



General Assembly

Amendment

February Session, 2012

LCO No. 3309

HB0555403309HDO

Offered by:

REP. FOX, 146th Dist.

SEN. COLEMAN, 2nd Dist.

REP. HETHERINGTON, 125th Dist.

SEN. KISSEL, 7th Dist.

To: Subst. House Bill No. 5554

File No. 268

Cal. No. 215

"AN ACT CONCERNING HABEAS CORPUS REFORM."

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

3 "Section 1. Section 52-470 of the general statutes is repealed and the
4 following is substituted in lieu thereof (*Effective October 1, 2012, and*
5 *applicable to petitions filed on or after said date*):

6 (a) The court or judge hearing any habeas corpus shall proceed in a
7 summary way to determine the facts and issues of the case, by hearing
8 the testimony and arguments [therein] in the case, and shall inquire
9 fully into the cause of imprisonment [, and shall] and thereupon
10 dispose of the case as law and justice require.

11 (b) (1) After the close of all pleadings in a habeas corpus proceeding,
12 the court, upon the motion of any party or, on its own motion upon

13 notice to the parties, shall determine whether there is good cause for
14 trial for all or part of the petition.

15 (2) With respect to the determination of such good cause, each party
16 may submit exhibits including, but not limited to, documentary
17 evidence, affidavits and unsworn statements. Upon the motion of any
18 party and a finding by the court that such party would be prejudiced
19 by the disclosure of the exhibits at that stage of the proceedings, the
20 court may consider some or all of the exhibits in camera.

21 (3) In order to establish such good cause, the petition and exhibits
22 must (A) allege the existence of specific facts which, if proven, would
23 entitle the petitioner to relief under applicable law, and (B) provide a
24 factual basis upon which the court can conclude that evidence in
25 support of the alleged facts exists and will be presented at trial,
26 provided the court makes no finding that such evidence is
27 contradicted by judicially noticeable facts. If the petition and exhibits
28 do not establish such good cause, the court shall hold a preliminary
29 hearing to determine whether such good cause exists. If, after
30 considering any evidence or argument by the parties at such
31 preliminary hearing, the court finds there is not good cause for trial,
32 the court shall dismiss all or part of the petition, as applicable.

33 (c) Except as provided in subsection (d) of this section, there shall be
34 a rebuttable presumption that the filing of a petition challenging a
35 judgment of conviction has been delayed without good cause if such
36 petition is filed after the later of the following: (1) Five years after the
37 date on which the judgment of conviction is deemed to be a final
38 judgment due to the conclusion of appellate review or the expiration of
39 the time for seeking such review; (2) October 1, 2017; or (3) two years
40 after the date on which the constitutional or statutory right asserted in
41 the petition was initially recognized and made retroactive pursuant to
42 a decision of the Supreme Court or Appellate Court of this state or the
43 Supreme Court of the United States or by the enactment of any public
44 or special act. The time periods set forth in this subsection shall not be
45 tolled during the pendency of any other petition challenging the same

46 conviction.

47 (d) In the case of a petition filed subsequent to a judgment on a prior
48 petition challenging the same conviction, there shall be a rebuttable
49 presumption that the filing of the subsequent petition has been
50 delayed without good cause if such petition is filed after the later of
51 the following: (1) Two years after the date on which the judgment in
52 the prior petition is deemed to be a final judgment due to the
53 conclusion of appellate review or the expiration of the time for seeking
54 such review; (2) October 1, 2014; or (3) two years after the date on
55 which the constitutional or statutory right asserted in the petition was
56 initially recognized and made retroactive pursuant to a decision of the
57 Supreme Court or Appellate Court of this state or the Supreme Court
58 of the United States or by the enactment of any public or special act.
59 For the purposes of this section, the withdrawal of a prior petition
60 challenging the same conviction shall not constitute a judgment. The
61 time periods set forth in this subsection shall not be tolled during the
62 pendency of any other petition challenging the same conviction.
63 Nothing in this subsection shall create or enlarge the right of the
64 petitioner to file a subsequent petition under applicable law.

65 (e) In a case in which the rebuttable presumption of delay under
66 subsection (c) or (d) of this section applies, the court, upon the request
67 of the respondent, shall issue an order to show cause why the petition
68 should be permitted to proceed. The petitioner or, if applicable, the
69 petitioner's counsel, shall have a meaningful opportunity to investigate
70 the basis for the delay and respond to the order. If, after such
71 opportunity, the court finds that the petitioner has not demonstrated
72 good cause for the delay, the court shall dismiss the petition. For the
73 purposes of this subsection, good cause includes, but is not limited to,
74 the discovery of new evidence which materially affects the merits of
75 the case and which could not have been discovered by the exercise of
76 due diligence in time to meet the requirements of subsection (c) or (d)
77 of this section.

78 (f) Subsections (b) to (e), inclusive, of this section shall not apply to

79 (1) a claim asserting actual innocence, (2) a petition filed to challenge
 80 the conditions of confinement, or (3) a petition filed to challenge a
 81 conviction for a capital felony for which a sentence of death is imposed
 82 under section 53a-46a.

83 [(b)] (g) No appeal from the judgment rendered in a habeas corpus
 84 proceeding brought by or on behalf of a person who has been
 85 convicted of a crime in order to obtain such person's release may be
 86 taken unless the appellant, within ten days after the case is decided,
 87 petitions the judge before whom the case was tried or, if such judge is
 88 unavailable, a judge of the Superior Court designated by the Chief
 89 Court Administrator, to certify that a question is involved in the
 90 decision which ought to be reviewed by the court having jurisdiction
 91 and the judge so certifies."

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| This act shall take effect as follows and shall amend the following sections: | | |
| Section 1 | <i>October 1, 2012, and applicable to petitions filed on or after said date</i> | 52-470 |