



General Assembly

January Session, 2011

**Raised Bill No. 6439**

LCO No. 3668

\*03668 \_\_\_\_\_ 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, 2011*) 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, 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 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, 2011*) (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 that could not have been discovered by the exercise of due diligence by  
40 the applicant or the applicant's counsel prior to the expiration of the  
41 three-year period for the filing of an application for a writ of habeas  
42 corpus and would establish that the applicant is actually innocent of  
43 the offense or offenses for which the applicant was convicted or  
44 committed. For purposes of this subdivision, "actually innocent" means  
45 that the applicant did not engage in the conduct for which he or she  
46 was convicted or committed, engage in conduct amounting to any  
47 lesser included offense thereof or commit any other offense or motor  
48 vehicle violation arising out of or reasonably connected to the facts

49 supporting the information upon which the applicant was convicted or  
50 committed;

51 (3) The applicant's claim for relief is based upon a new  
52 interpretation of federal or state constitutional law by either the  
53 Supreme Court of the United States or the Supreme Court of this state  
54 that is retroactively applicable to cases on collateral review; or

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

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

69 Sec. 4. (NEW) (*Effective October 1, 2011*) (a) A claim for relief raised  
70 in an application for a writ of habeas corpus, or in an amended  
71 application, shall be barred and no court may decide the claim if:

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

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

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

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

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

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

84 (1) The applicant sets forth sufficient facts which, when viewed in a  
85 light most favorable to the applicant, demonstrate good cause for his  
86 or her failure to raise the specific claim in the earlier proceedings and  
87 actual prejudice resulting from the impropriety claimed in the  
88 application. For purposes of this subdivision, an applicant  
89 demonstrates good cause by identifying an objective factor external to  
90 the defense that impeded his or her ability to raise the specific claim  
91 during the earlier proceedings or demonstrating that the claim for  
92 relief is based upon a new interpretation of federal or state  
93 constitutional law by either the Supreme Court of the United States or  
94 the Supreme Court of this state that was previously unavailable and is  
95 retroactively applicable to cases on collateral review; or

96 (2) The applicant alleges the existence of newly discovered evidence  
97 that could not have been discovered by the exercise of due diligence by  
98 the applicant or the applicant's counsel prior to the expiration of the  
99 three-year period for the filing of an application for a writ of habeas  
100 corpus and would establish that the applicant is actually innocent of  
101 the offense or offenses for which the applicant was convicted or  
102 committed. For purposes of this subdivision, "actually innocent" means  
103 that the applicant did not engage in the conduct for which he or she  
104 was convicted or committed, engage in conduct amounting to any  
105 lesser included offense thereof or commit any other offense or motor  
106 vehicle violation arising out of or reasonably connected to the facts  
107 supporting the information upon which the applicant was convicted or  
108 committed.

109       Sec. 5. (NEW) (*Effective October 1, 2011*) (a) The provisions of section  
110 51-296 of the general statutes shall not apply in a proceeding initiated  
111 by the filing of a second or subsequent application for a writ of habeas  
112 corpus. The court before which a second or subsequent application is  
113 pending may, if it determines that the application was filed within the  
114 time period set forth in section 3 of this act, that the grounds for relief  
115 raised in the application are not frivolous and not procedurally barred,  
116 that the interests of justice will be furthered and, after investigation by  
117 the public defender or his or her office, that the applicant is indigent as  
118 defined under chapter 887 of the general statutes, designate a public  
119 defender, assistant public defender or deputy assistant public defender  
120 or appoint counsel from the trial list established under section 51-291  
121 of the general statutes, to represent such indigent applicant.

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

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

128       Sec. 6. (NEW) (*Effective October 1, 2011*) (a) Prior to scheduling an  
129 evidentiary hearing on an application brought pursuant to sections 1 to  
130 6, inclusive, of this act, the court shall determine that any factual  
131 assertion that provides the predicate for a claim of relief brought  
132 pursuant to sections 1 to 6, inclusive, of this act is supported by an  
133 affidavit or certification from the declarant from which a court could  
134 determine that the evidence supporting the fact would be admissible  
135 in a hearing on the application.

136       (b) An applicant shall be entitled to a hearing on an application filed  
137 pursuant to sections 1 to 6, inclusive, of this act only upon an  
138 establishment of a prima facie case in support of the application and a  
139 determination by the court that there are material issues of disputed  
140 fact that cannot be resolved by reference to the existing record and that

141 an evidentiary hearing is necessary to resolve the claim or claims for  
142 relief. To establish a prima facie case for a claim or claims, an applicant  
143 must plead sufficient facts supported pursuant to subsection (a) of this  
144 section to demonstrate a reasonable likelihood that, if the facts are  
145 viewed in a light most favorable to the applicant, the claim or claims  
146 will succeed on the merits.

147 (c) A court shall not grant an evidentiary hearing (1) if such a  
148 hearing will not aid in the court's analysis of the applicant's claim or  
149 claims for relief, (2) if the allegations of the application are vague,  
150 conclusory or speculative, or (3) for the purpose of permitting an  
151 applicant to investigate whether additional claims for relief exist for  
152 which the applicant has not demonstrated a reasonable likelihood of  
153 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
Sec. 6	<i>October 1, 2011</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.]*