



## State of Connecticut

### DIVISION OF PUBLIC DEFENDER SERVICES

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### Testimony of Deborah Del Prete Sullivan, Legal Counsel Office of Chief Public Defender

### *Raised Bill No. 6569* **An Act Concerning Civil Actions and Subpoenas Filed To Harass an Individual or After Numerous Actions Against the Individual Have Been Dismissed**

### Judiciary Committee Public Hearing - March 13, 2013

The Office of Chief Public Defender is opposed to *Raised Bill No. 6569, An Act Concerning Civil Actions and Subpoenas Filed To Harass an Individual or After Numerous Actions Against the Individual Have Been Dismissed* as it would be applicable to habeas corpus proceedings or civil suits by persons who have been exonerated on the grounds of actual innocence and seek damages or compensation. Section 1 clearly applies to all civil actions which includes habeas corpus and actual innocence suits. This new language would create an additional burden upon counsel in representing a convicted person. It would also impact and undo the extensive habeas reform that the legislature passed in good faith after numerous discussions between this office, judges and criminal justice.

As in previous legislative sessions, this Office requests that if the bill is voted out of committee that language be added that specifically excludes habeas corpus proceedings and civil suits by persons who have been exonerated on the grounds of actual innocence and seek damages or compensation from Sections 1 and 2, and the subsections therein, so that the new provisions are not applicable to habeas corpus proceedings or to persons who have been exonerated on the grounds of actual innocence who then seek damages or compensation.

Page 2 of 2 March 13, 2013 - Judiciary Committee Public Hearing  
Deborah Del Prete Sullivan, Legal Counsel, Office of Chief Public Defender  
Re: *Raised Bill No. 6569 - An Act Concerning Civil Actions and Subpoenas Filed To Harass an Individual or After Numerous Actions Against the Individual Have Been Dismissed*

The use of the word party is applicable not only to the attorneys employed by this Agency but also to those who have been appointed as Assigned Counsel and paid by this Agency and will require the use of additional financial resources to comply with the requirements of Section 1. In civil actions where a person bringing the action has been convicted of a crime, this legislation pursuant to Section 1 (a) (1) would require a certificate to be filed that is signed and sworn to by the pro se party or the attorney "that a reasonable inquiry has been made and that, in the opinion of the attorney or party, there are grounds for a good-faith belief that such action has merit and that such action is not being filed for a malicious purpose or solely to harass the defendant." While this office has no position regarding this proposed provision as it applies to civil lawsuits, the problem here is that habeas corpus proceedings are civil proceedings which are brought against either the Warden or the Commissioner of Correction as the Respondent. The proposed language in Section 1 would be applicable to habeas corpus proceedings. Inmates who file habeas corpus petitions are entitled to representation by the Division of Public Defender Service after the filing, if indigent. The language places the burden of filing a certificate which must provide a detailed discussion as to why there is a good-faith basis, all without the benefit of counsel. Habeas Corpus petitions are filed by pro se inmates. As indicated, extensive habeas reform enacted last year by the legislature addressed issues where subsequent petitions were filed. As drafted, subsection (a)(2) could bar certain petitioners from filing a habeas corpus petition and be inconsistent with the legislation as adopted. Further, there already exist rules pursuant to the Connecticut Rules of Court which permit the exercise of discretion by a court to dismiss a habeas on various grounds.

Section 2 does appear to exempt habeas corpus proceedings from a new requirement that would require a party to notify the clerk (1) if the petitioner had three or more complaints or appeals against a party another dismissed by a state or federal court because such were frivolous or malicious or failed to state a claim and (2) if the subpoena is directed to the victim of such crimes. However, language should be added to make it clear that habeas corpus proceedings are exempt in subsection (c) also so that it is clear that Section 2, in its entirety, does not apply to habeas corpus proceedings or to civil suits filed by persons who have been exonerated on the grounds of actual innocence and seek damages or compensation.