
OLR Bill Analysis

sHB 5554

AN ACT CONCERNING HABEAS CORPUS REFORM.

SUMMARY:

Regarding habeas corpus petitions, this bill:

1. requires the court, on its own or if asked by a party, to determine if there is good cause to proceed to trial on the petition and
2. for a petition related to a criminal conviction, creates a rebuttable presumption that a petition filed after certain dates was delayed without good cause and requires the court to dismiss it if the petitioner does not establish good cause for the delay.

The bill's provisions do not apply to petitions claiming actual innocence, challenging prison conditions, or challenging a capital felony conviction that resulted in a death sentence.

Current statutes and court rules do not limit the filing of habeas petitions. Grounds for a court to dismiss a habeas petition include presenting the same grounds as a prior petition previously denied and failing to state new facts or offer new evidence not reasonably available at the time of the prior petition (Practice Book §§ 23-29 and 25-42).

EFFECTIVE DATE: October 1, 2012 and applicable to petitions filed on or after that date.

GOOD CAUSE TO PROCEED TO TRIAL

For any type of habeas petition except those excluded as specified above, the bill requires the court to determine whether there is good cause for some or all of the petition's allegations to proceed to trial if, after the pleading, (1) a party requests it or (2) the court notifies the

parties of its intention to make such a determination.

The bill allows the parties to submit exhibits such as documentary evidence, affidavits, and unsworn statements. The court can look at a petitioner's exhibit in camera (in private) if a party (1) requests it and (2) would be prejudiced by disclosure at that stage of the proceeding.

The court can determine good cause based on the petition and exhibits if they:

1. allege specific facts that, if proven, would entitle the petitioner to relief and
2. provide a factual basis to conclude that evidence supporting the facts exists and will be presented at trial, as long as the court does not make a finding that the evidence is contradicted by judicially noticeable facts (generally, facts that the court can accept without requiring proof because they are generally known).

If the petition and exhibits do not establish good cause, the bill requires the court to hold a preliminary hearing. It must dismiss all or part of a petition after the hearing if it does not find good cause after considering the parties' evidence and arguments.

REBUTTABLE PRESUMPTION OF DELAY

The bill creates two rebuttable presumptions of delay in filing habeas petitions challenging a criminal conviction other than claims of actual innocence or capital convictions resulting in a death sentence: one for initial petitions and another for subsequent petitions. If either presumption applies, the petitioner must have an opportunity to show good cause for the delay before the court dismisses the petition.

Initial Petition

The bill creates a rebuttable presumption that a petition was delayed without good cause if it is filed after the later of:

1. five years after appellate review of the conviction concludes or

the time for review expires;

2. October 1, 2017; or
3. two years after a constitutional or statutory right asserted in the petition was initially recognized and made retroactive by the U.S. Supreme Court, the Connecticut Supreme or Appellate Court, or a public or special act.

The bill's time periods are not tolled by another pending petition challenging the same conviction.

Subsequent Petition

The bill creates a rebuttable presumption that a subsequent petition challenging the same conviction was delayed without good cause if it is filed more than two years after the later of:

1. the date appellate review of the prior petition concluded or the period for review expired;
2. October 1, 2012; or
3. the date a constitutional or statutory right asserted in the petition was initially recognized and made retroactive by the U.S. Supreme Court, the Connecticut Supreme or Appellate Court, or a public or special act.

These provisions do not apply if the prior petition was withdrawn.

The bill's time periods are not tolled by another pending petition challenging the same conviction.

The bill specifies that these provisions do not create or enlarge a petitioner's right to file subsequent petitions.

Hearing

If a rebuttable presumption of delay applies, the respondent can request that and the bill requires the court to order the petitioner to show cause why the petition should proceed. The petitioner or his or

her counsel must have a meaningful opportunity to investigate the basis for the delay and respond to the order. The court must dismiss the petition if it does not find good cause for the delay.

Under the bill, good cause for this purpose includes the discovery of new evidence that materially affects the merits of the case that could not have been discovered by due diligence in the required timeframes.

BACKGROUND

Habeas Corpus

Habeas corpus is a civil action that allows a petitioner to challenge the legality of certain actions. For example, a habeas petition can be filed by a:

1. prisoner to challenge the legality of his or her conviction and confinement or the constitutionality of his or her prison conditions,
2. person confined in a hospital for psychiatric disabilities to challenge the legality of his or her confinement,
3. person subject to involuntary representation by a conservator to challenge the legality of the involuntary representation, or
4. person to challenge child custody or visitation orders.

The Connecticut Constitution prohibits suspending the privileges of the writ of habeas corpus unless the legislature does so because public safety requires it due to a rebellion or invasion (Art. I, § 12). Similarly, the U.S. Constitution prohibits suspending the privilege of the writ of habeas corpus except when public safety requires it due to rebellion or invasion (Art. I, § 9).

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 42 Nay 0 (04/02/2012)