



General Assembly

February Session, 2010

Raised Bill No. 5502

LCO No. 2307

02307_____JUD

Referred to Committee on Judiciary

Introduced by:
(JUD)

AN ACT CONCERNING HABEAS CORPUS REFORM.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2010*) The provisions of
2 sections 2 to 6, inclusive, of this act apply to any application for a writ
3 of habeas corpus filed on or after the effective date of this section that
4 is brought by or on behalf of a person who (1) claims to be illegally
5 confined or deprived of his or her liberty as a result of a conviction of
6 an offense, as defined in section 53a-24 of the general statutes, or a
7 motor vehicle violation for which a term of imprisonment may be
8 imposed, and is challenging the validity of the conviction or sentence
9 imposed, or (2) claims to be illegally confined or deprived of his or her
10 liberty as a result of a commitment to the jurisdiction of the Psychiatric
11 Security Review Board after a finding that the person was not guilty by
12 reason of mental disease or defect pursuant to section 53a-13 of the
13 general statutes and is challenging the validity of the commitment.

14 Sec. 2. (NEW) (*Effective October 1, 2010*) Except for the remedies of
15 appeal, petition for a new trial, sentence review in accordance with
16 section 51-196 of the general statutes or sentence reduction or

17 discharge in accordance with section 53a-39 of the general statutes and
18 the authority of the sentencing court at common law to correct an
19 illegal sentence, the remedy of habeas corpus as provided in sections 1
20 to 6, inclusive, of this act shall be used exclusively in lieu of all
21 common law, statutory or other remedies available prior to the
22 effective date of this section for challenging the validity of a conviction,
23 sentence or commitment.

24 Sec. 3. (NEW) (*Effective October 1, 2010*) (a) No application for a writ
25 of habeas corpus challenging the validity of a conviction, sentence or
26 commitment shall be brought except within: (1) Three years after the
27 date that the sentence was imposed or the commitment ordered, or (2)
28 one year after the date of the final order of the last appellate court in
29 this state to exercise jurisdiction on a direct appeal or the denial of a
30 petition for a writ of certiorari to the Supreme Court of the United
31 States or issuance of said court's final order following the granting of
32 such petition; whichever is later.

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

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

38 (2) The applicant alleges the existence of newly discovered evidence,
39 including scientific evidence, that could not have been discovered by
40 the exercise of due diligence by the applicant or the applicant's counsel
41 prior to the expiration of the three-year period for the filing of an
42 application for a writ of habeas corpus, is not for impeachment
43 purposes and would establish that the applicant is actually innocent of
44 the offense or offenses for which the applicant was convicted or
45 committed;

46 (3) The applicant's claim for relief is based upon a new
47 interpretation of federal or state constitutional law by either the

48 Supreme Court of the United States or the Supreme Court of this state
49 that is retroactively applicable to cases on collateral review; or

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

55 (c) A new three-year period shall not commence upon a
56 resentencing that results from an order of the review division in
57 accordance with section 51-196 of the general statutes, an order
58 reducing a sentence or discharging a defendant in accordance with
59 section 53a-39 of the general statutes or an order issued pursuant to the
60 authority of the sentencing court at common law to correct an illegal
61 sentence. Any claim for relief based upon such resentencing must be
62 brought within one year of the date that the new sentence was
63 imposed.

64 Sec. 4. (NEW) (*Effective October 1, 2010*) (a) A claim for relief raised
65 in an application for a writ of habeas corpus, or in an amended
66 application, shall be barred and no court may decide the claim if:

67 (1) It was raised and decided, either on the merits or on procedural
68 grounds, in any earlier proceeding; or

69 (2) It could have been raised but was not raised:

70 (A) At any time prior to the imposition of sentence in the
71 proceeding that resulted in the applicant's conviction or commitment;

72 (B) In a direct appeal from the proceeding that resulted in the
73 applicant's sentence or commitment; or

74 (C) In a previous habeas corpus proceeding challenging the same
75 sentence or commitment.

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

78 (1) The applicant demonstrates good cause for his or her failure to
79 raise the specific claim in the earlier proceedings and sets forth
80 sufficient facts to demonstrate a reasonable likelihood that, if the facts
81 are viewed in a light most favorable to the applicant, the claim or
82 claims will succeed on the merits. For purposes of this subdivision, an
83 applicant demonstrates good cause by identifying an objective factor
84 external to the defense that impeded his or her ability to raise the
85 specific claim during the earlier proceedings, or by proving the
86 ineffectiveness of counsel in failing to raise the specific claim prior to
87 the imposition of sentence in the proceeding that resulted in the
88 applicant's conviction or commitment, or on direct appeal;

89 (2) The applicant alleges the existence of newly discovered evidence,
90 including scientific evidence, that could not have been discovered by
91 the exercise of due diligence by the applicant or the applicant's counsel
92 prior to the expiration of the three-year period for the filing of an
93 application for a writ of habeas corpus and that would establish that
94 the applicant is actually innocent of the offense or offenses for which
95 the applicant was convicted; or

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

101 Sec. 5. (NEW) (*Effective October 1, 2010*) (a) The provisions of section
102 51-296 of the general statutes shall not apply in a proceeding initiated
103 by the filing of a second or subsequent application for a writ of habeas
104 corpus. The court before which a second or subsequent application is
105 pending may, if it determines that the application was filed within the
106 time period set forth in section 3 of this act, that the grounds for relief
107 raised in the application are not frivolous and not procedurally barred,

108 that the interests of justice will be furthered and, after investigation by
109 the public defender or his or her office, that the applicant is indigent as
110 defined under chapter 887 of the general statutes, designate a public
111 defender, assistant public defender or deputy assistant public defender
112 or appoint counsel from the trial list established under section 51-291
113 of the general statutes, to represent such indigent applicant.

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

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

120 Sec. 6. (NEW) (*Effective October 1, 2010*) (a) Prior to scheduling an
121 evidentiary hearing on an application brought pursuant to sections 1 to
122 6, inclusive, of this act, the court shall determine that any factual
123 assertion that provides the predicate for a claim of relief brought
124 pursuant to sections 1 to 6, inclusive, of this act is supported by an
125 affidavit or certification from the declarant from which a court could
126 determine that the evidence supporting the fact would be admissible
127 in a hearing on the application.

128 (b) An applicant shall be entitled to a hearing on an application filed
129 pursuant to sections 1 to 6, inclusive, of this act only upon an
130 establishment of a prima facie case in support of the application and a
131 determination by the court that there are material issues of disputed
132 fact that cannot be resolved by reference to the existing record and that
133 an evidentiary hearing is necessary to resolve the claim or claims for
134 relief. To establish a prima facie case for a claim or claims, an applicant
135 must plead sufficient facts supported pursuant to subsection (a) of this
136 section to demonstrate a reasonable likelihood that, if the facts are
137 viewed in a light most favorable to the applicant, the claim or claims
138 will succeed on the merits.

139 (c) A court shall not grant an evidentiary hearing (1) if such a
140 hearing will not aid in the court's analysis of the applicant's claim or
141 claims for relief, (2) if the allegations of the application are vague,
142 conclusory or speculative, or (3) for the purpose of permitting an
143 applicant to investigate whether additional claims for relief exist for
144 which the applicant has not demonstrated a reasonable likelihood of
145 success as required by this section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2010</i>	New section
Sec. 2	<i>October 1, 2010</i>	New section
Sec. 3	<i>October 1, 2010</i>	New section
Sec. 4	<i>October 1, 2010</i>	New section
Sec. 5	<i>October 1, 2010</i>	New section
Sec. 6	<i>October 1, 2010</i>	New section

Statement of Purpose:

To revise the process for the filing and disposition of applications for a writ of habeas corpus that challenges the validity of a conviction, sentence or commitment.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]