



**Office of Chief Public Defender
State of Connecticut**

30 TRINITY STREET, 4TH FLOOR
HARTFORD, CONNECTICUT 06106
TEL (860)509-6429
FAX (860-509-6499
susan.storey@jud.ct.gov

ATTORNEY SUSAN O. STOREY
CHIEF PUBLIC DEFENDER

DIVISION OF PUBLIC DEFENDER SERVICES

Testimony of Temmy Ann Pieszak, Esq., Chief of Habeas Corpus Services
Raised Bill # 6427
Public hearing: Judiciary Committee
March 7, 2011

The Office of the Chief Public Defender opposes Sections (1) and (2) of Raised Bill No. 6427, An Act Concerning Post-Conviction Procedures in Death Penalty Cases.

Section (1) would enact a statute of limitations in nearly all death and non-death¹ cases barring a habeas petition not filed within 1 year after the inmate's direct appeal. An existing federal statute of limitations already does that. But the narrow exceptions proposed would not protect the right to file legitimate claims that could not be raised earlier.

Section (2) would change, in death cases only, the existing automatic stay of execution, shortening some stays and eliminating others altogether. It would replace the presumption that a person should not be executed while his case is pending with one allowing execution even while the case is pending, unless he can prove that he is *likely* to prevail.

The proposed statute of limitations will not make inmates sentenced to death file their habeas petitions sooner. Congress has already taken care of that. The federal statute of limitations in the Anti-Terrorism and Effective Death Penalty Act requires state prisoners who want federal review of their issues to file their habeas cases within 1 year after their direct appeal or a properly filed post-conviction challenge. This requirement already ensures that habeas claims are filed promptly after the end of the direct appeal, particularly in cases where the

¹ Section 1 is not limited to death cases. It applies to inmates serving life sentences. Death cases present different concerns from non-death cases. For example, inmates sentenced to life are serving their sentences as they pursue their court cases. They cannot delay the running of their sentence, while death-sentenced inmates' executions are delayed while their cases are pending.

inmate is sentenced to death. Those death-sentenced petitioners have filed within 1 day of the end of the direct appeal, within 11 days, 15 days, 18 days, and in one case in under 3 months. The federal limitation and the fact that a stay lasts only 30 days after the end of the appeal mean that delay in filing by death-sentenced inmates is not a problem.

Most statutes of limitation run from the date on which the party knew or reasonably could have discovered the factual basis for the claim. Section (1) would bar a claim before it is even possible to discover the basis for the claim. It would bar a second petition such as one based on a clarification of the law. Recently the Connecticut Supreme Court clarified what constitutes a kidnapping, narrowing the facts that would support a conviction. That change applies to kidnapping convictions entered before the clarification because the Court merely clarified what the law has always been. Inmates convicted of the kidnap murder form of capital felony are entitled to pursue a habeas to ensure that they have not been convicted under a mistaken and overbroad interpretation of the law. But the proposed statute of limitations would bar such claims. The exception for a new interpretation of law is too limited to solve this problem. It applies only to clarifications of *constitutional* law, not statutory law, even when the change reveals a constitutional violation. Another exception, the disability exception, is also too narrow. It applies only to mental disease, not mental defects like brain damage. Also, the innocence exception excludes cases that would be proven by new *impeachment* evidence.

Section (2), in addition to creating a presumption that no stay will issue if an inmate has had a direct appeal and filed either a petition for new trial or a habeas petition, shortens some stays from the end of the post-conviction proceeding plus 30 days, to the end of the litigation plus 10 days. The change in the length of the stay will generate confusion without any substantial benefit. Section (2) does not include a stay of execution while the DNA testing (under General Statutes 54-102kk and Section 3 of the proposed bill) takes place. Section (2) is also flawed because the limitations on stays for habeas petitions apply if an earlier petition was filed, regardless of whether it was ever litigated and decided. For example, one death-sentenced inmate filed a habeas petition while his direct appeal was still underway. Once counsel was appointed and advised him, he withdrew that petition so all his claims about the trial and the appeal could be raised in a single petition after the appeal was over. Under this proposal he would not be entitled to a stay of execution for that petition because of the one he had filed and withdrawn.

Both sections require additional litigation by requiring hearings to show a stay should issue or an exception to the statute of limitations before the case is even allowed into court.