

year term; to the Federal Council on the Aging.

35.14 MODIFICATION IN APPOINTMENT OF CONFEREES—H.R. 2333

THE SPEAKER pro tempore, Mr. MONTGOMERY, by unanimous consent, and pursuant to clause 6 of rule X, announced the following modification in the appointment of conferees on (H.R. 2333) to authorize appropriations for the Department of State, the United States Information Agency and related agencies, to authorize appropriations for foreign assistance programs, and for other purposes; in the second panel from the Committee on Foreign Affairs, Mr. DIAZ-BALART is appointed in lieu of Mr. ROTH only for consideration of section 755 of the Senate amendment.

Ordered, That the Clerk notify the Senate thereof.

35.15 CRIME CONTROL

THE SPEAKER pro tempore, Mr. MONTGOMERY, pursuant to House Resolution 401 and rule XXIII, declared the House resolved into the Committee of the Whole House on the state of the Union for the further consideration of the bill (H.R. 4092) to control and prevent crime.

Mr. TORRICELLI, Chairman of the Committee of the Whole, resumed the chair; and after some time spent therein,

35.16 RECORDED VOTE

A recorded vote by electronic device was ordered in the Committee of the Whole on the following amendment submitted by Mr. HYDE:

Page 91, strike line 15 and all that follows through line 16 on page 106.

It was decided in the affirmative { Yeas ..... 270 Nays ..... 159

35.17 [Roll No. 119] AYES—270

- Allard Canady Emerson
Andrews (NJ) Cantwell English
Archer Carr Everett
Armye Castle Ewing
Bacchus (FL) Chapman Fawell
Bachus (AL) Clement Fazio
Baesler Clinger Fields (TX)
Baker (CA) Coble Fingerhut
Baker (LA) Collins (GA) Fowler
Ballenger Combest Franks (CT)
Barca Condit Franks (NJ)
Barcia Cooper Gallegly
Barrett (NE) Coppersmith Gekas
Bartlett Costello Geren
Barton Cox Gilchrist
Bateman Cramer Gillmor
Bentley Crane Gilman
Bereuter Crapo Gingrich
Bevill Cunningham Glickman
Bilirakis Danner Goodlatte
Bliley Darden Goodling
Blute de la Garza Gordon
Boehlert Deal Goss
Boehner DeLay Grams
Bonilla Deutsch Green
Borski Diaz-Balart Greenwood
Brewster Dickey Gunderson
Browder Dicks Hall (TX)
Brown (OH) Dooley Hamilton
Bunning Doolittle Hancock
Burton Dornan Hansen
Buyer Dreier Harman
Byrne Duncan Hastert
Callahan Dunn Hayes
Calvert Edwards (TX) Hefley
Camp Ehlers Herger

- Hobson
Hoekstra
Hoke
Holden
Horn
Houghton
Huffington
Hunter
Hutchinson
Hutto
Hyde
Inglis
Inhofe
Inslee
Istook
Johnson (CT)
Johnson (GA)
Johnson (SD)
Johnson, Sam
Kanjorski
Kaptur
Kasich
Kim
King
Kingston
Klein
Klink
Klug
Knollenberg
Kolbe
Kreidler
Kyl
Lambert
Lancaster
LaRocco
Lazio
Leach
Lehman
Levy
Lewis (CA)
Lewis (FL)
Lightfoot
Linder
Lipinski
Lloyd
Long
Machtley
Manzullo
Martinez
McCandless
McCollum
McCreery
McCurdy
McDade
McHale
McHugh
McInnis
McKeon
McMillan
McNulty
Meyers
Mica
Michel
Miller (FL)
Minge
Molinari
Montgomery
Moorhead
Moran
Morella
Murtha
Myers
Neal (NC)
Nussle
Ortiz
Orton
Oxley
Packard
Parker
Pastor
Paxon
Payne (VA)
Penny
Peterson (MN)
Petri
Pickett
Pombo
Pomeroy
Porter
Portman
Poshard
Pryce (OH)
Quillen
Quinn
Ramstad
Ravenel
Regula
Richardson
Ridge
Roberts
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Roukema
Rowland
Royce

NOES—159

- Abercrombie
Ackerman
Andrews (ME)
Andrews (TX)
Applegate
Barlow
Barrett (WI)
Becerra
Beilenson
Berman
Bilbray
Bishop
Blackwell
Bonior
Boucher
Brooks
Brown (CA)
Brown (FL)
Bryant
Cardin
Clay
Clayton
Clyburn
Coleman
Collins (MI)
Conyers
Coyne
de Lugo (VI)
DeFazio
DeLauro
Dellums
Derrick
Dingell
Dixon
Durbin
Edwards (CA)
Engel
Eshoo
Evans
Farr
Fields (LA)
Filner
Flake
Foglietta
Ford (MI)
Ford (TN)
Frank (MA)
Frost
Furse
Gejdenson
Gephardt
Gibbons
Gonzalez
Gutierrez
Hall (OH)
Hamburg
Hastings
Hefner
Hilliard
Hinchev
Hoagland
Hochbruckner
Hoyer
Hughes
Jacobs
Jefferson
Johnson, E. B.
Johnston
Kennedy
Kennelly
Kildee
Klecza
Kopetski
LaFalce
Lantos
Laughlin
Levin
Lewis (GA)
Lowey
Maloney
Mann
Manton
Margolies-
Mezvinsky
Markay
Matsui
Mazzoli
McCloskey

- Sangmeister
Santorum
Sarpalius
Saxton
Schaefer
Schenk
Schiff
Sensenbrenner
Shaw
Shays
Shepherd
Shuster
Sisisky
Skeen
Skelton
Slattery
Smith (MI)
Smith (NJ)
Smith (OR)
Smith (TX)
Snowe
Solomon
Spence
Spratt
Stearns
Stenholm
Stump
Stupak
Sundquist
Talent
Tanner
Tauzin
Taylor (MS)
Taylor (NC)
Tejeda
Thomas (CA)
Thomas (WY)
Thurman
Torkildsen
Trafigant
Upton
Valentine
Volkmer
Vucanovich
Walker
Walsh
Weldon
Williams
Wolf
Wyden
Young (AK)
Young (FL)
Zeliff
Zimmer

- Stokes
Strickland
Studds
Swett
Swift
Synar
Thompson
Thornton
Torres
Torrice
Towns
Tucker
Underwood (GU)
Unsoeld
Velazquez
Vento
Viscosky
Washington
Waters
Watt
Waxman
Wheat
Whitten
Wilson
Wise
Woolsey
Wynn
Yates

NOT VOTING—8

- Collins (IL) Gallo Romero-Barcelo
Faleomavaega Grandy (PR)
(AS) Livingston
Fish Peterson (FL)

So the amendment was agreed to. After some further time,

35.18 RECORDED VOTE

A recorded vote by electronic device was ordered in the Committee of the Whole on the following amendment submitted by Mr. DERRICK:

TITLE VIII—HABEAS CORPUS REFORM SEC. 801. FILING DEADLINES.

Section 2254 of title 28, United States Code, is amended by adding at the end the following:

“(g)(1) In the case of an applicant under sentence of death, any application for habeas corpus relief under this section must be filed in the appropriate district court not later than 1 year after—

“(A) the date of denial of a writ of certiorari, if a petition for a writ of certiorari to the highest court of the State on direct appeal or unitary review of the conviction and sentence is filed, within the time limits established by law, in the Supreme Court;

“(B) the date of issuance of the mandate of the highest court of the State on direct appeal or unitary review of the conviction and sentence, if a petition for a writ of certiorari is not filed, within the time limits established by law, in the Supreme Court; or

“(C) the date of issuance of the mandate of the Supreme Court, if on a petition for a writ of certiorari the Supreme Court grants the writ and disposes of the case in a manner that leaves the capital sentence undisturbed.

“(2) The time requirements established by this section shall be tolled—

“(A) during any period in which the State has failed to provide counsel as required in section 2257 of this chapter;

“(B) during the period from the date the applicant files an application for State postconviction relief until final disposition of the application by the State appellate courts, if all filing deadlines are met; and

“(C) during an additional period not to exceed 90 days, if counsel moves for an extension in the district court that would have jurisdiction of a habeas corpus application and makes a showing of good cause.”.

SEC. 802. STAYS OF EXECUTION IN CAPITAL CASES.

Section 2251 of title 28, United States Code, is amended—

(1) by inserting “(a)(1)” before the first paragraph;

(2) by inserting “(2)” before the second paragraph; and

(3) by adding at the end the following:

“(b) In the case of an individual under sentence of death, a warrant or order setting an execution shall be stayed upon application to any court that would have jurisdiction over an application for habeas corpus under this chapter. The stay shall be contingent upon reasonable diligence by the individual in pursuing relief with respect to such sentence and shall expire it—

“(1) the individual fails to apply for relief under this chapter within the time requirements established by section 2254(g) of this chapter;

“(2) upon completion of district court and court of appeals review under section 2254 of this chapter, the application is denied and—

“(A) the time for filing a petition for a writ of certiorari expires before a petition is filed;

“(B) a timely petition for a writ of certiorari is filed and the Supreme Court denies the petition; or

“(C) a timely petition for certiorari is filed and, upon consideration of the case, the Supreme Court disposes of it in a manner that leaves the capital sentence undisturbed; or

“(3) before a court of competent jurisdiction, in the presence of counsel qualified under section 2257 of this chapter and after being advised of the consequences of the decision, an individual waives the right to pursue relief under this chapter.”.

**SEC. 803. LAW APPLICABLE.**

(a) IN GENERAL.—Chapter 153 of title 28, United States Code, is amended by adding at the end the following:

**“§ 2256. Law applicable**

“In an action under this chapter, the court shall not apply a new rule. As used in this section, the term ‘new rule’ means a clear break from precedent, announced by the Supreme Court of the United States, that could not reasonably have been anticipated at the time the claimant’s sentence became final in State court. A rule is not ‘new’ merely because it was not dictated or compelled by the precedents existing at that time or because, at that time, it was susceptible to debate among reasonable minds.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 153 of title 28, United States Code, is amended by adding at the end the following new item:

“2256. Law applicable.”.

**SEC. 804. COUNSEL IN CAPITAL CASES; STATE COURT.**

(a) IN GENERAL.—Chapter 153 of title 28, United States Code, is amended by adding after the section added by section 803 the following:

**§ 2257. Counsel in capital cases; State court**

“(a) Notwithstanding section 2254(d) of this chapter, the court in an action under this chapter shall neither presume a finding of fact made in a State court proceeding specified in subsection (b)(1) of this section to be correct nor decline to consider a claim on the ground that it was not raised in such a proceeding at the time or in the manner prescribed by State law, unless—

“(1) the relevant State maintains a mechanism for providing legal services to indigents in capital cases that meets the specifications in subsection (b) of this section;

“(2) if the applicant in the instant case was eligible for the appointment of counsel and did not waive such an appointment, the State actually appointed an attorney or attorneys to represent the applicant in the State proceeding in which the finding of fact was made or the default occurred; and

“(3) the attorney or attorneys so appointed substantially met both the qualification standards specified in subsection (b)(3)(A) or (b)(4) of this section and the performance standards established by the appointing authority.

“(b) A mechanism for providing legal services to indigents within the meaning of subsection (a)(1) of this section shall include the following elements:

“(1) The State shall provide legal services to—

“(A) indigents charged with offenses for which capital punishment is sought;

“(B) indigents who have been sentenced to death and who seek appellate, collateral, or unitary review in State court; and

“(C) indigents who have been sentenced to death and who seek certiorari review of

State court judgments in the United States Supreme Court.

“(2) The State shall establish a counsel authority, which shall be—

“(A) a statewide defender organization;

“(B) a resource center; or

“(C) a counsel authority appointed by the highest State court having jurisdiction over criminal matters, consisting of members of the bar with substantial experience in, or commitment to, the representation of criminal defendants in capital cases, and comprised of a balanced representation from each segment of the State’s criminal defense bar.

“(3) The counsel authority shall—

“(A) publish a roster of attorneys qualified to be appointed in capital cases, procedures by which attorneys are appointed, and standards governing qualifications and performance of counsel, which shall include—

“(i) knowledge and understanding of pertinent legal authorities regarding issues in capital cases; and

“(ii) skills in the conduct of negotiations and litigation in capital cases, the investigation of capital cases and the psychiatric history and current condition of capital clients, and the preparation and writing of legal papers in capital cases;

“(B) monitor the performance of attorneys appointed and delete from the roster any attorney who fails to meet qualification and performance standards; and

“(C) appoint a defense team, which shall include at least 2 attorneys, to represent a client at the relevant stage of proceedings, within 30 days after receiving notice of the need for the appointment from the relevant State court.

“(4) An attorney who is not listed on the roster shall be appointed only on the request of the client concerned and in circumstances in which the attorney requested is able to provide the client with quality legal representation.

“(5) No counsel appointed pursuant to this section to represent a prisoner in State postconviction proceedings shall have previously represented the prisoner at trial or on direct appeal in the case for which the appointment is made, unless the prisoner and counsel expressly request continued representation.

“(6) The ineffectiveness or incompetence of counsel appointed pursuant to this section during State or Federal postconviction proceedings shall not be a ground for relief in a proceeding arising under section 2254 of this title. This limitation shall not preclude the appointment of different counsel at any phase of State or Federal postconviction proceedings.

“(7) Upon receipt of notice from the counsel authority that an individual entitled to the appointment of counsel under this section has declined to accept such an appointment, the court requesting the appointment shall conduct, or cause to be conducted, a hearing, at which the individual and counsel proposed to be appointed under this section shall be present, to determine the individual’s competency to decline the appointment, and whether the individual has knowingly and intelligently declined it.

“(8) Attorneys appointed pursuant to this section shall be compensated on an hourly basis pursuant to a schedule of hourly rates as periodically established by the counsel authority after consultation with the highest State court with jurisdiction over criminal matters. Appointed counsel shall be reimbursed for expenses reasonably incurred in representing the client, including the costs of law clerks, paralegals, investigators, experts, or other support services.

“(9) Support services for staff attorneys of a defender organization or resource center shall be equal to the services listed in paragraph (8).

“(10) This section shall take effect one year after the date of the enactment of this section.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 153 of title 28, United States Code, is amended by adding after the item added by section 803 the following new item:

“2257. Counsel in capital cases; State court.”.

**SEC. 805. SUCCESSIVE FEDERAL PETITIONS.**

Section 2244(b) of title 28, United States Code, is amended—

(1) by inserting “(1)” after “(b)”;

(2) by inserting “, in the case of an applicant not under sentence of death,” after “When”; and

(3) by adding at the end the following:

“(2) In the case of an applicant under sentence of death, a claim presented in a second or successive application, that was not presented in a prior application under this chapter, shall be dismissed unless—

“(A) the applicant shows that—

“(i) the basis of the claim could not have been discovered by the exercise of reasonable diligence before the applicant filed the prior application; or

“(ii) the failure to raise the claim in the prior application was due to action by State officials in violation of the Constitution of the United States; and

“(B) the facts underlying the claim would be sufficient, if proven, to undermine the court’s confidence in the applicant’s guilt of the offense or offenses for which the capital sentence was imposed, or in the applicant’s legal eligibility for that sentence.”.

**SEC. 806. CERTIFICATES OF PROBABLE CAUSE.**

The third paragraph of section 2253, of title 28, United States Code, is amended to read as follows:

“An appeal may not be taken to the court of appeals from the final order in a habeas corpus proceeding where the detention complained of arises out of process issued by a State court, unless the justice or judge who rendered the order or a circuit justice or judge issues a certificate of probable cause. However, an applicant under sentence of death shall have a right of appeal without a certification of probable cause, except after denial of a second or successive application.”.

**SEC. 807. DUTIES OF THE DISTRICT COURT.**

Section 2254(a) of title 28, United States Code, is amended by adding at the end the following:

“In adjudicating the merits of any such ground, the court shall exercise independent judgment in ascertaining the pertinent Federal legal standards and in applying those standards to the facts and shall not defer to a previous State court judgment regarding a Federal legal standard or its application. Upon request, the court shall permit the parties to present evidence regarding material facts that were not adequately developed in State court. The court shall award relief with respect to any meritorious constitutional ground, unless, in the case of a violation that can be harmless, the respondent shows that the error was harmless beyond a reasonable doubt.”.

**SEC. 808. CLAIMS OF INNOCENCE.**

(a) IN GENERAL.—Chapter 153 of title 28, United States Code, is amended by adding after the provision added by section 804 of this title the following:

**“§ 2258. Claims of innocence**

“(a) At any time, and notwithstanding any other provision of law, a district court shall issue habeas corpus relief on behalf of an applicant under sentence of death, imposed either in Federal or in State court, who offers credible newly discovered evidence which, had it been presented to the trier of fact or

