



General Assembly

January Session, 2011

**Raised Bill No. 6427**

LCO No. 3282

\*03282\_\_\_\_\_JUD\*

Referred to Committee on Judiciary

Introduced by:  
(JUD)

**AN ACT CONCERNING POST-CONVICTION PROCEDURES IN DEATH PENALTY CASES.**

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

1 Section 1. (NEW) (*Effective from passage*) (a) No application for a writ  
2 of habeas corpus filed by or on behalf of a person challenging a  
3 conviction of a capital felony under section 53a-54b of the general  
4 statutes entered on or after the effective date of this section or a  
5 sentence imposed in accordance with section 53a-46a of the general  
6 statutes on or after the effective date of this section shall be allowed if  
7 filed (1) more than three years after the date that the sentence was  
8 imposed if no direct appeal was taken, or (2) more than one year after  
9 the date of (A) the final order of the last appellate court in this state to  
10 exercise jurisdiction on a direct appeal or the termination of such  
11 appellate jurisdiction, or (B) the denial of a petition for a writ of  
12 certiorari to the Supreme Court of the United States or issuance of the  
13 final order of the Supreme Court of the United States following the  
14 granting of such petition, whichever is later.

15 (b) Notwithstanding the provisions of subsection (a) of this section,  
16 a court may hear a claim if the applicant establishes due diligence in

17 presenting the claim and:

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

20 (2) The applicant alleges the existence of newly discovered evidence,  
21 including scientific evidence, that could not have been discovered by  
22 the exercise of due diligence by the applicant or the applicant's  
23 attorney prior to the expiration of the three-year period for the filing of  
24 an application for a writ of habeas corpus, and the evidence (A) is not  
25 cumulative to evidence presented at trial, (B) is not for impeachment  
26 purposes, and (C) establishes by clear and convincing evidence that  
27 the applicant is innocent of the offense or offenses for which he or she  
28 was convicted; or

29 (3) The applicant's claim is based upon a new interpretation of  
30 federal or state constitutional law by either the Supreme Court of the  
31 United States or the Supreme Court of this state and made  
32 retroactively applicable to cases on collateral review.

33 Sec. 2. Subsection (c) of section 54-95 of the general statutes is  
34 repealed and the following is substituted in lieu thereof (*Effective from*  
35 *passage*):

36 (c) In any criminal prosecution in which the defendant has been  
37 sentenced to death, [and has taken an appeal to the Supreme Court of  
38 this state or the Supreme Court of the United States or brought a writ  
39 of error, writ of certiorari or petition for a new trial, the taking of the  
40 appeal, the making of the application for a writ of certiorari or the  
41 return into court of the writ of error or petition for a new trial shall,  
42 unless, upon application by the state's attorney and after hearing, the  
43 Supreme Court otherwise orders, stay the execution of the death  
44 penalty until the clerk of the court where the trial was had has received  
45 notification of the termination of any such proceeding by decision or  
46 otherwise, and for thirty days thereafter] execution of the sentence  
47 shall be stayed during the pendency of the direct appeal and for thirty

48 days thereafter. If the defendant brings a petition for writ of certiorari  
49 to the Supreme Court of the United States, execution of the sentence  
50 shall be stayed until the Supreme Court of the United States has finally  
51 determined the matter and for ten days thereafter. If the defendant  
52 brings an application for a writ of habeas corpus or a timely petition  
53 for a new trial, execution of the sentence shall be stayed until the  
54 matter is finally determined and for thirty days thereafter. The filing of  
55 a petition for certification to appeal the denial of an application for a  
56 writ of habeas corpus or the filing of an appeal from the denial of a  
57 petition for a new trial shall stay the execution of the sentence until  
58 any appeal to the Appellate Court or Supreme Court of this state is  
59 finally determined and for ten days thereafter or until ten days after  
60 the petition for certification is denied if no appeal is filed. Only the first  
61 application for a writ of habeas corpus or petition for a new trial shall  
62 give rise to an automatic stay pursuant to this subsection. If the  
63 defendant brings a second or subsequent application for a writ of  
64 habeas corpus or petition for a new trial, any motion for a stay of  
65 execution of the sentence shall be made to the Supreme Court of this  
66 state and shall only be granted upon a showing by the defendant of a  
67 likelihood of success upon the merits. No appellate procedure shall be  
68 deemed to have terminated until the end of the period allowed by law  
69 for the filing of a motion for reargument, or, if such motion is filed,  
70 until the proceedings consequent thereon are finally determined.  
71 [When] Whenever execution of the sentence is stayed under the  
72 provisions of this section, the clerk of the court shall forthwith give  
73 notice thereof to the warden of the institution in which such defendant  
74 is in custody. If the original judgment of conviction has been affirmed  
75 or remains in full force at the time when the clerk has received the  
76 notification of the termination of any proceedings by appeal, [writ of  
77 certiorari, writ of error or] petition for a new trial or application for a  
78 writ of habeas corpus, and the day designated for the infliction of the  
79 death penalty has then passed or will pass within thirty days  
80 thereafter, the defendant shall, within said period of thirty days, upon  
81 an order of the court in which the judgment was rendered at a regular

82 or special criminal session thereof, be presented before said court by  
83 the warden of the institution in which the defendant is in custody or  
84 his deputy, and the court, with the judge assigned to hold the session  
85 presiding, shall thereupon designate a day for the infliction of the  
86 death penalty and the clerk of the court shall issue a warrant of  
87 execution, reciting therein the original judgment, the fact of the stay of  
88 execution of the sentence and the final order of the court, which  
89 warrant shall be forthwith served upon the warden or his deputy.

90 Sec. 3. Section 54-102kk of the general statutes is repealed and the  
91 following is substituted in lieu thereof (*Effective from passage*):

92 (a) Notwithstanding any other provision of law governing  
93 postconviction relief, any person who was convicted of a crime and  
94 sentenced to incarceration may, at any time during the term of such  
95 incarceration, file a petition with the sentencing court requesting the  
96 DNA testing of any evidence that is in the possession or control of the  
97 Division of Criminal Justice, any law enforcement agency, any  
98 laboratory or the Superior Court. The petitioner shall state under  
99 penalties of perjury that the requested testing is related to the  
100 investigation or prosecution that resulted in the petitioner's conviction  
101 and that the evidence sought to be tested contains biological evidence.

102 (b) After notice to the prosecutorial official and a hearing, the court  
103 shall order DNA testing if it finds that:

104 (1) A reasonable probability exists that the petitioner would not  
105 have been prosecuted or convicted if exculpatory results had been  
106 obtained through DNA testing;

107 (2) The evidence is still in existence and is capable of being subjected  
108 to DNA testing;

109 (3) The evidence, or a specific portion of the evidence identified by  
110 the petitioner, was never previously subjected to DNA testing, or the  
111 testing requested by the petitioner may resolve an issue that was never

112 previously resolved by previous testing; and

113 (4) The petition before the Superior Court was filed in order to  
114 demonstrate the petitioner's innocence and not to delay the  
115 administration of justice.

116 (c) After notice to the prosecutorial official and a hearing, the court  
117 may order DNA testing if it finds that:

118 (1) A reasonable probability exists that the requested testing will  
119 produce DNA results which would have altered the verdict or reduced  
120 the petitioner's sentence if the results had been available at the prior  
121 proceedings leading to the judgment of conviction;

122 (2) The evidence is still in existence and is capable of being subjected  
123 to DNA testing;

124 (3) The evidence, or a specific portion of the evidence identified by  
125 the petitioner, was never previously subjected to DNA testing, or the  
126 testing requested by the petitioner may resolve an issue that was never  
127 previously resolved by previous testing; and

128 (4) The petition before the Superior Court was filed in order to  
129 demonstrate the petitioner's innocence and not to delay the  
130 administration of justice.

131 (d) Notwithstanding the provisions of subsections (b) and (c) of this  
132 section, whenever any person convicted of a capital felony under  
133 section 53a-54b and sentenced to death in accordance with section 53a-  
134 46a files a petition pursuant to subsection (a) of this section requesting  
135 the DNA testing of evidence, the court shall, without a hearing, order  
136 such DNA testing.

137 [(d)] (e) The costs of DNA testing ordered pursuant to this section  
138 shall be borne by the state or the petitioner, as the court may order in  
139 the interests of justice, except that DNA testing shall not be denied  
140 because of the inability of the petitioner to pay the costs of such

141 testing.

142 [(e)] (f) In a proceeding under this section, the petitioner shall have  
143 the right to be represented by counsel and, if the petitioner is indigent,  
144 the court shall appoint counsel for the petitioner in accordance with  
145 section 51-296.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	New section
Sec. 2	<i>from passage</i>	54-95(c)
Sec. 3	<i>from passage</i>	54-102kk

**Statement of Purpose:**

To streamline the process for filing habeas corpus petitions, appeals and requests for DNA testing of evidence in cases where the defendant has been convicted of a capital felony.

*[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.]*