



House of Representatives

General Assembly

File No. 679

January Session, 2011

Substitute House Bill No. 6439

House of Representatives, May 2, 2011

The Committee on Judiciary reported through REP. FOX, G. of the 146th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

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, 2011*) The provisions of
2 sections 2 to 5, 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, 2011*) 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 5, 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, 2011*) (a) A claim for relief raised
25 in an application for a writ of habeas corpus, or in an amended
26 application, shall be barred and no court may decide the claim if:

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

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

30 (A) At any time prior to the imposition of sentence in the
31 proceeding that resulted in the applicant's conviction, sentence or
32 commitment;

33 (B) In a direct appeal from the proceeding that resulted in the
34 applicant's conviction, sentence or commitment; or

35 (C) In a previous habeas corpus proceeding challenging the same
36 conviction, sentence or commitment.

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

39 (1) The applicant sets forth sufficient facts which, when viewed in a
40 light most favorable to the applicant, demonstrate good cause for his
41 or her failure to raise the specific claim in the earlier proceedings and
42 actual prejudice resulting from the impropriety claimed in the
43 application. For purposes of this subdivision, an applicant
44 demonstrates good cause by identifying an objective factor external to
45 the defense that impeded his or her ability to raise the specific claim

46 during the earlier proceedings or demonstrating that the claim for
47 relief is based upon a new interpretation of federal or state
48 constitutional law by either the Supreme Court of the United States or
49 the Supreme Court of this state that was previously unavailable and is
50 retroactively applicable to cases on collateral review; or

51 (2) The applicant alleges the existence of newly discovered evidence
52 that could not have been discovered previously by the exercise of due
53 diligence by the applicant or the applicant's counsel and would
54 establish that the applicant is actually innocent of the offense or
55 offenses for which the applicant was convicted or committed. For
56 purposes of this subdivision, "actually innocent" means that the
57 applicant did not engage in the conduct for which he or she was
58 convicted or committed, engage in conduct amounting to any lesser
59 included offense thereof or commit any other offense or motor vehicle
60 violation arising out of or reasonably connected to the facts supporting
61 the information upon which the applicant was convicted or
62 committed.

63 Sec. 4. (NEW) (*Effective October 1, 2011*) (a) The provisions of section
64 51-296 of the general statutes shall not apply in a proceeding initiated
65 by the filing of a second or subsequent application for a writ of habeas
66 corpus. The court before which a second or subsequent application is
67 pending may, if it determines that the grounds for relief raised in the
68 application are not frivolous and not procedurally barred, that the
69 interests of justice will be furthered and, after investigation by the
70 public defender or his or her office, that the applicant is indigent as
71 defined under chapter 887 of the general statutes, designate a public
72 defender, assistant public defender or deputy assistant public defender
73 or appoint counsel from the trial list established under section 51-291
74 of the general statutes, to represent such indigent applicant.

75 (b) The ineffective assistance of any counsel who represented the
76 applicant in an earlier habeas corpus proceeding shall not be a ground
77 for relief in a second or subsequent application.

78 (c) For the purposes of this section, "a second or subsequent

79 application" means an application for a writ of habeas corpus filed
80 after a first application for a writ of habeas corpus is filed.

81 Sec. 5. (NEW) (*Effective October 1, 2011*) (a) Prior to scheduling an
82 evidentiary hearing on an application brought pursuant to sections 1 to
83 4, inclusive, of this act, the court shall determine that any factual
84 assertion that provides the predicate for a claim of relief brought
85 pursuant to sections 1 to 4, inclusive, of this act is supported by an
86 affidavit or certification from the declarant from which a court could
87 determine that the evidence supporting the fact would be admissible
88 in a hearing on the application.

89 (b) An applicant shall be entitled to a hearing on an application filed
90 pursuant to sections 1 to 4, inclusive, of this act only upon an
91 establishment of a prima facie case in support of the application and a
92 determination by the court that there are material issues of disputed
93 fact that cannot be resolved by reference to the existing record and that
94 an evidentiary hearing is necessary to resolve the claim or claims for
95 relief. To establish a prima facie case for a claim or claims, an applicant
96 must plead sufficient facts supported pursuant to subsection (a) of this
97 section to demonstrate a reasonable likelihood that, if the facts are
98 viewed in a light most favorable to the applicant, the claim or claims
99 will succeed on the merits.

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

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2011</i>	New section
Sec. 2	<i>October 1, 2011</i>	New section

Sec. 3	<i>October 1, 2011</i>	New section
Sec. 4	<i>October 1, 2011</i>	New section
Sec. 5	<i>October 1, 2011</i>	New section

JUD *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 12 \$	FY 13 \$
Various State Agencies	GF - Savings	1.35 million	1.8 million

Note: GF=General Fund

Municipal Impact: None

Explanation

Summary

The bill places certain restrictions on the filing of habeas petitions by an offender. In 2009, 600 new habeas petitions were filed, in addition to approximately 1,000 pending habeas cases. To the extent that the bill reduces the caseload associated with habeas proceedings, the following savings would result:¹

Agency	FY 12 Savings	FY 13 Savings
Criminal Justice	\$ 624,375	\$ 832,500
Public Defenders	\$ 595,380	\$ 793,840
Judicial Department	\$ 112,500	\$ 150,000
Dept of Correction	Less than 18,750	Less than 25,000
TOTAL SAVINGS	\$ 1,351,005	\$ 1,801,340

Explanation of Savings

The Division of Criminal Justice would experience annual savings of \$832,500 due to a reduction in litigation costs. It is anticipated that staffing and other costs (expert witnesses, transcripts, etc.) associated with habeas corpus cases could be reduced. These savings include:

¹ The FY 12 savings figure reflects an October 1, 2011 effective date.

Criminal Justice	FY 12 Savings	FY 13 Savings
Habeas Corpus Unit	\$ 435,000	\$ 580,000
Expert Witnesses	\$ 161,250	\$ 215,000
Other Expenses	\$ 28,125	\$ 37,500
Total	\$ 624,375	\$ 832,500

The Public Defender Services Commission would experience similar savings related to a reduction in habeas corpus cases, as follows:

Public Defenders	FY 12 Savings	FY 13 Savings
Habeas Corpus Unit	\$ 226,875	\$ 302,500
Special Public Defenders	\$ 266,250	\$ 355,000
Expert Witnesses	\$ 93,750	\$ 125,000
Other Expenses	\$ 8,505	\$ 11,340
Total	\$ 595,380	\$ 793,840

The Judicial Department would experience annual court savings of \$150,000 associated with staffing and related other expenses associated with habeas hearings.²

The Department of Correction would experience savings of less than \$25,000 related to averted transportation of inmates for habeas cases.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

Sources: Core-CT Financial Accounting System
 Judicial Department Court Case Data
 2010 Public Defender Services Commission Annual Report

² On average, the Judicial Department has two habeas hearings per day, plus approximately 40 to 50 hours of related conference calls per month.

OLR Bill Analysis

sHB 6439

AN ACT CONCERNING HABEAS CORPUS REFORM.

SUMMARY:

This bill:

1. makes habeas corpus (a remedy for prisoners who claim that the state is unlawfully detaining them) the exclusive means to challenge the validity of a conviction, sentence, or commitment, with certain exceptions such as appeals;
2. bars a court from deciding a habeas claim if it was raised and decided or could have been raised earlier, with two exceptions;
3. prohibits making ineffective assistance of counsel in an earlier habeas proceeding grounds for a subsequent habeas application;
4. limits when the court can appoint a public defender for an indigent filing a second or subsequent habeas corpus application; and
5. requires the court to make certain findings before a habeas application proceeds to an evidentiary hearing.

The bill applies to any habeas corpus application filed on and after October 1, 2011 regarding a person who claims to be illegally confined or deprived of his or her liberty based on a (1) conviction for an offense (any state, federal, or Connecticut municipal provision punishable by a prison sentence except a motor vehicle violation or infraction) or (2) finding of not guilty by reason of mental disease or defect, when challenging commitment to the Psychiatric Security Review Board's jurisdiction.

Current statutes and court rules do not limit the filing of habeas petitions. But, under court rules, grounds for a court to dismiss a habeas petition include when the petition presents the same grounds as a prior petition previously denied and fails to state new facts or offer new evidence not reasonably available at the time of the prior petition (Practice Book § 23-29).

EFFECTIVE DATE: October 1, 2011

HABEAS AS EXCLUSIVE REMEDY

The bill makes habeas corpus the exclusive means to challenge the validity of a conviction, sentence, or commitment in place of any common law, statutory, or other remedies available before October 1, 2011. But it does not affect the following:

1. appeals;
2. petitions for a new trial;
3. sentence review by the court's Sentence Review Division (which reviews sentences imposed on offenders sentenced to a prison term of three years or more, at the offender's request);
4. sentence reduction or discharge (the sentencing court or judge can review a sentence of three years or less and, if the state's attorney agrees, a sentence of more than three years); and
5. the sentencing court's common law authority to correct illegal sentences.

ALLOWABLE HABEAS CLAIMS

The bill bars a claim for relief raised in a habeas corpus petition and prohibits a court from deciding it if the claim:

1. was raised and decided in an earlier proceeding on the merits or procedural grounds or
2. could have been raised but was not (a) before sentence was

imposed; (b) in a direct appeal; or (c) in a previous habeas corpus proceeding related to the conviction, sentence, or commitment.

But, the bill allows the court to hear such a claim under the following two circumstances:

1. The applicant set outs facts that, viewed most favorably to him or her, show good cause for the failure to raise the claim earlier and actual prejudice results from the impropriety claimed in the application. An applicant shows good cause by showing (a) objective factors external to the defense that impeded the ability to raise the claim earlier or (b) the claim is based on a new interpretation of federal or state constitutional law by the state or U.S. Supreme Court that was unavailable and applies retroactively to cases on collateral review.
2. The applicant alleges newly discovered evidence that (a) could not have been discovered previously by the applicant's or his or her counsel's due diligence and (b) would establish the applicant's actual innocence of the offense.

Under the bill, "actual innocence" means the applicant did not (1) engage in the conduct for which he or she was convicted or committed, (2) engage in conduct that is a lesser included offense, or (3) commit any other offense or motor vehicle violation arising out of or reasonably connected to the facts supporting the information (the criminal charging document filed by prosecutors against the person) that was the basis for conviction or commitment.

LIMITING ACCESS TO PUBLIC DEFENDERS

Current law allows the court to appoint a public defender, assistant public defender, deputy assistant public defender, or counsel from the trial list to represent an indigent person in a habeas corpus proceeding related to a criminal conviction. The bill allows a court to make such an appointment for an indigent person filing a second or subsequent habeas corpus application only if the:

1. grounds for relief are not frivolous and not procedurally barred;
2. interests of justice will be furthered; and
3. applicant is determined indigent, after an investigation by the public defender's office.

COURT DETERMINATIONS FOR AN EVIDENTIARY HEARING

The bill requires the court to make certain finding before a habeas application proceeds to a hearing (this appears to apply to applications for a public defender as well).

Before scheduling an evidentiary hearing, the court must find that a factual assertion that provides the predicate for a claim is supported by an affidavit or certification showing that the evidence supporting the fact would be admissible in a hearing.

The bill entitles an applicant to an evidentiary hearing if he or she makes a prima facie case and the court finds material issues of disputed fact that cannot be resolved on the existing record and an evidentiary hearing is needed to resolve the claim. A prima facie case requires the applicant to plead facts supported by the affidavit or certification that show a reasonable likelihood that, when viewed most favorably to the applicant, the claim will succeed on the merits.

The bill prohibits a court from holding an evidentiary hearing:

1. if the hearing will not aid the court's analysis of the claim;
2. if the allegations are vague, conclusory, or speculative; or
3. for the applicant to investigate whether additional claims for relief exist for which the applicant has not demonstrated a reasonable likelihood of success as required by the bill.

BACKGROUND

Related Law

The Connecticut Constitution prohibits suspending the privileges of

the writ of habeas corpus unless the legislature does so because public safety requires it due to a rebellion or invasion (Art. I, § 12). Similarly, the U.S. Constitution prohibits suspending the privilege of the writ of habeas corpus except when public safety requires it due to rebellion or invasion (Act. I, § 9).

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 24 Nay 21 (04/15/2011)