



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

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**TESTIMONY OF SUSAN O. STOREY, CHIEF PUBLIC DEFENDER
COMMITTEE ON JUDICIARY
MARCH 29, 2012**

RAISED BILL NO. 5554, AN ACT CONCERNING HABEAS CORPUS REFORM

The Office of Chief Public Defender supports the passage of **Raised Bill No. 5554, *An Act Concerning Habeas Corpus Reform***. This Office, after the last Legislative Session, agreed to meet with the Division of Criminal Justice in order to discuss possible agreement on legislative and procedural changes to existing habeas corpus statutes. Raised Bill No. 5554 is the result of extensive discussions that included the Judicial Department, specifically Judges Elliot Solomon and Carl Schuman, members of the Chief State's Attorneys Office, members of the Office of Chief Public Defender including the Chief of our Habeas Corpus Unit, and a representative member of the Connecticut Criminal Defense Lawyers Association (CCDLA). This bill offers some significant procedural changes while protecting the post-conviction rights of persons sentenced to death or claiming to be actually innocent.

Raised Bill No. 5554 contains provisions for a comprehensive screening process for habeas petitions as well as provisions for a rebuttable presumption that the filing of a petition challenging a conviction has been delayed without good cause if the initial petition is filed after five years from the date on which the judgment of conviction is deemed to be a final judgment due to the conclusion of appellate review or the expiration of time seeking such review, or two years from final judgment for a subsequent petition challenging the same petition.

Subsection (b) of the bill includes the criteria and procedures for the screening process for the habeas court to determine whether there is good cause for a trial for all or some of the claims raised by the petitioner. Subsection (b)(3) would require such determination to be made if either party or the court requested such determination to be made. Any determination would be made after the pleadings have been closed, and therefore the petitioner's claims should be sufficiently investigated and prepared, and petitioner's counsel able to allege specific facts which, if proven, would entitle the petitioner to relief under applicable law. The petitioner may also submit exhibits that would further the claim. If the court finds that the petition and exhibits alone are insufficient to establish good cause for trial, the court must hold a hearing for the petitioner

and/or his counsel to submit further evidence and argument in support of proceeding to trial. If after such hearing, the court finds that there is not good cause for the petitioner to proceed to trial, than the court can dismiss all or part of the petition.

Subsections (c) and (d) establish rebuttable presumptions of delay if an initial or subsequent habeas petition is filed after certain time periods. Subsection (c) establishes a 5 year rebuttable presumption of delay in filing an initial habeas petition. While not a strict statute of limitations, this provision is a substantial change to Connecticut's existing habeas statute, C.G.S. 52-470, which does not have such restrictions. Subsection (d) specifically addresses the issue of subsequent or successive petitions challenging the same conviction, which must be filed by the petitioner within 2 years of the final judgment or appellate review, if any, of the prior petition.

Subsections (b) through (e) specifically do not apply to claims of actual innocence, petitions filed to challenge the penalty of death for a capital felony or petitions filed challenging conditions of confinement. In all discussions with the Division of Criminal Justice and Judicial, the Office of Chief Public Defender consistently expressed that there could be no agreement on changes to the habeas statute if petitioners' rights of review in death penalty cases or claims of actual innocence were in anyway curtailed.

The Office of Chief Public Defender expects some greater influx of habeas petitions for at least a year after this legislation takes effect, due to the fact that inmates may want to make sure they are not foreclosed from having their claims addressed. We are therefore expecting that we will some additional resources in the Habeas Corpus Unit and in our Assigned Counsel Account in order to meet the demand for counsel for an increased number of habeas petitions.