

103^D CONGRESS
2^D SESSION

S. 2389

To reform habeas corpus procedures.

IN THE SENATE OF THE UNITED STATES

AUGUST 15 (legislative day, AUGUST 11), 1994

Mr. BRYAN (for himself and Mr. GRAHAM) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To reform habeas corpus procedures.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Habeas Corpus Reform
5 Act of 1994”.

6 **SEC. 2. SPECIAL HABEAS CORPUS PROCEDURES IN CAP-**
7 **ITAL CASES.**

8 (a) IN GENERAL.—Part IV of title 28, United States
9 Code, is amended by inserting immediately following chap-
10 ter 153 the following new title:

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

“Sec.

“2256. Application of chapter to prisoners in State custody subject to capital sentence and appointment of counsel.

“2257. Mandatory stays of execution and successive petitions.

“2258. Filing of habeas corpus petition.

“2259. Certificate of probable cause inapplicable.

“2260. Counsel in capital cases.

3 **“§ 2256. Application of chapter to prisoners in State**
4 **custody subject to capital sentence and**
5 **appointment of counsel**

6 “(a) APPLICABILITY OF CHAPTER TO CASES.—This
7 chapter shall apply to cases arising under section 2254
8 of this title brought by prisoners in State custody who are
9 subject to a capital sentence. It shall apply only if sub-
10 section (b) is satisfied.

11 “(b) APPLICABILITY OF CHAPTER TO STATES.—This
12 chapter is applicable if a State establishes by rule of its
13 court of last resort or by statute a mechanism for the ap-
14 pointment, compensation, and payment of reasonable fees
15 and litigation expenses of competent counsel consistent
16 with section 2260 of this title.

17 “(c) RULE FOR PREVIOUS COUNSEL.—No counsel
18 appointed pursuant to subsection (b) to represent a State
19 prisoner under capital sentence shall have previously
20 represented the prisoner at trial or on direct appeal in the
21 case for which the appointment is made unless the

1 prisoner and counsel expressly request continued
2 representation.

3 “(d) INEFFECTIVENESS OF COUNSEL.—The ineffec-
4 tiveness or incompetence of counsel appointed under this
5 chapter during State or Federal collateral post-conviction
6 proceedings shall not be a ground for relief in a proceeding
7 arising under this chapter or section 2254 of this title.
8 This limitation shall not preclude the appointment of dif-
9 ferent counsel at any phase of State or Federal post-con-
10 viction proceedings.

11 **“§ 2257. Mandatory stays of execution and successive**
12 **petitions**

13 “(a) IN GENERAL.—Upon the entry in the appro-
14 priate State court of record of an order pursuant to sec-
15 tion 2260 of this title, a warrant or order setting an execu-
16 tion date for a State prisoner shall be stayed upon applica-
17 tion to any court that would have jurisdiction over any
18 proceedings filed pursuant to section 2254 of this title.
19 The application shall recite that the State has invoked the
20 post-conviction review procedures of this chapter and that
21 the scheduled execution is subject to stay.

22 “(b) DURATION OF STAY.—A stay of execution
23 granted pursuant to subsection (a) shall expire if—

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

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

7 “(A) the time for filing a petition for cer-
8 tiorari has expired and no petition has been
9 filed;

10 “(B) a timely petition for certiorari was
11 filed and the Supreme Court denied the peti-
12 tion; or

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

17 “(3) a State prisoner under capital sentence
18 waives the right to pursue habeas corpus review
19 under section 2254 of this title—

20 “(A) before a court of competent jurisdic-
21 tion;

22 “(B) in the presence of counsel; and

23 “(C) after having been advised of the con-
24 sequences of his decision.

1 “(c) SUCCESSIVE PETITIONS.—If one of the condi-
2 tions provided in subsection (b) is satisfied, no Federal
3 court thereafter shall have the authority to enter a stay
4 of execution or grant relief in a capital case unless—

5 “(1) the basis for the stay and request for relief
6 is a claim not previously presented by the prisoner
7 in State or Federal courts, and the failure to raise
8 the claim is—

9 “(A) the result of State action in violation
10 of the Constitution or laws of the United
11 States;

12 “(B) the result of the Supreme Court rec-
13 ognition of a new Federal right that is retro-
14 actively applicable; or

15 “(C) based on a factual predicate that
16 could not have been discovered through the ex-
17 ercise of reasonable diligence in time to present
18 the claim for State or Federal postconviction
19 review; and

20 “(2) the facts underlying the claim would be
21 sufficient, if proven, to undermine the court’s con-
22 fidence in the jury’s determination of guilt of the of-
23 fense or offenses for which the death penalty was
24 imposed, or in the validity of the sentence of death.

1 **“§ 2258. Filing of habeas corpus petition**

2 “(a) FILING OF PETITIONS.—Any petition for habeas
3 corpus relief under section 2254 of this title must be filed
4 in the appropriate district court not later than 180 days
5 after the date of filing in the appropriate State court of
6 record of an order issued appointing collateral counsel in
7 compliance with section 2260 of this title.

8 “(b) TIME REQUIREMENTS.—The time requirements
9 established by this section shall be tolled—

10 “(1) from the date that a petition for certiorari
11 is filed in the Supreme Court until the date of final
12 disposition of the petition if a State prisoner seeks
13 review of a capital sentence that has been affirmed
14 on direct appeal by the court of last resort of the
15 State or has otherwise become final for State law
16 purposes;

17 “(2) during any period in which a State pris-
18 oner under capital sentence has a properly filed re-
19 quest for postconviction review pending before a
20 State court of competent jurisdiction; if all State fil-
21 ing rules are met in a timely manner, this period
22 shall run continuously from the date that the State
23 prisoner initially files for post-conviction review until
24 final disposition of the case by the State court of
25 last resort; and

1 “(3) during an additional period not to exceed
2 90 days, if counsel for the State prisoner—

3 “(A) moves for an extension of time in the
4 United States district court that would have
5 proper jurisdiction over the case upon the filing
6 of a habeas corpus petition under section 2254
7 of this title; and

8 “(B) makes a showing of good cause for
9 counsel’s inability to file the habeas corpus peti-
10 tion within the 180-day period established by
11 this section.

12 The tolling rule established by this subsection shall not
13 apply during the pendency of a petition for certiorari be-
14 fore the Supreme Court following such State post-convic-
15 tion review.

16 **“§ 2259. Certificate of probable cause inapplicable**

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

22 **“§ 2260. Counsel in capital cases**

23 “(a) IN GENERAL.—A mechanism for the provision
24 of counsel services to indigents sufficient to invoke the
25 provisions of this chapter shall—

1 “(1) provide for counsel to—

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

4 “(B) indigents who have been sentenced to
5 death and who seek appellate or collateral re-
6 view in State court; and

7 “(C) indigents who have been sentenced to
8 death and who seek certiorari review in the
9 United States Supreme Court; and

10 “(2) provide for the entry and filing of an order
11 in an appropriate State court of record appointing
12 one or more counsel to represent the prisoner except
13 upon a judicial determination (after a hearing, if
14 necessary) that—

15 “(A) the prisoner is not indigent; or

16 “(B) the prisoner knowingly and intel-
17 ligently waives the appointment of counsel.

18 “(b) STANDARDS FOR COUNSEL.—

19 “(1) IN GENERAL.—(A) Except as provided in
20 paragraph (2), at least one attorney appointed pur-
21 suant to this chapter before trial, if applicable, and
22 at least one attorney appointed pursuant to this
23 chapter after trial, if applicable, shall have been cer-
24 tified by a statewide certification authority. The
25 States may elect to create one or more certification

1 authorities (but not more than three such certifi-
2 cation authorities) to perform the responsibilities set
3 forth in subparagraph (B).

4 “(B) The certification authority for counsel at
5 any stage of a capital case shall be—

6 “(i) a special committee, constituted by the
7 State court of last resort or by State statute,
8 relying on staff attorneys of a defender organi-
9 zation, members of the private bar, or both;

10 “(ii) a capital litigation resource center, re-
11 lying on staff attorneys, members of the private
12 bar, or both; or

13 “(iii) a statewide defender organization, re-
14 lying on staff attorneys, members of the private
15 bar, or both.

16 “(C) The certification authority shall—

17 “(i) certify attorneys qualified to represent
18 persons charged with capital offenses or sen-
19 tenced to death;

20 “(ii) draft and annually publish procedures
21 and standards by which attorneys are certified
22 and rosters of certified attorneys; and

23 “(iii) periodically review the roster of cer-
24 tified attorneys, monitor the performance of all
25 attorneys certified, and withdraw certification

1 from any attorney who fails to meet high per-
2 formance standards in a case to which the at-
3 torney is appointed, or fails otherwise to dem-
4 onstrate continuing competence to represent
5 prisoners in capital litigation.

6 “(2) EXCEPTION FOR STATES WITHOUT STATE
7 SYSTEMS.—In a State that has a publicly-funded
8 public defender system that is not organized on a
9 statewide basis, the requirements of paragraph (1)
10 shall be deemed to have been satisfied if at least one
11 attorney appointed pursuant to this chapter before
12 trial shall be employed by a State funded public de-
13 fender organization, and if the highest court of the
14 State finds on an annual basis that the standards
15 and procedures established and maintained by such
16 organization (which have been filed by such organi-
17 zation and reviewed by such court on an annual
18 basis) insure that the attorneys working for such or-
19 ganization demonstrate continuing competence to
20 represent indigents in capital litigation.

21 “(c) NONCOMPLYING STATES.—

22 “(1) BEFORE TRIAL.—If a State has not elect-
23 ed to comply with the provisions of subsection (b),
24 in the case of an appointment made before trial, at
25 least one attorney appointed under this chapter

1 must have been admitted to practice in the court in
2 which the prosecution is to be tried for not less than
3 5 years, and must have not less than 3 years' experi-
4 ence in the trial of felony prosecutions in that court.

5 “(2) AFTER TRIAL.—If a State has not elected
6 to comply with the provisions of subsection (b), in
7 the case of an appointment made after trial, at least
8 one attorney appointed under this chapter must have
9 been admitted to practice in the court of last resort
10 of the State for not less than 5 years, and must
11 have had not less than 3 years' experience in the
12 handling of appeals in that State courts in felony
13 cases.

14 “(d) DIFFERENT ATTORNEY.—Notwithstanding any
15 other provision of this section, a court, for good cause,
16 and upon the defendant's request, may appoint another
17 attorney whose background, knowledge or experience
18 would otherwise enable the attorney to properly represent
19 the defendant, with due consideration of the seriousness
20 of the possible penalty and the unique and complex nature
21 of the litigation.

22 “(e) PAYMENT FOR ADDITIONAL SERVICES.—Upon
23 a finding in ex parte proceedings that investigative, expert
24 or other services are reasonably necessary for the rep-
25 resentation of the defendant, whether in connection with

1 issues relating to guilt or issues relating to sentence, the
2 court shall authorize the defendant's attorney to obtain
3 such services on behalf of the defendant and shall order
4 the payment of reasonable fees and expenses therefor,
5 under subsection (f). Upon finding that timely procure-
6 ment of such services could not practically await prior au-
7 thorization, the court may authorize the provision of any
8 payment of services nunc pro tunc.

9 “(f) ATTORNEY COMPENSATION.—Notwithstanding
10 the rates and maximum limits generally applicable to
11 criminal cases and any other provision of law to the con-
12 trary, the court shall fix the compensation to be paid to
13 an attorney appointed under this subsection (other than
14 State employees) and the fees and expenses to be paid for
15 investigative, expert, and other reasonably necessary serv-
16 ices authorized under subsection (c), at such rates or
17 amounts as the court determines to be reasonably nec-
18 essary to carry out the requirements of this subsection.”.

19 (b) AMENDMENTS TO TABLE OF CHAPTERS.—The
20 table of chapters for part IV of title 28, United States
21 Code, is amended by inserting after the item for chapter
22 153 the following:

“154. Special habeas corpus procedures in capital cases 2256”.

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