

The Division of Criminal Justice respectfully recommends and requests the Committee's JOINT FAVORABLE Report for H.B. No. 5554, An Act Concerning Habeas Corpus Reform. As we have stated for the past several years, reform of the habeas process is the single most important issue for the Division of Criminal Justice in this legislative session. The current system is broken and must be fixed – for the interests of victims, for the interests of those with legitimate habeas claims and for the interests of justice.

H.B. No. 5554 is the product of months of intensive discussions involving the Division of Criminal Justice, the Division of Public Defender Services, the private defense bar and the Judicial Branch. At times representatives of the Judiciary Committee have participated as well. The Division wishes to thank all of the parties for participating in this process. We are especially appreciative of the participation of the Judicial Branch, and in particular Judges Elliot Solomon and Carl Schuman for their untiring efforts to bring the parties together in an effort to achieve unanimous agreement.

What the bill seeks to do is establish a screening process to identify those habeas cases that present meritless claims or claims that have already been adjudicated and should not proceed to trial and, in many if not most cases, to subsequent appeal. The bill also establishes a rebuttable presumption intended to bring some control over the time frame in which petitions are brought. It must be stressed that the bill in no way proposes to limit habeas claims asserting the actual innocence of the petitioner nor would the provisions apply to any individual sentenced to death or to petitions challenging the conditions of confinement for any inmate.

The bill simply proposes to bring some very modest degree of control over the uncontrolled flood of habeas cases the judicial system is experiencing, many of which are meritless or raise claims that have already been heard and rejected by the courts. For many inmates the habeas process has become a merry-go-round where they file a first petition, appeal its denial and when the appeal fails, follow with a second petition and appeal -- and so on and so on. We have reached the point where the attorney representing the convict in today's habeas petition routinely will become the target of the claim of ineffective assistance of counsel in tomorrow's habeas petition. Victims, witnesses and investigators are called to testify years after the crime was committed, the defendant convicted and the sentence imposed.

In other cases, defendants bring petitions challenging their conviction on charges to which they pled guilty. Another trend in recent years is for a petitioner to file a petition and then, after much work has been done by the state in response, to withdraw the petition on the eve of trial and re-file it at a later

date. In all instances, the result is the same: there is simply no finality since at no point does the system declare a case closed. This is an injustice to the innocent victim who is forced to relive the crime sometimes in repeat habeas trials and years after being initially victimized. It is also an injustice to the small percentage of inmates who have legitimate claims to present to the court. They, too, must wait in line for their claims to be heard while the courts devote their time and effort to meritless and repeat petitions.

The cost of meritless and repeat claims is enormous. Not only are there the human costs of the injustices committed against victims and those with legitimate claims, but there are the direct and ever-increasing financial costs to the taxpayer. These costs include the costs to the Division of Criminal Justice for prosecutors, investigators and support staff, the Division of Public Defender Services for representation of petitioners and the Judicial Branch for the processing and disposition of cases. In our last analysis in 2010, the Division of Criminal Justice estimated our average costs for each habeas case at \$4,248. This figure is the cost to the Division alone and does not include the cost to the Judicial Branch or the Division of Public Defender Services. There is no question that habeas cases amount for a significant portion of the millions of dollars expended annually on private attorneys retained as Special Public Defenders. Another recent trend is a substantial increase in the amount being expended for purported expert witnesses retained by petitioner's counsel. What can result is a battle of the experts, where the state must hire its own expert to counter the petitioner's witness – with the cost of both borne by the taxpayer.

The habeas process – “The Great Writ” as it has been rightfully called – is a cherished right long enshrined in our American judicial system. It is a right that must be preserved and protected and not trivialized and abused by those who would bring meritless and repeat claims. H.B. No. 5554 is a good albeit small first step toward ending abuse of the habeas process. The Division would respectfully request the Committee's Joint Favorable Report.