

103^D CONGRESS
1ST SESSION

S. 246

To provide expedited procedures for the consideration of habeas corpus petitions in capital cases.

IN THE SENATE OF THE UNITED STATES

JANUARY 27 (legislative day, JANUARY 5), 1993

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

A BILL

To provide expedited procedures for the consideration of habeas corpus petitions 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 **SECTION 1. SPECIAL HABEAS CORPUS PROCEDURES IN**

4 **CAPITAL CASES.**

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

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

“Sec.

“2261. Defendants subject to capital punishment and prisoners in State custody subject to capital sentence; appointment of counsel; requirement of rule of court or statute; procedures for appointment.

“2262. Mandatory stay of execution; duration; limits on stays of execution; successive petitions.

“2263. Filing of habeas corpus petition; time requirements; tolling rules.

“2264. Evidentiary hearings; scope of Federal review; district court adjudication.

“2265. Certificate of probable cause inapplicable.

“2266. Counsel in capital cases; trial and post-conviction standards.

“2267. Law controlling in Federal habeas corpus proceedings; retroactivity.

“2268. Habeas corpus time requirements.

3 **“§ 2261. Defendants subject to capital punishment**
 4 **and prisoners in State custody subject to**
 5 **capital sentence; appointment of counsel;**
 6 **requirement of rule of court or statute;**
 7 **procedures for appointment**

8 “(a) This chapter shall apply—

9 “(1) to—

10 “(A) cases in which the defendant is tried
 11 for a capital offense; or

12 “(B) cases arising under section 2254 of
 13 this title brought by prisoners in State custody
 14 who are subject to a capital sentence; and

15 “(2) only if subsections (b) and (c) are satis-
 16 fied.

17 “(b) This chapter is applicable if a State establishes
 18 by rule of its court of last resort or by statute a mecha-
 19 nism for the appointment, compensation, and payment of

1 reasonable fees and litigation expenses of competent coun-
2 sel consistent with section 2266 of this title.

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

9 “(1) appointing one or more counsel to rep-
10 resent the defendant or prisoner upon a finding that
11 the defendant or prisoner—

12 “(A) is indigent and has accepted the
13 offer; or

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

16 “(2) finding, after a hearing, if necessary, that
17 the defendant or prisoner has rejected the offer of
18 counsel and made the decision with an understand-
19 ing of its legal consequences; or

20 “(3) denying the appointment of counsel upon
21 a finding that the defendant or prisoner is not indi-
22 gent.

23 “(d) No counsel appointed pursuant to subsections
24 (b) and (c) to represent—

1 “(1) a State defendant being tried for a capital
2 offense; or

3 “(2) prisoner under capital sentence during di-
4 rect appeals in the State courts,

5 shall have previously represented the defendant or pris-
6 oner at trial or on direct appeal in the case for which the
7 appointment is made unless the defendant or prisoner and
8 counsel expressly request continued representation.

9 “(e) The ineffectiveness or incompetence of counsel
10 during State or Federal collateral post-conviction proceed-
11 ings in a capital case shall not be a ground for relief in
12 a proceeding arising under this chapter. This subsection
13 shall not preclude the appointment of different counsel at
14 any phase of Federal post-conviction proceedings.

15 **“§ 2262. Mandatory stay of execution; duration; limits**
16 **on stays of execution; successive peti-**
17 **tions**

18 “(a) Upon the entry in the appropriate State court
19 of record of an order pursuant to section 2261(c) of this
20 title for a prisoner under capital sentence, a warrant or
21 order setting an execution date for a State prisoner shall
22 be stayed upon application to any court that would have
23 jurisdiction over any proceedings filed pursuant to this
24 chapter. The application must recite that the State has

1 invoked the procedures of this chapter and that the sched-
2 uled execution is subject to stay.

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

5 “(1) a State prisoner fails to file a habeas cor-
6 pus petition under this chapter within the time re-
7 quired in section 2263 of this title; or

8 “(2) upon completion of district court and court
9 of appeals review under this chapter, the petition for
10 relief is denied and—

11 “(A) the time for filing a petition for cer-
12 tiorari has expired and no petition has been
13 filed;

14 “(B) a timely petition for certiorari was
15 filed and the Supreme Court denied the peti-
16 tion; or

17 “(C) a timely petition for certiorari was
18 filed and upon consideration of the case, the
19 Supreme Court disposed of it in a manner that
20 left the capital sentence undisturbed; or

21 “(3) before a court of competent jurisdiction, a
22 State prisoner under capital sentence waives the
23 right to pursue habeas corpus review under section
24 2254 of this title, in the presence of counsel and

1 after having been advised of the consequences of
2 making the waiver.

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

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

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

11 “(A) was the result of State action in vio-
12 lation of the Constitution or laws of the United
13 States;

14 “(B) was the result of a recognition by the
15 Supreme Court of a new fundamental right that
16 is retroactively applicable; or

17 “(C) is due to the fact the claim is based
18 on facts that could not have been discovered
19 through the exercise of reasonable diligence in
20 time to present the claim for State or Federal
21 post-conviction review; and

22 “(3) the filing of any successive petition for a
23 writ of habeas corpus is authorized by the appro-
24 priate court of appeals in accordance with section
25 2264(c) and the facts underlying the claim would be

1 sufficient, if proved, to undermine the court's con-
2 fidence in the jury's determination of guilt on the of-
3 fense or offenses for which the death penalty was
4 imposed or newly discovered facts which are not
5 based upon or include opinion evidence, expert or
6 otherwise, which would be sufficient to undermine
7 the court's confidence in the validity of the death
8 sentence.

9 **“§2263. Filing of habeas corpus petition; time re-
10 requirements; tolling rules**

11 “(a) Any petition filed under this chapter for habeas
12 corpus relief must be filed in the appropriate district court
13 not later than 60 days after the filing in the appropriate
14 State court of record of an order issued in compliance with
15 section 2261(c) of this title. The time requirements estab-
16 lished by this section shall be tolled—

17 “(1) from the date that a petition for certiorari
18 is filed in the Supreme Court until the date of final
19 disposition of the petition if a State prisoner seeks
20 review of a capital sentence that has been affirmed
21 on direct appeal by the court of last resort of the
22 State or has otherwise become final for State law
23 purposes; and

24 “(2) during an additional period not to exceed
25 60 days, if counsel for the State prisoner—

1 “(2) may conduct an evidentiary hearing when
2 the court, in its discretion, determines that such
3 hearing is necessary to complete the record for ha-
4 beas corpus review.

5 “(b) Upon the development of a complete evidentiary
6 record, the district court shall rule on the merits of the
7 claims properly before it within the time limits established
8 in section 2268 of this title.

9 “(c)(1) Except as provided in paragraph (2), a dis-
10 trict court may not consider a successive claim under this
11 chapter.

12 “(2) A district court may only consider a successive
13 claim under this chapter if the petitioner seeks leave to
14 file a successive petition in the appropriate court of ap-
15 peals.

16 “(3) In a case in which the appropriate court of ap-
17 peals grants leave to file a successive petition, the time
18 limits established by this chapter shall be applicable to all
19 further proceedings under the successive petition.

20 **“§ 2265. Certificate of probable cause inapplicable**

21 “The requirement of a certificate of probable cause
22 in order to appeal from the district court to the court of
23 appeals does not apply to habeas corpus cases subject to
24 this chapter.

1 **“§ 2266. Counsel in capital cases; trial and post-con-**
2 **viction standards**

3 “(a) A mechanism for the provision of counsel serv-
4 ices to indigents sufficient to invoke the provisions of this
5 chapter shall—

6 “(1) provide for counsel to indigents charged
7 with offenses for which capital punishment is
8 sought, to indigents who have been sentenced to
9 death and who seek appellate or collateral review in
10 State court, and to indigents who have been sen-
11 tenced to death and who seek certiorari review in the
12 United States Supreme Court; collateral review in
13 State court, and to indigents who have been sen-
14 tenced to death and who seek certiorari review in the
15 United States Supreme Court; and

16 “(2) provide for the entry of an order of a court
17 of record appointing one or more counsel to rep-
18 resent the prisoner except upon a judicial determina-
19 tion (after a hearing, if necessary) that (A) the pris-
20 oner is not indigent; or (B) the prisoner knowingly
21 and intelligently waives the appointment of counsel.

22 “(b)(1) Except as provided below, at least one attor-
23 ney appointed pursuant to this chapter before trial, if ap-
24 plicable, and at least one attorney appointed pursuant to
25 this chapter after trial, if applicable, shall have been cer-
26 tified by a statewide certification authority. The States

1 may elect to create one or more certification authorities
2 (but not more than three such certification authorities)
3 to perform the responsibilities set forth below. The certifi-
4 cation authority for counsel at any stage of a capital case
5 shall be—

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

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

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

16 The certification authority shall—

17 “(iv) certify attorneys qualified to represent
18 persons charged with capital offenses or sentenced to
19 death; and

20 “(v) draft and annually publish procedures and
21 standards by which attorneys are certified and ros-
22 ters of certified attorneys; and

23 “(vi) periodically review the roster of certified
24 attorneys, monitor the performance of all attorneys
25 certified, and withdraw certification from any attor-

1 ney who fails to meet high performance standards in
2 a case to which the attorney is appointed; or fails
3 otherwise to demonstrate continuing competence to
4 represent prisoners in capital litigation.

5 “(2) In a State that has a publicly funded public de-
6 fender system that is not organized on a statewide basis,
7 the requirements of section 2261(b) shall have been
8 deemed to have been satisfied if at least one attorney ap-
9 pointed pursuant to this chapter before trial shall be em-
10 ployed by a State funded public defender organization, if
11 the highest court of the State finds on an annual basis
12 that the standards and procedures established and main-
13 tained by such organization (which have been filed by such
14 organization and reviewed by such court on an annual
15 basis) ensure that the attorneys working for such organi-
16 zation demonstrate continuing competence to represent
17 indigents in capital litigation.

18 “(c) If a State has not elected to establish one or
19 more statewide certification authorities to certify counsel
20 eligible to be appointed before trial to represent indigents,
21 in the case of an appointment made before trial, at least
22 one attorney appointed under this chapter must have been
23 admitted to practice in the court in which the prosecution
24 is to be tried for not less than 5 years, and must have

1 not less than 3 years' experience in the trial of felony pros-
2 ecutions in that court.

3 “(d) If a State has not elected to establish one or
4 more statewide certification authorities to certify counsel
5 eligible to be appointed after trial to represent indigents,
6 in the case of an appointment made after trial, at least
7 one attorney appointed under this chapter must have been
8 admitted to practice in the court of last resort of the State
9 for not less than 5 years, and must have had not less than
10 3 years' experience in the handling of appeals in that
11 State's courts in felony cases.

12 “(e) Notwithstanding this subsection, a court, for
13 good cause, may appoint another attorney whose back-
14 ground, knowledge or experience would otherwise enable
15 the attorney to properly represent the defendant, with due
16 consideration of the seriousness of the possible penalty
17 and the unique and complex nature of the litigation.

18 “(f) Upon a finding in ex parte proceedings that in-
19 vestigative, expert or other services are reasonably nec-
20 essary for the representation of the defendant, whether in
21 connection with issues relating to guilt or issues relating
22 to sentence, the court shall authorize the defendant's at-
23 torney to obtain such services on behalf of the defendant
24 and shall order the payment of fees and expenses therefor,
25 under subsection (g). Upon finding that timely procure-

1 ment of such services could not practically await prior au-
2 thorization, the court may authorize the provision of any
3 payment of services nunc pro tunc.

4 “(g) The court shall fix the compensation to be paid
5 to an attorney appointed under this subsection (other than
6 State employees) and the fees and expenses to be paid for
7 investigative, expert, and other reasonably necessary serv-
8 ices authorized under subsection (c), at such rates or
9 amounts as the court determines to be reasonably nec-
10 essary to carry out the requirements of this subsection.

11 **“§ 2267. Law controlling in Federal habeas corpus**
12 **proceedings; retroactivity**

13 “In cases subject to this chapter, all claims shall be
14 governed by the law as it was when the petitioner’s sen-
15 tence became final. A court considering a claim under this
16 chapter shall consider intervening decisions by the Su-
17 preme Court of the United States which establish fun-
18 damental constitutional rights.

19 **“§ 2268. Habeas corpus time requirements**

20 “(a) A Federal district court shall determine any pe-
21 tition for a writ of habeas corpus brought under this chap-
22 ter within 110 days of filing

23 “(b) The court of appeals shall hear and determine
24 any appeal of the granting, denial, or partial denial of a

1 petition for a writ of habeas corpus brought under this
2 chapter within 90 days after the notice of appeal is filed.

3 “(c) The Supreme Court shall act on any petition for
4 a writ of certiorari in a case brought under this chapter
5 within 90 days after the petition is filed.

6 “(d) The Administrative Office of United States
7 Courts shall report annually to Congress on the compli-
8 ance by the courts with the time limits established in this
9 section.”.

10 SEC. 2. AMENDMENT TO TABLE OF CHAPTERS.—
11 The table of chapters for part IV of title 28, United States
12 Code, is amended by inserting after the item for chapter
13 153 the following:

“**154. Special habeas corpus procedures in capital cases 2261**”.

14 SEC. 3. AMENDMENT TO SECTION 2254 OF TITLE
15 28.—Section 2254(c) of title 28, United States Code, is
16 amended by—

17 (1) striking “An applicant” and inserting “(1)
18 Except as provided in paragraph (2), an applicant”;
19 and

20 (2) adding at the end thereof the following:

21 “(2) An applicant in a capital case shall be deemed
22 to have exhausted the remedies available in the courts of
23 the State when he has exhausted any right to direct appeal
24 in the State.”.