

Habeas Corpus Process and Data

Office of Chief Public Defender

August 21, 2019

Process-Quick Overview

- Petitioner files pro se petition, application for waiver of fees and requests appointment of counsel.
- Court authorizes appointment of counsel if petitioner is financially eligible.
- Court refers application to Public Defender's Office (CTIP) to determine eligibility.
- CTIP conducts investigation into eligibility pursuant to PD Commission Guidelines.
- If Petitioner is financially eligible, case is assigned to a staff attorney or sent to OCPD Assigned Counsel Unit.
- A lawyer is assigned by the OCPD Assigned Counsel Unit.

Process-Quick Overview

- Pre 2012 reform, petitioner's counsel in habeas was a mix of individual contractors and public defender staff lawyers.
- Post reform surge coincided with state budget crisis (layoffs, hiring freeze)
- “Assigned Counsel Firm Model”
 - Specialized firms who handle large volume of habeas matters.
 - Rates are slightly lower, firm can count on volume, contracts modified annually to achieve efficiencies.
 - Improves supervision resulting in better quality control.
 - Cases are assigned by OCPD on rotation.
- Re Staffing OCPD Post Conviction Unit

Caseload Data

How do we count?

- By referral from the Court
 - Initial appointments on new habeas petition.
 - Request for appointment on petitioner who initially opted to go pro se.
 - Reassignments pursuant to court order.
- Pre 2014, cases were tracked on an Access database.
- Since 2014, cases are logged using our Electronic Case Management system (JUSTWARE).
- Cases are assigned and billing is done using FileMaker online system.

How Many Petitions Get Referred to OCPD?

- 1/1/2010 – 2/6/2019 = **6589 petitions filed** (CV10-4003335 – CV19-4009924) (cases then changed to CV19-50000** for e-filing purposes)
 - 2010 - 2015 = 2,895 case referred to CTIP/OCPD
 - 2016 – 2019 = 1,493
 - 2/7/2019 – 7/2/2019 = 244 petitions
- **Total Referred to OCPD 2010-2019 = 4,388**

How Many Habeas Referrals Do We Receive?

OLD DATABASE

By Calendar Year

- 2010 – cases referred = 342
- 2011 – cases referred = 357
- 2012 – cases referred = 436
- 2013 – cases referred = 422
- 2014 – cases referred = 756
- 2015 – cases referred = 582

JUSTWARE

- 2016 – cases referred = 507
 - 2016 – cases referred (1/1/2016 – 3/29/2016) = 132
 - 2016 – cases referred (4/1/2016- 12/31/2016) = 375
- 2017 – cases referred = 434
- 2018 – cases referred = 333
- 2019 – cases referred = 219
 - (1/1/2019- 8/1/2019)

Policy Change Drives Habeas Filings

What Impacts the Caseload?

- Habeas Reform
 - Immediate surge in 2014 (756 cases)
 - When statute adopted SOL, incarcerated individuals rushed to file, creating large number of initial filings.
 - Surge combined with staffing issues for all agencies made it difficult for screening procedures to be utilized.
 - Data shows filings are leveling off, system needs time to process surge through to disposition.

What Impacts the Caseload?

- Case Law
 - Miller/Graham decisions
 - When MG decided most individuals incarcerated prior to 18th birthday filed MTC and habeas petitions raising the issue of age and lack of mitigation (couple of hundred cases)
 - Cases were converted to parole cases subsequent to S.C decisions in Casiano and Riley but lawyers were already appointed.
 - Salamon/Luurtsema cases
 - General Statutes § 53a–92 (a)(2)(A) found not impose liability for the crime of kidnapping where the restraint used is merely incidental to the commission of another offense. Habeas needed to litigate retroactivity.

What Impacts the Caseload?

- Policy/Statutory Changes

- RECC

- Limitation of RECC, (PA 13-3 & PA 15-216) led to a large number of due process and ex post facto claims. Everyone who earned RECC filed to complain. Policy changes impact habeas filings and had impact on appeals.
 - Breton v Commissioner of Correction, 330 Conn. 462 (2018)

- New Special Parole Rules (P.A. 18-63)

- Eliminated special parole as a sentencing option for convictions of offenses related to dependency-producing drugs and prohibits the court from imposing a period of special parole unless it determines that special parole is necessary to ensure public safety.
 - Changes have led to new habeas petitions being filed.

What Else Impacts the Caseload?

- **Cases are Slow to Resolve**
 - Trial backlog is significant.
 - **Discovery Issues-** Need to have all information to do an effective assessment of the issues
 - Trial lawyers don't always have all information.
 - Claims often involve material /evidence that was not disclosed.
 - Age of case of impacts level of difficulty in gathering material.
- **Attorney Reassignment**
 - Only done by Court order. OCPD cannot remove a lawyer from a case.
 - Approach to attorney reassignment differs by Judge.
 - Should be an actual breakdown of relationship or conflict of interest.
 - Sometimes, client just does not like the advice being given and wants a new answer.
 - Reassignments cost time and money.

Successive Filings

- Is a small percentage of overall habeas filings.
- Is often a combination of conditions and convictions filings.
- Screening would help but would not eliminate successive filings
- Habeas relief granted in about 10% of cases. Anecdotally, a significant number of these were not an initial habeas.
- Need a process for individuals to challenge convictions based on bad lawyering, new evidence and changed science.

Movement of Added Civil Case--Habeas Corpus Type*
In Relation to Sentenced Prisoner Population July 1, End Of Fiscal Year**

FY	Sentenced population 07/01/FYE	Number HC added	HC as % of Sent. prisoners
99-00	14,364	536	3.73
00-01	14,230	631	4.43
01-02	14,845	680	4.58
02-03	15,243	666	4.36
03-04	14,173	589	4.15
04-05	13,930	486	3.48
05-06	14,191	588	4.14
06-07	14,611	636	4.35
07-08	15,017	604	4.22
08-09	14,600	603	4.13
09-10	14,038	526	3.74
10-11	13,591	500	3.67
11-12	12,484	538	4.30
12-13	12,564	673	5.35
13-14	12,489	841	6.73
14-15	12,170	949	7.79
15-16	11,468	824	7.18
16-17	10,568	748	7.07
17-18	9,516	668	7.01

* Source: https://www.jud.ct.gov/statistics/civil/civil_casetypeAdd.pdf (visited 1/23/19)

** Source: <https://data.ct.gov/Public-Safety/Correctional-Facility-Daily-Population-Count/tghy-ygnr>

TRENDS

The 2012 reforms might actually be
working!

How Many Habeas Appointments do we Make?

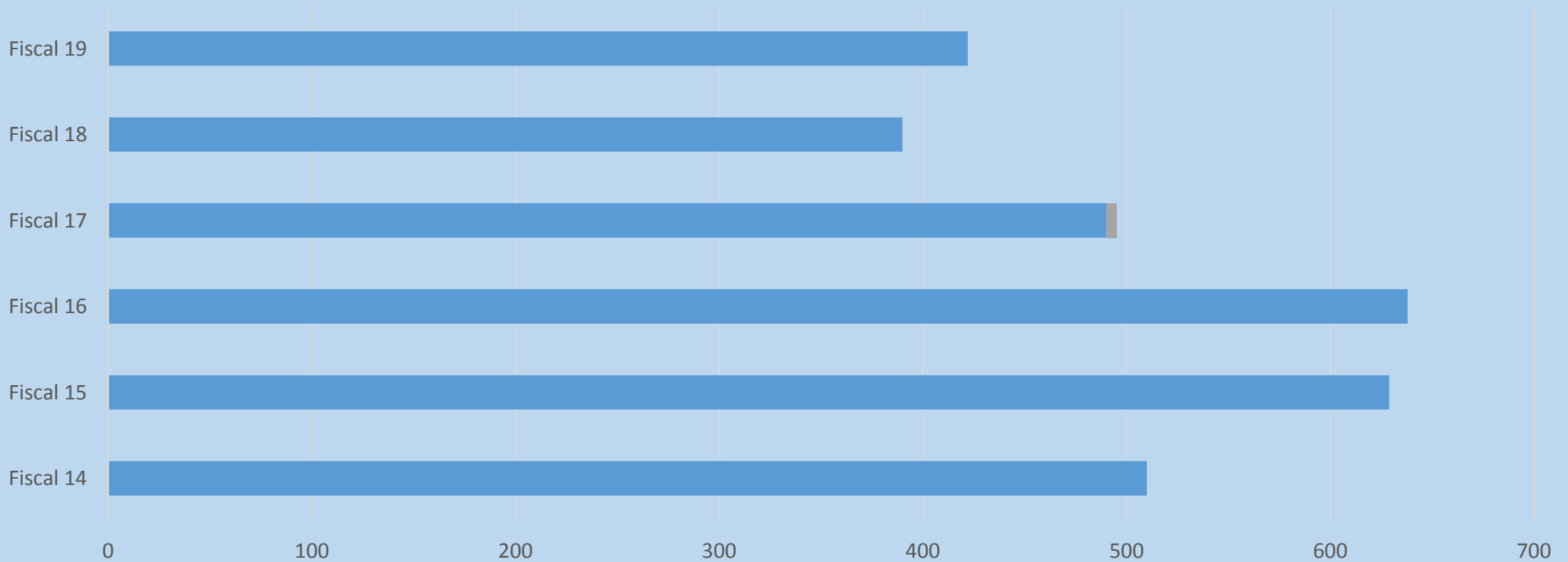
BY FISCAL YEAR

FILEMAKER

- FY14 (our records start in September, 2013) = 510
- FY15 = 629
- FY16 = 638
- FY17 = 490
- FY18 = 390
- FY19 = 442(includes larger than normal number of reassignments)

Public Defender New Cases Opened

Chart Title

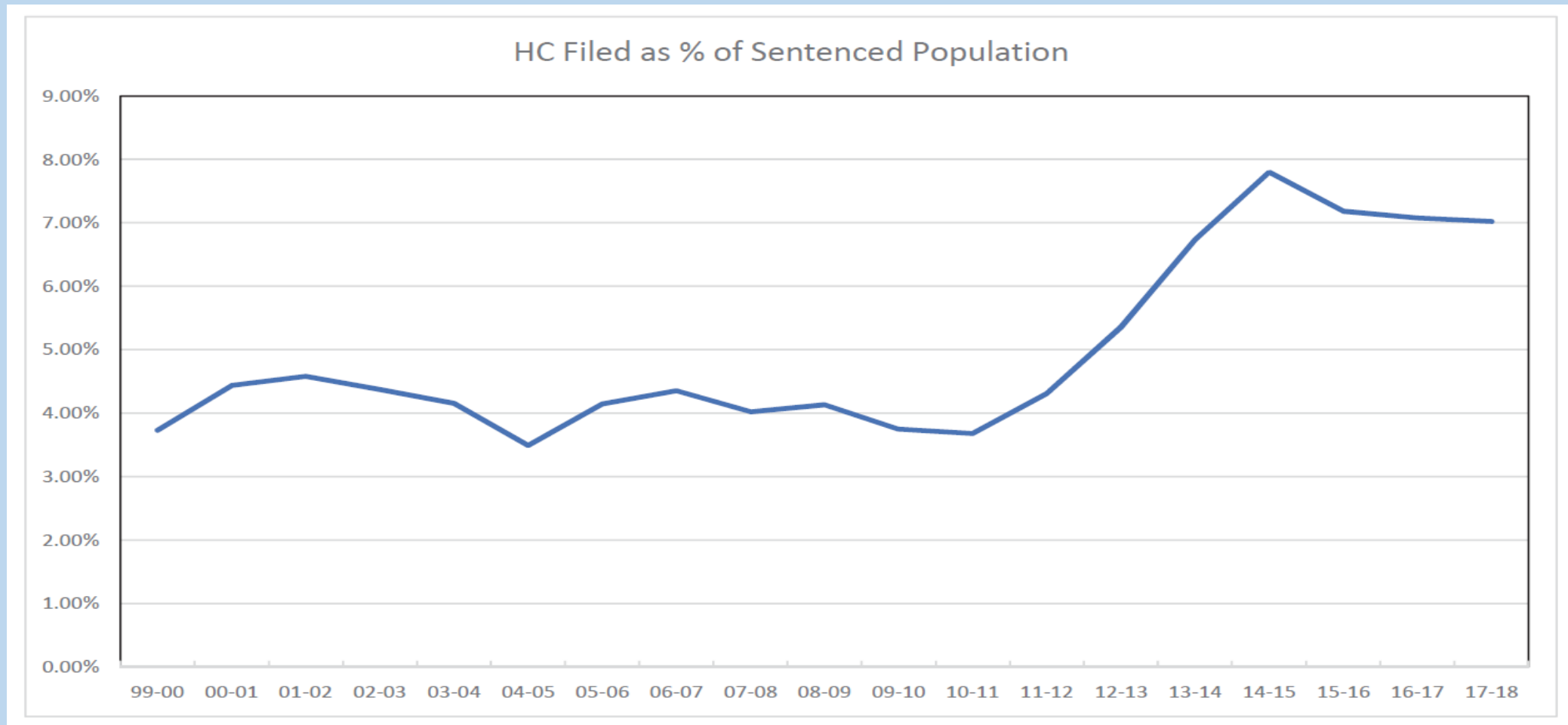


Trends

- All data shows a spike in filings and referrals between 2014-2016.
- Referrals to OCPD have been gradually declining.
- There are 987 cases on the habeas trial list and 486 scheduled for status conference between now and January 2020. There are still cases filed in 2014 that have not been tried.

HABEAS	2013	2014	2015	2016	2017	2018	2019
JANUARY		40	34	7	39	27	37
FEBRUARY		22	74	152	35	15	98
MARCH		61	80	60	55	42	25
APRIL		101	43	24	44	37	29
MAY		54	50	48	30	31	45
JUNE		29	53	29	38	17	
JULY		40	45	46	20	13	
AUGUST		41	53	31	50	35	
SEPTEMBER	110	62	50	48	45	28	
OCTOBER	50	53	56	45	44	31	
NOVEMBER	27	52	33	49	20	16	
DECEMBER	16	47	81	30	42	55	
TOTAL	203	602	652	569	462	347	
MONTHLY AVERAGE	51	50	54	47	38	29	47

Even at the Peak, less than 10% of Sentenced Individuals filed a Writ



COST

Rates

- Specialized Habeas Firms
 - \$65/hour
 - Limits on number of hours per week
 - Some tasks can be billed at a paralegal rate to save money
- \$35/hour rate for investigation
- Experts-Any expense over \$5000 must be approved by PDSC.
- Habeas appeals
 - \$5000 flat rate

Cost to DPDS for Attorney Representation

Fiscal Year	Total Time Billed Dollars
2014	\$2,593,757.00
2015	\$4,158,618.50
2016	\$4,385,190.00
2017	\$5,026,111.00
2018	\$5,382,491.50
2019	\$5,295,650.00

Is the Cost Really too Much?

- Cost to provide representation in habeas matters in FY 2017 was .008% of total DOC budget and .01% of total judicial budget.
- Cost is .07% of PD budget.

What impacts cost?

- Trials are the most expensive part of a habeas case. The overall cost to OCPD has dropped some but reflects the expense of trials on older cases.
- Cost represents billing- trials, assignments etc.
- Successive appointment of lawyers on a petition.
- Rulings or policy changes that lead to additional filings or multiple appeals. Many of these have merit and have resulted in favorable appellate rulings. (Breton)

What could make the system more efficient?

- Appropriate use of C.G.S Sec. 52-470 d (presumption of unreasonable delay)
 - State did not use the motion to dismiss, has begun to do it more.
 - Counsel has duty to client to raise a non frivolous claim. State has sole duty to move to dismiss.
- Improved Discovery Process
 - Very little voluntary Disclosure
 - Petitioner's Counsel can't make a reasoned determination of merit of claim without full information.
 - Lack of access to information leads to broadly pleaded petitions.
- More Resources
 - Only 1 full time judge hearing habeas corpus matters. used to be 3 plus a part time JTR
 - Would allow more trials and faster rulings. (Anders rulings can take up to 18 months).
- More Consistency in Court Assignments
 - Judges approach cases differently.
 - Process tends to change with new judges
 - Creates some amount of chaos every time (Eligibility investigations)

What could make the system more efficient?

- Systemic Reforms
 - Independent Conviction Integrity Unit
 - Needs to be multidisciplinary and formed using nationally recognized best practices
 - Can provide a gatekeeping and review function for claims of newly discovered evidence, invalid scientific evidence, misconduct
 - Will provide a just process for claims of both wrongful and improper convictions.
 - Open File Discovery in Habeas Matters
 - If the goal is justice, a full and open review of the evidence should be conducted