be found between a prisoner's need to throw-off an unjust conviction and the State's need that litigation eventually end and an inmate's rehabilitation begin. In discussing post-conviction proceedings, the Supreme Court of the United States has observed that the "writ of habeas corpus is one of the centerpieces of our liberties. 'But the writ has potentialities for evil as well as for good. Abuse of the writ may undermine the orderly administration of justice and therefore weaken the forces of authority that are essential for civilization.' ..." (Citation omitted.) *McClesky v. Zant*, 499 U.S. 467, 496, 11 S.Ct. 1454, 1471, 113 L.Ed.2d 517 (1991). "[W]rits of habeas corpus frequently cost society the right to punish admitted offenders. Passage of time, erosion of memory, and dispersion of witnesses may render retrial difficult, even impossible. While a habeas writ may, in theory, entitle the defendant only to retrial, in practice it may reward the accused with complete freedom from prosecution." *Engle v. Isaac*, 456 U.S. 107, 127-28, 102 S.Ct. 1558, 1572, 71 L.Ed.2d 783 (1982). "At some point litigation must come to an end. The purpose of law is not to provide convicted criminals with the means to escape well-deserved sanctions, but to provide a reasonable opportunity for those who have been wrongly convicted to

demonstrate the injustice of their conviction." *Commonwealth v. Peterkin*, 554 Pa. 547, 557-58, 722 A.2d 638 (1999). Nor is the purpose of law to "fill the leisure hours of prisoners by permitting them to file endless post-conviction petitions." *Id.* at 557.

Under the current system in Connecticut, a person convicted of an offense may file a direct appeal to the Appellate Court and/or the Connecticut Supreme Court and then may seek review by the United States Supreme Court. This bill will not change that. A defendant may then file an unlimited number of habeas petitions and obtain counsel, and a trial on the habeas petition, and an appeal on each one – so long as he attacks the representation provided by predecessor counsel in raising or litigating his issues at a prior proceeding. At some point, however, "the law must convey to those in custody that a wrong has been committed, that consequent punishment has been imposed, that one should no longer look back with a view to resurrecting every imaginable basis for further litigation but rather should look forward to rehabilitation and to becoming a constructive citizen." *Engle v. Isaac*, 457 U.S. at 127 n.31.

The current situation in Connecticut is not a new development nor is it an issue that has not been examined by our court system and others. It was well summarized in a February 28, 2008, letter from Michael Dearington, State's Attorney for the Judicial District of New Haven, to the Public Service and Trust Commission established by the Judicial Branch:

I am writing about the distressing, longstanding post conviction habeas corpus problem in this State. I am writing to make you aware of the full extent of this day-to-day legal "train wreck" which [Chief State's Attorney] Kevin Kane and the Division of Criminal Justice have taken the initiative in trying to correct. Over the years the Division, with little or no success, has sought to correct the problem that a convicted person may file an unlimited number of applications for writs of habeas corpus. Each results in a mini-trial. When one is denied then another is filed, for the same reason or another reason. It can be endless, and the State pays for it and pays for a "special public defender" to represent the petitioner. Almost all of these habeas petitions are without merit. There is virtually no screening process within the system directed at weeding out the claims. Such an unreasonable procedure does not exist in the federal system or, I dare say, in most states. Moreover, there is no statute of limitations on the legal ability to file such process. It is not unusual to have a habeas petition filed ten or fifteen years after conviction.

... But this not the worst of the debacle.

In the last few years, this system has fostered the deprivation of victims' constitutional and human rights. There have been numerous habeas trials where the petitioner's counsel has subpoenaed the crime victim or lay witnesses who have already testified at the criminal trial.

Needless to say, these individuals are shocked and frightened to have a process server show up at their homes/work place many years after they thought that a criminal case was finished, with a subpoena ordering them to drive to Rockville to face the perpetrator again.

In this letter, State's Attorney Dearington detailed specific cases where individuals convicted of violent crimes have used the habeas process to again victimize the victims of those crimes. In some cases, these violent criminals have sought to have their victims

ordered to court so the criminal can personally question the victim. There is no new evidence whatsoever nor has the victim or any of the witnesses recanted their original testimony. It is purely harassment, and the Division of Criminal Justice would contend, a violation of the rights guaranteed to the victims of crime by our state Constitution.

One case cited by State's Attorney Dearington is particularly disturbing:

In *Vincent Martone v. Commissioner*, CV05-4000347, filed in 2005, habeas counsel subpoenaed the victim of a home invasion. The victim was home alone when two men entered her home in December of 2000. She was threatened with a crowbar and locked in the furnace room while her home was searched for valuables. The victim had already testified at a motion to suppress. The defendant subsequently pleaded guilty. His habeas counsel's excuse for calling her was that perhaps the habeas court would not find her credible. The State's Motion to Quash was denied. The 64-year-old victim had to relive this terrifying experience. She left the stand clutching her heart and in tears. She and her husband had to drive 50 miles to Rockville from New Haven in a sleet/rainstorm and got lost along the way. Her testimony, seven years after the crime, was almost a verbatim reliving of her experience and was of no assistance to the petitioner at all.

This abuse of human rights should be reason enough to bring about reform of the habeas process. It is, however, not the only reason why reform is in order. The current practice that allows inmates to abuse the habeas process is also a waste of limited public resources that threatens to potentially violate the rights of those who have legitimate claims. The ever-increasing caseload has left the Division of Criminal Justice in a never-ending race to meet deadlines and file legitimate responses to what simply are not legitimate petitions. The Division has been forced to allocate an increasing share of its limited resources to dealing with cases that have no merit. We have been forced to assign heavy caseloads to full-time prosecutors, including those who have other critical duties in the pretrial and trial stages of prosecutions. We have had to hire per diem employees to keep pace with the caseload. Were it not for the dedication and commitment of our employees, there is little doubt that the Division long ago would have been unable to meet its responsibilities in this area. But even the best employees can only be stretched so far – and we are fast approaching the breaking point – and all of this for a growing number of petitions that simply do not belong in the system to begin with. The issue is as much one of fairness as it is the waste of limited resources.

A recent survey of Division of Criminal Justice offices puts the total number of currently pending habeas cases at more than 1,500. These include:

- 825 cases involving the Civil Litigation Bureau in the Office of the Chief State's Attorney. The vast majority of these cases (approximately 650) are pending in the state court system; fewer are pending in the federal courts (United States District Court; United States Circuit Court of Appeals for the Second Circuit);
- Nearly 300 cases being handled by the Office of the State's Attorney for the Judicial District of Waterbury;
- Approximately 215 cases assigned to one Senior Assistant State's Attorney in the Judicial District of New Haven who is assigned solely to habeas matters and who is assisted by a per diem prosecutor. It is interesting to note that while all of these cases are assigned to a single prosecutor, the petitioners in nearly 140 of these cases are represented by special public defenders. Another 30 or so

cases had not been assigned as of the date the data was collected but will likely be assigned to special public defenders;

- More than 150 cases in which the state is represented by prosecutors from the Post Conviction Unit in the Judicial District of Fairfield in Bridgeport;
- More than 60 cases being handled by prosecutors in the Office of the State's Attorney for the Judicial District New London. It is interesting to note that not all cases are from the Judicial District courts; several of those pending in the New London Judicial District are from cases decided in the Geographical Area (G.A.) courts in New London and Norwich. No court location is immune from the never-ending flood of habeas matters.

The simple reality is we are spending time on frivolous and vindictive petitions at the expense of valid legal claims. The very small percentage of inmates who may have a valid claim that is worthy of consideration by the courts are being forced to stand in line behind the vast majority who are merely wasting the court's time and the public's resources. Just as it is not justice to allow inmates to use the habeas process to re-victimize the victims of their original crimes, neither is it justice to make those who deserve a day in court wait while the courts take up cases with absolutely no merit at all.

The problems with the habeas process are not new. In fact, the General Assembly itself recognized many of the same concerns being voiced today several years ago. The Connecticut Law Revision Commission studied the habeas process at the request of the co-chairs of the Joint Committee on Judiciary. A committee of the Law Revision Commission consisting of Judge John Maloney, then-Representative Robert Farr and attorneys Jon P. FitzGerald and Robert W. Grant. The committee submitted a report dated February 13, 2001, to the Law Revision Commission recommending several of the same reforms proposed in H.B. No. 6705. A copy of the 2001 report is attached to this testimony.

Clearly, the time has come for reform of the habeas process. H.B. No. 6705 seeks to end the abuse of the process by bringing about meaningful reforms that in no way infringe on the legitimate rights of any party, and, as just stated, will in fact enhance the ability of those with valid claims to have their cases heard. The bill does not prevent someone who has evidence of actual innocence from bringing that forward at any time; it does prevent an inmate from harassing innocent victims and witnesses by allowing a never-ending stream of unfounded claims that have been long ago resolved.

A section-by-section explanation of the bill details how reasonable, yet effective, reform would be achieved:

Section 1 simply makes it clear that the provisions of H.B. 6705 apply to habeas petitions challenging the legality of a conviction, sentence, or commitment filed after the bill is enacted. The changes in no way affect those habeas cases challenging the conditions of confinement and in which the Commissioner of Corrections is represented by the Attorney General.

Section 2 makes it clear that a petition for writ of habeas corpus can not be used as a substitute for any of the remedies available in the trial court to persons charged with crimes or on direct appeal to persons who have been convicted. It establishes that a person convicted of a crime may challenge the legality of his or her conviction or sentence by means of a direct appeal, petition for new trial, motion for sentence review, motion for reduction or discharge, a motion to correct an illegal sentence, or a petition for writ of habeas corpus. The remedy of habeas corpus takes the place of all other common

law, statutory, or other remedies available for challenging the legality of a conviction or sentence.

Section 3 seeks to limit the repetitive filing of claims and piecemeal challenges to the legality of convictions and sentences by providing that any claims that were raised and decided or could have been raised in the trial court, on direct appeal, or in an earlier petition for writ of habeas corpus are procedurally barred and no court may hear such claims in a petition for writ of habeas corpus. The procedural bar does not apply, however, if the petitioner is able to show (1) good cause for the failure to raise the claim in the earlier proceeding and actual prejudice resulting from that failure, (2) newly discovered evidence that establishes clear and convincing evidence that the petitioner is innocent of the crimes of which he or she was convicted, or (3) the claim is based on a new interpretation of constitutional law that is retroactively applicable.

Section 4 provides that petitions for writs of habeas corpus must be filed within three years of the date that sentence was imposed or the commitment ordered or more than one year after the person's direct appeal is decided by the last appellate court in the state to exercise jurisdiction or the Supreme Court of the United States, whichever is later. The section creates exceptions if the petitioner is able to show: (1) that a physical disability or mental disease precluded a timely assertion of the claim, (2) newly discovered evidence that establishes clear and convincing evidence that the person is innocent of the crimes of which he or she was convicted, (3) the claim is based on a new interpretation of constitutional law that is retroactively applicable.

Section 5 provides that a person who files a second or subsequent petition is not entitled to court appointed counsel. It further provides, however, that the court may appoint counsel if it determines that the petition is not frivolous, that the interests of justice will be served by consideration of the claims raised, and the petitioner is indigent. This section also seeks to limit the number of successive petitions that can be filed by providing that a claim of ineffective assistance of habeas counsel shall not be a ground for relief in a second or subsequent petition.

Some will contend that this provision represents a denial of the right to counsel. Such is not the case. The United States Constitution does not provide criminal defendants with a right to counsel beyond the first appeal as of right. *Pennsylvania v. Finley*, 481 U.S. 551, 107 S.Ct. 1990, 95 L.Ed.2d 539 (1987); *Ross v. Moffitt*, 417 U.S. 600, 617-19, 94 S.Ct. 2437, 41 L.Ed.2d 341 (1974). In most cases, this means a defendant has a right to effective counsel only in the Appellate Court. Therefore, as a constitutional matter, they have no right to counsel – effective or otherwise – when petitioning Connecticut's Supreme Court for certification to appeal and in habeas corpus proceedings. See *Finley*, 481 U.S. at 555. Contrary to federal law, the Connecticut Supreme Court has found a right to the effective assistance of habeas counsel. *Lozada v. Warden*, 223 Conn. 834 (1992). That right is founded in General Statutes Section 51-296, which requires the appointment of counsel “[i]n any criminal action, in any habeas corpus proceeding arising from a criminal matter. . . .” The court reasoned that this right to counsel would “become an empty shell if it did not embrace the right to have the assistance of a competent attorney.” *Lozada*, 223 Conn. at 839. Thus, the right to effective habeas counsel arises from statutory interpretation. A petitioner also is entitled to the effective assistance of habeas appellate counsel. *Iovieno v. Commissioner of Correction*, 242 Conn. 689, 701-02 (1997). To prove a claim that prior habeas counsel was ineffective is “a herculean task.” *Lozada*, 223 Conn. at 843. The petitioner must demonstrate “both (1) that his appointed habeas counsel was ineffective, and (2) that his trial counsel was ineffective.” *Id.* at 842. The Division of Criminal Justice is

aware of no petitioner who has prevailed on a claim that prior habeas counsel was ineffective and received a new trial. A few have obtained a restoration of their right to appeal the decision of the prior habeas court. See, e.g., *Jarrett v. Commissioner of Correction*, 106 Conn. App. 317, 318 (2008). Given that the right to effective habeas counsel is based upon the statutory right to counsel in habeas proceedings, the legislature has the constitutional ability to limit counsel for subsequent petitions.

Section 6 provides that a person shall file a petition for writ of habeas corpus in the jurisdiction in which he or she was convicted, sentenced or committed.

Section 7 makes it clear that the provisions of this section shall not apply to any petitions for writ of habeas corpus filed prior to the enactment of this bill. The reforms are strictly prospective. All habeas matters pending on the effective date of the act would proceed as they would under current law.

In conclusion, these provisions provide for meaningful reform of the habeas process to assure the effective and efficient administration of justice. Clear exceptions are established to protect the rights of all and to ensure a forum for the consideration of legitimate claims. The Division of Criminal Justice would respectfully request the Committee's Joint Favorable Report for H.B. No. 6705. The Division extends its appreciation to the Committee for your consideration of this important legislation. We would be happy to provide any additional information the Committee might desire or to answer any questions you might have.

ATTACHMENTS filed with the Clerk of the Joint Committee on Judiciary:

(1) Letter of February 28, 2008, from Michael Dearington, State's Attorney for the Judicial District of New Haven to the Judicial Branch Public Service and Trust Commission re: "Habeas Horror Stories and need for Habeas Reform from Crime Victim's Perspective".

(2) "Committee report on habeas corpus," submitted by the committee consisting of Judge John Maloney, Representative Robert Farr and attorneys Jon P. FitzGerald and Robert W. Grant to the Law Revision Commission, February 13, 2001.

(3) Table prepared by the Civil Litigation Bureau in the Office of the Chief State's Attorney illustrating decisions by the courts in twelve states upholding the constitutionality of statutes of limitations in habeas cases. A federal statute of limitations has been in place since 1996 and has never been held unconstitutional.

(4) Table prepared by the Civil Litigation Bureau in the Office of the Chief State's Attorney illustrating the results of a random review of the right to counsel in post-conviction proceedings in several states. The chart also notes for some states whether the ineffective assistance of counsel in a prior habeas proceeding is a cognizable claim in a subsequent petition.

(5) Table prepared by the Civil Litigation Bureau in the Office of the Chief State's Attorney identifying the thirty states that have a statute of limitations for habeas matters.



State of Connecticut
DIVISION OF CRIMINAL JUSTICE

ATTACHMENTS TO TESTIMONY

H.B. NO. 6705: AN ACT CONCERNING HABEAS CORPUS REFORM

**JOINT COMMITTEE ON JUDICIARY
MARCH 26, 2009**

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Honorable Alexandra DiPentima, Chairperson
Public Service and Trust Commission
Appellate Court, 75 Elm Street
Hartford, CT 06106

February 28, 2008

Re: *Habeas Horror Stories and Need for Habeas Reform from Crime Victim's Perspective*

Dear Judge DiPentima:

I, at the suggestion of Kevin Kane, am writing to you in your capacity as Chairperson of the Public Service and Trust Commission.

I am writing about the distressing, longstanding post conviction habeas corpus problem in this State. I am writing to make you aware of the full extent of this day to day legal "train wreck" which Kevin Kane and the Division of Criminal Justice have taken the initiative in attempting to correct. Over the years the Division, with little or no success, has sought to correct the problem that a convicted person may file an unlimited number of applications for writs of habeas corpus. Each results in a mini trial. When one is denied then another is filed, for the same reason or another reason. It can be endless, and the State pays for it and pays for a "special public defender" to represent the petitioner. Almost all of these habeas petitions are without merit. There is virtually no screening process within the system directed at weeding out the claims. Such an unreasonable procedure does not exist in the federal system or, I dare say, in most states. Moreover, there is no statute of limitations on the legal ability to file such process. It is not unusual to have a habeas petition filed five or ten or fifteen years after conviction. Again, this is not tolerated in the federal system or most states. This is the reason that in the New Haven Judicial District we have pending about two hundred active habeas matters which are being handled by a full time and part time prosecutor.

Moreover each Judicial District has an unmanageable caseload not to mention the Tolland J.D. Superior Court where 1216 habeas matters are currently pending.

But this is not the worst of this debacle.

In the last few years, this system has fostered the deprivation of victims' constitutional and human rights. There have been numerous habeas trials where the petitioner's counsel has subpoenaed the crime victim or lay witnesses who have already testified at the criminal trial.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

Needless to say, these individuals are shocked and frightened to have a process server show up at their homes/work place many years after they thought that a criminal case was finished, with a subpoena ordering them to drive to Rockville to face the perpetrator again.

Specific recent examples include the following cases:

In *Leroy Harris v. Commissioner*, CV05-4000393, filed in 2005, counsel for the petitioner subpoenaed the crime victims. Mr. Harris had been convicted after trial in a case where the two victims were raped, accosted and robbed after having made a wrong turn in New Haven. Our office became aware of the subpoenas when the father of one of the victims called to say that a process server had showed up at his house. The father was irate, since the case had severely traumatized his daughter. The crime occurred in 1983! Harris has already had several previous habeas trials. The victims have never recanted and the sole reason for the subpoena was the petitioner's claim that he was innocent and the victims were mistaken and he wanted to question them again. Fortunately, Judge Fuger dismissed the case before the victims were forced to relive their ordeal. However, the victims' sense of privacy had already been invaded.

In *Joseph Hoskie v. Commissioner*, CV03-0004097, filed in 2003, the petitioner insisted that his habeas counsel subpoena the crime victim (his former girlfriend). Hoskie had kidnapped and terrorized her in 2000. She too had not recanted, was very fearful about seeing him again, and had nothing to say that would have assisted him. Fortunately, Judge Fuger granted the State's Motion to Quash, but the victim nevertheless had come to court and to lose time from work. Subpoenaing her was simply a form of harassment.

In *Ronnie Holley v. Commissioner*, CV04-0004525, filed in 2004, the petitioner insisted that his habeas counsel subpoena the crime victim (his former girlfriend). Holley had been convicted of raping her in 2002. She had sought the aid of the witness protection program and had relocated out of state after the trial. She too had not recanted, was very fearful about seeing him again, and had nothing to say that would have assisted him. Although she was not located by the time of trial, her family was very concerned that she was being sought by representatives of the man who had assaulted her.

In *Orgeby Hollby v. Commissioner*, CV01-0453733, filed in 2001, the petitioner insisted that his habeas counsel subpoena the crime victim (a child who had been molested by the petitioner). Hollby had molested the child in 1997. She too had not recanted, and the sole reason for requesting continuances to locate her was that the petitioner wanted his counsel to question her. Fortunately, she was not located and did not have to testify, but her family was very concerned that she was being sought so many years after the guilty plea. Also, they were concerned because Hollby was no longer in jail and they did not want him to know her current whereabouts.

In *Vincent Martone v. Commissioner*, CV05-4000347, filed in 2005, habeas counsel subpoenaed the victim of a home invasion. The victim was home alone when two men entered her home in December of 2000. She was threatened with a crow bar and locked in the furnace room while her home was searched for valuables. The victim had already testified at a motion to suppress. The defendant subsequently pleaded guilty. His habeas counsel's excuse for calling her was that perhaps the habeas court would not find her credible. The State's Motion to Quash was denied. The 64 year old victim had to relive this terrifying experience. She left the stand clutching her heart and in tears. She and her husband had to drive the 50 miles to Rockville from New Haven in a sleet/rainstorm and got lost along the way. Her testimony, 7 years after the crime, was almost a verbatim reliving of her experience and was of no assistance to the petitioner at all.

In all these instances, the crime victim had been subjected to the threat that she will have to face again the person who violated her. The timing of this re-victimization is entirely at the whim of the inmate. No crime victim should have to face the possibility that she can be subpoenaed at any time while the perpetrator is serving his sentence. Nor should she have to drive the excessive mileage that all participants are required to drive to get to remote Rockville, without any preliminary showing that her testimony is material or relevant to the proceedings. The decision to transfer habeas cases to Rockville shows no concern for the time and financial cost to persons, including victims and lay witnesses as well as attorneys, to reach that remote location. The venue only adds to the inconvenience to the victim.

While there has been recent legislation to curtail pro se litigants from subpoenaing their victims, there is currently no requirement that habeas counsel make any preliminary showing before subpoenaing crime victims or persons who have already testified.

The same situation has arisen with former witnesses. People from the community who witnessed a crime and reported it to the police are being subpoenaed years later to Rockville to be questioned about events that happened many years ago. For example, in *Larry McCown v. Commissioner of Correction*, CV03-0004172, filed in 2003, a national guard officer who saw a shooting 1994 while looking out the Armory window, and who testified at the criminal trials of all three defendants, was subpoenaed to Rockville many years later, simply so that she could be asked the same questions that she already testified to at the criminal trials. The woman had to take a day off from work, drive to Rockville at her own expense, and wait in court all day until counsel got around to questioning her. She added nothing to the habeas case, but the petitioner sure made his point that he had the power to inconvenience her at his whim.

In the *Holley* case mentioned above, counsel also subpoenaed a witness from Catholic Charities, who drove with a coworker at the charity's expense from New Haven to Rockville, because the petitioner had the notion that the victim only made the criminal complaint to get assistance. The fact that the petitioner's attorney had already been told by Catholic Charities that there was no such connection meant nothing, because the petitioner wanted the witness called anyway! In other words, even charities are not immune to this abuse.

In a pending case, concerning a crime committed in 1987, with the criminal trial in 1989, the petitioner is subpoenaing lay and police witnesses, including medical personnel, from the original criminal trial. None of these persons have recanted their former testimony, yet they are being subpoenaed to Rockville 20 years later. It is expected that these witnesses will either have to take a day off from work and drive the considerable distance to Rockville, only to state that they have already testified to what they know, or their employers or the state will have to go to the effort and expense of filing motions to quash the subpoenas.

As an added note, lay witnesses are typically served with subpoenas at the last moment and without any reasonable advance notice to them, to their employers, or to the state, which typically makes a motion to quash impractical since there is not enough time to file the motion and have it heard before the appearance date on the subpoena. The result is that the witness has to show up in Rockville even if a motion to quash is filed and argued.

The common denominator is that these witnesses were shocked to learn that, if you witness a crime and talk to the police (or if you assist someone who turns out to be a crime victim, as a charity or as a medical person), you are subject to being subpoenaed by the defendant many years later. And of course, the State aids in this absurdity, catering to his whim and his choice of timing, for as long as he is serving his sentence. The fact that the defendant pleaded guilty or was found guilty by a jury after a trial means nothing. Everyone also asks: Why am I being subpoenaed to Rockville and not the jurisdiction where the case occurred? How will I get there and who will pay for my gasoline and lost day(s) of work? Why do I have to testify again when I already testified at the trial? Why do I have to testify when he pleaded guilty years ago? When does this end?

These examples are not unique to the New Haven Judicial District. The Bridgeport and Hartford Judicial Districts have similar habeas "horror stories", as does the Office of the Chief State's Attorney Civil Litigation Bureau. The problem is getting worse.

If the following reforms were enacted the above mentioned abuses would not have occurred.

1. A statute of limitations
2. A requirement that habeas petitions be filed and heard in the Judicial District where the case arose; and
3. A requirement that all petitioners, whether pro se or represented by counsel, make a preliminary showing that the testimony of the victim or a witness who has previously testified is needed for the habeas trial, *before* any subpoenas are issued.

This is not to suggest that some applications for a writ of habeas corpus are not legitimate but it is clear the system is substantially abused at the expense particularly of victims who become re-victimized and re-traumatized.

Very truly yours,



Michael Dearington
State's Attorney

MD/tc

cc: Honorable Chase T. Rogers, Chief Justice
cc: Michelle Cruz, Office of the Victim Advocate

REP ARTHUR J. ONEILL, CHAIR
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To: Law Revision Commission Members
From: David L. Hemond
Date: February 13, 2001
Re: Committee report on habeas corpus

The Connecticut Law Revision Commission, at its May 16, 2000 regular meeting, pursuant to a request of the Cochairs of the Judiciary Committee, voted to undertake a review of the habeas corpus system in Connecticut. In accordance with that action, a Commission subcommittee chaired by Commission member Judge John Maloney and including Commission members Representative Robert Farr, Jon P. FitzGerald, and Robert W. Grant met with a group of advisors, including representatives of the offices of the Chief State's Attorney and the Chief Public Defender, to analyze and prepare recommendations concerning that review.

After review, the committee has prepared recommendations, as detailed below, in the following areas:

- Promulgation of a court rule providing judicial discretion to dismiss a habeas petition the filing of which was unreasonably delayed if the delay in filing is not the result of new evidence or new law, or is not otherwise reasonably justifiable, and the State has been prejudiced by the delay. The proposal includes a safe harbor time period for filing of three years for claims of ineffective assistance of counsel and of one year for claims that do not challenge the conviction that provides the grounds for confinement.
- Authority for the Chief Court Administrator to consolidate venue for all habeas petitions contesting incarceration in one judicial district, or to revise that venue as may otherwise be necessary, to improve access to experienced habeas judges and to improve efficiency and equity of resource allocations.
- Elimination of the right to appeal the denial of a petition for certification to appeal.
- Provision of statutory authority for prescreening of inmate cases by public defenders.
- Increased use of administrative grievance procedures by requiring exhaustion of administrative remedies prior to consideration of conditions of confinement claims.
- Strengthening record retention rules to ensure availability of records and exhibits that are necessary for a habeas review.

Judicial discretion to dismiss an unreasonably delayed filing

A primary impetus for the Commission's review of habeas law was the concern expressed by the Office of the Chief State's Attorney as to the potential for abuse of the writ and for the filing of state claims when a habeas petition is used to bring claims based on ineffective assistance of counsel. The use of a habeas petition as the proper method by which to raise a claim of ineffective assistance of counsel was expressly approved by the Connecticut Supreme Court in *State v. Leecan*, 198 Conn. 517, cert. denied, 476 U.S. 1184 (1986). The essence of that case was to direct that claims based on ineffective assistance should be brought as habeas proceedings or as petitions for a new trial rather than pursuant to an appeal because the independent proceeding ensured consideration by the court of a fuller record.

One result of that ruling is that because ineffective assistance claims are now routinely brought as habeas petitions rather than as part of the underlying case, those claims, themselves, have substantially expanded the habeas docket. However, because such a claim requires review of the trial proceedings, a lengthy delay in asserting the claim can prejudice the State in its ability to respond to the allegations. The committee finds that, while procedural limitations on habeas should not preclude a good faith petitioner from access to the court, a petitioner is not entitled to delay the filing of a mature claim in a way that prejudices the State in defending against the petition. While Practice Book Rule 23-29 expressly provides five grounds for summary dismissal of a habeas petition, including legal insufficiency or repetition of the claims, and "any other legally sufficient ground for dismissal", it does not expressly include authority to dismiss a claim based on an unreasonable filing delay by the petitioner that is prejudicial to the State. Because the current procedural rules governing habeas practice are collected in the Practice Book, the committee recommends that the Rules Committee of the Superior Court adopt an appropriate revision to the rules addressing an unreasonable delay in filing.

With respect to claims of ineffective assistance of counsel, the committee recommends language that would allow dismissal of the claim without a hearing on the merits if (1) the claim is filed more than three years after the judgment, and more than one year after the expiration of any appeals, and (2) the claim is not based on new evidence or new law and the delay in filing is not otherwise reasonable, and (3) the delay is prejudicial to the State. In habeas cases where the claim is not attacking the conviction that provides the grounds for confinement – typically conditions of confinement cases – the committee recommends that the analogous safe harbor for filing be reduced to one year.

In the alternative, should the Judges of the Superior Court wish to defer consideration of such a rule, consideration could be given to adoption of the proposed language by statute.

One approach would amend Practice Book Rule 23-29 as follows:

"(a) The judicial authority may, at any time, upon its own motion or upon motion of the respondent, dismiss the petition, or any count thereof, if it determines that:

(1) the court lacks jurisdiction;

(2) the petition, or a count thereof, fails to state a claim upon which the habeas corpus relief can be granted;

(3) the petition presents the same ground as a prior petition previously denied and fails to state new facts or proffer new evidence not reasonably available at the time of the prior petition;

(4) the claims asserted in the petition are moot or premature;

(5) as provided in subsection (b) or (c), the state has been prejudiced by an unreasonable delay in filing the claim;

(6) any other legally sufficient ground for dismissal of the petition exists.

(b) A writ of habeas corpus based on a claim of ineffective assistance of counsel may be dismissed without a hearing on the merits of the claim if it is brought more than three years after the date of final judgment in the trial court or more than one year after final disposition of any appeal from that judgment, whichever is later, and (1) the petitioner's delay in filing the claim is not the result of new evidence or new law, or is not otherwise reasonably justifiable, and (2) the failure to file the claim in a timely manner has prejudiced the state in defending the basis of the incarceration.

(c) A writ of habeas corpus that does not contest the conviction that is the basis of the petitioner's confinement may be dismissed without a hearing on the merits of the claim if it is brought more than one year after the date of the event with respect to which habeas relief is sought and, except as provided in subsection (d), more than one year after disposition of any proceeding to exhaust administrative remedies that is required by [the section requiring exhaustion of administrative remedies] if (1) the petitioner's delay in filing the claim is not the result of new evidence or new law, or is not otherwise reasonably justifiable, and (2) the failure to file the claim in a timely manner has prejudiced the state in defending the claims made in the petition for habeas relief.

(d) The period specified in subsection (c) is not tolled by an administrative proceeding that was applied for more than one year after the date of the event with respect to which habeas relief is sought."

Consolidation of venue for habeas petitions

Both State's Attorneys and Public Defenders indicated support for consolidation of habeas venue for persons incarcerated in the custody of the state. Consolidation would facilitate more efficient allocation of resources by those offices and by the Judicial branch. Consolidation would also facilitate specialization by the habeas court and ensure that habeas petitions were routinely considered by judges with substantial experience in habeas matters. Finally, consolidation would ameliorate the discrepancy in resource allocation to habeas matters that occurs among the current habeas districts. The committee finds that this result can best be accomplished by providing flexibility to the Chief Court Administrator to set the requirements for venue. That authority may be provided by revision of subsection (a) of section 52-466 to provide as follows:

"(a)(1) An application for a writ of habeas corpus by a person committed to the custody of the state of Connecticut as the result of a criminal conviction shall be made to the superior court, or to a judge thereof, for such judicial district or judicial districts as may be designated by the Chief Court Administrator. In any case in which the application is filed in a judicial district other than a designated judicial district, the clerk of the court for that district shall transfer the petition to the clerk for the judicial district so designated.

(2) An application for a writ of habeas corpus, other than an application pursuant to subdivision (1) of this subsection, shall be made to the superior court or to a judge thereof for the judicial district in which the person whose custody is in question is claimed to be illegally confined or deprived of his liberty [~~provided any application made by or on behalf of a person confined in the Connecticut Correctional Institution, Enfield-Medium or the Carl Robinson Correctional Institution, Enfield, shall be made to the superior court or a judge thereof for the judicial district of Tolland~~]."

Elimination of the right to appeal denial of a petition for certification to appeal

Both State's Attorneys and Public Defenders support eliminating the right in a habeas case to further appeal the denial of a petition to certify an appeal. Appellate practice with respect to habeas matters has proved problematic for both offices. Where a state habeas petition is denied, exhaustion requirements for purposes of a federal habeas currently require petitioners to first appeal a denial of the applicant's petition for certification to appeal. Practitioners often view the required appeal from the denial of certification to be a barrier to filing a federal habeas petition rather than as avenue to sympathetic review. This aspect of the state appellate process is therefore often reduced to a pro forma exercise to satisfy "exhaustion" requirements, expending substantial resources without usefully advancing habeas practice. Moreover, the purpose of a "certification" procedure is to eliminate appeal as a matter of right, allowing only appeals that raise reasonable substantive issues. The current practice of allowing appeal of the denial of the certification undermines that role of the certification process.

The committee notes that the existing problematic right to appeal the denial of a petition for certification is not grounded in the constitution, and can be legislatively revised. See the discussion in *Iovieno v. Commissioner of Correction*, 242 Conn. 689 (1997). The current practice of allowing appeal from denial of the certification stems from Connecticut Supreme Court decisions in *Sims v. Warden*, 229 Conn. 178 (1994) and *Carpenter v. Meachum*, 229 Conn. 193 (1994) in which a divided court found such a right to appeal. As noted, the committee finds the practice that has resulted to be problematic and recommends that the pro forma appellate practice that stems from the right to appeal the denial of a petition for certification be eliminated. The ten day period for petition in the current statute has been extended to twenty days to mirror the more usual period for appeal.

That result may be obtained by revising subsection (b) of section 52-470 to read:

"(b) No appeal from the judgment rendered in a habeas corpus proceeding brought in order to obtain his release by or in behalf of one who has been convicted of a crime may be taken unless the appellant, within [ten] twenty days after the case is decided, petitions either the judge before whom the case was tried or a judge of the Supreme Court or Appellate Court to certify that a question is involved in the decision which ought to be reviewed by the court having jurisdiction and the judge so certifies. The judge to whom the petition is brought shall render a decision thereon either granting or denying certification. Denial of certification by the judge to whom the petition has been brought shall be a final judgment and may not be appealed."

Provision of statutory authority for prescreening by public defenders

Resolution or disposition of habeas matters are routinely delayed by the dynamics of existing habeas practice under which public defenders are not appointed as counsel until after the original pro se filing of the petition. As practice has developed, public defenders are not positioned to counsel petitioners until after the initial claims are already in court. Typically, this results in a substantial delay of the case while the public defenders conduct interviews, gather materials, and otherwise investigate the case to ascertain the legal sufficiency of the allegations. Again, as a matter of practice, that investigation often leads to an amendment of the habeas claims, often in substantially different form from the original filing. During this process, the case sits, docketed on the court calendar, expending judicial resources and requiring ongoing monitoring by the state's attorneys.

The committee finds that the handling of habeas claims could be facilitated by explicitly empowering public defenders to prescreen cases and provide appropriate counsel. Notice of such representation should be given to the State's Attorney to assist that office in protecting its record for those cases.

Adding a new subsection (d) to section 51-296 as follows would accomplish that result:

"(d) Prior to the filing of a habeas corpus petition, a public defender,

assistant public defender, deputy assistant public defender, or a special public defender, upon a determination that an inmate is indigent pursuant to subsection (a) of section 51-297 and upon notice to the state, shall be authorized to represent the inmate and file a habeas corpus petition on behalf of the inmate. Representation of the inmate under this subsection shall be subject to any subsequent appointment of counsel by the court."

Increased use of administrative grievance procedures by requiring exhaustion of administrative remedies prior to consideration of conditions of confinement claims

Approximately 40% of the habeas docket consists of "conditions of confinement" claims that challenge the manner in which a person is incarcerated rather than the underlying grounds for the incarceration. While "conditions of confinement" claims reflect serious issues that may be constitutionally entitled to habeas review, the committee finds that those issues are most susceptible to redress, and ought to be first considered, at the administrative level, either within the context of the existing grievance process within the Department of Corrections, or pursuant to an independent administrative grievance procedure. The committee recommends, therefore, that consideration by the Superior Court of a "conditions of confinement claim" should be conditioned on exhaustion by the petitioner of his available administrative remedies. Further consideration should be given, with input from the Department of Corrections, the Attorney General, and the Correctional Ombudsman, to the adequacy and effectiveness of the existing administrative remedies, and, if necessary, to revision of that administrative process.

A revision to effect that result might be structured as follows:

"If a person committed to the custody of the State of Connecticut as the result of a criminal conviction applies for a writ of habeas corpus that does not challenge the basis of that conviction, it shall be a sufficient defense that the applicant has failed to exhaust administrative remedies that are available to address the circumstances complained of."

Strengthening of record retention rules to ensure availability of records and exhibits that are necessary for a habeas review

Record retention rules that prohibit the destruction of necessary records and exhibits are critical to the integrity of the habeas process. This is a matter of common sense. While a person's liberty is at stake, evidence that may shed light on the legality of his conviction must be preserved. Destruction of records is currently addressed by C.G.S. section 51-36 and by Practice Book rule 7-13. In particular, Practice Book rule 7-13(i) does not allow destruction of a file where there has been conviction of a felony charge until expiration of the sentence. However, section 7-13 also allows the file to be stripped and it is unclear to what extent necessary exhibits, records, and other evidence is being, or, as a matter of practice, may be, destroyed. The committee recommends strengthening of these record retention rules for cases involving incarceration and a potential habeas action. To accomplish that result, section 51-36 may be amended to include new language as follows:

Sec. 51-36. Microfilming, destruction and transferring of court records.

"(a) The Chief Court Administrator may cause any and all court records, papers or documents other than records concerning title to land, required to be retained indefinitely or for a period of time defined by (1) rules of court, (2) directives promulgated by the Office of the Chief Court Administrator or (3) statute, to be microfilmed. The device used to reproduce such records on film shall be one which accurately reproduces the original thereof in detail. Such microfilm shall be considered and treated the same as the original records, papers or documents, provided a certificate of authenticity appears on each roll of microfilm. A transcript, exemplification or certified copy thereof shall for all purposes be deemed

to be a transcript, exemplification or certified copy of the original. The original court records, papers or documents so reproduced may be disposed of in such manner as approved by the Office of the Chief Court Administrator. For purposes of this subsection, microfilm shall include microcard, microfiche, microphotograph, electronic medium or any other process which actually reproduces or forms a durable medium for so reproducing the original.

(b) [Any] Except as provided in subsection (c) of this section, any judge of the Superior Court may order that official records of evidence or judicial proceedings in said court, the Court of Common Pleas or the Circuit Court, including official notes and tapes of evidence or judicial proceedings concerning title to land, taken more than seven years prior to the date of such order by any stenographer or official court reporter, be destroyed by the person having the custody thereof.

(c) In criminal cases in which the defendant has been convicted of a felony, the official records of evidence or judicial proceedings may not be destroyed until expiration of twenty years from the date of disposition or upon expiration of the sentence, whichever is later. For purposes of this subsection, official records of evidence or judicial proceedings include the unstripped court file, all exhibits from the parties whether marked for identification or admitted as full exhibits, and the transcripts of all proceedings held in the matter including the transcript of the voir dire.

~~(e)~~ (d) All court records other than records concerning title to land may be destroyed in accordance with rules of court. Records concerning title to land shall not be subject to any such destruction, except that official notes and tapes of evidence or judicial proceedings concerning title to land may be destroyed. All court records may be transferred to any agency of this state or to any federal agency in accordance with rules of court or directives promulgated by the Office of the Chief Court Administrator, provided records in any action concerning title to land terminated by a final judgment affecting any right, title or interest in real property shall be retained for not less than forty years in the office of the clerk of the court location in which the judgment was rendered. Any other Judicial Department books, records, papers or documents may be destroyed or transferred to any agency of this state or to any federal agency in accordance with directives promulgated by the Office of the Chief Court Administrator."

Tennessee	1 year	<i>Carothers v. State</i> , 980 S.W.2d 215 (1997)	Statute of limitations does not violate due process.
		<i>Potts v. State</i> , 833 S.W.2d 60 (1992)	Additionally, an earlier statute of limitations did not constitute a suspension of the writ
Utah	1 year	<i>Manning v. State</i> , 89 P.3d 196, 202 n.4 (2004)	An earlier statute of limitations (3 months) was held unconstitutional in <i>Currier v. Holden</i> , 862 P.2d 1357 (1993)
Washington	1 year	<i>In the matter of Runyan</i> , 121 Wn.2d 432, 853 P.2d 424 (1993)	Statute of limitations does not violate the Suspension Clause

**Constitutionality of Habeas Corpus and Post-Conviction
Statutes of Limitations**

Alaska	2 years	<i>Flanagan v. State</i> , 3 P.3d 372 (2000)	Statute of limitations does not constitute a "suspension of the writ"
Colorado	Various	<i>People v. Hampton</i> , 976 P.2d 1236 (Colo. 1994); <i>People v. Wiedemer</i> , 852 P.2d 424 (Colo. 1993)	Statute of limitations does not violate federal or state constitutions.
Florida	2 years	<i>Johnson v. State</i> , 536 So.2d 1099 (Fla. 1988)	Statute of limitations constitutional.
Idaho	1 year	<i>Martinez v. State</i> , 130 Idaho 530, 944 P.2d 127 (1997)	Statute of limitations constitutional.
Iowa	3 years	<i>Davis v. State</i> , 443 N.W.2d 707 (Iowa 1989)	Statute of limitations does not "suspend" the writ and does not violate due process.
Maine	1 year	<i>Finch v. State</i> , 736 A.2d 1043 (1999)	Enactment of statute of limitations did not violate due process
Missouri	90 or 180 days	<i>Carter v. State</i> , 955 S.W.2d 548 (Missouri 1997)	Post-conviction statute of limitations is constitutional, even in death penalty cases.
Oregon	2 years	<i>Bartz v. State</i> , 314 Ore. 353, 839 P.2d 217 (1992)	An earlier statute of limitations (120 days) did not violate Suspension Clause
Pennsylvania	1 year	<i>Commonwealth v. Peterkin</i> , 554 Pa. 547, 558, 722 A.2d 638 (1998)	Statute of limitations "strikes a reasonable balance between society's need for finality in criminal cases and the convicted person's need to demonstrate" error. Therefore, statute of limitations is not unconstitutional.

Post-Conviction Remedies and Habeas Corpus Other States

Appointment of Counsel

Ineffectiveness of Habeas Counsel Is A Cognizable Claim

Alaska

Yes

Yes

Petitioner entitled to counsel in a first petition for post-conviction relief.

No right to counsel in litigating a second petition. *Grinols v. State*, 10 P.3d 600, 621-24 (Alaska 2000).

Petitioner may file a second application challenging the effectiveness of prior post-conviction counsel but such second application must be brought within 1 year of the decision on the prior application. *Grinols v. State*, 10 P.3d 600, 617-21 (Alaska 2000); A.S. § 12.72.025.

Colorado

Conditional

Yes

Petitioners have a "limited" right to the appointment of counsel *if* the trial court and the public defender find "arguable merit" to the claims.. *Silva v. People*, 156 P.3d 1164 (Colo. 2007) (en banc). Ineffective assistance of post-conviction counsel states a cognizable claim.

Connecticut

Yes

Yes

Delaware

Discretionary

No

Super. Ct. Crim. Rule 61(e)(1) provides that "[t]he court will appoint counsel for an indigent movant only in the exercise of discretion and for good cause shown, but not otherwise."

A claim attacking post-conviction counsel's effectiveness is not cognizable. *Porter v. State*, 586 A.2d 1202 (Del. 1990).

Florida

Discretionary

No

"There is no automatic right to counsel in post-conviction proceedings, and appointment of counsel is a matter solely within the discretion of the trial court." *Lee v. State*, 847 So.2d 1142, 1143 (Fla. App. 3 Dist. 2003).

Ineffective assistance of post-conviction counsel does not raise a colorable claim. *Zack v. State*, 911 So.2d 1190 (Fla. 2005).

Minnesota

Conditional

No

As to post-conviction relief, public defender "shall" represent petitioner *if* he has *not* had a direct appeal and "may" others. *Deegan v. State*, 711 N.W.2d 343 (Minn. 2008); M.S.A. § 590.05.

Minnesota Supreme Court does not recognize the right to effective assistance of counsel in postconviction proceedings. *Schleicher v. State*, 718 N.W.2d 440, 445-46 (Minn. 2006).

Mississippi

Discretionary

Discretionary. If an evidentiary hearing is required, the court may appoint counsel. Miss.Code.Ann. § 99-39-23.

Montana

Conditional

Montana requires the appointment of counsel *if* an evidentiary hearing is required or if the interests of justice so require. § 46-21-201(2) MCA

Nevada

Discretionary

A court may appoint counsel to represent an indigent petitioner. Factors to be considered include the severity of the consequences facing the petitioner and whether (1) the issues are difficult, (2) the petitioner is unable to comprehend the proceedings; (3) counsel is necessary to proceed with discovery." N.R.S. 34.750.

New Hampshire

Discretionary

The appointment of counsel is a matter within the court's discretion in habeas corpus proceedings and at a motion for a new trial. *State v. Hall*, 154 N.H. 180, 908 A.2d 766 (2006).

Utah

Discretionary

No

Utah Code § 78B-9-109 provides that the court may appoint counsel. Factors to be considered are whether (1) an evidentiary hearing will be required and (2) the petition involves complicated issues of law or fact. A claim that habeas counsel was ineffective "cannot be the basis for relief in any subsequent post-conviction petition."

Washington

Conditional

Counsel shall be appointed if the "issues raised by the petition are not frivolous" and it is a first petition. See Wash. Rev. Code § 10.73.150 (except in death penalty cases, counsel shall not be provided at public expense to file a second or subsequent collateral attack).

Wyoming

No

No right to public defender or appointed counsel. Wyo. Stat. Ann. § 7-14-104.

Post-Conviction Remedies and Habeas Corpus
50 State Survey

- | | <u>Statute of Limitations</u> | <u>Period</u> |
|---|-------------------------------|---|
| 1. <u>Alabama</u> | Yes | 1 year after direct appeal |
| <p>Ala.R.Crim.P. 32.2(c) requires that a petition must be filed within one year of the conclusion of a direct appeal <u>or</u> within one year after the time for filing an appeal lapses.</p> | | |
| 2. <u>Alaska</u> | Yes | 2 years after sentencing <u>or</u>
1 year after direct appeal |
| <p>A.S. § 12.72.020 provides that a petition must be brought two years after the entry of the judgment of the conviction <u>or</u>, if the conviction was appealed, one year after the the court's decision is final under the Alaska Rules of Appellate Procedure."</p> | | |
| 3. <u>Arkansas</u> | Yes | 90 days after sentencing <u>or</u>
60 days after direct appeal |
| <p>Rule 37.2 of the Arkansas Rules of Criminal Procedure requires that a petition for post-conviction relief be filed within 90 days of sentencing or, if an appeal was taken, 60 days from the date the mandate was issued by the appellate court.</p> | | |
| 4. <u>Arizona</u> | Yes | 90 days after sentencing <u>or</u>
30 days after direct appeal |
| <p>§ 13-4234(C) provides that "[in] noncapital cases, the notice [of postconviction relief] shall be filed within ninety days after the judgment and sentence are entered or within thirty days after the order and mandate affirming the judgment and sentence is issued on direct appeal, which ever is later."</p> | | |
| 5. <u>California</u> | No | |
| <p>Post-Conviction procedures are judicially created and not codified.</p> | | |

6. Colorado Yes 3 years from the date of conviction
No limit for Class 1 felonies

Colo. Rev. Stat. Tit. 16 § 16-5-402 (2004) requires that post-conviction challenges to all felonies except for "Class 1" felonies must be commenced within three years of the date of conviction. The untimeliness of a petition may be excused if the court finds that the delay was "the result of circumstances amounting to justifiable excuse or excusable neglect."

7. Connecticut No

8. Delaware Yes 1 year from final judgment

"A motion for postconviction relief may not be filed more than one year after the judgment of conviction is final or, if it asserts a retroactively applicable right that is newly recognized after the judgment of conviction is final, more than one year after the right is first recognized by the Supreme Court of Delaware or by the United States Supreme Court." Super. Ct. Crim. Rule 61.

9. Florida Yes 2 years from final judgment

Rule 3.850 of the Florida Rules of Criminal Procedure requires that a motion to vacate, set aside, or correct sentence be filed no more than two years after the judgment became final in a noncapital case.

10. Georgia No

Primary post-conviction relief through habeas corpus. See Ga. Code Ann. § 9-14-1 et seq. No second or successive petitions. § 9-14-51. Suggested time lines provided by Rule 44.

11. Hawaii No

See Rule 40 of Hawaii Rules of Penal Procedure.

12. Idaho Yes 1 year from final judgment

Uniform Post-Conviction Procedure Act (UPCPA) requires that application be filed within one year from the appeal. I.C. § 19-4902(a). UPCPA replaces all other common law and statutory remedies, including habeas corpus. *Eubank v. State*, 130 Idaho 861, 863, 949 P.2d 1068 (1997).

13. Illinois Yes 6 months after direct appeal or
3 years after sentencing

725 ILCS 5/122-1C provides that no proceedings shall be commenced more than 6 months after the conclusion of proceedings in the United States Supreme Court” or “more than 6 months from the date for filing a certiorari petition” or, “[i]f a defendant does not file a direct appeal, the post-conviction petition shall be filed no later than 3 years from the date of conviction. . . .” There are exceptions when (1) the untimeliness of a petition was not due to the petitioner’s culpable negligence and (2) the petition claims actual innocence.

14. Indiana No

See Ind. Post-Conviction Rule 1.

15. Iowa Yes 3 years from final judgment

I.C.A. § 822.3 requires that applications be filed within “three years from the date the conviction or decision is final” unless a ground of facts or law “could not have been raised within the applicable time period.”

16. Kansas Yes 1 year from final judgment

K.S.A. 60-1507 provides that any habeas action “must be brought within one year of: (i) The final order of the last appellate court in this state to exercise jurisdiction on a direct appeal or the termination of such jurisdiction; or (ii) the denial of a petition for writ of certiorari to the United States Supreme Court or issuance of such court’s final order following granting such petition.”

17. Kentucky Yes 3 years from final judgment

Kentucky Rules of Criminal Procedure 11.42(10) requires that a motion to vacate, set aside or correct sentence must be filed within three years after the judgment became final unless based on newly discovered evidence or new rule applied retroactively.

18. Louisiana Yes 2 years from final judgment

Article 930.8 of the Louisiana Code of Criminal Practice requires that applications for post-conviction relief be filed no "more than two years after the judgment of conviction and sentence has become final" unless (1) the facts upon which the claim is based were not known to the petitioner and his attorney, (2) the claim is based on a new rule retroactively applied, or (3) the applicant is under a sentence of death.

19. Maine Yes 1 year from final judgment

Me. Rev. Stat. Ann. Tit. 15, § 2128(5) requires that the petition be filed within one year of the final judgment unless based on newly discovered evidence or involves a new rule that may be applied retroactively.

20. Maryland Yes 10 years from date of sentencing

Maryland mandates that a petition be filed within ten years of sentencing and limits prisoners to one petition for relief for each trial or sentence. Maryland Code, § 7-103 of the Criminal Procedure Article.

21. Massachusetts No

Primary post-conviction vehicle in Massachusetts is the Motion for New Trial pursuant to Rule 30 Massachusetts Rules of Criminal Procedure. No statute of limitations. No right to counsel in post-conviction proceedings but, if counsel appointed, must be effective. *Breese v. Comm.*, 415 Mass. 249.

22. Michigan No

Post-conviction relief is governed by Rule 6.502. No statute of limitations but only one petition is permitted.

23. Minnesota Yes 2 years from final judgment

M.S.A. § 590.01 provides that a petition must be filed within two years of (1) the disposition of a direct appeal or (2) sentencing, if no direct appeal is filed. An untimely petition may be considered if a mental or physical disability precluded its timely filing or if it is based on a new rule made retroactive.

24. Mississippi Yes 3 years from final judgment

The Mississippi Uniform Post-Conviction Collateral Relief Act (UPCCRA) mandates that a petition must be filed within three years of the conclusion of direct review or within three years of the judgment of conviction. Miss.Code.Ann. § 99-39-5. Excepted from this statute of limitations are claims of newly discovered evidence and claims relying on intervening court decisions which would have actually adversely affected the outcome of trial.

25. Missouri Yes 90days after direct appeal or
180 days after incarceration begins

A challenge to a conviction after a trial is governed by Rule 29.15 of the Missouri Supreme Court Rules and must be filed within 90 days of the conclusion of a direct appeal or, if no appeal, within 180 days of the date the person is delivered to the custody of the Department of Corrections.

A challenge to a guilty pleas is governed by Rule 24.035 of the Missouri Supreme Court Rules and must be filed within 90 days of the conclusion of a direct appeal or, if no appeal, within 180 days of the date the person is delivered to the custody of the Department of Corrections.

26. Montana Yes 1 year from final judgment

Montana requires that all petitions be filed within one year of the date that the conviction becomes final. A conviction becomes final once the period of time within which a direct appeal must be taken expires or at the conclusion of direct review. § 46-21-102, MCA. In the case of "newly discovered evidence," a petition may be brought within one year of the discovery of such evidence.

27. Nebraska No

Post-conviction actions governed by Neb.Rev.Stat. § 29-3001, et seq.

28. Nevada Yes 1 year from final judgment

N.R.S. 34.726 requires that a petition be filed within one year of entry of judgment or one year from the conclusion of the direct appeal, unless the delay is not the petitioner's fault.

29. New Hampshire No

Primary avenue of relief is Chapter 534. Habeas Corpus. No time limitation. Alternative to habeas corpus is Chapter 526, motion for a new trial which must be filed within three years of the rendition of judgment.

30. New Jersey Yes 5 years from judgment or sentence

Rule 3:22-12 of the New Jersey Rules of Court mandates that a petition cannot be filed more than 5 years after "the rendition of the judgment or sentence sought to be attacked unless it alleges facts showing that the delay . . . was due to the defendant's excusable neglect." Except for a direct appeal, such petition "is the exclusive means of challenging a judgment rendered upon conviction of a crime."

31. New Mexico No

N. M. S. A. 31-11-6 provides that a motion for relief may be made at any time. Nevertheless, a "court shall not be required to entertain a second or successive motion for similar relief on behalf of the same prisoner."

32. New York No

Post-conviction relief is governed by New York Criminal Procedure Law § 440.10.

33. North Carolina No

"A motion for appropriate relief is North Carolina's procedural mechanism for state post-conviction relief." *State v. Moore*, 648 S.E.2d 288, 292 (N.C. App. 2007). N.C.G.S.A. § 15A-1415 provides that a non-capital defendant may file a motion for appropriate relief "at any time."

34. North Dakota No

35. Ohio Yes 180 days from delivery of transcript on direct appeal or the expiration of time to file a direct appeal

A petition for post-conviction relief under Ohio Revised Code 2953.21 must be filed within 180 days of the date on which the trial transcript is filed in the appellate court on direct appeal or, if no direct appeal is taken, within 180 days of the expiration of the time for filing the appeal.

36. Oklahoma No

Oklahoma's Post-Conviction Procedure Act "replaces all common law and statutory methods of challenging a conviction or sentence." 22 Okl.Stat. Ann. § 1080.

37. Oregon Yes 2 years from final judgment

An application for post-conviction relief must be filed within two years of the date the judgment entered or the conclusion of appellate review.

38. Pennsylvania Yes 1 year from final judgment

With limited exceptions, an application for post-conviction relief must be filed within one year of the date the judgment becomes final. In other words, one year from the conclusion of direct review. 42 Pa. Cons. Stat. § 9545(b)(1).

39. Rhode Island No

See *Raso v. Wall*, 884 A.2d 391 (R.I. 2005); General Laws 1956 § 10-9.1-3.

40. South Carolina Yes 1 year from final judgment

Under South Carolina's Uniform Post-Conviction Procedure Act, a petition must be filed within one year after the entry of a judgment of conviction or within one year after the final decision on appeal, whichever is later. S.C. Code Ann. § 17-27-45. Excepted from this statute of limitations are (1) claims involving a new right intended to be applied retroactively and (2) claims of newly discovered evidence.

41. South Dakota No

Primary vehicle for post-conviction relief is through habeas corpus. A habeas petition may be brought at any time. SDCL § 21-27-3.1. Nevertheless, a petition may be dismissed if delay has prejudiced the state's ability to defend against the claims. If the petition is filed more than five (5) years after the entry of judgment, a rebuttable presumption exists that the state has been prejudiced. SDCL § 21-27-3.2.

42. Tennessee Yes 1 year from final judgment

Tennessee's Post-Conviction Procedures Act requires that petitions be filed within "one (1) year of the date of the final action of the highest state appellate court to which an appeal is taken or, if no appeal is taken, within one (1) year of the date on which the judgment became final. . . ." Tenn. Code Ann. § 40-30-102.

43. Texas No

Post-Conviction relief is governed by Article 11.07 of the Texas Code of Criminal Procedure (Effective 9-1-07). No statute of limitations on post-conviction relief but the doctrine of laches is applicable to such actions. *Ex parte Carrio*, 992 S.W.2d 486 (Tex.Crim.App. 1999).

44. Utah Yes 1 year from final judgment

Utah Code § 78B-9-107 limits post-conviction relief to petitions filed within one year of final judgment or one year of "the date on which the petitioner knew or should have know, in the exercise of reasonable diligence, of evidentiary facts on which the petition is based."

45. Vermont No

See 13 V.S.A. § 7131.

46. Virginia Yes 2 years from disposition in trial court or
1 year from direct appeal

Under Virginia's Code § 8.01-654, a petition for writ of habeas corpus must be "filed within two years from the date of final judgment in the trial court or within one year from either final disposition of the direct appeal in state court or the time for filing such appeal has expired, whichever is later."

47. Washington Yes 1 year from final judgment

An application for post-conviction relief must be filed within one year of the date the judgment becomes final. This means the date the judgment is filed with the court clerk or the date that the appellate court issues its decision. Wash. Rev. Code § 10.73.090 10.

48. West Virginia No

With the exception of a direct appeal, a habeas corpus petition pursuant to W. Va. Code, § 53-4A-1, et seq. is the exclusive vehicle for post-conviction relief. It may be filed "at any time." § 53-4A-1(e).

49. Wisconsin No

The primary vehicle for a prisoner to collaterally attack his conviction is pursuant to a motion brought under W.S.A. 974.06. A petition for writ of habeas corpus, however, may be used to raise a few specified claims. See *State v. Knight*, 168 Wis.2d 509, 484 N.W.2d 540 (1992) (the appropriate vehicle for litigating a claim that appellate counsel was ineffective is to petition the appellate court for writ of habeas corpus).

50. Wyoming Yes 5 years from judgment of conviction

Wyoming places a 5-year limit on petitions. Wyo. Stat. Ann. § 7-14-103.

