



General Assembly

Amendment

January Session, 2009

LCO No. 7923

HB0657807923SR0

Offered by:
SEN. KISSEL, 7th Dist.

To: House Bill No. 6578

File No. 726

Cal. No. 661

"AN ACT CONCERNING THE PENALTY FOR A CAPITAL FELONY."

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

3 "Section 1. (NEW) (*Effective October 1, 2009*) Sections 1 to 5, inclusive,
4 of this act apply to any application for a writ of habeas corpus filed on
5 or after the effective date of this section that is brought by or on behalf
6 of a person who (1) has been convicted of an offense, as defined in
7 section 53a-24 of the general statutes, in order to obtain such person's
8 release by challenging his or her conviction or sentence, or (2) has been
9 found not guilty by reason of mental disease or defect pursuant to
10 section 53a-13 of the general statutes and committed to the jurisdiction
11 of the Psychiatric Security Review Board in order to obtain such
12 person's release by challenging such commitment.

13 Sec. 2. (NEW) (*Effective October 1, 2009*) The remedy of habeas
14 corpus is not a substitute for and does not affect any remedy incident
15 to the proceedings in the trial court or direct review of the conviction.

16 Except for the remedies of appeal, petition for a new trial, sentence
17 review in accordance with section 51-196 of the general statutes,
18 sentence reduction or discharge in accordance with section 53a-39 of
19 the general statutes and the authority possessed by the sentencing
20 court at common law to correct an illegal sentence, the remedy of
21 habeas corpus as provided for in sections 1 to 5, inclusive, of this act,
22 comprehends and takes the place of all common law, statutory and
23 other remedies available prior to the effective date of this section for
24 challenging the validity of a conviction, sentence or commitment and
25 shall be used exclusively in place of such remedies.

26 Sec. 3. (NEW) (*Effective October 1, 2009*) (a) A claim for relief raised
27 in an application for a writ of habeas corpus, or in an amended
28 application, shall be procedurally barred and no court may decide the
29 claim if it was raised and decided, either on the merits or on
30 procedural grounds, in any earlier proceeding or it could have been
31 raised but was not raised:

32 (1) At any time prior to the imposition of sentence in the proceeding
33 that resulted in the applicant's conviction or commitment;

34 (2) In a direct appeal from the proceeding that resulted in the
35 applicant's sentence or commitment; or

36 (3) In a previous habeas corpus proceeding challenging the same
37 sentence or commitment.

38 (b) Notwithstanding the provisions of subsection (a) of this section,
39 a court may hear a claim if:

40 (1) The applicant demonstrates good cause for his or her failure to
41 bring the specific claim in the earlier proceedings and actual prejudice
42 resulting from that failure. For purposes of this subsection, an
43 applicant shows good cause by identifying an objective factor external
44 to the defense that impeded his or her ability to raise the specific claim
45 during the earlier proceedings, and shows actual prejudice by
46 demonstrating that the failure to raise the claim resulted in a finding of

47 guilt, a sentence or a commitment so infected by error that it violates
48 due process. In addition, if proven, the ineffectiveness of counsel for
49 failing to raise the specific claim prior to the imposition of sentence in
50 the proceeding that resulted in the applicant's conviction or
51 commitment, or on direct appeal, may constitute good cause and
52 actual prejudice;

53 (2) The applicant alleges the existence of newly discovered evidence,
54 including scientific evidence, that could not have been discovered by
55 the exercise of due diligence by the applicant or the applicant's counsel
56 at an earlier proceeding, and the evidence is not cumulative to
57 evidence presented at trial, is not for impeachment purposes and
58 establishes by clear and convincing evidence that the applicant is
59 innocent of the offense or offenses for which he or she was convicted;
60 or

61 (3) The applicant's claim for relief is based upon a new
62 interpretation of federal or state constitutional law by either the
63 Supreme Court of the United States or the Supreme Court of this state
64 that was previously unavailable and is retroactively applicable to cases
65 on collateral review.

66 Sec. 4. (NEW) (*Effective October 1, 2009*) (a) No application for a writ
67 of habeas corpus shall be allowed if filed: (1) More than three years
68 after the date that the sentence was imposed or the commitment
69 ordered if no direct appeal was taken, or (2) more than one year after
70 the date of (A) the final order of the last appellate court in this state to
71 exercise jurisdiction on a direct appeal or the termination of such
72 appellate jurisdiction, or (B) the denial of a petition for writ of
73 certiorari to the Supreme Court of the United States or issuance of said
74 court's final order following the granting of such petition; whichever is
75 later.

76 (b) Notwithstanding the provisions of subsection (a) of this section,
77 a court may hear a claim if the applicant establishes due diligence in
78 presenting the claim and:

79 (1) The applicant establishes that a physical disability or mental
80 disease precluded a timely assertion of the claim;

81 (2) The applicant alleges the existence of newly discovered evidence,
82 including scientific evidence, that could not have been discovered by
83 the exercise of due diligence by the applicant or the applicant's counsel
84 prior to the expiration of the three-year period for the filing of an
85 application for a writ of habeas corpus, and the evidence is not
86 cumulative to evidence presented at trial, is not for impeachment
87 purposes and establishes by clear and convincing evidence that the
88 applicant is actually innocent of the offense or offenses for which he or
89 she was convicted;

90 (3) The applicant's claim for relief is based upon a new
91 interpretation of federal or state constitutional law by either the
92 Supreme Court of the United States or the Supreme Court of this state
93 and made retroactively applicable to cases on collateral review; or

94 (4) The applicant establishes that the evidence on which the claim is
95 based was in the exclusive possession of the state and was not
96 otherwise available to the applicant, was not disclosed prior to the
97 expiration of the time periods set forth in subsection (a) of this section,
98 is favorable to the applicant and is material to the applicant's guilt or
99 punishment.

100 (c) A new three-year period shall not commence upon a
101 resentencing that results from an order of the review division in
102 accordance with section 51-196 of the general statutes, an order
103 reducing a sentence or discharging a defendant in accordance with
104 section 53a-39 of the general statutes or an order issued pursuant to the
105 sentencing court's authority at common law to correct an illegal
106 sentence. Any claim for relief based upon such resentencing must be
107 brought within one year of the date that the new sentence was
108 imposed.

109 Sec. 5. (NEW) (*Effective October 1, 2009*) (a) The provisions of section
110 51-296 of the general statutes shall not apply at a proceeding initiated

111 by the filing of a second or subsequent application for a writ of habeas
112 corpus. The court before which a second or subsequent application is
113 pending may, if it determines that the grounds for relief raised in the
114 application are not frivolous, that the interests of justice will be
115 furthered and, after investigation by the public defender or his or her
116 office, that the applicant is indigent as defined under chapter 887 of the
117 general statutes, designate a public defender, assistant public defender
118 or deputy assistant public defender or appoint counsel from the trial
119 list established under section 51-291 of the general statutes, to
120 represent such indigent applicant.

121 (b) The ineffectiveness or incompetence of any counsel who
122 represented the applicant in an earlier habeas corpus proceeding shall
123 not be a ground for relief in a second or subsequent application.

124 (c) For the purposes of this section, "a second or subsequent
125 application" means an application for a writ of habeas corpus filed
126 after a first application for a writ of habeas corpus is filed.

127 Sec. 6. Subdivision (2) of subsection (a) of section 52-466 of the
128 general statutes is repealed and the following is substituted in lieu
129 thereof (*Effective October 1, 2009, and applicable to any application made on*
130 *or after said date*):

131 (2) An application for a writ of habeas corpus claiming illegal
132 confinement or deprivation of liberty, made by or on behalf of an
133 inmate or prisoner confined in a correctional facility as a result of a
134 conviction of a crime, shall be made to the superior court [, or to a
135 judge thereof,] for the judicial district of Tolland.

136 Sec. 7. Subsection (c) of section 54-95 of the general statutes is
137 repealed and the following is substituted in lieu thereof (*Effective from*
138 *passage*):

139 (c) [In any criminal prosecution in which the defendant has been
140 sentenced to death and has taken an appeal to the Supreme Court of
141 this state or the Supreme Court of the United States or brought a writ

142 of error, writ of certiorari or petition for a new trial, the taking of the
143 appeal, the making of the application for a writ of certiorari or the
144 return into court of the writ of error or petition for a new trial shall,
145 unless, upon application by the state's attorney and after hearing, the
146 Supreme Court otherwise orders, stay the execution of the death
147 penalty until the clerk of the court where the trial was had has received
148 notification of the termination of any such proceeding by decision or
149 otherwise, and for thirty days thereafter.] In any criminal prosecution
150 in which the defendant has been sentenced to death, the sentence shall
151 be stayed during the pendency of the direct appeal and for thirty days
152 thereafter. If the defendant brings a petition for writ of certiorari to the
153 Supreme Court of the United States, the sentence shall be stayed until
154 the Supreme Court of the United States has finally determined the
155 matter and for ten days thereafter. If the defendant brings an
156 application for a writ of habeas corpus or a timely petition for a new
157 trial, the sentence shall be stayed until the matter is finally determined
158 and for thirty days thereafter. The filing of a petition for certification to
159 appeal the denial of a writ of habeas corpus or the filing of an appeal
160 from the denial of a petition for a new trial shall stay the execution of
161 the sentence until any appeal to the Appellate Court or Supreme Court
162 of this state is finally determined and for ten days thereafter or until
163 ten days after the petition for certification is denied if no appeal is
164 filed. Only the first application for a writ of habeas corpus or petition
165 for a new trial shall give rise to an automatic stay pursuant to this
166 subsection. If the defendant brings a second or subsequent application
167 for a writ of habeas corpus or petition for a new trial, any motion for a
168 stay of the sentence shall be made to the Supreme Court of this state
169 and shall only be granted upon a showing by the defendant of a
170 likelihood of success upon the merits. No appellate procedure shall be
171 deemed to have terminated until the end of the period allowed by law
172 for the filing of a motion for reargument, or, if such motion is filed,
173 until the proceedings consequent thereon are finally determined.
174 When execution is stayed under the provisions of this section, the clerk
175 of the court shall forthwith give notice thereof to the warden of the
176 institution in which such defendant is in custody. If the original

177 judgment of conviction has been affirmed or remains in full force at the
 178 time when the clerk has received the notification of the termination of
 179 any proceedings by appeal, [writ of certiorari, writ of error or] petition
 180 for a new trial or application for a writ of habeas corpus, and the day
 181 designated for the infliction of the death penalty has then passed or
 182 will pass within thirty days thereafter, the defendant shall, within said
 183 period of thirty days, upon an order of the court in which the
 184 judgment was rendered at a regular or special criminal session thereof,
 185 be presented before said court by the warden of the institution in
 186 which the defendant is in custody or his deputy, and the court, with
 187 the judge assigned to hold the session presiding, shall thereupon
 188 designate a day for the infliction of the death penalty and the clerk of
 189 the court shall issue a warrant of execution, reciting therein the
 190 original judgment, the fact of the stay of execution and the final order
 191 of the court, which warrant shall be forthwith served upon the warden
 192 or his deputy.

193 Sec. 8. (NEW) (*Effective October 1, 2009*) In any habeas corpus
 194 proceeding pending in the courts of this state on September 30, 2009,
 195 the law in effect prior to October 1, 2009, shall govern such
 196 proceeding."

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2009</i>	New section
Sec. 2	<i>October 1, 2009</i>	New section
Sec. 3	<i>October 1, 2009</i>	New section
Sec. 4	<i>October 1, 2009</i>	New section
Sec. 5	<i>October 1, 2009</i>	New section
Sec. 6	<i>October 1, 2009, and applicable to any application made on or after said date</i>	52-466(a)(2)
Sec. 7	<i>from passage</i>	54-95(c)
Sec. 8	<i>October 1, 2009</i>	New section