



General Assembly

February Session, 2012

Amendment

LCO No. 3062

SB0028003062SR0

Offered by:

SEN. MCKINNEY, 28th Dist.

SEN. FASANO, 34th Dist.

To: Subst. Senate Bill No. 280

File No. 111

Cal. No. 113

"AN ACT REVISING THE PENALTY FOR CAPITAL FELONIES."

1 After the last section, add the following and renumber sections and
2 internal references accordingly:

3 "Sec. 501. Section 52-470 of the general statutes is repealed and the
4 following is substituted in lieu thereof (*Effective from passage 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 filed to challenge a conviction for a capital felony for which a sentence
13 of death is imposed under section 53a-46a, as amended by this act, the
14 court, upon the motion of any party or, on its own motion upon notice

15 to the parties, shall determine whether there is good cause for trial for
16 all or part of the petition.

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

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

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

48 conviction.

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

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

80 [(b)] (f) No appeal from the judgment rendered in a habeas corpus

81 proceeding brought by or on behalf of a person who has been
82 convicted of a crime in order to obtain such person's release may be
83 taken unless the appellant, within ten days after the case is decided,
84 petitions the judge before whom the case was tried or, if such judge is
85 unavailable, a judge of the Superior Court designated by the Chief
86 Court Administrator, to certify that a question is involved in the
87 decision which ought to be reviewed by the court having jurisdiction
88 and the judge so certifies."

This act shall take effect as follows and shall amend the following sections:		
Sec. 501	<i>from passage and applicable to petitions filed on or after said date</i>	52-470