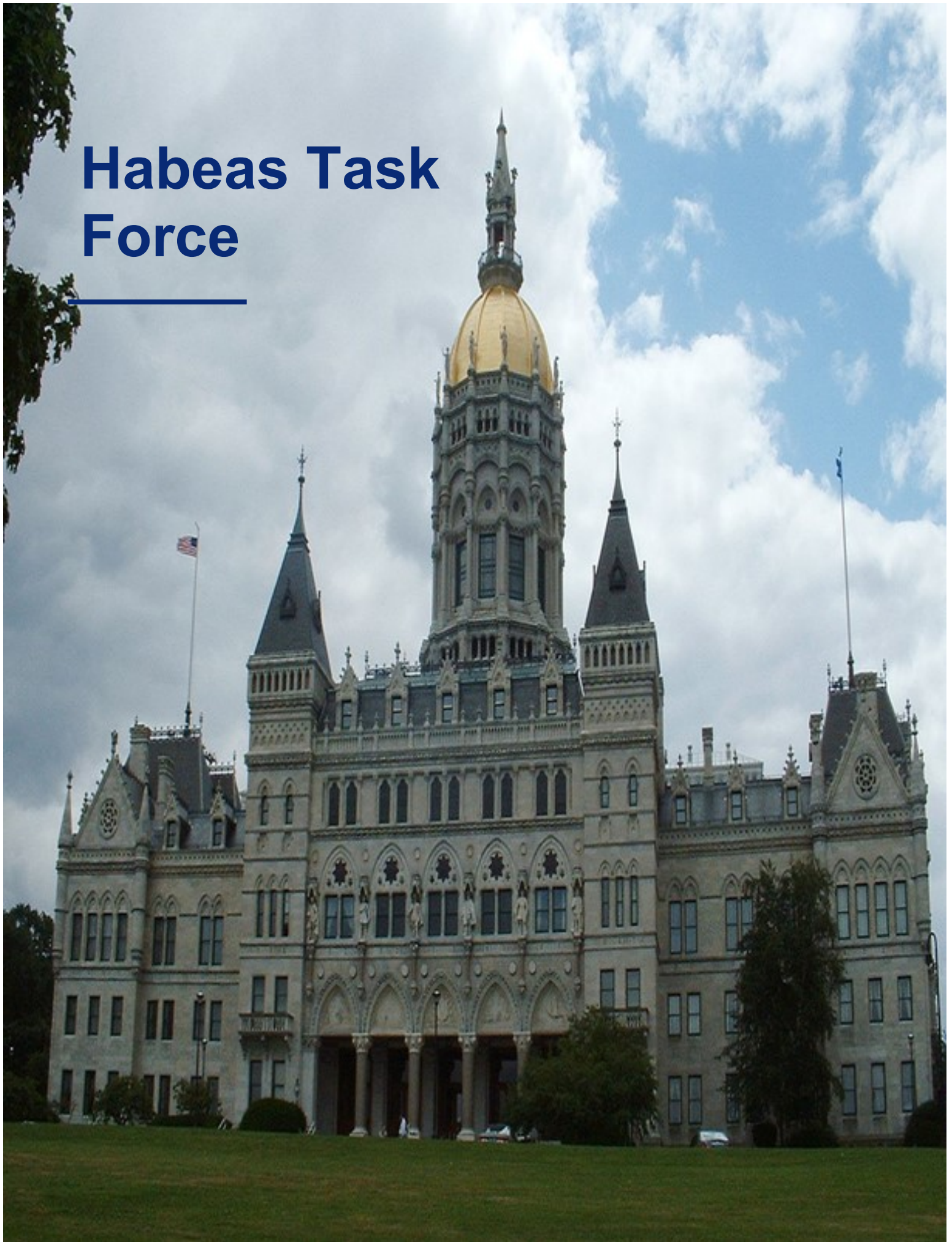


Habeas Task Force



Report to the Connecticut General Assembly Judiciary Committee

Special Act No. 18-18 (House Bill No. 5407), An Act Establishing a Task Force to Promote Efficiencies in the Filing of Habeas Corpus Matters.

There is established a task force to study the filing of habeas corpus matters in the state. The task force shall examine methods that allow the state to better evaluate an application for a writ of habeas corpus at the time of filing in order to reduce the number of frivolous applications filed.

Not later than January 1, 2019, the task force shall submit a report on its findings and recommendations to the joint standing committee of the General Assembly having cognizance of matters relating to the judiciary. The task force shall terminate on the date that it submits such report or January 1, 2019, whichever is later.

Habeas Task Force

Co-Chairs: Kenneth Rosenthal, Attorney Merit Lajoie, Office of the Victim Advocate	
Members:	
William Bright, Judge	Maria Horn, Attorney, State House Representative
Thomas Bishop, Judge	Rosa Rebimbas, Attorney, State House Representative
Samuel Sferrazza, Judge (<i>retired Nov. 2019</i>)	Carl Schuman, Judge
Charles D. Ray, Attorney	Christine Perra Rapillo, Chief Public Defender
Timothy Everett, Attorney, UCONN Law	Kevin Kane, Chief State's Attorney (<i>retired October 2019</i>) Richard Colangelo, Chief State's Attorney
John A. Kissel, Attorney, State Senator	Nicole Anker, Attorney, Department of Correction
Susan Hatfield, Attorney, DCJ	Gennaro Bizzarro, Attorney, State Senator

Appointments to the task force were assigned in May 2019

“Connecticut Courts Overwhelmed with Inmates’ Petitions for Release”

Hartford Courant, May 10 2018

(<https://www.courant.com/breaking-news/hc-habeas-reform-effort-20180502-story.html>)

The Habeas Task Force held its first meeting on June 25, 2019. While the special act required the task force to submit a report by January 1, 2019, appointments to the task force delayed this timeline by nearly one year. Therefore, the task force set out to complete its work by December 2020 with recommendations available for consideration by the General Assembly in the 2021 legislative session.

The task force met monthly and created two (2) working subcommittees, Successive Petitions Subcommittee and Petition for Certification Subcommittee. The subcommittees met separately with expanded membership to ensure there was fair and adequate representation of all interested parties.

On March 20, 2020, Governor Ned Lamont issued Executive Order No. 7H, which required a “stay safe, stay home” order for all non-essential businesses in the state in response to the COVID-19 pandemic. The task force suspended all meetings to ensure compliance with the state’s pandemic restrictions, which continue to this day. The task force does not believe that “virtual meetings” can effectively meet the needs of the spirited discussions and debate of the task force meetings.

As the pandemic continues to create disruption to our “normal” business operations, combined with the initial late installation of the task force and now a newly elected membership of the General Assembly, including leadership within the General Assembly, the task force believes that the General Assembly should re-authorize the task force if it is the General Assembly’s desire to consider legislative reforms to the habeas corpus filing process.

Habeas Task Force

During the first (organizational) meeting of the task force, there was consensus to schedule a series of presentations and statistical data collection in an effort to gauge the current status and practices within the habeas corpus process. Meetings that followed included:

Presentations to the Habeas Task Force	
July 2019	Habeas Matters, Rockville Superior Court Judicial Branch Statistics & Performance Mgmt, Habeas Case Analysis Judge Vernon Oliver, Judge’s Perspective

	Habeas Corpus Appeals, Division of Criminal Justice Perspective Division of Criminal Justice Habeas Practice
August 2019	Commission on Freedom of Information Office of the Chief Public Defender, Habeas Corpus Process & Data Damon Kirschbaum, Categories of Potential Claims to Raise
September 2019	Judicial Branch Habeas Case Analysis (follow up presentation) Department of Correction Habeas Presentation, Conditions of Confinement Petitions
October 2019	Proposal presentations: Petition for Certification: Judiciary, Judge Schuman Division of Criminal Justice Division of Public Defender Services, Habeas Corpus Appeals: An Overview & Proposed Way Forward
November 2019	Judge Sferrazza CT Innocence Project, Director Darcy McGraw Michelle Feldman Scott Lewis Conditions of Confinement, Office of the Attorney General; Nicole Anker, Department of Correction
January 2020	James A. Killen, Senior Asst. State's Attorney

While there was consensus on the task force that reforms to the current habeas corpus filing process should be considered to identify frivolous and/or successive filings, there was substantial disagreement between members of the task force regarding specific proposals of reform. The task force, after receiving several presentations, formed two working subcommittees, the Petition for Certification Subcommittee and the Successive Petition Subcommittee. The task force directed the subcommittees to meet and make recommendations to the task force for consideration.

Successive Petition Subcommittee

The Successive Petition Subcommittee raised several areas for study and review, including:

- Attorney discipline for misconduct in criminal cases;
- Mixed petition that raise an ineffective of assistance claim and other claims;
- That ineffective of assistance claims might be raised as cause for purposes of procedural default, even if otherwise barred under a successive petition rule;
- The difference between multiple petitions and successive petitions;
- A rule that would require all claims to be made in the first petition; and
- Proposal (based on Massachusetts model) to expand screening by Chief Public Defender's Office on court referral (currently limited to financial eligibility) to include merits evaluation of third or greater petition as prerequisite to appointment of counsel

Petition for Certification Subcommittee

The Petition for Certification Subcommittee raised several areas for study and review, including:

- Procedures in zoning board cases;
- Appointment of counsel and waiver of fees;
- Standard for granting certification;
- Presumptive number of pages in the certification process;
- Presumptive time period;
- Addressing shortcomings in *Simms* decision by statute;
- Number of Appellate judges to decide petition;
- Exception to procedures by stipulation of parties; and
- *Anders motion* in petition for certification process.

Due to the COVID-19 pandemic, the work of the subcommittees was halted, therefore, the work of the subcommittees was incomplete.

Summary and Recommendations

In so far as Public Act No. 12-115, was enacted in an attempt to mitigate the late filing of habeas corpus matters, frivolous filings and successive petitions, the act also created a number of unintended or intended consequences. The Law Revision Commission (2012), which developed in large part, the recommendations within the act, recognized the need for further reforms. Among the issues leading to the formation of the task force was a short-term increase in the annual number of new habeas cases added, in the lead up to implementation of the new limitations period, reaching a peak of over 1,000 new filings in 2014. However, based on recent data supplied to the task force by the judicial department, that number has steadily declined in subsequent years, with annual cases added now well below those in any of the preceding years, indicating that in the long run the 2012 amendments have had their intended effect. The task force focused on specific improvements that would address identified flaws, procedural defects, barriers and impediments and higher court decisions, and identified a number of areas that may warrant additional reforms – an issue that the task force believes the General Assembly may wish to continue as it considers criminal justice reforms.

In addition, the task force was confronted with whether the task force should also be looking at habeas petitions filed for conditions of confinement claims. Conditions of confinement petitions are adjudicated by the Office of the Attorney General and carry a number of issues, including the lack of a statute of limitations for filing; withdrawals on the eve of trial; no requirement to exhaust administrative remedies; and successive petitions. The current habeas corpus process for conditions of confinement cases makes it difficult to resolve confinement issues in an expeditious manner.

Therefore, the task force recommends:

- 1. The General Assembly form a task force to continue to study the habeas corpus process in petitions arising from a criminal conviction; and**

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- 2. The General Assembly form a task force to study the habeas corpus process in petitions arising from conditions of confinement.**

References

Habeas Corpus Matters Task Force

June 25, 2019 Minutes:

https://cga.ct.gov/jud/tfs/20190729_Habeas%20Corpus%20Matters%20Task%20Force/20190625/Minutes.pdf

July 17, 2019 Minutes:

https://cga.ct.gov/jud/tfs/20190729_Habeas%20Corpus%20Matters%20Task%20Force/20190717/Minutes%207-17-19%20Habeas%20Corpus%20Matters%20TF.pdf

August 21, 2019 Minutes:

https://cga.ct.gov/jud/tfs/20190729_Habeas%20Corpus%20Matters%20Task%20Force/20190821/8-21-19%20Minutes%20Habeas%20Corpus%20TF.pdf

September 18, 2019 Minutes:

https://cga.ct.gov/jud/tfs/20190729_Habeas%20Corpus%20Matters%20Task%20Force/20190918/9-18-19%20Minutes%20of%20Habeas%20TF.pdf

October 16, 2019 Minutes:

https://cga.ct.gov/jud/tfs/20190729_Habeas%20Corpus%20Matters%20Task%20Force/20191016/10-16-19%20Minutes%20Habeas%20Corpus%20TF.pdf

November 20, 2019 Minutes:

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January 15, 2020 Minutes:

Presentations to the Habeas Task Force

July 17, 2019

DCF Habeas Practice:

https://cga.ct.gov/jud/tfs/20190729_Habeas%20Corpus%20Matters%20Task%20Force/20190717/DCJ%20Habeas%20Practice%20PPP%207-17-19.pdf

Judicial Branch Statistics & Performance Mgmt, Habeas Case Analysis:

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Habeas Corpus Appeals, DCJ Perspective:

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August 21, 2019

Office of the Chief Public Defender, Habeas Corpus Process and Data

https://cga.ct.gov/jud/tfs/20190729_Habeas%20Corpus%20Matters%20Task%20Force/20190821/Ofc.%20Chief%20Public%20Defender%20Habeas%20Corpus%20Process%20&%20Data%20PPP%208-21-19.pdf

Categories of Potential Claims to Raise, Damon Kirschbaum

https://cga.ct.gov/jud/tfs/20190729_Habeas%20Corpus%20Matters%20Task%20Force/20190821/Categories%20of%20Potential%20Claims%20to%20Raise-Damon%20Kirschbaum-OPD.pdf

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Department of Correction Habeas Presentation

https://cga.ct.gov/jud/tfs/20190729_Habeas%20Corpus%20Matters%20Task%20Force/20190918/DOC%20Habeas%20Presentation%20Sept%202018,%202019.pdf

Judicial Habeas Case Analysis

https://cga.ct.gov/jud/tfs/20190729_Habeas%20Corpus%20Matters%20Task%20Force/20190918/Judicial%20Habeas%20Case%20Analysis%20%209-18-19.pdf

October 16, 2019

Division of Public Defender Services, Habeas Corpus Appeals: An Overview and Proposed Way Forward

https://cga.ct.gov/jud/tfs/20190729_Habeas%20Corpus%20Matters%20Task%20Force/20191016/DPDS%20PowerPoint%20Presentation.pdf

November 20, 2019

CT Innocence Project, Director Darcy McGraw Testimony

https://cga.ct.gov/jud/tfs/20190729_Habeas%20Corpus%20Matters%20Task%20Force/20191120/CT%20Innocence%20Project,%20Director%20Darcy%20McGraw%202011-20-19%20Testimony.pdf

Judge Samuel Sferrazza Submission

https://cga.ct.gov/jud/tfs/20190729_Habeas%20Corpus%20Matters%20Task%20Force/20191120/Judge%20Samuel%20Sferrazza%202011-20-19%20Submission.pdf

Attorney Michelle Feldman Testimony

https://cga.ct.gov/jud/tfs/20190729_Habeas%20Corpus%20Matters%20Task%20Force/20191120/Michelle%20Feldman%20Testimony.pdf

Scott Lewis Testimony

https://cga.ct.gov/jud/tfs/20190729_Habeas%20Corpus%20Matters%20Task%20Force/20191120/Scott%20Lewis%20Testimony.pdf

January 15, 2020

James A. Killen, Sr. Asst. State's Attorney Testimony

https://cga.ct.gov/jud/tfs/20190729_Habeas%20Corpus%20Matters%20Task%20Force/20200115/James%20A.%20Killen,%20Sr.%20Asst.%20State%27s%20Attorney%20Prepared%20Remarks%201-15-20%20Habeas%20TF%20Mtg..pdf

March 2021

Habeas Cases 2008-2020

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Petition for Certification Subcommittee

December 18, 2019 Minutes:

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Successive Petitions Subcommittee

February 6, 2020 Minutes:

https://cga.ct.gov/jud/tfs/20190729_Habeas%20Corpus%20Matters%20Task%20Force/20200206%20Successive%20Habeas%20Petition%20Subcommittee/02-06-20%20Minutes%20Successive%20Petitions.pdf

March 5, 2020 Minutes: