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2024 Edition

# Petition for New Trial (Criminal)

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A Guide to Resources in the Law Library

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*Prepared by Connecticut Judicial Branch, Superior Court Operations,  
Judge Support Services, Law Library Services Unit*

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This guide links to advance release opinions on the Connecticut Judicial Branch website **and to case law hosted on Google Scholar and Harvard's Case Law Access Project.** The online versions are for informational purposes only.

References to online legal research databases refer to in-library use of these databases. Remote access is not available.

See Also - [Pleadings and Motion Practice in Family Matters](#), Section 8: Request for New Trial

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<https://www.jud.ct.gov/policies.htm>

# Introduction

A Guide to Resources in the Law Library

**Causes for which new trials may be granted.** "(a) The Superior Court may grant a new trial of any action that may come before it, for misleading, the discovery of new evidence or want of actual notice of the action to any defendant or of a reasonable opportunity to appear and defend, when a just defense in whole or part existed, or the want of actual notice to any plaintiff of the entry of a nonsuit for failure to appear at trial or dismissal for failure to prosecute with reasonable diligence, or for other reasonable cause, according to the usual rules in such cases. The judges of the Superior Court may in addition provide by rule for the granting of new trials upon prompt request in cases where the parties or their counsel have not adequately protected their rights during the original trial of an action.

(b) An affidavit signed by any party or his or her attorney shall be presumptive **evidence of want of actual notice.**" Conn. Gen. Stat. § [52-270](#) (2023)

Petition for new trial. "(a) **No petition for a new trial in any civil or criminal** proceeding shall be brought but within three years next after the rendition of the judgment or decree complained of, except that a petition for a new trial in a criminal proceeding based on DNA (deoxyribonucleic acid) evidence or other newly discovered evidence, as described in subsection (b) of this section, that was not discoverable or available at the time of the original trial or at the time of any previous petition under this section, may be brought at any time after the discovery or availability of such new evidence, and the court may grant the petition if the court finds that had such evidence been presented at trial, there is a reasonable likelihood there would have been a different outcome at the trial." Conn. Gen. Stat. § [52-582](#) (2023)

Appeal by defendant in criminal prosecution; stay of execution. "(a) Any defendant in a criminal prosecution, aggrieved by any decision of the Superior Court, upon the trial thereof, or by any error apparent upon the record of such prosecution, may be relieved by appeal, petition for a new trial or writ of error, in the same manner and with the same effect as in civil actions. No appeal may be taken from a judgment denying a petition for a new trial unless, within ten days after the judgment is rendered, the judge who heard the case or a judge of the Supreme Court or the Appellate Court, as the case may be, certifies that a question is involved in the decision which ought to be reviewed by the Supreme Court or by the Appellate Court. It shall be sufficient service of any such writ of error or petition for a new trial to serve it upon the state's attorney for the judicial district where it is brought." Conn. Gen. Stat. § [54-95](#) (2023)

"The standard that governs the granting of a petition for a new trial based on newly discovered evidence is well established. The petitioner must demonstrate, by a preponderance of the evidence, that: (1) the proffered evidence is newly discovered, such that it could not have been discovered earlier by the exercise of due diligence; (2) it would be material on a new trial; (3) it is not merely cumulative; and (4) it is likely to produce a different result in a new trial." [Asherman v. State](#), 202 Conn. 429, 434, 478 A.2d 227 (1984).

# Section 1: Effect and Purpose of the Petition for New Trial

A Guide to Resources in the Law Library

**SCOPE:** Bibliographic resources concerning the nature and meaning of a petition for new trial in the criminal context.

**DEFINITIONS:** A Petition for New Trial is not a Motion for New Trial: “[...] **the claim of the** defendant that the motion is the equivalent of a petition for a new trial, authorized under the provisions of General Statutes § 52-270 when brought within three years after the rendition of the judgment complained of (General Statutes § 52-582), we reject **as invalid.**” [State v. Goodwin](#), 3 Conn. Cir. Ct. 386, 387-388, 215 A.2d 913 (1965).

A new trial is not an appeal: **“It does not furnish a** substitute for, or an alternative to, an ordinary appeal but applies only when no other remedy is adequate and when in equity and good conscience relief against a judgment should be **granted.**” [State v. Grimes](#), 154 Conn. 314, 325, 228 A.2d 141 (1967)

A new trial may supplement the record for an appeal: **“At** the hearing on such a motion, the defendant would have had an opportunity to supplement the record for [the Supreme Court’s] review [.]” [State v. Beliveau](#), 237 Conn. 576, 597, 678 A.2d 924 (1996).

A proceeding on a petition for new trial is not a criminal action: **“A proceeding on a petition for new trial [...]** is not a criminal action. Rather, it is a distinct proceeding that is commenced by the service of civil process and is prosecuted as a civil action. *Redding v. Elfire, LLC*, supra, at 818-19, 911 **A.2d 1141.**” [Small v. State](#), 101 Conn. App. 213, 217, 920 A.2d 1024 (2007).

**“[...] a habeas corpus petition is not a surrogate for a time** barred petition for a new trial.” [Summerville v. Warden](#), 229 Conn. 397, 429, 641 A.2d 1356 (1994).

**STATUTES:** Conn. Gen. Stat. (2023)

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

Title 52. Civil Actions  
Chapter 903. New Trials  
§ [52-270](#). Causes for which new trials may be granted.  
§ [52-582](#). Petition for new trial.

Title 54. Criminal Procedure

Chapter 961. Trial and Proceedings After Conviction  
§ [54-95](#). Appeal by defendant in criminal prosecution; stay of execution

LEGISLATIVE:

[Office of Legislative Research](#) reports summarize and analyze the law in effect on the date of each **report's** publication. Current law may be different from what is discussed in the reports.

- *Procedures for Requesting New Trials Based on Newly Discovered Evidence*, George Coppolo, Connecticut General Assembly, Office of Legislative Research Report, [1996-R-1410](#) (November 12, 1996).
- *Reopening Criminal Trial*, Lawrence K. Furbish, Connecticut General Assembly, Office of Legislative Research Report, [98-R-1432](#) (November 19, 1998).

COURT RULES:

Amendments to the Practice Book (Court Rules) are published in the [Connecticut Law Journal](#) and posted [online](#).

Connecticut Practice Book (2024)

Chapter 42. Trial Procedure  
§ [42-55](#). —Time for Filing Motion for New Trial Based on Newly Discovered Evidence

CASES:

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [Small v. State](#), 101 Conn. App. 213, 920 A.2d 1024 (2007). **"A proceeding on a petition for new trial, therefore, is not a criminal action. Rather, it is a distinct proceeding that is commenced by the service of civil process and is prosecuted as a civil action. *Redding v. Elfire, LLC*, supra, at 818-19, 911 A.2d 1141." (p. 217)**  
**"It is evident that a proceeding on a petition for a new trial does not fall within the scope of any of the proceedings enumerated in § 51-296. Accordingly, we conclude that the petitioner does not possess a statutory right to appointed counsel pursuant to § 51-296." (p. 219)**
- [State v. Beliveau](#), 237 Conn. 576, 596-597, 678 A.2d 924 (1996). **"We acknowledge that the defendant could not have made the necessary record at the trial stage because the nature and content of the material sent in response to his subpoena did not become known to him until after the trial had been completed. There is no reason, however, that the defendant could not have filed a petition for a new trial under General Statutes § 52-270 and Practice Book § 904 in order to provide us with a factual record. In fact, § 904 specifically provides that such a petition may be filed and granted during the pendency of an appeal. A new trial would have been appropriate in this instance [...] the defendant would have had an opportunity to supplement the record for our review [...] We decline to remand this**

case to the trial court solely on the basis of the defendant's **unsupported speculation [...] that those hypothetical records may have affected the outcome of the trial.**"

- [Rizzo v. Pack](#), 15 Conn. App. 312, 315, 544 A.2d 252 (1988). "The purpose of a petition for a new trial is to permit the granting of a new trial when a party had a meritorious defense below, but did not have an opportunity to present it. Id.; *Krooner v. State*, 137 Conn. 58, 60, 75 A.2d 51 (1950)."
- [State v. Goodwin](#), 3 Conn. Cir. Ct. 386, 387-388, 215 A.2d 913 (1965). "[...] the defendant filed a motion for a new trial [...] the claim of the defendant that the motion is the equivalent of a petition for a new trial, authorized under the provisions of General Statutes § 52-270 when brought within three years after the rendition of the judgment complained of (General Statutes § 52-582), we reject as invalid."

WEST KEY NUMBERS:

- Criminal Law  
Motions for new trial  
# 905. Nature and scope of remedy of new trial in general
- New Trial  
# 0.5-12. Nature and scope of remedy

DIGESTS:

- ALR Index: *New Trial*
- ALR Digest: *New Trial*

ENCYCLOPEDIAS:

Encyclopedias and ALRs are available in print at some law library locations and accessible online at all law library locations.

Online databases are available for in-library use. Remote access is not available.

- 66 *C.J.S.* New Trial, Thompson West, 2021 (also available on Westlaw)  
I. In General
- 58 *Am Jur 2d* New Trial, Thomson West, 2023 (also available on Westlaw)  
I. Introduction

TEXTS & TREATISES:

- *LexisNexis Practice Guide: Connecticut Criminal Law*, by Stephan E. Seeger, editor, 2022 ed., LexisNexis.  
Chapter 11. Other Post-Conviction Remedies  
Part II: Petition for a New Trial  
§ 11.04. Understanding the Procedure for a Petition for a New Trial

Each of our law libraries own the Connecticut treatises cited. You can [contact](#) us or visit our [catalog](#) to determine which of our law libraries own the other treatises cited or to search for more treatises.

References to online databases refer to in-library use of these databases. Remote access is not available.

- *Connecticut Appellate Practice & Procedure*, 8th ed., by Hon. Eliot D. Prescott, Connecticut Law Tribune, 2023.  
Chapter 3. Reviewability: Matters Subject to Review  
§ 3-1:13.4: Petition for a New Trial
- *Connecticut Criminal Procedure*, 2023 ed., by Elizabeth A. Latiff, Connecticut Law Tribune, 2023.  
Chapter 16. Postconviction Motions and Petitions  
§ 16-4:4: Distinctions Between Petitions for New Trial and Habeas Corpus Petitions
- 6 Connecticut Practice Series, *Connecticut Trial Practice*, 2d ed., by Robert B. Yules, Pocket Part By The Publisher's Editorial Staff, Thomson West, 2000, with 2022-2023 supplement (also available on Westlaw).  
Chapter 11. Verdict and Motions After Verdict  
§ 11.38. Motion for new trial—Procedure

Table 1: Difference Between Motion for a New Trial and Petition for a New Trial

<p>Connecticut Practice Book (2024)</p> <p>Chapter 42. Trial Procedure</p> <p>§ <a href="#">42-53</a>. Motion for New Trial; In General</p>	
<p><a href="#">Berthiaume v. State</a>, 192 Conn. App. 322, 332-333, 217 A.3d 1073 (2019).</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p>Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can <a href="#">contact your local law librarian</a> to learn about the tools available to you to update cases.</p> </div>	<p>“Procedurally, a petition for a new trial is always brought in a separate civil proceeding, while a motion for a new trial is filed in the court in which the original proceeding was held. ‘The petition [for a new trial] is instituted by a writ and complaint served on the adverse party; although such an action is collateral to the action in which a new trial is sought, it is by its nature a distinct proceeding. The judgment on the petition terminates the suit which renders it final. On the contrary, a motion for a new trial is filed in a case then in progress or pending and is merely a gradation in that case leading to a final judgment.’ <i>State v. Asherman</i>, 180 Conn. 141, 144, 429 A.2d 810 (1980). For this reason, we have particularly stressed in the past that ‘the distinction between a petition and a motion is not one of mere nomenclature’; (internal quotation marks omitted) <i>State v. Gonzalez</i>, supra, 106 Conn. App. at 262, 941 A.2d 989; and that ‘<i>the trial court should not exercise its authority in cases ... where a party fails properly to serve a writ of summons and complaint on the adverse party in accordance with Practice Book § 42-55.</i>’ (Emphasis in original; internal quotation marks omitted.) <i>Id.</i>, at 261, 941 A.2d 989.</p> <p>Compliance with the summons and complaint requirements is not enough. We have held previously that even when a petitioner properly served a writ of summons and complaint in connection with a petition for a new trial, the petition was actually a motion for a new trial because the process was served under the same docket number as the original proceeding and ‘failed to institute a separate and distinct proceeding for the purpose of having the court determine whether a new trial was warranted ...’ <i>Redding v. Elfire</i>, 98 Conn. App. 808, 820, 911 A.2d 1141 (2006). Similarly, when the original trial court concludes that a motion for a new trial is brought on the basis of ‘newly discovered evidence, it lack[s] authority to consider the relief sought by the defendant in his motion pursuant to Practice Book § 42-53.’ <i>State v. Bennett</i>, 324 Conn. 744, 776–77, 155 A.3d 188 (2017).”</p>



<p><a href="#">State v. Gonzalez</a>, 106 Conn. App. 238, 262, cert. denied, 287 Conn. 903 (2008)</p>	<p><b>"We conclude that the defendant's claim of newly discovered evidence was not presented properly to the court. Simply put, 'the distinction between a petition and a motion is not one of mere nomenclature.'</b> <i>Redding v. Elfire, LLC</i>, 98 Conn.App. 808, 818, 911 A.2d 1141 (2006). As a result of the defendant's failure to file a petition for a new trial on the basis of newly discovered evidence, the trial court lacked the authority to consider it pursuant to our <b>rules of practice."</b></p>
<p><a href="#">State v. Santaniello</a>, 96 Conn. App. 646, 672, 902 A.2d 1 (2006).</p> <div data-bbox="256 772 526 1157" style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p>Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can <a href="#">contact your local law librarian</a> to learn about the tools available to you to update cases.</p> </div>	<p><b>"There is a significant difference between Practice Book [§§ 42-53 and 42-54, and § 42-55]. Practice Book [§ 42-53] is concerned with motions for a new trial based on errors committed during the trial. . . . On the other hand, [§ 42-55] provides: A request for a new trial on the ground of newly discovered evidence shall be called a petition for a new trial and shall be brought in accordance with [General Statutes § 52-270].'</b> (Internal quotation marks omitted.) <i>State v. Legrande</i>, 60 Conn. App. 408, 420, 759 A.2d 1027 (2000), cert. denied, 255 Conn. 925, <b>767 A.2d 99 (2001)</b>. 'Practice Book § 42-53 provides for the granting of a motion for a new trial in the interests of justice, for constitutional error or for other materially injurious error. A motion for a new trial under Practice Book [§ 42-53] is limited to trial errors, and cannot be based upon newly discovered evidence. . . . The defendant must bring a petition under [§ 42-55] if he wishes to seek <b>a new trial based upon newly discovered evidence.'</b> (Internal quotation marks omitted.) <i>State v. Newton</i>, 59 Conn. App. 507, 511 n.3, 757 A.2d 1140, cert. denied, 254 Conn. 936, 761 A.2d 764 (2000). A petition for a new trial <b>is instituted properly 'by a writ and complaint served on the adverse party; although such an action is collateral to the action in which a new trial is sought, it is by its nature a distinct proceeding.'</b> <i>State v. Asherman</i>, 180 Conn. 141, <b>144, 429 A.2d 810 (1980)</b>."</p>
<p><a href="#">State v. Asherman</a>, 180 Conn. 141, 143- 144, 429 A.2d 810 (1980).</p>	<p>"A motion for a new trial is interlocutory and an appeal lies only from the judgment to which the motion is addressed. <i>Hoberman v. Lake of Isles, Inc.</i>, 138 Conn. 573, 575-77, 87 A.2d 137; <i>State v. Kemp</i>, supra. Although the defendant obtained certification for review from the trial court pursuant to General Statutes § 54-95 (b), this tack does not obscure the fact that many of the essentials necessary to support a petition for a new trial are absent. The defendant filed his motion within the technical confines of the docketed criminal case. No separate civil action was brought. Compare <i>Aillon v. State</i>, supra; <i>Reilly v. State</i>, 32 Conn. Sup. 349, 355 A.2d 324. See</p>

<div data-bbox="261 304 529 684" style="border: 1px solid black; padding: 5px;"> <p>Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can <a href="#">contact your local law librarian</a> to learn about the tools available to you to update cases.</p> </div>	<p>generally <i>Hoberman v. Lake of Isles, Inc.</i>, supra, 575-77; <i>State v. Kemp</i>, supra, 644-45.</p> <p>The specific distinctions between a petition and a motion for a new trial indicate why judgments rendered upon the former are appealable. The petition is instituted by a writ and complaint served on the adverse party; although such an action is collateral to the action in which a new trial is sought, it is by its nature a distinct proceeding. The judgment on the petition terminates the suit which renders it final. On the contrary, a motion for a new trial is filed in a case then in progress or pending and is merely a gradation in that case leading to a final judgment. <i>Hoberman v. Lake of Isles, Inc.</i>, supra, 575-76.</p> <p>Most importantly, errors which are claimed to have been committed in rendering the judgment on a petition for a new trial are not reviewable on an appeal from the judgment rendered in the action in which a new trial is sought. See <i>Palverari v. Finta</i>, 129 Conn. 38, 41, 26 A.2d 229; <i>Husted v. Mead</i>, 58 Conn. 55, 68, 19 A. 233. On the other hand, errors which are claimed in relation to a motion for a new trial may be assigned on the appeal from the judgment rendered in the case in which the motion is made. <i>Hoberman v. Lake of Isles, Inc.</i>, supra, 577.</p>
<p><a href="#">State v. Goodwin</a>, 3 Conn. Cir. Ct. 386, 387-388, 215 A.2d 913 (1965).</p>	<p><b>"[...] the claim of the defendant that the motion is the equivalent of a petition for a new trial, authorized under the provisions of General Statutes § 52-270 when brought within three years after the rendition of the judgment complained of (General Statutes § 52-582), we reject as invalid."</b></p>

## Section 2: Causes for a New Trial

A Guide to Resources in the Law Library

**SCOPE:** Bibliographic resources relating to information on the causes for a new trial under Conn. Gen. Stat. § 52-270.

- DEFINITIONS:**
- Newly discovered evidence: “[...] may include newly discovered forensic scientific evidence that was not discoverable or available at the time of the original trial or **original or previous petition for a new trial [...]**” Conn. Gen. Stat. § [52-270](#)(b)(1) (2023).
  - Newly Discovered: “[...] meaning that it could not have been discovered previously despite the exercise of due **diligence.**” [Skakel v. State](#), 295 Conn. 447, 505-506, 991 A. 2d 414 (2010).
  - Forensic: “[...] means the application of scientific or technical practices to the recognition, collection, analysis and interpretation of evidence for criminal and civil law or **regulatory issues [...]**” Conn. Gen. Stat. § [52-582](#)(d) (2023).
  - Forensic scientific evidence: “[...] includes scientific knowledge or technical knowledge, reports or testimony by forensic analysts or experts, and scientific standards or a scientific method or technique upon which the relevant **scientific evidence is based [...]**” Conn. Gen. Stat. § [52-582](#)(d) (2023).
  - Scientific knowledge: “[...] includes knowledge of the general scientific community and all fields of scientific **knowledge upon which those fields or disciplines rely.**” Conn. Gen. Stat. § [52-582](#)(d) (2023).

**STATUTES:** Conn. Gen. Stat. (2023)

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

Title 52. Civil Actions  
Chapter 903. New Trials  
§ [52-270](#). Causes for which new trials may be granted.  
§ [52-582](#). Petition for new trial.

Title 54. Criminal Procedure  
Chapter 961. Trial and Proceedings After Conviction  
§ [54-102kk](#). DNA testing of biological evidence.

## LEGISLATIVE:

[Office of Legislative Research](#) reports summarize and analyze the law in effect on the date of each **report's** publication. Current law may be different from what is discussed in the reports.

- *Procedures for Requesting New Trials Based on Newly Discovered Evidence*, George Coppolo, Connecticut General Assembly, Office of Legislative Research Report, [1996-R-1410](#) (November 12, 1996).
- *Reopening Criminal Trial*, Lawrence K. Furbish, Connecticut General Assembly, Office of Legislative Research Report, [98-R-1432](#) (November 19, 1998).

## CASES:

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- [Reyes v. State](#), 222 Conn. App. 538, 566, 306 A.3d 515 (2023). “[...] **in order to satisfy the exception in § 52-582**, any purported new evidence in support of a petition must be newly discovered forensic scientific evidence and not **merely newly discovered evidence of any type or form.**”
- [Carmon v. State](#), Superior Court of Connecticut, Judicial District of New Haven, No. NNH CV19-5052879, (November 30, 2022) (2022 WL 17423683). **“Individually, none of the new items of evidence is a game changer. Collectively, they combine to likely alter the outcome. See *Kyles v. Whitley*, 514 U.S. 419, 436 (1995) (the materiality of suppressed evidence is to be considered collectively, not item by item). Had the suppressed evidence and the new forensic evidence been available to the defense, it is reasonably probable, and likely, that the result of the trial would have been different. That evidence puts the entire case against the petitioner in such a different light as to undermine confidence in the verdict.”** (p. 20)  
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**“It is unlikely that a jury of twelve would be firmly convinced, after hearing the new evidence in conjunction with the prior evidence, that the petitioner was responsible for the tragic shooting that killed Danielle Taft and permanently paralyzed Charlene Troutman on the evening of February 3, 1994 at 810 Orchard Street. Put differently, the suppressed evidence and the new forensic evidence places the entire case against the petitioner in such a different light as to undermine confidence in the verdict that the jury reached on April 7, 1995. Accordingly, the petition for a new trial and petition for a writ of habeas corpus filed by the petitioner are hereby granted.”** (p. 26)
- [Skakel v. Warden](#), Superior Court of Connecticut, Judicial District of Tolland, No. TSRCV104003762S (March 1, 2013) (2013 WL 1943921). **“It is undisputed that the petitioner could have litigated his allegations against Attorney**

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Sherman as part of his petition for a new trial, *State v. Leecan*, 198 Conn. 517, 541 (1986); *Brown v. Commissioner*, 44 Conn.App. 746, 747–49 (1997). Indeed, § 52–270 expressly lists an ineffective representation claim **as a cognizable ground for granting a new trial.**”

- [Skakel v. State](#), 295 Conn. 447, 521, 991 A. 2d 414 (2010). **“The petitioner did not exercise due diligence to obtain these reports once he knew of their specific existence. Indeed, neither the *Brady* doctrine nor our rules of discovery are intended either to relieve the defense of its obligation diligently to seek evidence favorable to it or to permit the defense to close its eyes to information likely to lead to the discovery of such evidence. In light of these facts, the trial court did not abuse its discretion in concluding that the evidence was not newly discovered.”**
- [Joyce v. State's Attorney](#), 84 Conn. App. 195, 852 A.2d 841, cert. denied, 271 Conn. 923 (2004). **“We are cognizant that the cases cited by the petitioner, *Taborsky v. State*, supra, 142 Conn. 619, 116 A.2d 433, *Santiago v. State*, supra, 47 Conn.Supp. 130, 779 A.2d 868, and *Reilly v. State*, 32 Conn.Supp. 349, 355 A.2d 324 (1976), as well as our Supreme Court's decisions in *Shabazz v. State*, 259 Conn. 811, 792 A.2d 797 (2002), and *Summerville v. Warden*, 229 Conn. 397, 641 A.2d 1356 (1994), have looked beyond the traditional four-pronged test for newly discovered evidence and have been guided by the general principle of whether an injustice was done. All of those cases, however, stem from an underlying conviction of **either murder or manslaughter.**” (p. 203)**

**“The petitioner in the present case was convicted of arson. The cases in which the court has looked beyond the traditional test all involved homicides. Except for his own injuries, no one else was hurt. Thus, the petitioner's case does not present the type of serious criminal case in which a deviation from the traditional four-pronged test is warranted. We conclude, therefore, that the court applied the proper legal test to determine if the petitioner was entitled to a new trial.”** (p. 204)

- [Summerville v. Warden](#), 229 Conn. 397, 437, 641 A.2d 1356 (1994). **“[The forensic psychologist's] testimony amounted to nothing more than a fourth expert opinion derived from an interpretation of the underlying autopsy data that Katsnelson, Gross and Sturner had already interpreted. That is not the kind of evidence that renders prior expert opinions as to the cause of death scientifically impossible or improbable.”**
- [Asherman v. State](#), 202 Conn. 429, 434, 521 A.2d 578 (1987). **“The standard that governs the granting of a**

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petition for a new trial based on newly discovered evidence is well established. The petitioner must demonstrate, by a preponderance of the evidence, that: (1) the proffered evidence is newly discovered, such that it could not have been discovered earlier by the exercise of due diligence; (2) it would be material on a new trial; (3) it is not merely cumulative; and (4) it is likely to produce a different result in a new trial. *Kubeck v. Foremost Foods Co.*, 190 Conn. 667, 670, 461 A.2d 1380 (1983); *Burr v. Lichtenheim*, 190 Conn. 351, 355, 460 A.2d 1290 (1983); *Pass v. Pass*, 152 Conn. 508, 511, 208 A.2d 753 (1965)."

- [Aillon v. State](#), 168 Conn. 541, 547-548, 363 A.2d 49 (1975). **"In this state, an improper act of a judge does not automatically justify a new trial unless there has been prejudice to the unsuccessful party; *Wood v. Holah*, 80 Conn. 314, 316, 68 A. 323; and ordinarily the burden of establishing that an error of the trial court is harmful rests on the appellant. *State v. L'Heureux*, 166 Conn. 312, 323, 348 A.2d 578; *State v. Vennard*, 159 Conn. 385, 393, 270 A.2d 837, cert. denied, 400 U.S. 1011, 91 S. Ct. 576, 27 L. Ed.2d 625. In this case, however, we are dealing with an intrusion into the constitutional rights of an accused. Thus, the accused is not required to show that the constitutional error was harmful; rather, the state must show that it was harmless beyond a reasonable doubt. *Chapman v. California*, 386 U.S. 18, 24, 87 S. Ct. 824, 17 L. Ed.2d 705."**
- [Malaspina v. Itts](#), 3 Conn. Cir. Ct. 651, 654, 223 A.2d 54 (1966). **"[...] newly remembered evidence is not tantamount to newly discovered evidence. 'Forgotten facts do not constitute newly discovered evidence, and the want of recollection of a fact, which by due diligence and attention might have been remembered, is not ground [sic] for a new trial.' 39 Am.Jur. 169, New Trial, s 161. '(A) new trial will not be granted on the mere after-recollection of a former witness.' *Shields v. State*, 45 Conn. 266, 270; see *Gannon v. State*, 75 Conn. 576, 583, 54 A. 199."**
- [Taborsky v. State](#), 142 Conn. 619, 631-632, 116 A.2d 433 (1955). **"It is true that a new trial will not ordinarily be granted because of additional impeaching or discrediting testimony. *Smith v. State*, 139 Conn. 249, 251, 93 A.2d 296; *Dortch v. State*, 142 Conn. 18, 27, 110 A.2d 471. This is not, however, a case where the new evidence consists merely of a recantation by one of the state's witnesses, as in the *Smith* case, supra, or where statements by a witness out of court variant with his testimony in court are presented, as in *Apter v. Jordan*, 94 Conn. 139, 143, 108 A. 548, and *Husted v. Mead*, 58 Conn. 55, 61, 19 A. 233, or where the new evidence impeaches the general reputation of a witness. See *Apter v. Jordan*, supra, 142. In the present case, the impeaching testimony is much more**

fundamental. It goes to the very sanity of the key witness, without whose evidence the accused could not have been convicted. The prohibition is not applicable, where, as here, the impeaching testimony is of such importance that it appears reasonably certain that an injustice has been done and that the result of a new trial would probably be **different.**"

WEST KEY NUMBERS:

- Criminal Law  
Motions for new trial  
# 913. Grounds for new trial in general  
Review  
# 1063-1066. Motions for new trial or in arrest  
# 1156. New Trial
- New Trial  
# 13-108. Grounds
- Appeal and Error #1175

DIGESTS:

- ALR Index: *New Trial*
- ALR Digest: *New Trial*

ENCYCLOPEDIAS:

Encyclopedias and ALRs are available in print at some law library locations and accessible online at all law library locations.

Online databases are available for in-library use. Remote access is not available.

- 58 *Am Jur 2d* New Trial, Thomson West, 2023 (also available on Westlaw)  
IV. Grounds for Granting a New Trial
- 66 *C.J.S.* New Trial, Thompson West, 2021 (also available on Westlaw)  
II. Grounds for New Trial

TEXTS & TREATISES:

You can [contact](#) us or visit our [catalog](#) to determine which of our law libraries own the treatises cited.

References to online databases refer to in-library use of these databases.

- *LexisNexis Practice Guide: Connecticut Criminal Law*, by Stephan E. Seeger, editor, 2022 ed., LexisNexis.  
Chapter 11. Other Post-Conviction Remedies  
Part II: Petition for a New Trial  
§ 11.03. Understanding the Grounds for a Petition for a New Trial
- *Connecticut Criminal Procedure*, 2023 ed., by Elizabeth A. Latiff, Connecticut Law Tribune, 2023.  
Chapter 16. Postconviction Motions and Petitions  
§ 16-4:2: Grounds  
§ 16-4:3: Petitions Based on Newly Discovered Evidence

Each of our law libraries own the Connecticut treatises cited. You can [contact](#) us or visit our [catalog](#) to determine which of our law libraries own the other treatises cited or to search for more treatises.

References to online databases refer to in-library use of these databases. Remote access is not available.

- 6 Connecticut Practice Series, *Connecticut Trial Practice*, 2d ed., by Robert B. Yules, Pocket Part By The Publisher's Editorial Staff, Thomson West, 2000, with 2022-2023 supplement (also available on Westlaw).
  - Chapter 11. Verdict and Motions After Verdict
    - § 11.34. Motion for new trial—Mispleading
    - § 11.35. Motion for new trial—Want of Notice or Opportunity to Defend
    - § 11.36. Motion for new trial—Newly Discovered Evidence
    - § 11.37. Motion for new trial—Mispleading
- *State Postconviction Remedies and Relief Handbook*, 2023-2024 ed., by Donald E. Wilkes, Jr., Thomson West, 2023.
  - Chapter 9. Connecticut
    - § 9:60 Postconviction DNA testing statute
    - § 9:61 –Case law



# Section 3: Time to Petition for New Trial

A Guide to Resources in the Law Library

## SCOPE:

Bibliographic resources concerning the time to file a petition for new trial.

## STATUTES:

Conn. Gen. Stat. (2023)

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

Title 52. Civil Actions  
Chapter 903. New Trials  
§ [52-270](#). Causes for which new trials may be granted.  
Chapter 926. Statute of Limitations  
§ [52-582](#). Petition for new trial.

Title 54. Criminal Procedure  
Chapter 961. Trial Proceedings and Conviction  
§ [54-95](#). Appeal by defendant in criminal prosecution; stay of execution

## LEGISLATIVE:

[Office of Legislative Research](#) reports summarize and analyze the law in effect on the date of each **report's** publication. Current law may be different from what is discussed in the reports.

- *Procedures for Requesting New Trials Based on Newly Discovered Evidence*, George Coppolo, Connecticut General Assembly, Office of Legislative Research Report, [1996-R-1410](#) (November 12, 1996).
- *Reopening Criminal Trial*, Lawrence K. Furbish, Connecticut General Assembly, Office of Legislative Research Report, [98-R-1432](#) (November 19, 1998).

## COURT RULES:

Connecticut Practice Book (2024)

Amendments to the Practice Book (Court Rules) are published in the [Connecticut Law Journal](#) and posted [online](#).

Chapter 42. Trial Procedure  
§ [42-55](#). —Time for Filing Motion for New Trial Based on Newly Discovered Evidence

## CASES:

Once you have identified useful cases, it is important to update them to ensure they are still good law. You can [contact your local law librarian](#) to learn about updating cases.

- [Reyes v. State](#), 222 Conn. App. 538, 541, -- A.3d -- (2023). **"On appeal, the petitioner claims that the trial court** improperly (1) concluded, as a matter of law, that the three year limitation period of § 52-582 cannot be tolled by application of the fraudulent concealment statute, General Statutes § 52-595, and (2) determined that the exception to the three year limitation period for newly discovered forensic scientific evidence pursuant to § 52-582 (a) was not applicable to the present case. We agree with the petitioner's first claim but disagree with his second claim. Accordingly, we affirm in part and reverse in part the

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judgment of the trial court, and we remand the case to the trial court for a new evidentiary hearing before a different judge to determine whether the three year limitation period of § 52-582 was tolled by § 52-595.”

- [Torres v. State](#), 218 Conn. App. 854, 855, 292 A.3d 1292 (2023). “In light of this court's decision in *Randolph v. Mambrino*, 216 Conn. App. 126, 284 A.3d 645 (2022), the judgment of the habeas court dismissing the amended petition for a new trial filed by the petitioner, Julio Burgos Torres, is reversed and the case is remanded for further proceedings according to law. See *id.*, at 132, 284 A.3d 645 (holding that three year limitation period of General Statutes § 52-582 may be tolled by showing of fraudulent concealment pursuant to General Statutes § 52-595).”
- [Myers v. Commissioner of Correction](#), 215 Conn. App. 592, 627, 284 A.3d 309 (2022). “[...] we conclude that the legislature intended for newly discovered evidence under § 52-582 to include only newly discovered forensic evidence. Consequently, because the petitioner's untimely petition for a new trial was not based on such evidence, the court correctly concluded that it lacked subject matter jurisdiction over the petition and properly dismissed the petition on that basis.”
- [LaBow v. LaBow](#), 69 Conn. App. 760, 766, 796 A.2d 592 (2002). “**Black** and the cases cited therein stand for the proposition that a new trial should be granted only where there is no legal remedy and to remedy injustice after a judgment has been rendered. Until a judgment has been rendered, there can be no reason for a new trial as there is no order or court action that so concludes the rights of the parties that further proceedings cannot affect them. See *State v. Curcio*, 191 Conn. 27, 31, 463 A.2d 566 (1983).”

WEST KEY NUMBERS:

- Criminal Law  
Motions for new trial  
# 951. Time for making
- New Trial  
# 117-121. Proceedings to procure new trial

DIGESTS:

- ALR Index: *New Trial*
- ALR Digest: *New Trial*

TEXTS & TREATISES:

- *Connecticut Appellate Practice & Procedure*, 8th ed., by Hon. Eliot D. Prescott, Connecticut Law Tribune, 2023.  
Chapter 3. Reviewability: Matters Subject to Review  
§ 3-1:13.4: Petition for a New Trial

You can [contact](#) us or visit our [catalog](#) to determine which of our law libraries own the treatises cited.

References to online databases refer to in-library use of these databases.

- *Connecticut Criminal Procedure, 2023 ed.*, by Elizabeth A. Latiff, Connecticut Law Tribune, 2023.  
Chapter 16. Postconviction Motions and Petitions  
§ 16-3: Practice Book § 42-55: **“Time for filing motion for new trial based on newly discovered evidence”**  
§ 16-4: 1: Generally

# Section 4: Procedure to Petition for a New Trial

A Guide to Resources in the Law Library

SCOPE: Bibliographic resources concerning the procedure to petition for new trial.

SEE ALSO: [Pleadings and Motion Practice in Family Matters, Section 8:](#) Request for New Trial, sample [Complaint for New Trial](#) (Civil) (P.B. 1963, Form 398).

STATUTES: Conn. Gen. Stat. (2023)

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

Title 52. Civil Actions  
Chapter 903. New Trials  
§ [52-270](#). Causes for which new trials may be granted.  
Chapter 926. Statute of Limitations  
§ [52-582](#). Petition for new trial.

Title 54. Criminal Procedure  
Chapter 961. Trial and Proceedings After Conviction  
§ [54-95](#). Appeal by defendant in criminal prosecution; stay of execution

LEGISLATIVE:

[Office of Legislative Research](#) reports summarize and analyze the law in effect on the date of each **report's** publication. Current law may be different from what is discussed in the reports.

- *Procedures for Requesting New Trials Based on Newly Discovered Evidence*, George Coppolo, Connecticut General Assembly, Office of Legislative Research Report, [1996-R-1410](#) (November 12, 1996).
- *Reopening Criminal Trial*, Lawrence K. Furbish, Connecticut General Assembly, Office of Legislative Research Report, [98-R-1432](#) (November 19, 1998).

COURT RULES:

Amendments to the Practice Book (Court Rules) are published in the [Connecticut Law Journal](#) and posted [online](#).

Connecticut Practice Book (2024)

Chapter 10. Pleadings  
§ [10-12](#). Service of the Pleading and Other Papers; Responsibility of Counsel or Self-Represented Party; Documents and Persons To Be Served  
§ [10-13](#). —Method of Service  
§ [10-14](#). —Proof of Service  
§ [10-17](#). —Service by Indifferent Person

CASES:

- [Mitchell v. State](#), 338 Conn. 66, 71-72, 257 A.3d 259 (2021). "Trial then commenced on the petition for a new trial, before the same judge who had presided over the petitioner's criminal trial. On August 22, 2016, the trial

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

court, *Hon. Edward J. Mullarkey*, judge trial referee, rendered judgment denying the petition. On September 12, 2016, the petitioner filed a request for an extension of time to file his appeal, which the trial court granted on September 13. The petitioner then filed his appeal within the extended deadline.

When the petitioner filed the appeal from the trial court's denial of his petition for a new trial, he did so without first obtaining certification to do so in accordance with General Statutes § 54-95 (a), which provides that certification to appeal shall **be obtained 'within ten days after the judgment is rendered ....'** See *Santiago v. State*, 261 Conn. 533, 543-44, 804 A.2d 801 (2002). That appeal had been pending for almost one year when, on September 5, 2017, the Appellate Court notified the petitioner that the requisite certification to appeal was lacking. On September 8, 2017, prior to the hearing in the Appellate Court to show cause why his appeal should not be dismissed, the petitioner filed in the trial court a request for leave to file a petition for certification to appeal, to which the petition for certification was appended. To explain his failure to seek certification within the statutory time limitation, the petitioner alleged in **that request that, '[a]lthough analogous to a petition for certification to appeal in a habeas corpus case, the petitioner was not provided with a written notice of appeal procedures via [Judicial Branch] form JD-CR-84, as is the custom in habeas corpus cases ....'**"

- [Summerville v. Warden](#), 229 Conn. 397, 641 A.2d 1356 (1994). **"The petitioner's claim is instead that he is entitled by way of habeas corpus to a new trial because the evidence at his criminal trial was medically unreliable [...]** We are not confronted, therefore, with a claim that he is burdened by an unreliable conviction resulting from such an antecedent constitutional violation. Compare, e.g., *Bunkley v. Commissioner of Correction*, supra, 222 Conn. 444 (habeas corpus claim for new trial based on constitutional claim of ineffectiveness of appellate counsel); *Phillips v. Warden*, 220 Conn. 112, 595 A.2d 1356 (1991) (habeas corpus claim for new trial based on constitutional claim of ineffectiveness of trial counsel flowing from actual conflict of interest).

**The petitioner's claim is, as he states, one of 'factual innocence.' On the basis of Taff's testimony that the cause of death of the victim was not asphyxiation resulting from manual strangulation, but acute cocaine intoxication, the petitioner claims that he is the victim of a miscarriage of justice because 'no crime was committed.'** (Emphasis in original.)" (pp. 420-421)

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

**"The foundational question is whether habeas corpus permits the granting of a new trial pursuant to a petitioner's claim of actual innocence, unadorned by an antecedent showing of a constitutional violation that affected the fairness of his criminal trial. We conclude that it does." (p. 421)**

- [Shashaty v. State](#), Superior Court, Judicial District of Ansonia-Milford, No. CV93-042336 (April 6, 1993) (1993 WL 117704). "[...] **the State claims that the plaintiff failed to bring his petition for a new trial as a separate proceeding and pursuant to the holding in *Waterworks v. Audet*, 29 Conn. App. 722 (1992), 'the failure to bring a petition for new trial as a separate proceeding deprives the trial court of subject matter jurisdiction.'** Finally, **the State asserts that it was never served with a complaint or any form of process in this action, that the complaint is not signed by the defendant or anyone who might be required by law to do so, there is no return date on the complaint, and that these defects deprive the court of jurisdiction.**"
- [State v. Grimes](#), 154 Conn. 314, 324-325, 228 A.2d 141 (1967). **"Proceedings in this state for procuring a new trial, whether in a civil or a criminal case, are controlled by statute. General Statutes § 52-270; *Wojculewicz v. State*, 142 Conn. 676, 677, 117 A.2d 439. We have had recent occasion to consider applications brought pursuant to the statute. *Pass v. Pass*, 152 Conn. 508, 510, 208 A.2d 753; *Black v. Universal C. I. T. Credit Corporation*, 150 Conn. 188, 192, 187 A.2d 243. As noted in these cases, the proceeding is essentially equitable in nature; the petitioner has the burden of alleging and proving facts which would, in conformity with our settled equitable construction of the statutes, entitle him to a new trial on the grounds claimed; and the petition is addressed to the legal discretion of the trial court."**
- [Krooner v. State](#), 137 Conn. 58, 61-62, 75 A.2d 51 (1950). **"Both parties have followed the correct procedure. The plaintiff filed in court a transcript of the evidence and exhibits received on the former trial together with affidavits summarizing the evidence claimed to be newly discovered [...] In the case at bar, the state chose to demur to the complaint."**
- Criminal Law  
Motions for new trial  
# 948. Application for new trial  
# 948.1. – In general  
# 949. – Form and requisites in general  
# 1063. Necessity of motion for new trial or in arrest

WEST KEY  
NUMBERS:

- New Trial  
# 124-175. Proceedings to procure new trial

DIGESTS:

- ALR Index: *New Trial*
- ALR Digest: *New Trial*

ENCYCLOPEDIA:

Encyclopedias and ALRs are available in print at some law library locations and accessible online at all law library locations.

Online databases are available for in-library use. Remote access is not available.

- 66 *C.J.S. New Trial*, Thompson West, 2021 (also available on Westlaw)
  - I. In General
    - C. State of Proceedings
      - § 13. New trial as part of same action or independent action; effect of order of dismissal

TEXTS & TREATISES:

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References to online databases refer to in-library use of these databases. Remote access is not available.

- *LexisNexis Practice Guide: Connecticut Criminal Law*, by Stephan E. Seeger, editor, 2022 ed., LexisNexis.
  - Chapter 11. Other Post-Conviction Remedies
    - Part II: Petition for a New Trial
      - § 11.04. Understanding the Procedure for a Petition for a New Trial
    - Part IV: Checklists
      - § 11.07. Checklist: Petitioning for a New Trial
  - Forms Appendix
    - Form CCL 11.01: Petition for New Trial
- *Connecticut Criminal Procedure*, 2023 ed., by Elizabeth A. Latiff, Connecticut Law Tribune, 2023.
  - Chapter 16. Postconviction Motions and Petitions
    - § 16-4:1: Generally

# Section 5: Response to Petition

A Guide to Resources in the Law Library

## SCOPE:

Bibliographic resources concerning the possible responses to a petition for new trial.

## STATUTES:

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

Conn. Gen. Stat. (2023)

Title 52. Civil Actions

Chapter 903. New Trials

§ [52-270](#). Causes for which new trials may be granted.

Chapter 926. Statute of Limitations

§ [52-582](#). Petition for new trial.

Title 54. Criminal Procedure

Chapter 961. Trial and Proceedings After Conviction

§ [54-95](#). Appeal by defendant in criminal prosecution; stay of execution

## LEGISLATIVE:

[Office of Legislative Research](#) reports summarize and analyze the law in effect on the date of each **report's** publication. Current law may be different from what is discussed in the reports.

- *Procedures for Requesting New Trials Based on Newly Discovered Evidence*, George Coppolo, Connecticut General Assembly, Office of Legislative Research Report, [1996-R-1410](#) (November 12, 1996).
- *Reopening Criminal Trial*, Lawrence K. Furbish, Connecticut General Assembly, Office of Legislative Research Report, [98-R-1432](#) (November 19, 1998).

## CASES:

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [Reyes v. State](#), 222 Conn. App. 510, 516, 306 A.3d 5 (2023). **"In response to the petition, the respondent, the state of Connecticut, denied all of the substantive allegations and left the petitioner to his proof."**
- [Payne v. State](#), Superior Court, Judicial District of New Haven, No. CV94-0362826 (March 30, 1995) (1995 WL 151978). **"On July 22, 1994, the State moved to strike the petition for a new trial on the ground that the allegations of the complaint are legally insufficient to state a claim of newly discovered evidence upon which relief can be granted."**

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**"The State claims that the petitioner has failed to make the four factual allegations stated in *Summerville v. Warden*, supra. While technically correct in its position, the court must view the complaint in the manner most favorable to the petitioner in order to determine whether the petition can survive the motion to strike."**



Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

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**"The petitioner here has failed to allege any facts to show that petitioner exercised reasonable diligence in attempting to discover and produce the testimony of Stevenson as a witness. This failure is fatal to the complaint and petition for a new trial under the statute.**

**The motion to strike is granted."**

- [Shashaty v. State](#), Superior Court, Judicial District of Ansonia-Milford, No. CV93-042336 (April 6, 1993) (1993 WL 117704). **"The State has now moved to dismiss the petition because Mr. Shashaty was convicted on March 30, 1984 and sentenced to a total effective sentence of six years and pursuant to § 52-582, '[n]o petition for new trial in any civil or criminal proceeding shall be brought but within three years next after the rendition of the judgment or decree complained of.'"**
- [Gannon v. State](#), 75 Conn. 576, 578-579, 54 A. 199, 199 (1903). "If the adverse party desires to controvert the accuracy of the statement of the former testimony, or of the new testimony set forth, or to produce other testimony to be considered with that alleged, he may do so, and for this purpose no pleadings are essential. **1 Swift's Digest, 788.** Or he may admit the accuracy of the statement of the testimony, both old and new, and for this purpose a demurrer is used. In either case, whether upon the testimony old and new—as found by the court after hearing witnesses—or upon such testimony as set forth in the application and admitted, the court decides in the exercise of a sound discretion whether a new trial should be granted or denied. *Parsons v. Platt*, 37 Conn. 563, 567. This discretion is a legal one; it is controlled by the well-established rules defining the requisites essential to granting a new trial. It may be abused by refusing a new trial where all essential requisites exist and the injustice of the judgment is apparent, and error may be affirmed where the trial court has erroneously held it had no power to exercise discretion. *Wildman v. Wildman*, 72 Conn. 262. But, within these limits, the power is discretionary, and its exercise in the denial of a new trial on the ground of newly-discovered evidence cannot be reviewed upon proceedings in error. This principle is firmly settled by many decisions of this court, extending from its organization to the present time. *Kimball v. Cady*, Kirby, 41; *Granger v. Bissell*, 2 Day, 364; *Lewis v. Hawley*, 1 Conn. 49; *White v. Trinity Church*, 5 id. 187, 189; *Magill v. Lyman*, 6 id. 59; *Lester v. State*, 11 id. 415; *Norwich & W. R. Co. v. Cahill*, 18 id. 484; *Parsons v. Platt*, 37 id. 563; *Hamlin v. State*, 48 id. 92; *Hart v. Brainerd*, 68 id. 50, 52; *State v. Brockhaus*, 72 id. 109, 43 Atl. 850."

WEST KEY  
NUMBERS:

- Criminal Law  
# 958. (5) Counter affidavits
- New Trial  
# 151. – Counter affidavits  
# 154. Dismissal or abandonment  
# 165. Vacation or setting aside order on motion for new trial

DIGESTS:

- ALR Index: *New Trial*
- ALR Digest: *New Trial*

ENCYCLOPEDIAS:

Encyclopedias and ALRs are available in print at some law library locations and accessible online at all law library locations.

Online databases are available for in-library use. Remote access is not available.

- 58 *Am Jur 2d New Trial*, Thomson West, 2023 (also available on Westlaw)
  - VI. Hearing and Determination of Application or Motion for New Trial
    - B. Evidentiary Matters
      - § 357. Counteraffidavits opposing new trial motion
- 66 *C.J.S. New Trial*, Thompson West, 2021 (also available on Westlaw)
  - IV. Proceedings to Procure a New Trial
    - B. Motion for New Trial
      - § 203. Opposition to motion for new trial

TEXTS &  
TREATISES:

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References to online databases refer to in-library use of these databases. Remote access is not available.

- *LexisNexis Practice Guide: Connecticut Criminal Law*, by Stephan E. Seeger, editor, 2022 ed., LexisNexis.
  - Chapter 11. Other Post-Conviction Remedies
    - Part II: Petition for a New Trial
      - § 11.04. Understanding the Procedure for a Petition for a New Trial

# Section 6: Denial of Petition

A Guide to Resources in the Law Library

## SCOPE:

Bibliographic resources concerning the denial of a petition for new trial.

## STATUTES:

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

Conn. Gen. Stat. (2023)

Title 54. Criminal Procedure  
Chapter 961. Trial and Proceedings After Conviction  
§ [54-95](#). Appeal by defendant in criminal prosecution;  
stay of execution

## LEGISLATIVE:

[Office of Legislative Research](#) reports summarize and analyze the law in effect on the date of each **report's** publication. Current law may be different from what is discussed in the reports.

- *Procedures for Requesting New Trials Based on Newly Discovered Evidence*, George Coppola, Connecticut General Assembly, Office of Legislative Research Report, [1996-R-1410](#) (November 12, 1996).
- *Reopening Criminal Trial*, Lawrence K. Furbish, Connecticut General Assembly, Office of Legislative Research Report, [98-R-1432](#) (November 19, 1998).

## COURT RULES:

Amendments to the Practice Book (Court Rules) are published in the [Connecticut Law Journal](#) and posted [online](#).

Connecticut Practice Book (2024)

Chapter 42. Trial Procedure  
§ [42-55](#). —Time for Filing Motion for New Trial Based on Newly Discovered Evidence

## CASES:

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [Turner v. State](#), 172 Conn. App. 352, 353-354, 160 A.3d 398 (2017). "The petitioner, Corey Turner, appeals from the judgment of the trial court denying on statute of limitations grounds his petition for a new trial filed pursuant to General Statutes § 52-270. The petitioner concedes that he filed his petition outside of the three year limitations period set forth in General Statutes § 52-582. Instead, he claims that the trial court improperly failed to exercise its equitable power to toll the statute of limitations, thereby unfairly denying him access to a remedy. We conclude that the petitioner's failure to comply with § 52-582 deprived the court of jurisdiction to consider the petition. Because the court should have dismissed the untimely petition, rather than

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having denied it, we reverse the judgment of the trial court only as to the form of the judgment and remand with **direction to dismiss the petition for new trial.**"

- [State v. Holmes](#), 75 Conn. App. 721, 730-731, cert. denied, 264 Conn. 903, 817 A.2d 689 (2003). **"The court has a right, if not a duty, to rely on the representations of a defendant's counsel. Matters of trial strategy and tactics rest with counsel for an accused. Furthermore, as this court recently has stated: '[D]ecisions concerning the composition of a jury charge fall into the category of decisions concerning matters of trial strategy.'** *State v. Stewart*, 64 Conn.App. 340, 353, 780 A.2d 209, cert. denied, 258 Conn. 909, 782 A.2d 1250 (2001). The defendant's counsel possessed the authority to waive his client's right to receive the instruction that he originally had requested. The court, acting on the representations of the defendant's counsel, properly omitted the instruction. For those reasons, we conclude that the denial of the defendant's motion for a new trial reflected a proper exercise of discretion."
- [Shabazz v. State](#), 259 Conn. 811, 812-813, 792 A.2d 797 (2002). **"The dispositive issue in this appeal is whether the trial court, in deciding this petition for a new trial on the basis of newly discovered evidence, properly engaged in a credibility assessment of the proffered newly discovered evidence in order to determine whether it was likely to produce a different result in the event of a new trial. The petitioner, Abdullah Shabazz, appeals from the trial court's judgment denying his petition for a new trial following his conviction for murder. The petitioner claims that the trial court improperly engaged in a credibility assessment of the newly discovered evidence offered in support of his petition. We conclude, to the contrary, that the trial court's action in this respect was proper. Accordingly, we affirm the trial court's judgment."**
- [Summerville v. Warden](#), 229 Conn. 397, 426-427, 641 A.2d 1356 (1994). **"The three year period begins to run from the date of rendition of judgment by the trial court; *Varley v. Varley*, 181 Conn. 58, 434 A.2d 312 (1980); which, in a criminal case, is the date of imposition of the sentence by the trial court. *State v. Coleman*, 202 Conn. 86, 89, 519 A.2d 1201 (1987).**

The three year statute of limitations on a petition for a new trial based on newly discovered evidence is the product of the legislature's balancing of the interests of the petitioner against the interests of the public and the state. The petitioner's interest is in attempting to establish that he is probably not guilty and that, therefore, the verdict in his criminal trial should be overturned. The state's interests are in preserving the finality of judgments, in not degrading the

properly prominent place given to the original trial as the forum for deciding the question of guilt or innocence within the limits of human fallibility, and in the fact that in many cases an order for a new trial may in reality reward the accused with complete freedom from prosecution because of the debilitating effect of the passage of time on the state's evidence. *Bunkley v. Commissioner of Correction*, supra, 222 Conn. 461-63.”

WEST KEY NUMBERS:

- Criminal Law
  - # 911. Discretion of court as to new trial
  - # 961. – Determination.
  - # 962. Grant of new trial ineffectual or not beneficial
  - # 964. Order granting or refusing new trial
- New Trial
  - # 160. Determination in General
  - # 161. Conditions on granting or refusing new trial
  - # 163. Order granting or refusing new trial

DIGESTS:

- ALR Index: *New Trial*
- ALR Digest: *New Trial*

ENCYCLOPEDIAS:

Encyclopedias and ALRs are available in print at some law library locations and accessible online at all law library locations.

Online databases are available for in-library use. Remote access is not available.

- 58 *Am Jur 2d* New Trial, Thomson West, 2023 (also available on Westlaw)
  - VII. Conditions to Granting or Denying of New Trial

TEXTS & TREATISES:

You can [contact](#) us or visit our [catalog](#) to determine which of our law libraries own the treatises cited.

References to online databases refer to in-library use of these databases.

- *LexisNexis Practice Guide: Connecticut Criminal Law*, by Stephan E. Seeger, editor, 2022 ed., LexisNexis.
  - Chapter 11. Other Post-Conviction Remedies
    - Part II: Petition for a New Trial
      - § 11.03. Understanding the Grounds for a Petition for a New Trial
      - § 11.04. Understanding the Procedure for a Petition for a New Trial
    - Part IV: Checklists
      - § 11.07. Checklist: Petitioning for a New Trial

# Section 7: Certification to Appeal, and Appeal of Judgment on Petition

A Guide to Resources in the Law Library

## SCOPE:

Bibliographic resources concerning the appeal of a decision on a petition for new trial, or the appeal of a decision on the certification to appeal a petition for new trial.

## STATUTES:

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

Conn. Gen. Stat. (2023)

Title 54. Criminal Procedure  
Chapter 961. Trial and Proceedings After Conviction  
§ [54-95](#). Appeal by defendant in criminal prosecution;  
stay of execution

## LEGISLATIVE:

[Office of Legislative Research](#) reports summarize and analyze the law in effect on the date of each **report's** publication. Current law may be different from what is discussed in the reports.

- *Procedures for Requesting New Trials Based on Newly Discovered Evidence*, George Coppolo, Connecticut General Assembly, Office of Legislative Research Report, [1996-R-1410](#) (November 12, 1996).
- *Reopening Criminal Trial*, Lawrence K. Furbish, Connecticut General Assembly, Office of Legislative Research Report, [98-R-1432](#) (November 19, 1998).

## COURT RULES:

Amendments to the Practice Book (Court Rules) are published in the [Connecticut Law Journal](#) and posted [online](#).

Connecticut Practice Book (2024)

Chapter 42. Trial Procedure  
§ [42-55](#). —Time for Filing Motion for New Trial Based on Newly Discovered Evidence

## CASES:

- [Daniels v. State](#), 88 Conn. App. 572, 870 A.2d 1109 (2005). **"The petitioner first claims that the court improperly denied certification to appeal from the denial of his petition for a new trial. As a preliminary matter, we identify the standard of review. It is well established that we apply the abuse of discretion standard when reviewing a court's decision to deny a request for certification to appeal from a denial of a petition for a new trial. *Joyce v. State's Attorney*, 84 Conn. App. 195, 197-98, 852 A.2d 841, cert. denied, 271 Conn. 923, 859 A.2d 578 (2004). In determining whether a court abused its discretion in this context, we apply the criteria**

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

set forth in *Lozada v. Deeds*, 498 U.S. 430, 431-32, 111 S. Ct. 860, 112 L. Ed. 2d 956 (1991). *Joyce v. State's Attorney*, supra. According to the *Lozada* framework, a petitioner can establish a clear abuse of discretion by demonstrating one of the following criteria: (1) that the issues are debatable among jurists of reason; (2) that a court could resolve the issues in a different manner; or (3) that the questions are adequate to deserve encouragement to proceed further. *Seebeck v. State*, 246 Conn. 514, 534, 717 A.2d 1161 (1998).” (pp. 575-576)

- [Adams v. State](#), 259 Conn. 831, 792 A.2d 809 (2002). “The respondent, the state of Connecticut (state), appeals from the judgment of the trial court granting the petitioner, **Tyrone Adams, a new trial.**” (p. 832)

“Moreover, implicit in our recognition in *Shabazz* that the trial court sits as fact finder in a hearing on a petition for a new trial is the principle that, absent extraordinary or extenuating circumstances, the court should make its credibility assessments—both initial and thereafter—on the basis of the presentation of live testimony, rather than on **the basis of a printed record.**” (p. 841)

“The absence of any finding that Greene's testimony was sufficiently strong and convincing so as to warrant a new trial further convinces us that the trial court misunderstood **its responsibilities with respect to this petition.**” (p. 847)

- [Seebeck v. State](#), 246 Conn. 514, 533-534, 717 A.2d 1161 (1998). “**Having decided that this court has jurisdiction to consider an appeal from the denial of a request for certification to appeal pursuant to § 54-95 (a), we next address the appropriate scope of review of that denial.** The petitioner argues that we should review the denial of certification under § 54-95 (a) under the same standard that we use to examine the denial of certification under § 52-470 (b). We agree. The language of the two statutes is virtually identical, and the policy underlying each—to discourage frivolous appeals—is also identical. We therefore conclude that the same scope of review applies to the denial **of certification to appeal under each statute.**”
- [Demers v. State](#), 209 Conn. 143, 547 A.2d 28 (1988). “The principal issue on appeal is whether the trial court abused its discretion in granting the petition for a new trial. The state argues that it did because the trial court erred in basing its conclusion that the petition should be granted on the finding of a Brady-Agurs violation.” (pp. 145-146)

“[...] **we conclude that the trial court did not abuse its discretion in granting the joint petition for a new trial.** Although the suppressed evidence related directly only to

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an element of one of the charged crimes, i.e., sexual assault in the first degree, a new trial is required on all counts of the respective informations (sic.) against the petitioners given the nature of such evidence and its profound relevancy to the victim's credibility as a witness." (p. 162)

- [State v. Asherman](#), 180 Conn. 141, 143-144, 429 A.2d 810 (1980). "It is clear that a judgment rendered upon a petition for a new trial is appealable. See *Aillon v. State*, 168 Conn. 541, 542, 363 A.2d 49; *Black v. Universal C.I.T. Credit Corporation*, 150 Conn. 188, 189, 187 A.2d 243; *State v. Kemp*, 124 Conn. 639, 644, 1 A.2d 761. A motion for a new trial is interlocutory and an appeal lies only from the judgment to which the motion is addressed. *Hoberman v. Lake of Isles, Inc.*, 138 Conn. 573, 575-77, 87 A.2d 137; *State v. Kemp*, supra. Although the defendant obtained certification for review from the trial court pursuant to General Statutes § 54-95 (b), this tack does not obscure the fact that many of the essentials necessary to support a petition for a new trial are absent. The defendant filed his motion within the technical confines of the docketed **criminal case. No separate civil action was brought.**"

WEST KEY NUMBERS:

- Criminal Law  
# 1065. Necessity of ruling or order on motion for new trial
- New Trial  
# 168. Application to appellate court and proceedings thereon

DIGESTS:

- ALR Index: *New Trial*
- ALR Digest: *New Trial*

TEXTS & TREATISES:

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- *LexisNexis Practice Guide: Connecticut Criminal Law*, by Stephan E. Seeger, editor, 2022 ed., LexisNexis.  
Chapter 11. Other Post-Conviction Remedies  
Part II: Petition for a New Trial  
§ 11.03. Understanding the Grounds for a Petition for a New Trial  
§ 11.04. Understanding the Procedure for a Petition for a New Trial  
Part IV: Checklists  
§ 11.07. Checklist: Petitioning for a New Trial
- *Connecticut Appellate Practice & Procedure*, 8th ed., by Hon. Eliot D. Prescott, Connecticut Law Tribune, 2023.  
Chapter 2. Appealability: Right to Appellate Review  
§ 2-1:3.4: Petitions for New Trial in Criminal Cases