


HABEAS CORPUS

Habeas Corpus Task Force
September 2019



VOLUME AND TYPES OF HABEAS CASES




- ▶ There are currently 690 open habeas petitions being defended by 10 attorneys at the Office of the Attorney General.
 - ▶ Main Categories:
 - ▶ Medical/ Mental Health Care (270 open petitions)
 - ▶ Time Calculations (245 open petitions)
 - ▶ Jail credit
 - ▶ Good time
 - ▶ Risk Reduction Earned Credit
 - ▶ Parole
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▶ Main Categories:

- ▶ Conditions of Confinement (47 open petitions)
 - ▶ Due process
 - ▶ Environmental exposures (water, asbestos, radon)
 - ▶ Classification
- ▶ “Other” (123 open petitions)
 - ▶ Disciplinary reports
 - ▶ Retaliation
 - ▶ Parole
 - ▶ Access to courts

MEDICAL/ MENTAL HEALTH CASES (270)

- ▶ Heavy volume of repetitive habeas filing by the same inmates regarding medical treatment.
 - ▶ Instead of utilizing the internal administrative remedies they come directly to court. There should be an expectation that the inmate pursue relief with a health services review prior to filing the petition.
 - ▶ The pre-trial process is lengthy and the petitioner is allowed to raise claims without amending the petition. This disregards the rules of civil procedure and creates an unrealistic expectation.
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MEDICAL/ MENTAL HEALTH CASES (270)

- ▶ There is nothing that prevents the inmate from withdrawing on the day of trial.
 - ▶ This is a regular occurrence that is problematic because the respondent is expected to provide copies of the medical record. A fee, typically in excess of \$200.00, is incurred by the State of Connecticut to provide copies of the medical record to both the petitioner and the court. This also overlooks the time required by both the AAG and the expert from DOC to prepare the case for trial.
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TIME CALCULATION CASES (245)

- ▶ There is no statute of limitation on our cases.
- ▶ This is problematic for the time calculations because the information required may no longer be available. These claims are outside of the retention period, which is problematic when trying to gather all of the evidence needed.
- ▶ Despite the fact that we have sound legal authority on how to award and apply RREC we continue to see petitions being filed that clearly:
 - ▶ Lack jurisdiction
 - ▶ Are moot
 - ▶ Fail to state a claim for relief

RESOURCES REQUIRED FOR DEFENSE




- ▶ OAG spends roughly 10 hours per week per attorney (including support staff time) responding to the petition, complying with discovery, preparing exhibits and witnesses, appearing in court for pre-trial and status conferences, arguing motions and litigating the merits of the petition.
- ▶ DOC employs a nurse consultant whose main job duties is to help the OAG with their habeas cases; a doctor also assists part time in case preparation and provides testimony.
- ▶ Pretrial conferences once a month with a large number of conditions of confinement cases. Each case takes approximately an average of 10 hours of DOC time to prepare, and almost a full day in court every month.

PROBLEMS



THERE IS NO STATUTE OF LIMITATIONS

- ▶ Conn. Gen. Stat. 52-470 sets forth a rebuttable presumption that a habeas has been delayed without good cause.
 - ▶ However, it only applies to habeas petitions challenging a conviction.
 - ▶ Thus, there is no rebuttal presumption or statute of limitations of any kind for a conditions of confinement habeas
 - ▶ Conditions of confinement cases can literally be brought decades after the events in question
 - ▶ Records retention schedules means necessary documents may have been discarded
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THERE IS NO EXHAUSTION REQUIREMENT

- ▶ In 1996, facing a strain on federal court resources caused by an influx of inmate cases, Congress enacted the Prison Litigation Reform Act.
- ▶ “No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.” 42 U.S.C. § 1997e(a).
- ▶ Inmates were required to file grievances before going to court. This enabled prisons and jails to address issues where possible before they take up scarce court and attorney time and resources.

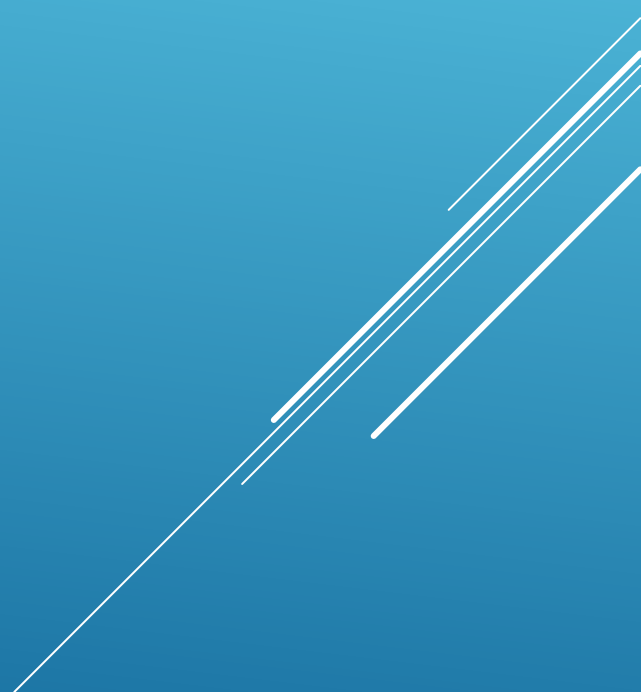
THERE IS NO EXHAUSTION REQUIREMENT

- ▶ Connecticut Claims Commissioner, facing similar onslaught of inmate claims, also put an exhaustion requirement in statute:
 - ▶ Conn. Gen. Stat. 4-165b:
 - ▶ Any inmate . . . who suffers an injury may file a claim against the state. Such claim shall be heard and decided in accordance with the provisions of this chapter, ***provided no such claim shall be presented to the Office of the Claims Commissioner until the inmate has exhausted all administrative remedies provided by the Department of Correction. . .***
 - ▶ “. . . An inmate’s notice of claim shall include a description of the administrative remedies that have been exhausted. . .”


INMATES ARE ALLOWED SUCCESSIVE PLEADINGS ON THE SAME ISSUE

- ▶ This occurs particularly in medical cases
 - ▶ Case is resolved or withdrawn at the last minute only to be re-filed later
 - ▶ Cases are filed again after inmate loses at trial
 - ▶ Sanctions for successive and/or frivolous cases are not imposed
 - ▶ PLRA: three strikes rule – cannot file without judicial permission
 - ▶ Claims Commissioner: three strikes rule re filing fee
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PLEADING REQUIREMENTS ARE MINIMAL

- ▶ Pleadings are on a pre-set form that asks lots of questions about prior convictions
 - ▶ The forms have very little space in which to write claims (although inmates can submit additional pages)
 - ▶ Forms are not official judicial branch forms
 - ▶ Inmate pleadings are often inadequate to apprise DOC of what is being claimed
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THE FILING FEE IS ESSENTIALLY NON-EXISTENT DUE TO LAX WAIVER POLICY

- ▶ Filing fees fulfill two purposes: (1) recoup some of the costs of litigation; (2) ensure that the individual filing the case believes in the merits of the case
 - ▶ Filing Fee – This amount is waived for indigent prisoners.
 - ▶ Indigent – nothing prevents petitioner from being dishonest in order to have the fees waived. Federal court requires a certificate signed by an officer at the institution where inmate confined showing amount of money in inmate account
 - ▶ Federal court: court will temporarily waive a filing fee but place a hold on the account; 20% of all incoming money will go to the court until the filing fee is satisfied
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SUGGESTIONS FOR IMPROVEMENT




SUGGESTIONS

- ▶ Create a one year statute of limitations for conditions of confinement habeas cases
 - ▶ Claims Commissioner has a one year statute of limitations.
 - ▶ Create an exhaustion requirement similar to that in the Prison Litigation Reform Act or Claims Commissioner statute to enable DOC to address issues at the lowest level before spending substantial state time and resources in court on matters that can be easily resolved.
 - ▶ Exhaustion requirement is not a new suggestion.
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SUGGESTIONS

- ▶ Require a modest non-waivable fee even for indigent inmates
 - ▶ If the inmate has no money in their account, the fee could be deferred until the inmate receives money – this would result in indigent inmates being able to file legitimate claims despite a lack of funds but also ensure that there is a reason not to file the frivolous case
 - ▶ Impose a three strikes law similar to the federal court for frivolous/improperly successive pleadings
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SUGGESTIONS

- ▶ Require a minimal level of pleading that adequately puts DOC on notice as to what is being alleged
 - ▶ Review and improve the standard habeas form. Create:
 - ▶ One form for habeas challenging conviction
 - ▶ One form for habeas challenging conditions of confinement
 - ▶ Make habeas form official judicial branch form
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QUESTIONS?

