



**State of Connecticut**  
**DIVISION OF CRIMINAL JUSTICE**

**Testimony of the Division of Criminal Justice**

*In Support of:*

**H.B. No. 5502 (RAISED) An Act Concerning Habeas Corpus Reform**

*Joint Committee on Judiciary*  
*March 22, 2010*

The Division of Criminal Justice respectfully recommends and requests the Committee's Joint Favorable Report for H.B. No. 5502, *An Act Concerning Habeas Corpus Reform*. This bill is one of - if not the most - important pieces of criminal justice legislation the General Assembly will consider in this session. The bill seeks to end a serious and growing abuse of the judicial process and in doing so promises to stem the waste of resources and provide the potential for significant savings that will allow the criminal justice system to focus on the areas where it should.

H.B. No. 5502 simply seeks to put an end to what has become the merry-go-round of never-ending habeas petitions seeking review of criminal convictions. Once a convicted individual loses one habeas petition he or she simply files another. In many cases these petitions are merely repetitive, raising claims that have already been adjudicated at trial, on appeal or in an earlier habeas. Unfortunately, the current system puts no limits on the number of petitions that can be filed and does nothing to sort out the few meritorious claims that might exist.

At the outset, it must be stated that this is not about what have become known as wrongful convictions, i.e., the very limited number of cases where an inmate convicted at trial has subsequently found to be *actually innocent*. In fact, the Division of Criminal Justice has very deliberately, specifically and carefully drafted H.B. No. 5502 to assure that those who have a valid claim of actual innocence would have the ability to bring their claims notwithstanding the proposed statute of limitations or limits on successive petitions that are proposed in the bill. The Division of Criminal Justice fully recognizes our constitutional responsibility to the pursuit of justice. We would call to the Committee's attention the recent inauguration of the Post Conviction DNA Testing program, a collaborative initiative between the Division, the Connecticut Innocence Project of the Division of Public Defender Services and the State of Connecticut Department of Public Safety Forensic Science Laboratory. This federally funded program is being led by a veteran prosecutor and the Director of the Innocence Project. As a team they are identifying cases where physical evidence exists and where testing of that evidence may indicate a possibility of the innocence of the person or persons convicted of the offense in question.

This initiative is being undertaken completely independent of the habeas process. In fact, only two of the recent cases involving wrongful convictions were reversed as a result of a petition for a writ of habeas corpus. The Division is asking for time to decide whether to appeal the decision of the habeas court in those two cases, which arose from the same incident. In all but one of the other cases where the convictions were subsequently vacated this was done following the examination of DNA evidence undertaken with the agreement of the prosecution. To state, as some undoubtedly will, that H.B. No. 5502 would prevent those wrongfully convicted from obtaining the justice they rightfully deserve is simply not true. This is not an attempt to keep innocent people behind bars. In fact, the very opposite is true - by removing the repetitive and meritless petitions that are wasting the time and resources of the criminal justice system, the system will be able to better focus that time and resources on cases where there are claims actually worthy of consideration.

Since this issue was last examined by the Judiciary Committee, the Division of Criminal Justice has made a concerted effort to collect statistical information concerning habeas abuse. This was not simple since as the Committee is well aware the Division lacks the case management and information technology capabilities to easily produce meaningful statistics. It is only through the arduous efforts of our dedicated employees that we have been able to produce these statistics, and we must publicly acknowledge their work. Our employees have sifted through hundreds, if not thousands, of paper files counting and recounting the cases. What did they find?

-- An estimated 20 percent or more - or one in every five - habeas petitions are successive petitions, that is a petition brought by or on behalf of a convicted individual who has already had a habeas petition denied. Sometimes the petitioner will simply reformulate claims already raised and rejected. Sometimes he or she will raise other claims that have no merit. Most often the successive petition alleges ineffective assistance of habeas counsel. What is happening is that every time an inmate fails to win a claim, that claim comes back in a subsequent petition claiming that the previous one was denied because the lawyer did not do his or her job. Thus a first habeas petition is filed claiming ineffective assistance of trial counsel. When that fails, a second habeas petition is brought alleging ineffective assistance of appellate counsel. When that fails, another petition alleges ineffective assistance by the first habeas counsel. Then the second. And on and on.

-- Approximately half of the habeas petitions are challenging convictions in cases where the defendant pled guilty. The end result is the system expends a tremendous amount of resources on people who voluntarily waived their right to trial and took advantage of a plea agreement.

-- Habeas petitions are filed many years after the conviction or even the appeal of the conviction was decided. For example, a habeas petition is now pending in a homicide case where the defendant was sentenced in October 1984 (*Aillon, #26482 v. Warden, State Prison CV09-4002922-S*). The Division has anecdotally noted instances where multiple petitions will be filed following the death of an attorney, who obviously is then not available to defend his or her actions in the underlying case. There are also instances where witnesses have died or victims have been called to testify many years after the conviction.

-- The Division examined records for the past eighteen years and during that time identified only fourteen cases where a habeas petition resulted in an order for a new trial. We are now averaging approximately 600 petitions being filed each year. Two of those cases, which arose from the same incident, were just recently decided and are pending possible appellate review. Of the remaining twelve cases the Division is not aware of a single case where the restoration of appellate rights through the habeas process ultimately resulted in the acquittal of the defendant.

-- Appeals of habeas decisions represent a significant portion of the criminal appellate caseload. In the 2009 calendar year, the Appellate Bureau in the Office of the Chief State's Attorney opened 246 new appeals of which 91, or more than one-third of the total, were from habeas decisions. This year the rate is more than 40 percent, 34 of the 79 new cases added as of this past week.

-- For calendar year 2009, the Appellate Court issued decisions in 78 appeals from habeas decisions, all of which were appeals from trial court decisions denying or dismissing habeas petitions. In just four of those 78 cases, the Appellate Court reversed the decision of the habeas court and remanded the case for the trial court to consider a claim that, for various reasons, it has declined to consider initially. It must be stressed that this does not constitute in any way a reversal of the conviction. In none of these four cases was the habeas claim found to have any actual merit, each was a remand for the trial court to consider a claim it had initially declined to consider. In the remaining 74 cases the Appellate Court affirmed the trial court rejection of the claims.

So what is the cost of the abuse of the current habeas system?

The Division of Criminal Justice estimates our costs for each habeas case at \$4,248. For calendar year 2009, this involved slightly more than 1,000 cases and a total cost for personnel and other costs of more than \$4.37 million. Nearly 600 new habeas petitions were filed on average in each year over the past five years. These costs are only those for the Division of Criminal Justice and do not involve the expenses of the Judicial Branch or the Division of Public Defender Services. We would recommend the Committee examine the expenses to these agencies, as well, as it is obvious that a significant portion of the several million dollars paid each year to private attorneys serving as Special Public Defenders are for habeas cases. A significant reduction in successive and frivolous petitions would appear to promise significant savings in this area while freeing those attorneys employed by the state to focus on other priority areas, such as the prosecution of domestic violence, repeat offenders or other areas on which the General Assembly has focused attention.

Habeas cases are demanding more resources in the form of investigators and expert witnesses, even in those cases where there is no showing that further investigation is warranted. The Division of Criminal Justice is being required to send prosecutors out of state to attend depositions of witnesses whom petitioners want to have deposed. Further, the Division is reaching the point where it will have no choice but to assign investigators to assist prosecutors in locating and re-interviewing witnesses in cases decided long ago. There are no personnel available for such assignments and there are no indications additional positions are forthcoming, particularly in light of the current fiscal situation.

As great as the financial costs of habeas abuse are, they may not be the highest cost. The highest cost may be the human costs to the innocent victims of crime and their families who are denied finality and in some cases victimized over and over again by the habeas process. We have provided specific examples to the Committee of cases where victims have been called to testify as witnesses in habeas proceedings many years after the crime and conviction of their assailant. They are not only forced to relive the crime but are subjected to the indignity of essentially being mocked and victimized again. This in no way serves the interests of justice, and it could be argued infringes upon the rights guaranteed to victims of crime by our state Constitution.

The small percentage of habeas petitioners who have valid claims are equally victimized. They must stand in line while the courts devote substantial time and resources to meritless and frivolous petitions or claims that essentially were long ago resolved but are now brought back to life because of the lack of any limits on successive petitions. In some cases it would appear there is reluctance or failure on the part of defense counsel to simply tell the inmate the truth - that the petition has no merit. This not only gives false hope to the petitioner but it denies the finality the victim and the system deserve.

H.B. No. 5502 provides a well-reasoned and thoughtful approach to bring about the end to the abuse of the habeas system. Despite what some will argue, the General Assembly is fully within its authority to do so. The opponents of habeas reform will claim that this bill in some fashion would violate constitutional rights, yet they cannot point to a single case to support that argument. The statute of limitations and restrictions on successive petitions that are provided in H.B. No. 5502 are common place in other jurisdictions. The federal system and some thirty states already place a reasonable statute of limitations on habeas petitions. These other jurisdictions also place significant limits on the filing of successive petitions. The federal system, for example, provides that successive petitions are to be dismissed unless the petitioner makes specific showings similar to those required in H.B. No. 5502 (See 28 U.S.C. § 2244). And to restate emphatically, in the very tiny number of cases where an exception is in order, the bill provides an avenue for such exception.

In the interests of justice, in the interests of respecting the rights of victims and in the interests of conserving scarce public resources, the Division of Criminal Justice would respectfully request the Committee's Joint Favorable Report for H.B. No. 5502. We would be happy to provide any additional information or to answer any questions the Committee might have.

Respectfully submitted,

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