PA12-115

HB5554

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CONNECTICUT
GENERAL ASSEMBLY
HOUSE

PROCEEDINGS
2012

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PART 5
1395 – 1745

take a tally. The Clerk will please announce the tally.

THE CLERK:

House Bill 5124.

Total number voting	146
Necessary for adoption	74
Those voting Yea	146
Those voting Nay	0
Those absent and not voting	5

DEPUTY SPEAKER RYAN:

The bill passes.

Will the Clerk please call Calendar Number 215.

THE CLERK:

On page 16, Calendar 215, Substitute for House Bill Number 5554, AN ACT CONCERNING HABEAS CORPUS REFORM, favorable report by the Committee on the Judiciary.

DEPUTY SPEAKER RYAN:

The Chairman of the Judiciary Committee, Gerry Fox of the 146th, you have the floor, sir.

REP. G. FOX (146th):

Thank you, Mr. Speaker.

I move for the acceptance of the Joint Committee's favorable report and passage of the bill.

DEPUTY SPEAKER RYAN:

The question is acceptance of the Joint Committee's favorable report and passage of the bill.

Representative Fox, you have the floor.

REP. G. FOX (146th):

Thank you, Mr. Speaker.

This bill came to the Judiciary Committee, and it is the product of a number of meetings and a lot of work by the Chief State's Attorney's office, the Public Defender's office, the Connecticut Criminal Defense Lawyers Association, as well as the judicial branch.

Over the course, Mr. Speaker, of a number of years there had been proposals with respect to how we handle habeas cases and how we can hopefully improve upon that process. I can represent that this bill is a compromise. It's supported by all of the different entities that I mentioned, and they really do deserve a tremendous amount of credit for working together to come up with this bill and with this, you know, with the process.

Now, Mr. Speaker, there is a strike-all amendment, and the Clerk has in his possession LCO Number 3309. If that could please be called?

DEPUTY SPEAKER RYAN:

Will the Clerk please call LCO 3309, which will be designated House Amendment Schedule "A."

THE CLERK:

LCO 3309, House "A," offered by Representative Fox, Senator Coleman, Representative Hetherington, and Senator Kissel.

DEPUTY SPEAKER RYAN:

The Representative seeks leave of the Chamber to summarize the amendment. Is there objection to summarization? Is there objection? Hearing none, Representative Fox, you may proceed with summarization.

REP. G. FOX (146th):

Thank you, Mr. Speaker.

As I said, this amendment is a strike-all, so it does become the bill. What the product of these meetings and what came about is that a process was developed and certain criteria were placed on those who can file habeas petitions and when those petitions can be filed.

There's a screening process that is incorporated, and the objective of that would be to weed out certain potentially frivolous petitions. There's a good cause

requirement that petitioners will need to meet.

Also Mr. Speaker, there's a five-year time limitation for the filing of habeas claims after which there would be a rebuttable presumption that claims could not be brought after that time unless that rebuttable presumption could be met. There's also a -- the issue of subsequent or successive petitions is addressed, and a limitation is placed on that.

In addition there is an exception because there was certain concerns, so certainly claims of actual innocence are not time barred, nor are capital felony death penalty cases -- are also not time barred with respect to this amendment.

Mr. Speaker, I am pleased that both the chairs and the ranking members have signed onto this. As I said, it is a -- the result of a lot of work that went on during the off session. The Chief State's Attorney has called this meaningful reform. He stated that during the course of our public hearing on this bill that he would not be back seeking any changes to this in the immediate future and that he would be able to work with this.

And the hope, Mr. Speaker, from all parties -- because one of the things that generated this

legislation and one of the things that I always thought of when I heard about this issue is that all parties felt that there was a way to do this better and that there's a way to make sure that we can focus on those claims where -- that are -- that do have merit, that are potentially legitimate and weed out those claims that seem to be bogging down the process and using up a lot of resources where the end result, in all likelihood, would be nothing would come of it.

So Mr. Speaker, I would urge passage of this bill, and I'd urge adoption of the amendment.

DEPUTY SPEAKER RYAN:

The question before the Chamber is adoption of House Amendment Schedule "A." Will you remark on the amendment?

Representative Hetherington of the 125th.

REP. HETHERINGTON (125th):

Thank you, Mr. Speaker.

On the amendment that will become the bill if adopted, and therefore my remarks go to the amendment, but ultimately they reflect on the bill.

This is a compromise. It's the first success that we have achieved in modifying the habeas corpus process in a way that should serve the ends of justice

and at the same time expedite the process.

It has -- it's a delicate, if you will, compromise worked out by the Criminal Defense Bar and by the Department of Justice. We would note that there are exceptions, those in the case of a death penalty, which will become largely academic, presumably, when the Governor signs the new law, actual claims of innocence and -- what's the other thing? Oh, and a petition to challenge conditions of confinement.

I think on balance it's a very positive step and I would urge adoption.

Thank you, Mr. Speaker.

DEPUTY SPEAKER RYAN:

Thank you, Representative.

Will you remark further on the amendment? Will you remark further?

Representative O'Neill of the 69th.

REP. O'NEILL (69th):

Yes. Thank you, Mr. Speaker.

If I may, a question or two to the proponent of the amendment?

DEPUTY SPEAKER RYAN:

Please proceed, sir.

REP. O'NEILL (69th):

The first question I would ask is, does this statute, if it passes, would it apply to the persons currently on death row?

Through you, Mr. Speaker.

DEPUTY SPEAKER RYAN:

Representative Fox.

REP. G. FOX (146th):

Through you, Mr. Speaker.

If the question was to those currently on death row, the answer is no.

DEPUTY SPEAKER RYAN:

Representative O'Neill.

REP. O'NEILL (69th):

Thank you.

Secondly, in looking at lines -- I think it's 42, well, going back up to perhaps 39, these are apparently the target or the deadline dates, the triggering events for the running of the time. And the third one of those is that it's considered to be unjustly delayed -- I believe the challenge is without good -- delayed without good cause, that's the phrase that's used -- if it's two years after the date on which the constitutional or statutory right

asserted in the petition was initially recognized and made retroactive pursuant to a decision of the supreme court or appellate court of this state or the Supreme Court of the United States, or the enactment of any public or special act.

What I noted was absent from that list of courts was the appellate court for, presumably we'd be talking about the Second Circuit. And my question is, was that intentional, or is it the assumption that there are no constitutional rights that might be evolved from a -- or might emerge from an appellate court decision at the Second Circuit level? So is that intentional to leave that federal appellate court level out of the statute?

Through you, Mr. Speaker.

DEPUTY SPEAKER RYAN:

Representative Fox.

REP. G. FOX (146th):

Through you, Mr. Speaker. And thank you for your patience.

There may be a reason why the Second Circuit is not included. I am not sure of the reason. I know that this amendment was very carefully crafted by the parties that were involved.

So the way I see it, I think the way it's worded, I do think is understandable in that if one of the -- our higher courts or the Legislature or the supreme court makes a change, then I think at that point this would kick in.

DEPUTY SPEAKER RYAN:

Representative O'Neill.

REP. O'NEILL (69th):

Okay. Thank you, Mr. Speaker.

I just want to be -- try to clarify that because I fear this may be treated by a court when having to handle a habeas case potentially as a matter of some ambiguity.

The -- let's assume for the moment -- I take a -- I'll try a hypothetical -- assume that the Second Circuit were to rule that a particular statute does not encompass a certain type of activity; in other words, that something that was construed as criminal activity under a statute of the State of Connecticut, that the Second Circuit reaches the conclusion that that course of conduct does not in fact -- is not part of the statutes, is not violated by the statute.

If that conclusion were reached and someone had been convicted in -- and previously was convicted and

was sitting in prison and it was -- more than two years goes by from the date that the appellate court makes its decision, would they be barred from filing a petition for habeas corpus?

Through you, Mr. Speaker.

DEPUTY SPEAKER RYAN:

Representative Fox.

REP. G. FOX (146th):

Through you, Mr. Speaker.

I do believe at that point, though, there would be a rebuttable presumption that could potentially be addressed in the event of a habeas petition being filed. So if one were to file their petition claiming that, then I believe they may be able to meet that rebuttable presumption.

Through you.

DEPUTY SPEAKER RYAN:

Representative O'Neill.

REP. O'NEILL (69th):

Thank you, Mr. Speaker.

Is the rebuttable presumption language contained within the amendment before us?

Through you, Mr. Speaker.

DEPUTY SPEAKER RYAN:

Representative Fox.

REP. G. FOX (146th):

Through you, Mr. Speaker.

I'm not sure of the line, but I believe it is.

REP. O'NEILL (69th):

I beg the Speaker's indulgence. I'm scanning as quickly as I can looking for that phrase "rebuttable presumption." Okay.

REP. G. FOX (146th):

Mr. Speaker, if I may?

DEPUTY SPEAKER RYAN:

Representative Fox.

REP. G. FOX (146th):

Yeah. It's lines 34 -- lines 33 and 34 references the rebuttable presumption.

DEPUTY SPEAKER RYAN:

Representative O'Neill.

REP. O'NEILL (69th):

Okay. So, in my hypothetical that I was previously putting forward of the Second Circuit rules that a Connecticut statute making certain conduct criminal under Connecticut law is invalid, perhaps it's unconstitutional, but for one -- some reason it's invalid and then that case is decided and it doesn't

have -- well, I guess it should be a Connecticut case. And then someone files a habeas corpus petition 25 months after the date that that appellate court decision is issued, then under the terms of the rebuttable presumption there would be a presumption that they are barred, but they would have the opportunity to present some kind of evidence or justification for delaying past the two-year time limit that's prescribed. And so that I think I understand the answer to the question now in the context of rebuttable presumption.

My question then would be, what would someone be -- what kind of evidence, what would it take to rebut the presumption in this case that the delay was unreasonable? How would a petitioner get into court? What would he have to prove to rebut the presumption of untimeliness?

Through you, Mr. Speaker.

DEPUTY SPEAKER RYAN:

Representative Fox.

REP. G. FOX (146th):

Through, Mr. Speaker, the way I would envision a petitioner meeting the rebuttable presumption requirement would be, if for some reason that

petitioner had no knowledge that the Second Circuit had made -- had determined that one of our laws was unconstitutional, and as a result, the time were to lapse, I think that that may be an example of when a petitioner would be able to rebut the presumption.

I would think also that our habeas courts, as well as our Appellate and Supreme Courts, would pay very close attention to a Second Circuit case if one of our statutes or one of our laws are found to be unconstitutional. So I think that that would certainly be a meritorious reason for a petitioner to bring a claim.

DEPUTY SPEAKER RYAN:

Representative O'Neill.

REP. O'NEILL (69th):

Thank you, Mr. Speaker.

And which gives rise to a follow-up question unfortunately. And that is, if there were a ruling by the Second Circuit, which again isn't mentioned here on the list of courts that is specifically time barred by the expiration of time, but if there was a ruling by the Second Circuit and then subsequent to that ruling the -- this Legislature were to repeal that provision of our criminal law that was deemed

unconstitutional by the Second Circuit, I assume that that would then sort of start the clock running again since the two years, I believe, its statutory changes give you a two-year window. Is that correct?

Through you, Mr. Speaker.

DEPUTY SPEAKER RYAN:

Representative Fox.

REP. G. FOX (146th):

Through you, Mr. Speaker, that is my understanding as well.

DEPUTY SPEAKER RYAN:

Representative O'Neill.

REP. O'NEILL (69th):

Thank you, Mr. Speaker.

I guess I wish I had paid a little more attention to this when it was inside the Judiciary Committee so we could have answered and asked these -- asked and answered these questions at the public hearing.

But I didn't notice the -- that the list seemed so comprehensive until I started thinking about the Second Circuit. And I do know that, from time to time, it's relatively rare they will make a ruling on criminal law that might affect Connecticut's state statutes.

And so I hope that this discussion that we have had will provide some clarity in the event that that issue arises in the habeas corpus petition. Otherwise, I think that I agree with the previous speakers, that this is the first real progress we have made in trying to improve the habeas corpus process in Connecticut and expedite things so that the legitimate habeas corpus petitions get heard as quickly as possible. And what's blocking the system up are a lot of cases where there's not much merit, it seems, to the claims, but there they keep on coming.

So with that, Mr. Speaker, I would join in supporting the amendment. Thank you.

DEPUTY SPEAKER RYAN:

Thank you, sir.

Representative Labriola of the 131st.

REP. LABRIOLA (131st):

Thank you, Mr. Speaker.

A question or two to the proponent of the bill, through you.

DEPUTY SPEAKER RYAN:

Please proceed, sir.

REP. LABRIOLA (131st):

Thank you, Mr. Speaker.

You referenced that there are some problems regarding delay in these habeas corpus petitions and possible abuse, I guess, where certain defendants are using this petition to merely delay the process, and that there are, I guess, there's a backlog. And I'm wondering if that is one of the main purposes of this bill that we seek to address.

DEPUTY SPEAKER RYAN:

Representative Fox.

REP. G. FOX (146th):

Through you, Mr. Speaker.

My answer would be yes. We certainly want to get rid of claim -- we want to address claims that lack merit early on in the process. So to say we want to get rid of claims would probably -- would not be correct because there are potentially those claims that do have merit and are successful.

But we certainly -- I believe everybody involved felt that there was a way, whether they defended those petitioners or whether they were prosecuting those cases, there was everyone involved in the process who felt that resources could be better spent and better used towards those claims where the outcome is not -- where the outcome could potentially be in question.

DEPUTY SPEAKER RYAN:

Representative Labriola.

REP. LABRIOLA (131st):

Thank you, Mr. Speaker.

That answer makes a lot of sense. I do recognize that we're attempting to resolve those problems.

I'm just -- having looked at this amendment for the first time just now, I'm trying to figure out what exactly is changed by this amendment. For example, it says that the court, on its own, can determine if there's good cause to proceed to trial. And I'm wondering if -- wouldn't a court be able to do that now? Or how is this different from the present law?

Through you.

DEPUTY SPEAKER RYAN:

Representative Fox.

REP. G. FOX (146th):

Through you, Mr. Speaker.

From what I understand it is -- it's much more difficult now for the court to ascertain early on which cases have merit and would meet the good cause standard.

Also what has changed is there is this, this time frame that is now in there, first the five year time

frame which is -- even though it's not a strict statute of limitations, there is a rebuttable presumption that those claims should be brought within five years.

So those are some fairly significantly changes, at least as referenced by the Chief State's Attorney who feels that this is, in fact, meaningful habeas reform.

Through you.

DEPUTY SPEAKER RYAN:

Representative Labriola.

REP. LABRIOLA (131st):

Thank you, Mr. Speaker.

And so then that -- the other question that I had was this bill -- the amendment which will become the bill apparently says that either party could request the court to determine if there's good cause to proceed to trial. And so, again, my question is, isn't that currently the situation? How is that different from present law?

Through you.

DEPUTY SPEAKER RYAN:

Representative Fox.

REP. G. FOX (146th):

Through you, Mr. Speaker.

There's also a section with respect to who may request good cause that also addresses how that process would be handled. And at times, that process, according to this bill, that process could now be handled through a review, a disclosure of the exhibits and a review of the exhibits, which could be done in camera. And I'm not sure if that's currently the case. So I believe that's a change.

DEPUTY SPEAKER RYAN:

Representative Labriola.

REP. LABRIOLA (131st):

Thank you, Mr. Speaker.

Well, I think this is a long time coming. As Chairman Fox indicated, we have been wrestling with this important issue for many years, and it is important that we not only weed out frivolous claims, but cut down on some of the delay. Because I think there are some cases where the only goal is delay and that there's some abuse in the process.

And so while this maybe goes short of what I'd like to see in terms of meaningful habeas corpus reform, I do think it's a step in the right direction, and I'm happy to support it.

Thank you, Mr. Speaker.

DEPUTY SPEAKER RYAN:

Thank you, sir.

Will you remark further? Will you remark further on the amendment before us? If not, I will try your minds. All those in favor please signify by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER RYAN:

All those opposed, nay.

The ayes have it. The amendment is adopted.

Will you remark further on the bill as amended? Will you remark further on the bill as amended? If not, will staff and guests please come to the well of the House. Will the members please take your seats. The machine will be opened.

THE CLERK:

The House of Representatives is voting by roll call. Members to the Chamber. The House is taking a roll call vote. Members to the Chamber please.

DEPUTY SPEAKER RYAN:

Have all members voted? Have all members voted? Will the members please check the board to determine

if their vote is properly cast. If all members have voted, the machine will be locked and the Clerk will take a tally. The Clerk will please announce the tally.

THE CLERK:

House Bill 5554 as amended by House "A."

Total number voting	146
Necessary for adoption	74
Those voting Yea	146
Those voting Nay	0
Those absent and not voting	5

DEPUTY SPEAKER RYAN:

The bill as amended is passed.

Will the Clerk please call Calendar Number 206.

THE CLERK:

On page 15, Calendar 206, House Bill Number 5364, AN ACT CONCERNING THE DEFINITION OF NOTARIAL ACT, favorable report by the Committee on the Judiciary.

DEPUTY SPEAKER RYAN:

Representative Holder-Winfield of the 94th, you have the floor, sir.

REP. HOLDER-WINFIELD (94th):

Thank you, Mr. Speaker. Good afternoon.

This bill -- I move acceptance of the Joint

JOINT
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JUDICIARY
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2012

SENATOR COLEMAN: Okay. Thank you.

Thank you, Mr. Chairman.

REP. FOX: Thank you.

Are there any other questions?

All right. Thank you --

REP. REYNOLDS: Thank you

REP. FOX: -- Representative Mr. Reynolds.

Before I call the next speaker, I would like to point out we do an overflow room. There are a number of you who are standing. The overflow room is Room 2E, and there will be video and audio on a screen in Room 2E, so you'll have an opportunity to see everything. You'll also -- we'll still give you the opportunity to come down and speak, but if any of you would like to utilize that, please feel free.

Next is Chief State's Attorney Kevin Kane.

Is Attorney Kane here? Yes.

Good morning.

CHIEF STATE'S ATTORNEY KEVIN KANE: Senator Coleman, Representative Fox, Representative Hetherington, and the rest of the committee, good morning. Sorry. I just came in from CJPAC meeting in the other room. SB454 HB5360

We submitted written testimony on several bills today. The bill I'd like to -- to devote my remarks to, at least initially, is the Habeas Reform Bill, which is before you. I'd forgotten the number right now -- HB5554

REP. FOX: It's 5554?

CHIEF STATE'S ATTORNEY KEVIN KANE: We had -- and thanks to Senator Coleman and Representative Fox, we -- the three public defenders, a lawyer from CCDLA, who's -- who's designated by that board and two judges -- who Chief Justice Rodgers requested participate, have been negotiating now for a very long time on habeas reform. We've had a long series of negotiations going back and forth.

At the outset, I promised Attorney Storey -- she asked me for a promise and I told her I would promise her that if we achieved meaningful habeas reform, I would not come back to this legislature asking for further legislative reform in the habeas area for a long, long time.

This thing depending on how long it was, how meaningful it is was that would affect the length of time. I told her last night, we were -- we ended up agreeing on everything except -- except they wanted me to sign a memorandum of understanding with various terms, whereases and wherefores. It was written out like a contract. I read it yesterday. I said I wouldn't sign some of things on it, and I sent it back saying change this and that, and I haven't had time to read their final drafts.

I promised her and I'll promise you and I'll promise again that if this bill, as is written now, with the language it's written in, which is the result of our negotiations. And we've agreed on the terms. We've each given up things about -- we've each given up things that we thought we wanted very much and maybe did want very much and agreed that these terms are satisfactory solutions, at least for now, and I'll say for the next three years. I won't come

back here for more than -- for over three years if this bill is passed by this legislature in these terms. I don't know if she's satisfied with that promise or not, but I made it. She'll be up here in a minute.

We've agreed upon this language, I think. The -- the fundamental -- not the fundamental, the two sections of this bill will deal with this and here's one of the problems we've seen with habeas petitions in a long time.

Petitioners that followed habeas is making claims that my lawyer was ineffective because he didn't investigate this or he didn't investigate that or he didn't call so and so as a witness. With no indication whatsoever of what that person would have testified to had he been called as a witness.

We've had cases where the petitions have gone in, they've been denied, and they've actually gone to trial. And people have been, at the last minute of trial, the petitioner's lawyer is subpoenaed witness all up. Got them over there in Rockville, questioned them and found out they won't say what he had thought they might say or what his client told them they might say and withdrew the petition at the last minute. Sometimes they actually got witnesses on the witness stand who wouldn't say.

The two sections in this bill are: One, who enable the trial court to screen out cases where there's no reason to believe that the petitioner will be able to produce evidence supporting his claims. They basically -- the basic impact of that screening thing is the petitioner has to allege facts, which, if true, would entitle him or her to relief under the present law and furnish a reasonable basis for the court to -- to believe that he will produce that evidence,

whether true or not. If he merely says I have my investigator interviewed so and so and this is what the person will say and if what the person say's is accepted by the trial court, he's entitled to relief, and so he's entitled to a trial.

It merely enables the court to -- to basically say to a petitioner, okay, put up or shut. Do you have something to support this claim. If you do, we'll have a trial. It doesn't require that the investigator have a written signed, sworn statement from that witness or an affidavit from that witness. It will allow a -- a -- a lawyer to say I've talked to so and so and he's going to testify to this, or I have my investigators talked to so and so and so and so has said this and we'll produce that witness. That witness is somebody who will testify. They'll get a trial on that.

The pretrial hearing will not allow a judge to make factual credibility determinations as to whether or not the witness is truthful. There may be one witness, and there may be 15 other witnesses contrary to that witness but still that's a question of fact for a trier of fact to decide to be entitled to a trial.

What it enables a trial court to do is -- is to -- to -- weed out those cases pretrial, where there's no reason to believe the petitioner will have any evidence at all, which will -- will support his claim. And any evidence at all means any evidence credible or not. Means a witness could come in testify to X, Y, Z, which if X, Y, Z is true, they'd be entitled to relief.

It's an important tool to enable cases and to, I think, both sides recognize that this will enable the docket to be shortened. One of the

big tragedies about habeas reform is in our position -- and I'm saying our position as a prosecutor from the state -- a huge percentage of those cases lack any merit whatsoever. Now there's a dispute about that, obviously, sometimes as to what the percentage is.

But the real problem is there are meritorious habeas claims. There are habeas claims that should be litigated, need to be addressed. Sometimes they're legal issues; sometimes they're factual issues. And if they're hidden, if they're on a backlog of all of these other cases, it's a tragedy to have people incarcerated for lengthy periods of times without their claims being able to be reached because of the backlog and nonmeritorious claims.

This gives the trial court a tool to -- to help weed those claims out. It provides for a lot of discretion. Well, it provides a lot of leeway for the petitioners make -- to make a showing that they will have evidence.

It also allows them in certain cases, if necessary, and they've requested this to be allowed to submit documents or reports under seal so we can't see those who they're intending to call. If the court feels that appropriate -- feels appropriate it can seal those documents, make a determination that there is a basis to go to trial and order a trial. We've agreed to that.

The other sections are dealt with -- many years, I had wanted to statute of limitations, a real statute of limitations, which would -- which would prevent habeases, except in cases if actual innocence or allegations where actual innocence was claimed. I had been arguing for

many years for a statute of limitations of -- of X number of years for that.

What we ended up agreeing to is -- is a presumption and you can see them in the last sections. They're fairly simple. For once, this habeas bill reform bill is a simple one with basic provisions which, I think, are clearly understandable. I think we have an agreement if Attorney Storey accepts my promise not to come back here for another -- for more than three years. I'd be glad to try to answer questions about it if anyone has any.

REP. FOX: Do you have any other bills you wanted to testify on or -- I know that was one you put a lot of work in --

CHIEF STATE'S ATTORNEY KEVIN KANE: -- We've submitted a lot of written testimony there. One of them is the unauthorized practice of law bill, which is an important bill, I think, to the state and to the public. Again, I've forgotten the number.

SB454

Our concern at the outset, and we do have -- I have been talking with the Bar Association about it because they have a concern, which I think is a very legitimate concern. They have other language which they -- they would like to suggest. I talked to Ralph Monaco, who is on the list to testify. I'd like to see that language. What he told me about it is I think a legitimate concern. I think we can and work it out.

Our concern about the present statute, which really needs to be amended is the unauthorized practice of law is only a -- I think it's a six month, it's a misdemeanor. I think the maximum sentence is six months, which certainly is insufficient for somebody in many of the cases

And it's trying to strike that balance between -- between, you know, between -- it's trying to -- to strike an appropriate balance between the public's right to safety and to be free from the dangers that occur when -- when minors engage in -- in excessive alcohol consumption and may go out and drive or do whatever else that we see that happens sometimes after house parties that get out of hand and impose some -- some criminal liability on people who ignore responsibilities which are very clear, without going to far and having it be a crime for what people do in their houses.

It's an important statute. It's Title 30 of the General Statutes, which I think we -- you need to consider in looking at this bill, and that is one that permits a minor to consume alcohol in the presence of his or her parents. A minor having a glass of wine or whatever or a beer on Thanksgiving Day at dinner is not a crime. There's a statutory exemption that -- that deals very carefully with that. And this bill, however it's drafted, I was trying to read it last night among other things, look at it. This bill needs to take that into consideration because we don't want to make that a crime under this bill.

REP. O'NEILL: Thank you, Mr. Chairman.

REP. FOX: Senator Meyer.

SENATOR MEYER: Thank you, Mr. Chairman.

HB 5554

Kevin, I've been a -- a sponsor of the habeas corpus reform in the past --

CHIEF STATE'S ATTORNEY KEVIN KANE: I know you have.

SENATOR MEYER: -- and will be of this bill as well. I just wanted you -- to ask you a couple of questions, sort of, for the record.

First, have you reviewed what you believe is a constitutionality of this bill and believe that it has no -- no violation of due process and that the rights of -- of defendants in criminal cases will not be -- their constitutional rights will not be infringed by this reform?

CHIEF STATE'S ATTORNEY KEVIN KANE: Absolutely. Not only have I -- and I should say the board of directors of CCDLA was involved with this. Now this product -- this is a product of long negotiations with Judge Solomon, Judge Schuman, and they had more patience than Job dealing with the Attorney Storey and me, who worked hard on this, and they were terrific. So it's not just my representation that this is constitutional, but that certainly impliedly, the representation of everybody who's agreed on this and participated in this, but, yes, this does not have any constitutional impediments.

SENATOR MEYER: Okay. And the other question I had was that DNA is increasingly showing that we've convicted people wrongfully and -- and does this bill and maybe you can point me to where this bill will always preserve the right to a habeas corpus petition in the event of an innocence --

CHIEF STATE'S ATTORNEY KEVIN KANE: This (inaudible).

SENATOR MEYER: -- such as a DNA discovery?

CHIEF STATE'S ATTORNEY KEVIN KANE: This bill and even the presumption sections that I talked about -- that take place statute of limitations, they do not apply to claims of actual innocence, and the whole bill does not apply to death penalty cases either. They're both exempt.

REP. SMITH: Well, thank you for your honesty, and I'll -- I'll pose my question to Ralph.

Thank you, Mr. Chairman.

REP. FOX: Thank you.

Are there other questions of Attorney Kane?

Chairman Coleman.

SENATOR COLEMAN: Good morning, Attorney Kane.

CHIEF STATE'S ATTORNEY KEVIN KANE: Good morning, Senator Coleman.

SENATOR COLEMAN: I guess I wanted to congratulate you for the work that you've done on the habeas reform bill, and it almost seems as if there's a negotiated plea -- HB 5554

CHIEF STATE'S ATTORNEY KEVIN KANE: It is.

SENATOR COLEMAN: I'm very tempted to conduct some sort of canvass.

CHIEF STATE'S ATTORNEY KEVIN KANE: I'd be glad to, you can even put -- you can even put me under oath as to the promise I just made.

SENATOR COLEMAN: Well, you realize that by making this agreement, you're giving up certain rights?

CHIEF STATE'S ATTORNEY KEVIN KANE: I do.

SENATOR COLEMAN: Do you feel that the agreement is fair and equitable?

CHIEF STATE'S ATTORNEY KEVIN KANE: Yes, I do.

SENATOR COLEMAN: Okay. And I think you've indicated in your testimony that it'll be at least three

years before you come back to us asking for some other modification, revision or change in this stipulated agreement?

CHIEF STATE'S ATTORNEY KEVIN KANE: Yes, I have.

SENATOR COLEMAN: Okay. Well, I've been a little bit facetious but --

CHIEF STATE'S ATTORNEY KEVIN KANE: And it may be longer than three years. Although at my age I don't have too many -- too many more years beyond that, but I'll try to hang around here and see because I'll miss you. I'll miss doing this.

SENATOR COLEMAN: I do want to let you know we appreciate the time that you put in on this, as well, as the time that the others who negotiated this have put in.

CHIEF STATE'S ATTORNEY KEVIN KANE: Well, it was Attorney Storey, Attorney Conrad Seifert from the CCDLA, and most importantly, I think, Judge Solomon and Judge Schuman, who -- who worked extremely hard with a great deal of patience.

SENATOR COLEMAN: We do appreciate that, and I hope it proves to be effective.

CHIEF STATE'S ATTORNEY KEVIN KANE: Thank you.

SENATOR COLEMAN: Thanks for your effort.

REP. FOX: Thank you, Chairman Coleman.

I, too, would like to thank you, Attorney Kane for all the effort you put into this. And I can point out -- I don't know if you got a chance to see all the testimony, but there is testimony from CCDLA, as well, as public defenders in support of the Habeas Bill, so that, I don't

think that ever happened before, so I think that's a credit to everyone's hard work and their willingness to compromise.

CHIEF STATE'S ATTORNEY KEVIN KANE: I think everybody recognizes that it really is a problem, and it's a problem that needs to be dealt with and needs to be dealt with fairly without preventing people from -- from being able to raise legitimate claims. And it's not -- it is a financial concern, but it's an important thing for justice, and I think these things -- we all have different perspectives and those perspectives sometimes are strongly felt. And I'm hoping -- hoping that this has -- this works out to -- to have a significant improvement of the situation.

REP. FOX: Well, thank you, thanks again for your testimony.

Any other questions?

CHIEF STATE'S ATTORNEY KEVIN KANE: And thank you all for being as patient with us as you have.

REP. FOX: Next we have State Representatives Henry Genga and Jack Thompson.

REP. GENGA: Good morning.

REP. FOX: Good morning.

REP. GENGA: Honorable Co-Chairs Senator Coleman and Representative Fox, Honorable Ranking Member Kissel, and Honorary -- honorable members of the Judiciary Committee.

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I'm Henry Genga, state rep, representing East Hartford; and this morning with me is Representative Jack Thompson from Manchester and Deputy Speaker Bob Godfrey from Danbury. And

REP. HOLDER-WINFIELD: Any other questions?

Thank you.

We will now hear from Michelle Cruz.

MICHELLE CRUZ: Good morning, members of the Judiciary Committee.

REP. HOLDER-WINDFIELD: Good afternoon.

MICHELLE CRUZ: My name is Michelle Cruz. For the record, I represent the office of Victim Advocate. I'm going to be brief since we, obviously, have lots of people here today.

I just wanted to voice the OVA support of House Bill Number 5554.

For the last four years, we've come and testified in support of the habeas bill and this is the first year that I've seen everybody from the public defenders to state's attorneys all agree on one bill. And so I would just want to voice our support of this bill, and we think it's well drafted and would answer many of the issues we have.

Second, I'd like to offer testimony on House Bill Number 5555, Section 3. And the Office of the Victim Advocate is providing testimony today in opposition to this particular bill.

This bill would allow those individuals charged with subsection 1 of subsection a of 53a-71 to be accepted into the accelerated rehabilitation program. The problem with this broad brush approach of allowing any persons charged with subsection 1 of subsection a of section 53a-71 acceptance into the accelerated rehab program is that the unintended consequence that individuals, such as Scott Shefelbine, an

While we understand that proving this about a news reporter is most likely very difficult, it does expose newspapers, reporters and the news gathering industry to a potentially unmanageable amount of legal exposure for simply reporting the news.

We do support the intent of the bill, as I said, and interested to work with the committee to find ways to -- to potentially make it better.

And if I might put on my CCFOI hat on for just one second. I think that we need to be careful when criminalizing free speech. The present criminal law provides protection for harassment and present civil law provides redress for defamation, so I think that's something to keep in mind.

I'd be happy to answer any questions.

REP. HOLDER-WINFIELD: Thank you.

Any questions?

Thank you.

CHRIS VANDEHOEF: Thank you.

REP. HOLDER-WINFIELD: Susan Storey?

HB5554.

SUSAN STOREY: Good afternoon, Representative Holder-Winfield and members of the Judiciary Committee. I'm Attorney Susan Storey, chief public defender for Connecticut; and with me is Attorney Temmy Ann Pieszak, who is the chief of our Habeas Corpus Unit so, hopefully, together, if you have questions we can -- we can answer anything that you -- that you might have.

We are here as a -- as you heard from Attorney Kane, we are here to support the passage of

Raised Bill Number 5554, which is AN ACT CONCERNING HABEAS CORPUS REFORM. With the urging of this committee over several years, we were able to -- with the assistance of Judges Elliot Solomon and Carl Schuman and -- and Conrad Seifert from CCDLA, come to an agreement on certain areas that we could agree on on habeas corpus reform. And as Attorney Kane said, those are the screening process, which is fairly comprehensive and also for the presumption of delay instead of a strict statute of limitations.

These are -- are provisions that we think, as I think Senator Meyer asked, whether it was constitutional? We believe they are, and we believe they are something that will not restrict -- unduly restrict the right for petitioners to have their cases heard. That was very important to us, as public defenders, to also protect our clients but also there is a number of pro se petitioners who also need access to the habeas corpus.

And I think sometimes we see that habeas corpus is seen more of an annoyance than a fundamental right, and it's becoming increasingly important if you review the Supreme Court cases and some of the cases in Connecticut regarding the duties of defense counsel, which are far expanded over the last couple of years in their duties to clients, in areas of making an adequate record, in areas of properly advising clients on plea bargains, and also collateral consequences. So there's -- they are additional responsibilities. This is a very important area of law. And we think that the changes that we are making are -- are good changes.

The only thing I would like to mention in the Raised Bill, section f3 -- and I'm trying to -- we're trying to contact Attorney Kane, as I say

this, I believe it's more of a technical change, that he won't have a problem with that, but I do want to check with him since this is an agreement. If you look at section f3 when we're talking about carving out the death penalty, the way it's written, it talks about a petition filed to challenge the penalty of death for a capital felony. It really should say a petition to challenge the conviction for capital felony where the penalty of death has been imposed. To make it clear that it is the conviction that is at issue and not just penalty. And as soon as I'm able to discuss this with Attorney Kane, I will bring it your attention, whether there is an agreement on that portion of the bill.

I'd be happy to answer any questions that you may have.

REP. HOLDER-WINFIELD: Thank you.

Questions?

Senator Meyer.

SENATOR MEYER: Thank you. Congratulations on your initiative of this and thanks for your recent e-mail by the way.

SUSAN STOREY: You're welcome.

SENATOR MEYER: Did you find precedent in other states for the work you did in -- in drafting this bill or is this going to be a unique habeas corpus reform?

SUSAN STOREY: Do you want to answer that? I'll ask Temmy that. I don't think it's necessarily unique, but she might disagree with me.

TEMMY PIESZAK: I'm not aware about what other states have done in terms of agreement to change

procedures in habeas. I do know our habeas procedure is unique in that they're -- prior to the recent Martinez decision by the US Supreme Court, Connecticut Supreme Court recognized in the statute -- recognized the right to counsel in habeas states and that was not common in other states.

SENATOR MEYER: Thank you.

REP. HOLDER-WINFIELD: Thank you.

Any other questions?

Representative Smith.

REP. SMITH: Thank you, Mr. Chair.

And good afternoon.

SUSAN STOREY: Good afternoon.

REP. SMITH: I'm just -- I know you're here mostly on the habeas bill but am wondering if you have a position on House Bill 5555, which is the diversionary program bill. You just heard probably the victim's advocate testify against it in reference to section 3, and I just wondered if you had a position on that?

SUSAN STOREY: I'm going to let Attorney Alevy speak to that because I believe he's been instrumental in drafting our testimony on that.

MICHAEL ALEVY: Thank you. Representative Smith, with respect to the diversionary bill, that particular section, we did not take a position on that particular language. We do recognize the arguments that have been put forward by Attorney Cruz, as well as the overall intent of the bill to, I think, provide some discretion to the court in making those AR decisions in that

particular case. But we have not taken a position. We do support the overall bill, 5555.

REP. SMITH: Okay. Thank you for that, and I'm just wondering, perhaps, if this ever does make it to the House and Senate -- hopefully, it will, maybe before that time we could -- you might want to reach out to the Victim's Advocates, see if we can come to some type of compromise language that might satisfy their concerns and potentially still protect the interests of those who may be in that situation and would be entitled to the program or might benefit from the program. So just a suggestion, maybe to reach out. I hear where she's coming from and think anybody would be concerned with, you know, allowing people who have been charged with sexual offenses to just get in a program and walk away and potentially offend again. So I know it's a concern, not probably only of her, but many other people. So if we could do something to tighten up the statute in that area, I think that would be helpful.

MICHAEL ALEVY: We'd be happy to have that conversation, Representative Smith.

REP. HOLDER-WINFIELD: Thank you.

Any --

SUSAN STOREY: If I could just say one comment about Attorney Kane's testimony regarding his promise not to come back in here and change -- try to change the statute. We had extensive discussions about having a length of time where neither of us would come in to try to change what we've agreed to, and that's important for a number of reasons. The main reason is to see how this works. To see if it works for both sides, whether the petitioners are hurt by it, or doesn't work for the State, but also to gauge

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the impact on the agency, of putting in a presumption of the delay. It's not a statute of limitations, per se, but what it may do is -- is cause more petitions, at least initially, to be filed to make -- for petitioners to make sure that they're not foreclosed from having their petitions heard. And at this point, we're working on trying to determine what the impact might be, but at the same time that was one of the main reasons that we wanted an agreement. For that reason, but also because it takes a such an inordinate amount of time for us to argue about habeas that we, sort of, wanted a moratorium on having to argue about that just one issue so thank you.

REP. HOLDER-WINFIELD: Thank you.

Thank you.

Joseph -- Joseph Riker.

JOSEPH RIKER: Good morning, Mr. Chairman and members of the Judiciary Committee, with your permission, I like to be joined by two of my colleagues in an effort to consolidate our time before you today.

REP. HOLDER-WINFIELD: Are they also on the list?

JOSEPH RIKER: Yes, they are.

REP. HOLDER-WINFIELD: Okay. Thank you.

JOSEPH RIKER: I am joined by Paul Waters of the Commonwealth Group, and Michael Norton of MCCA.

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Good morning, members of the committee. My name is Joseph Riker and I'm the executive director of Connecticut Renaissance. I'm here with my colleagues today to speak strongly in favor of

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2012

CCDLA
"Ready in the Defense of Liberty"
Founded 1988

Connecticut Criminal Defense Lawyers Association
P.O. Box 1766
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March 28, 2012

The Honorable Co-Chairs of the Judiciary Committee
Senator Eric D. Coleman
Representative Gerald M. Fox and
Members of the Judiciary Committee
Legislative Office Building
Hartford, CT 06106

Re: **Raised House Bill 5554, An Act Concerning Habeas Corpus Reform**

Dear Chairmen and Committee Members,

My name is Conrad Ost Seifert. I am an attorney practicing in Old Lyme and mostly handle appeals and criminal defense. Since 1982, I have represented inmates in habeas corpus litigation and habeas corpus appeals, and have testified as a legal expert witness regarding the ineffectiveness of counsel standard required under Strickland. I am a past president of the Connecticut Criminal Defense Lawyers Association, CCDLA, and I am submitting this testimony on behalf of the CCDLA, as well as on behalf of myself.

The CCDLA is a statewide organization of over 300 lawyers in both the public and private sectors dedicated to defending persons accused of criminal offenses. Founded in 1988, CCDLA works to improve the criminal justice system by insuring that the individual rights guaranteed by the Connecticut and United States Constitutions are applied fairly and equally, and that those rights are not diminished.

On behalf of the CCDLA, I was privileged and honored to serve on the Habeas Corpus

Reform Committee with two distinguished judges, Judge Elliot Solomon and Judge Carl Schuman and with members of the Chief States Attorneys Office and the Office of the Chief Public Defender. The committee members put in many hours and worked very hard. Raised Bill 5554 is the result. All committee members support it, to my best knowledge.

"Habeas corpus," roughly translated from Latin into English, means "to have the body." After all appeals are over, habeas corpus is the last chance that an innocent person convicted of a crime has to be freed regarding a crime he or she did not commit. It not only serves to protect factually innocent inmates. Habeas corpus also exists to protect convicted people who were incompetently and ineffectively represented by their attorney.

Mr. Chief Justice Chase, writing for the United States Supreme Court in Ex Parte Yerger, 75 U.S. 85 at 95 (1868) stated the following: "The great writ of *habeas corpus* has been for centuries esteemed the best and only sufficient defense of personal freedom." Id. Justice Brennan once wrote that the writ of habeas corpus is, "that most important writ to a free people, affording as it does a swift and imperative remedy in cases of illegal restraint or confinement."[1] Charles Pinckney, a founding father and signer of the Declaration of Independence, was the first delegate to the Constitutional Convention to propose that our new Constitution provide for the writ of habeas corpus. At the Constitutional Convention, the debate was not whether or not to provide for the writ in our Constitution. Rather, the debate was over whether or not the "Great Writ" should ever subject to suspension. In the end, it was decided that it would be. The final version is contained in Article 1, Section 9, Clause 2 of the Constitution and states: "*[t]he Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of*

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[1] William J. Brennan, Jr., *Landmarks of Legal Liberty*, in THE FOURTEENTH AMENDMENT: CENTENNIAL VOLUME 4, p. 4 (Bernard Schwartz ed. 1970).

Rebellion or Invasion the public Safety may require it." Id. This is known as "The Suspension Clause." During a few extraordinary circumstances in our nation's history, the right to habeas corpus has been suspended by an act of Congress such as when the Territory of Hawaii was placed under martial law on December 7, 1941 in the Hawaii Organic Act, ch. 339, § 31 Stat. 141. More commonly known is that President Lincoln suspended the writ of habeas corpus several times during the Civil War. But these are extraordinary exceptions and it is not an exaggeration to say that the constitutional right to the writ of habeas corpus is a bedrock, fundamental right, a right the founding fathers fought for.

It is with this sense of our nation's history and with this sense of constitutional history that I had testified in prior years against earlier versions of habeas corpus reform bills promulgated by the Chief States Attorneys Office. Those earlier versions unduly restricted the right of habeas corpus.

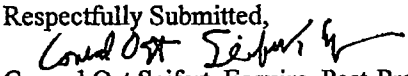
Aware of the constitutional importance of preserving the right to habeas corpus but also aware that Connecticut's current habeas corpus courts are clogged with a very large number of habeas corpus cases, the Habeas Reform Committee members were in agreement that statutory reform is necessary. Section 1.(c) creates a five year period of time within which a petitioner may bring his or her first habeas corpus case without any time barrier concerns. After that, there is a presumption of delay. But, the presumption of delay is rebuttable. Similarly, as regards subsequent petitions for habeas corpus, there is a two year period measured from the date of final judgment on the first habeas case. Within that two year period there is no time barrier concern. After that, there is again a rebuttable presumption of delay. Also note that these provisions do not apply to actual innocence claims or to those inmates sentenced to death. (See Section (f)). As regards these habeas claims, there is no time barrier.

The other major statutory change is that all newly filed habeas corpus petitions are subject

to a screening process as a means of weeding out bogus and frivolous petitions early on. (Section (b) (1).) You will note that in (b) (3), whether a petition demonstrates "good cause" for a habeas trial requires the pleading of facts that would, if proven, afford the petitioner habeas "relief" and there must be some "factual basis" upon which the court can conclude there will be evidence which supports the petition's allegations. If the court decides the petition and preliminary evidence do not "establish such good cause", there is then a preliminary hearing at which time additional preliminary evidence can be presented. (Id.) The statutory purpose is to have a procedure whereby completely unprovable habeas cases do not linger in the system for months and sometimes years on end, only to end up withdrawn or summarily dismissed once the case is reached for habeas trial. CCDLA had testified in the past that some form screening mechanism would be beneficial and this is that mechanism. Weeding out bogus and unprovable cases earlier in the litigation should also allow meritorious habeas claims to go to trial sooner than the current average waiting time of over 16 months.

For all of these reasons, CCDLA believes that if Raised Bill 5554 is passed it will serve and facilitate justice and will not hamper a petitioner's constitutional right to the Great Writ of habeas corpus.

Respectfully Submitted,



Conrad Ost Seifert, Esquire, Past-President, Connecticut Criminal Defense Lawyers Association

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RE: Raised Bill #5554: AN ACT CONCERNING HABEAS CORPUS REFORM

Co-Chairs Coleman, Fox and members of the Judiciary Committee:

My name is Dr. Samuel L. Rieger. I am past president of Survivors of Homicide, current president of the Melanie Ilene Rieger Memorial Foundation and chair of the Melanie Ilene Rieger Memorial Conference Against Violence, the most educational & emotional Conference of its kind in the U.S. The Conference will be held at CCSU in New Britain on May 30th & 31st, 2012. I cannot be present this morning to testify before you as I need to be in Pennsylvania babysitting for our two granddaughters.

My beautiful 19 year old daughter Melanie was brutally strangled to death in our home by her ex-boyfriend on May 24, 1994. He was tried in January 1996, found guilty of murder on Jan. 30th and sentenced to 60 years in prison 6 weeks later. He is eligible for "good time" which will cut about 1/3 off his sentence. Inmate #230602 has already had many appeals. A Habeas was heard before the CT Supreme Court roughly 10 years ago. That body has just held another Habeas on Feb. 10th, 2009. Various other appeals have been heard in the Rockville Court. It would seem that these appeals have all been in reference to the same claims, rephrased and regurgitated many times over. Fortunately, these courts have seen the frivolousness of these claims and denied them all.

I appeared before this Judiciary Committee about one year ago regarding the limitation of Habeas petitions. I would like to see this extended to the limitation of all appeals as they are mostly without merit and a waste of the taxpayers money. I am not an attorney. I am merely a homicide survivor, having lost something very special and irreplaceable to my wife Wanda and myself. Those of us who have suffered the indescribable loss of a child at the hands of a selfish, menace to society, would never wish this on anyone. It is a horrific event from which one never recovers. I know that death, especially a murder, is most difficult to deal with. But, how can the system care more about the perpetrators than their victims? We did not choose to become victims or survivors. It was the perpetrators that made the conscious decision which placed us in our current state. Just imagine if you lost someone to a violent act. How would you feel? Certainly, you and your family members have a much greater chance of being victims of violent crime than becoming perpetrators!

We are further victimized by the existing criminal justice system, as there are no limits placed on appeals. The perpetrator has nothing to lose and actually gains by having a day out of jail; blowing kisses and laughing with his relatives, right in front of us. We will never be done with these worthless appeals until he dies or we do. Why can't we expect the system to relieve us from this repeat victimization it causes us?

Melanie was a wonderful, vibrant young lady who had already spent part of her young life helping those less fortunate than herself. She was pursuing a degree in social work/psychology and had already volunteered at soup kitchens, elderly housing, helped with newborns, etc.

Wanda and I would favor raised bill 5554 and would favor the following:

1) Limitations on habeas appeals; 30 states have them with limitation of 5 yrs from judgment. EX: Pennsylvania, New Jersey, Maine, Ohio, etc.

2) We favor the fact that a habeas petition cannot be brought if the individual had the claim raised before on the same grounds which was decided on merit or procedure.

3) Repetitive habeas petitions should not be allowed.

4) An individual cannot bring a habeas if using the same evidence at trial.

5) The Court should have the discretion not to hear a habeas petition if the evidence does not warrant it.

6) Ineffective assistance should not be grounds for a second or subsequent appeal.

7) Habeas trials should be held in the local jurisdictions, not Rockville.

I implore this Committee to move this legislation so that it will become law. Homicide Survivors have suffered enough at the hands of those who killed our loved ones. It's time to stop our suffering at the hands of the Criminal Justice System. Wanda, I and our family have suffered immeasurably by the loss of our beloved Melanie. We will never see her age, get married, have children, graduate from college, or the many other life long functions we all take for granted. Inmate # 230602 selfishly took that away from us. He and all those who have committed murder and other horrendous crimes should no longer have the power to do further harm to us and all the other survivors/victims of horrendous crimes, by continuing to file these ridiculous costly appeals which have no merit. Roughly 85% of these appeals are filed by Special Public Defenders who are not full-time state employees, at additional cost to CT taxpayers. In these hard economic times, you owe it to these taxpayers to reduce the burden on them, especially for these frivolous matters. Beyond these attorneys, you also have the cost of State's Attorneys, Judges, various clerks, marshals, transcriptionists and other personnel, not to mention the cost of operating the courthouse and the transportation of inmates. If these appeals were eliminated, these personnel could work toward clearing the backlog of pending cases to make the criminal justice system more efficient and save the taxpayers a great deal of money at the same time. On behalf of all Survivors of Homicide and other victims of crime, I thank you for your attention and urge you to finally grant some peace and solace to us for the remainder of our lives.

Samuel L. Rieger

Samuel L. Rieger, Ph.D.

The Melanie Ilene Rieger Memorial Foundation and Conference

March 29, 2012

STATE OF CONNECTICUT

OFFICE OF VICTIM ADVOCATE
505 HUDSON STREET, HARTFORD, CONNECTICUT 06106

Michelle S. Cruz, Esq.
State Victim Advocate

Testimony of Michelle Cruz, Esq., State Victim Advocate
Submitted to the Judiciary Committee
Thursday, March 29, 2012

Good morning Senator Coleman, Representative Fox and distinguished members of the Judiciary Committee. For the record, my name is Michelle Cruz and I am the Victim Advocate for the State of Connecticut. Thank you for the opportunity to provide testimony concerning:

House Bill No. 5554, *An Act Concerning Habeas Corpus Reform*

All crime victims have constitutionally protected rights through the criminal justice process. Those rights include but are not limited to, the right to be treated with fairness and respect, the right to a timely disposition of the case, the right to be reasonably protected and the right to address the court at plea and at sentencing.

There is no doubt that Connecticut must address the habeas corpus structure, not only in capital felony cases, but all criminal cases. Most habeas corpus appeals are filed on a claim of ineffective assistance of council, among other claims. In some cases, the ineffective assistance of council claim is being filed as late as ten years and more after the conviction. This becomes problematic as witnesses, and even some attorneys, may have moved on or even died. Not only is it difficult for the state's attorney to investigate and litigate habeas corpus petitions that are filed after a long period of time, similarly the defense will also experience difficulties in proving their claim for the same reasons. In addition, the trauma of endless and often frivolous appeals, which are a constant reminder of the crime committed against the victim, leads to further harm and a feeling of helplessness for crime victims. In some cases, our current system of limitless habeas appeals is a tool for the prisoner to abuse in order to further victimize and harass the victim(s) and/or their families.

Moreover, offenders who have a valid and viable claim must wait for justice as the system processes numerous repetitive and frivolous claims by well seasoned offenders. It has been well reported that there are high case loads of habeas appeals for Public Defender Services. Every public defender takes an oath to zealously defend their client and unlike a prosecutor, there is no requirement per se to exclude frivolous or unwarranted claims; if the state were to instill time limits, the public defenders will be in a better position to focus on appropriately filed claims that are ripe for appeal. This will result in bringing legitimate claims forward swiftly which is more economical.

A fifty state survey was conducted by the Office of the Chief State's Attorney wherein thirty-one states and the federal government have adopted a statute of limitations for the filing of habeas corpus petitions. The majority of states allow for a one to two

year statute of limitations; the federal government provides for a one year statute of limitations. The proposal herein recommends a five year statute of limitations for new petitions; a two year statute of limitations for subsequent petitions filed on the same conviction; and a two year statute of limitations after assertion of cognizable constitutional or statutory right(s). As compared to the statute of limitations in the majority of states, the proposal is more than generous with time. Other states have successfully restructured the habeas corpus system, Connecticut is lagging far behind. The current structure is only a waste of precious resources; resources that Connecticut cannot afford to waste.

The passage of House Bill No. 5554 will finally infer the crime victim's right to a timely disposition; there will be an end to the criminal justice process. Although the rights of crime victims have existed for more than fifteen years, much like the path of Gideon and Miranda, crime victims' rights have been slow to materialize. House Bill No. 5554 may finally bring substance to the crime victims' right to timely disposition.

Connecticut is often ahead of other states with the passage of groundbreaking legislation, unfortunately, that is not the case with the statute of limitations for habeas corpus filings. The absence of a statute of limitations for habeas corpus petitions has been clearly and articulately identified as problematic. House Bill No. 5554 is a fair and reasonable solution as well as an eventual cost savings benefit to the state. I strongly urge the Committee's favorable report on House Bill No. 5554.

Thank you for consideration of my testimony.

Respectfully submitted,

Michelle A. Cruz

Michelle Cruz, Esq.
State Victim Advocate

Office of Chief Public Defender
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ATTORNEY SUSAN O STOREY
CHIEF PUBLIC DEFENDER

TESTIMONY OF SUSAN O. STOREY, CHIEF PUBLIC DEFENDER
COMMITTEE ON JUDICIARY
MARCH 29, 2012

RAISED BILL NO. 5554, AN ACT CONCERNING HABEAS CORPUS REFORM

The Office of Chief Public Defender supports the passage of **Raised Bill No. 5554,** ***An Act Concerning Habeas Corpus Reform.*** This Office, after the last Legislative Session, agreed to meet with the Division of Criminal Justice in order to discuss possible agreement on legislative and procedural changes to existing habeas corpus statutes Raised Bill No. 5554 is the result of extensive discussions that included the Judicial Department, specifically Judges Elliot Solomon and Carl Schuman, members of the Chief State's Attorneys Office, members of the Office of Chief Public Defender including the Chief of our Habeas Corpus Unit, and a representative member of the Connecticut Criminal Defense Lawyers Association (CCDLA) This bill offers some significant procedural changes while protecting the post-conviction rights of persons sentenced to death or claiming to be actually innocent.

Raised Bill No. 5554 contains provisions for a comprehensive screening process for habeas petitions as well as provisions for a rebuttable presumption that the filing of a petition challenging a conviction has been delayed without good cause if the initial petition is filed after five years from the date on which the judgment of conviction is deemed to be a final judgment due to the conclusion of appellate review or the expiration of time seeking such review, or two years from final judgment for a subsequent petition challenging the same petition.

Subsection (b) of the bill includes the criteria and procedures for the screening process for the habeas court to determine whether there is good cause for a trial for all or some of the claims raised by the petitioner. Subsection (b)(3) would require such determination to be made if either party or the court requested such determination to be made. Any determination would be made after the pleadings have been closed, and therefore the petitioner's claims should be sufficiently investigated and prepared, and petitioner's counsel able to allege specific facts which, if proven, would entitle the petitioner to relief under applicable law The petitioner may also submit exhibits that would further the claim. If the court finds that the petition and exhibits alone are insufficient to establish good cause for trial, the court must hold a hearing for the petitioner

and/or his counsel to submit further evidence and argument in support of proceeding to trial. If after such hearing, the court finds that there is not good cause for the petitioner to proceed to trial, than the court can dismiss all or part of the petition.

Subsections (c)and (d) establish rebuttable presumptions of delay if an initial or subsequent habeas petition is filed after certain time periods. Subsection (c) establishes a 5 year rebuttable presumption of delay in filing an initial habeas petition. While not a strict statute of limitations, this provision is a substantial change to Connecticut's existing habeas statute, C.G.S. 52-470, which does not have such restrictions Subsection (d) specifically addresses the issue of subsequent or successive petitions challenging the same conviction, which must be filed by the petitioner within 2 years of the final judgment or appellate review, if any, of the prior petition

Subsections (b) through (e) specifically do not apply to claims of actual innocence, petitions filed to challenge the penalty of death for a capital felony or petitions filed challenging conditions of confinement. In all discussions with the Division of Criminal Justice and Judicial, the Office of Chief Public Defender consistently expressed that there could be no agreement on changes to the habeas statute if petitioners' rights of review in death penalty cases or claims of actual innocence were in anyway curtailed

The Office of Chief Public Defender expects some greater influx of habeas petitions for at least a year after this legislation takes effect, due to the fact that inmates may want to make sure they are not foreclosed from having their claims addressed. We are therefore expecting that we will some additional resources in the Habeas Corpus Unit and in our Assigned Counsel Account in order to meet the demand for counsel for an increased number of habeas petitions.

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CONNECTICUT
GENERAL ASSEMBLY
SENATE

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On calendar page 28, Calendar 512, House Bill 5424. Madam President, move to place the item on the consent calendar.

THE CHAIR:

So ordered, sir.

SENATOR LOONEY:

Thank you, Madam President.

And a final item is on calendar page 30, Calendar 522, House Bill 5289. Madam President, move to place this item on the consent calendar.

THE CHAIR:

So ordered, sir.

SENATOR LOONEY:

Thank you, Madam President.

Madam President, if the Clerk would -- would read the items on the consent calendar for a verification and then if we might move to a vote on the consent calendar.

THE CHAIR:

Mr. Clerk.

SENATOR LOONEY:

Thank you, Madam President.

THE CHAIR:

Thank you, sir.

THE CLERK:

On page 6, Calendar 364, House Bill 5089; page 7, Calendar 378, House Bill 5554; page 8, Calendar 391, House Bill 5446; page 9, Calendar 395, House Bill 5483.

On page 10, Calendar 402, House Bill 5299; page 12, Calendar 425, House Bill 5476.

On page 13, Calendar 426, House Bill 5443; on page 14, Calendar 438, House Bill 5347; Page 14, Calendar 439, House Bill 5388; page 15, Calendar 441, House Bill 5501.

Also on page 15, Calendar 442, House Bill 5536; page 16, Calendar 445, House Bill 5145; page 16, Calendar 446, House Bill 5395; on page 16, Calendar 448, House Bill 5414; page 17, Calendar 451, House Bill 5548; page 18, Calendar 456, House Bill 5285.

Also on page 18, Calendar 458, House Bill 5031; on page 20, Calendar 468, House Bill 5217; page 21, Calendar 471, House Bill 5164; page 22, Calendar 476, House Bill 5263.

On page 23, Calendar 485, House Bill 5237. On page 25, Calendar 497, House Bill 5512; page 26, Calendar 502, House Bill 5497; page 26, Calendar 503, House Bill 5409.

On page 28, Calendar 512, House Bill 5424. And on page 30, Calendar 522, House Bill 5289.

THE CHAIR:

That seems correct.

Mr. Clerk, would you please call for a roll call vote on the consent calendar. (Inaudible.)

THE CLERK:

Immediate roll call has been ordered in the Senate. Will senators please return to the Chamber. Immediate roll call has been ordered in the Senate.

THE CHAIR:

Senator Gomes, would you like to vote, please. Thank you.

If all members have voted, if all members have voted, the machine will be closed.

Mr. Clerk, would you please call a tally.

THE CLERK:

On today's consent calendar,

Total Number Voting 35
Necessary for passage 18
Those Voting Yea 35
Those Voting Nay 0
Those Absent and Not Voting 1

THE CHAIR:

The consent calendar passes.

Are there any points of personal privilege or announcements? Are there any points of personal privilege or announcements?

Senator Looney.

SENATOR LOONEY:

Thank you, Madam President.

Yes, Madam President, if there are no announcements or points of personal privilege, we will, of course, be in session tomorrow -- or actually it's later today but -- but not on Thursday. But --

THE CHAIR:

Okay. Promise?

SENATOR LOONEY:

-- we will -- we will convene later this morning. We will have a -- announce the Democratic caucus at eleven followed by session at noon today.

Thank you, Madam President.

With that, would move the Senate stand adjourned, subject to the call of the chair.

THE CHAIR:

So ordered, sir. Everybody drive safely.

On motion of Senator Looney of the 11th, the Senate, at 12:32 a.m. adjourned subject to the call of the chair.