



General Assembly

Substitute Bill No. 6439

January Session, 2011

* HB06439JUD 041511 *

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.*