

103^D CONGRESS
1ST SESSION

S. 47

To amend title 28, United States Code, to provide special habeas corpus procedures in capital cases.

IN THE SENATE OF THE UNITED STATES

JANUARY 21 (legislative day, JANUARY 5), 1993

Mr. THURMOND introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 28, United States Code, to provide special habeas corpus procedures in capital cases.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SPECIAL HABEAS CORPUS PROCEDURES IN CAPITAL

4 CASES

5 (a) Title 28, United States Code, is amended by in-
6 serting the following new chapter immediately following
7 chapter 153:

1 **“CHAPTER 154—SPECIAL HABEAS CORPUS**
 2 **PROCEDURES IN CAPITAL CASES**

“Sec.

“2256. Prisoners in State custody subject to capital sentence; appointment of counsel; requirement of rule of court or statute; procedures for appointment.

“2257. Mandatory stay of execution; duration; limits on stays of execution; successive petitions.

“2258. Filing of habeas corpus petition; time requirements; tolling rules.

“2259. Evidentiary hearings; scope of Federal review; district court adjudication.

“2260. Certificate of probable cause inapplicable.

3 **“§ 2256. Prisoners in State custody subject to capital**
 4 **sentence; appointment of counsel; re-**
 5 **quirement of rule of court or statute; pro-**
 6 **cedures for appointment**

7 “(a) This chapter shall apply to cases arising under
 8 section 2254 of this title brought by prisoners in State
 9 custody who are subject to a capital sentence. It shall
 10 apply only if subsections (b) and (c) are satisfied.

11 “(b) This chapter is applicable if a State establishes
 12 by rule of its court of last resort or by statute a mecha-
 13 nism for the appointment, compensation, and payment of
 14 reasonable litigation expenses of competent counsel in
 15 State post-conviction proceedings brought by indigent
 16 prisoners whose capital convictions and sentences have
 17 been upheld on direct appeal to the court of last resort
 18 in the State to have otherwise become final for State law
 19 purposes. The rule of court or statute must provide stand-
 20 ards of competency for the appointment of such counsel.

1 “(c) Any mechanism for the appointment, compensa-
2 tion, and reimbursement of counsel as provided in sub-
3 section (b) must offer counsel to all State prisoners under
4 capital sentence and must provide for the entry of an
5 order by a court of record—

6 “(1) appointing one or more counsel to rep-
7 resent the prisoner upon a finding that the pris-
8 oner—

9 “(A) is indigent and has accepted the
10 offer; or

11 “(B) is unable competently to decide
12 whether to accept or reject the offer;

13 “(2) finding, after a hearing, if necessary, that
14 the prisoner has rejected the offer of counsel and
15 made the decision with an understanding of its legal
16 consequences; or

17 “(3) denying the appointment of counsel upon
18 a finding that the prisoner is not indigent.

19 “(d) No counsel appointed pursuant to subsections
20 (b) and (c) to represent a State prisoner under capital
21 sentence shall have previously represented the prisoner at
22 trial or on direct appeal in the case for which the appoint-
23 ment is made unless the prisoner and counsel expressly
24 request continued representation.

1 “(e) The ineffectiveness or incompetence of counsel
2 during State or Federal collateral post-conviction proceed-
3 ings in a capital case shall not be a ground for relief in
4 a proceeding arising under this chapter or section 2254
5 of this title. This subsection shall not preclude the ap-
6 pointment of different counsel at any phase of State or
7 Federal post-conviction proceedings.

8 **“§ 2257. Mandatory stay of execution; duration; limits**
9 **on stays of execution; successive peti-**
10 **tions**

11 “(a) Upon the entry in the appropriate State court
12 of record of an order pursuant to section 2256(c) of this
13 title, a warrant or order setting an execution date for a
14 State prisoner shall be stayed upon application to any
15 court that would have jurisdiction over any proceedings
16 filed pursuant to section 2254 of this title. The application
17 must recite that the State has invoked the post-conviction
18 review procedures of this chapter and that the scheduled
19 execution is subject to stay.

20 “(b) A stay of execution granted pursuant to sub-
21 section (a) shall expire if—

22 “(1) a State prisoner fails to file a habeas cor-
23 pus petition under section 2254 of this title within
24 the time required in section 2258 of this title; or

1 “(2) upon completion of district court and court
2 of appeals review under section 2254 of this title,
3 the petition for relief is denied and—

4 “(A) the time for filing a petition for cer-
5 tiorari has expired and no petition has been
6 filed;

7 “(B) a timely petition for certiorari was
8 filed and the Supreme Court denied the peti-
9 tion; or

10 “(C) a timely petition for certiorari was
11 filed and upon consideration of the case, the
12 Supreme Court disposed of it in a manner that
13 left the capital sentence undisturbed; or

14 “(3) before a court of competent jurisdiction, a
15 State prisoner under capital sentence waives the
16 right to pursue habeas corpus review under section
17 2254 of this title, in the presence of counsel and
18 after having been advised of the consequences of
19 making the waiver.

20 “(c) If one of the conditions in subsection (b) has
21 occurred, no Federal court thereafter shall have the au-
22 thority to enter a stay of execution or grant relief in a
23 capital case unless—

1 “(1) the basis for the stay and request for relief
2 is a claim not previously presented in the State or
3 Federal courts;

4 “(2) the failure to raise the claim—

5 “(A) was the result of State action in vio-
6 lation of the Constitution or laws of the United
7 States;

8 “(B) was the result of a recognition by the
9 Supreme Court of a new Federal right that is
10 retroactively applicable; or

11 “(C) is due to the fact that the claim is
12 based on facts that could not have been discov-
13 ered through the exercise of reasonable dili-
14 gence in time to present the claim for State or
15 Federal post-conviction review; and

16 “(3) the facts underlying the claim would be
17 sufficient, if proven, to undermine the court’s con-
18 fidence in the jury’s determination of guilt on the of-
19 fense or offenses for which the death penalty was
20 imposed.

21 **“§2258. Filing of habeas corpus petition; time re-**
22 **quirements; tolling rules**

23 “(a) Any petition for habeas corpus relief under sec-
24 tion 2254 of this title must be filed in the appropriate
25 district court not later than 180 days after the filing in

1 the appropriate State court of record of an order issued
2 in compliance with section 2256(c) of this title. The time
3 requirements established by this section shall be tolled—

4 “(1) from the date that a petition for certiorari
5 is filed in the Supreme Court until the date of final
6 disposition of the petition if a State prisoner seeks
7 review of a capital sentence that has been affirmed
8 on direct appeal by the court of last resort of the
9 State or has otherwise become final for State law
10 purposes;

11 “(2) subject to subsection (b), during any pe-
12 riod in which a State prisoner under capital sentence
13 has a properly filed request for post-conviction re-
14 view pending before a State court of competent ju-
15 risdiction; and

16 “(3) during an additional period not to exceed
17 60 days, if counsel for the State prisoner—

18 “(A) moves for an extension of time in the
19 Federal district court that would have jurisdic-
20 tion over the case upon the filing of a habeas
21 corpus petition under section 2254 of this title;
22 and

23 “(B) makes a showing of good cause for
24 counsel’s inability to file the habeas corpus peti-

1 “(B) was the result of a recognition by the
2 Supreme Court of a new Federal right that is
3 retroactively applicable; or

4 “(C) is due to the fact that the claim is
5 based on facts that could not have been discov-
6 ered through the exercise of reasonable dili-
7 gence in time to present the claim for State
8 post-conviction review; and

9 “(2) conduct any requested evidentiary hearing
10 necessary to complete the record for habeas corpus
11 review.

12 “(b) Upon the development of a complete evidentiary
13 record, the district court shall rule on the merits of the
14 claims properly before it.

15 **“§ 2260. Certificate of probable cause inapplicable**

16 “The requirement of a certificate of probable cause
17 in order to appeal from the district court to the court of
18 appeals does not apply to habeas corpus cases subject to
19 this chapter except when a second or successive petition
20 is filed.”.

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