An Act Concerning Post Conviction Proceedings in Capital Cases

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) *(Effective upon passage)* This act applies to any application for a writ of habeas corpus filed on or after the effective date of this section that is brought by or on behalf of a person who has been convicted of a violation of section 53a-54a and sentenced pursuant to section 53a-46a.

Sec. 2. Section 51-61 of the general statutes is repealed and the following substituted in lieu thereof *(Effective upon passage)*:

(a) Each official court reporter, before entering upon the duties of his office, shall be sworn to faithfully perform them and shall then be an officer of the court. He shall attend the court and make accurate records of all proceedings in the court, except sessions of small claims and the arguments of counsel, provided upon the request of any party, he shall make accurate records of the arguments of counsel.

(b) Each official court reporter shall, if the judge or judges of the court so direct, employ assistant court reporters and monitors to attend such court as the judge or judges may desire. He shall not employ assistant reporters or monitors receiving a per diem rate to attend any session unless their employment is authorized by the judge holding the session. Each assistant court reporter or monitor, before entering upon his duties, shall be sworn to faithfully perform them.

(c) Each official court reporter, assistant court reporter and monitor shall, when requested, furnish to the court, to the state's attorney or any assistant or deputy assistant state's attorney, to any party of record and to any other person, within a reasonable time, a transcript of the proceedings, or such portion thereof as may be desired, except that, if the proceedings were closed to the public, such court reporter or monitor shall not furnish such transcript or portion thereof to such other person unless the proceedings were commenced on or after October 1, 1988, and the court in its discretion determines that such disclosure is appropriate.

(d) Whenever a transcript of proceedings, or a portion thereof, has been requested by any party of record pursuant to subsection (c) of this section, the court reporter or monitor shall furnish a transcript or portion thereof to the

state's attorney, assistant state's attorney or deputy assistant state's attorney at no cost as provided in subsection (c) of section 51-63.

(e) Whenever a transcript of proceedings, or a portion thereof, has been requested by the state's attorney, assistant state's attorney or deputy assistant state's attorney and the public defender, assistant public defender or deputy assistant public defender, the court reporter or monitor shall provide a transcript or portion thereof, in a form that may be photocopied, to either such state's attorney or such public defender and the cost of such transcript, or portion thereof, shall be shared by such state's attorney and such public defender.

(f) Each official court reporter, assistant court reporter and monitor shall inform the court whenever a transcript of proceedings, or a portion thereof, has been requested by the state's attorney, assistant or deputy assistant state's attorney or any party of record pursuant to subsection (c) of this section. If such transcript or portion thereof has been requested, the court, upon request, shall receive from such court reporter or monitor a transcript, or portion thereof, at no cost as provided in subsection (c) of section 51-63.

(g) Whenever the court deems it necessary, it may order a transcript of the proceedings, or any part thereof, to be filed with the clerk of the trial court.

(h) All records of the proceedings taken on the trial of any action shall, within thirty days after the action has been submitted, be filed with the clerk or the clerk's designee, except that for the purpose of transcribing such records the court reporter or monitor may at any time withdraw them for a reasonable time.

(i) In capital cases where the death penalty has been imposed, the clerk of the trial court shall prepare a list of all pre-trial hearings, trial proceedings, and post-trial hearings, including any in camera or ex parte proceedings, that specifies the date of the hearing and the name of the court reporter. This list shall be served by the clerk of the trial court on each listed court reporter, the prosecuting attorney, the defendant's trial counsel, and the trial judge within 10 days of the entry of a judgment and sentence. Any party may serve and file objections to, and propose amendments to the list within 10 days after receipt of the list prepared by the clerk of the trial court. If objections or amendments to the list are served and filed, any objections or proposed amendments must be heard by the trial court judge for settlement and approval. If the judge before whom the proceedings were held is for any reason unable to promptly settle questions, another judge may act in the place of the judge before whom the proceedings were held. Once the list of hearings is settled, the clerk of the trial court shall serve a copy on each court reporter and shall file a copy with the Supreme Court. The final list should indicate the date it was served on the court reporters and the

attorneys. The court reporters shall complete the transcripts of the proceedings within 90 days after the reporter receives the list of hearings. If the transcripts cannot be completed within this time, the court reporter shall, no later than 10 days before the due date, submit an affidavit to counsel of record and to the Supreme Court stating the reasons for the delay. Any party or any court reporter may move for an extension of time from the Supreme Court. When the transcript has been completed and delivered to the parties and the court, the Supreme Court shall set a briefing schedule.

Sec. 3. (NEW) (*Effective October 1, 2009*) (a) No application challenging a conviction of section 53a-54a and sentence pursuant to section 53a-46a shall be allowed if filed: (1) more than three years after the date that the sentence was imposed or the commitment ordered if no direct appeal was taken; or (2) more than one year after date the final order of the last appellate court in this state to exercise jurisdiction on a direct appeal or the termination of such appellate jurisdiction or the denial of a petition for writ of certiorari to the Supreme Court of the United States or issuance of such court's final order following the granting of such petition; whichever is later.

(b) Notwithstanding the provisions of subsection (a) of this section, a court may hear a claim if the applicant establishes due diligence in presenting the claim; and

(1) The applicant establishes that a physical disability or mental disease precluded a timely assertion of the claim;

(2) The applicant alleges the existence of newly discovered evidence, including scientific evidence, that could not have been discovered by the exercise of due diligence by the petitioner or petitioner's attorney prior to the expiration of the three-year period for the filing of a habeas corpus petition, and the evidence is not cumulative to evidence presented at trial, is not for impeachment purposes, and establishes by clear and convincing evidence that the petitioner is innocent of the offense or offenses for which he or she was convicted; or

(3) The applicant's ground or claim for relief is based upon a new interpretation of federal or state constitutional law by either the Supreme Court of the United States or the Supreme Court of the State of Connecticut and made retroactively applicable to cases on collateral review.

(c) A new three-year period shall not commence upon a resentencing that results from an order of the Sentence Review Division in accordance with Section 51-196, an order reducing a sentence or discharging a defendant in accordance with Section 53a-39, or an order issued pursuant to the sentencing court's authority at

common law to correct an illegal sentence. Any ground or claim for relief based upon such resentencing must be brought within one year of the date that the new sentence was imposed.

Sec. 4. Subsection (c) of section 54-95 of the general statutes is repealed and the following is substituted in lieu thereof *(Effective upon passage)*:

(c) In any criminal prosecution in which the defendant has been sentenced to death, the sentence shall be stayed during the pendency of the direct appeal and for thirty days thereafter. If the defendant brings a writ of certiorari in the United States Supreme court, the sentence shall be stayed until the United States Supreme Court has finally determined the matter and for ten days thereafter. If the defendant brings an application for a writ of habeas corpus the sentence shall be stayed until the matter is finally determined and the habeas trial court has decided any petition for certification to appeal and for 10 days thereafter. Only the first application for a writ of habeas corpus shall give rise to an automatic stay pursuant to this subsection. If the defendant brings a second or subsequent application for a writ of habeas corpus, any motion for stay of the sentence shall be made to Supreme Court of this state and shall only be granted upon a showing by the defendant of a likelihood of success upon the merits. [and has taken an appeal to the Supreme Court of this state or the Supreme Court of the United States or brought a writ of error, writ of certiorari or petition for a new trial, the taking of the appeal, the making of the application for a writ of certiorari or the return into court of the writ of error or petition for a new trial shall, unless, upon application by the state's attorney and after hearing, the Supreme Court otherwise orders, stay the execution of the death penalty until the clerk of the court where the trial was had has received notification of the termination of any such proceeding by decision or otherwise, and for thirty days thereafter. No appellate procedure shall be deemed to have terminated until the end of the period allowed by law for the filing of a motion for reargument, or, if such motion is filed, until the proceedings consequent thereon are finally determined. When execution is stayed under the provisions of this section, the clerk of the court shall forthwith give notice thereof to the warden of the institution in which such defendant is in custody. If the original judgment of conviction has been affirmed or remains in full force at the time when the clerk has received the notification of the termination of any proceedings by appeal, writ of certiorari, writ of error or petition for a new trial, and the day designated for the infliction of the death penalty has then passed or will pass within thirty days thereafter, the defendant shall, within said period of thirty days, upon an order of the court in which the judgment was rendered at a regular or special criminal session thereof, be presented before said court by the warden of the institution in which the defendant is in custody or his deputy, and the court, with the judge assigned to hold the session presiding, shall thereupon designate

a day for the infliction of the death penalty and the clerk of the court shall issue a warrant of execution, reciting therein the original judgment, the fact of the stay of execution and the final order of the court, which warrant shall be forthwith served upon the warden or his deputy.]

Statement of Purpose:

To amend procedures for post-conviction proceedings in capital cases.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]