

104<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 623

To reform habeas corpus procedures, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

MARCH 24 (legislative day, MARCH 23), 1995

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

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## A BILL

To reform habeas corpus procedures, and for other purposes.

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 1995”.

6       **SEC. 2. FILING DEADLINES.**

7       Section 2244 of title 28, United States Code, is  
8 amended by adding at the end the following new sub-  
9 section:

10       “(d)(1) A 1-year period of limitation shall apply to  
11 an application for a writ of habeas corpus by a person

1 in custody pursuant to the judgment of a State court. The  
2 limitation period shall run from the latest of—

3 “(A) the date on which the judgment became  
4 final by the conclusion of direct review or the expira-  
5 tion of the time for seeking such review;

6 “(B) the date on which the impediment to filing  
7 an application created by State action in violation of  
8 the Constitution or laws of the United States is re-  
9 moved, if the applicant was prevented from filing by  
10 such State action;

11 “(C) the date on which the constitutional right  
12 asserted was initially recognized by the Supreme  
13 Court, if the right has been newly recognized by the  
14 Supreme Court and is made retroactively applicable;  
15 or

16 “(D) the date on which the factual predicate of  
17 the claim or claims presented could have been dis-  
18 covered through the exercise of due diligence.

19 “(2) The time during which a properly filed applica-  
20 tion for State post-conviction or other collateral review  
21 with respect to the pertinent judgment or claim shall not  
22 be counted toward any period of limitation under this sub-  
23 section.

1 **SEC. 3. APPEAL.**

2 Section 2253 of title 28, United States Code, is  
3 amended to read as follows:

4 **“§ 2253. Appeal**

5 “(a) In a habeas corpus proceeding or a proceeding  
6 under section 2255 before a district judge, the final order  
7 shall be subject to review, on appeal, by the court of ap-  
8 peals for the circuit in which the proceeding is held.

9 “(b) There shall be no right of appeal from a final  
10 order in a proceeding to test the validity of a warrant to  
11 remove to another district or place for commitment or trial  
12 a person charged with a criminal offense against the Unit-  
13 ed States, or to test the validity of such person’s detention  
14 pending removal proceedings.

15 “(c)(1) Unless a circuit justice or judge issues a cer-  
16 tificate of appealability, an appeal may not be taken to  
17 the court of appeals from—

18 “(A) the final order in a habeas corpus proceed-  
19 ing in which the detention complained of arises out  
20 of process issued by a State court; or

21 “(B) the final order in a proceeding under sec-  
22 tion 2255.

23 “(2) A certificate of appealability may issue under  
24 paragraph (1) only if the applicant has made a substantial  
25 showing of the denial of a constitutional right.

1 “(3) The certificate of appealability under paragraph  
2 (1) shall indicate which specific issue or issues satisfy the  
3 showing required by paragraph (2).”.

4 **SEC. 4. AMENDMENT OF FEDERAL RULES OF APPELLATE**  
5 **PROCEDURE.**

6 Rule 22 of the Federal Rules of Appellate Procedure  
7 is amended to read as follows:

8 **“Rule 22. Habeas corpus and section 2255 pro-**  
9 **ceedings**

10 “(a) APPLICATION FOR THE ORIGINAL WRIT.—An  
11 application for a writ of habeas corpus shall be made to  
12 the appropriate district court. If application is made to  
13 a circuit judge, the application shall be transferred to the  
14 appropriate district court. If an application is made to or  
15 transferred to the district court and denied, renewal of the  
16 application before a circuit judge shall not be permitted.  
17 The applicant may, pursuant to section 2253 of title 28,  
18 United States Code, appeal to the appropriate court of ap-  
19 peals from the order of the district court denying the writ.

20 “(b) CERTIFICATE OF APPEALABILITY.—In a habeas  
21 corpus proceeding in which the detention complained of  
22 arises out of process issued by a State court, an appeal  
23 by the applicant for the writ may not proceed unless a  
24 district or a circuit judge issues a certificate of  
25 appealability pursuant to section 2253(c) of title 28, Unit-

1 ed States Code. If an appeal is taken by the applicant,  
2 the district judge who rendered the judgment shall either  
3 issue a certificate of appealability or state the reasons why  
4 such a certificate should not issue. The certificate or the  
5 statement shall be forwarded to the court of appeals with  
6 the notice of appeal and the file of the proceedings in the  
7 district court. If the district judge has denied the certifi-  
8 cate, the applicant for the writ may then request issuance  
9 of the certificate by a circuit judge. If such a request is  
10 addressed to the court of appeals, it shall be deemed ad-  
11 dressed to the judges thereof and shall be considered by  
12 a circuit judge or judges as the court deems appropriate.  
13 If no express request for a certificate is filed, the notice  
14 of appeal shall be deemed to constitute a request ad-  
15 dressed to the judges of the court of appeals. If an appeal  
16 is taken by a State or its representative, a certificate of  
17 appealability is not required.”.

18 **SEC. 5. SECTION 2254 AMENDMENTS.**

19 Section 2254 of title 28, United States Code, is  
20 amended—

21 (1) by amending subsection (b) to read as fol-  
22 lows:

23 “(b)(1) An application for a writ of habeas corpus  
24 on behalf of a person in custody pursuant to the judgment

1 of a State court shall not be granted unless it appears  
2 that—

3 “(A) the applicant has exhausted the remedies  
4 available in the courts of the State; or

5 “(B)(i) there is an absence of available State  
6 corrective process; or

7 “(ii) circumstances exist that render such proc-  
8 ess ineffective to protect the rights of the applicant.

9 “(2) An application for a writ of habeas corpus may  
10 be denied on the merits, notwithstanding the failure of the  
11 applicant to exhaust the remedies available in the courts  
12 of the State.

13 “(3) A State shall not be deemed to have waived the  
14 exhaustion requirement or be estopped from reliance upon  
15 the requirement unless the State, through counsel, ex-  
16 pressly waives the requirement.”;

17 (2) by redesignating subsections (d), (e), and  
18 (f) as subsections (e), (f), and (g), respectively;

19 (3) by inserting after subsection (c) the follow-  
20 ing new subsection:

21 “(d) An application for a writ of habeas corpus on  
22 behalf of a person in custody pursuant to the judgment  
23 of a State court shall not be granted with respect to any  
24 claim that was adjudicated on the merits in State court  
25 proceedings unless the adjudication of the claim—

1           “(1) resulted in a decision that was contrary to,  
2           or involved an unreasonable application of, clearly  
3           established Federal law, as determined by the Su-  
4           preme Court of the United States; or

5           “(2) resulted in a decision that was based on an  
6           unreasonable determination of the facts in light of  
7           the evidence presented in the State court proceed-  
8           ing.”;

9           (4) by amending subsection (e), as redesignated  
10          by paragraph (2), to read as follows:

11          “(e)(1) In a proceeding instituted by an application  
12          for a writ of habeas corpus by a person in custody pursu-  
13          ant to the judgment of a State court, a determination of  
14          a factual issue made by a State court shall be presumed  
15          to be correct. The applicant shall have the burden of re-  
16          butting the presumption of correctness by clear and con-  
17          vincing evidence.

18          “(2) If the applicant has failed to develop the factual  
19          basis of a claim in State court proceedings, the court shall  
20          not hold an evidentiary hearing on the claim unless the  
21          applicant shows that—

22                  “(A) the claim relies on—

23                          “(i) a new rule of constitutional law, made  
24                          retroactive by the Supreme Court, that was pre-  
25                          viously unavailable; or

1           “(ii) a factual predicate that could not  
2           have been previously discovered through the ex-  
3           ercise of due diligence; and

4           “(B) the facts underlying the claim would be  
5           sufficient to establish by clear and convincing evi-  
6           dence that but for constitutional error, no reasonable  
7           factfinder would have found the applicant guilty of  
8           the underlying offense.”; and

9           (5) by adding at the end the following new sub-  
10          sections:

11          “(h) Notwithstanding any other provision of law, in  
12          all proceedings brought under this section, and any subse-  
13          quent proceedings on review, appointment of counsel for  
14          an applicant who is or becomes financially unable to afford  
15          counsel shall be in the discretion of the court, except as  
16          provided by a rule promulgated by the Supreme Court  
17          pursuant to statutory authority. Appointment of counsel  
18          under this section shall be governed by section 3006A of  
19          title 18.

20          “(i) The ineffectiveness or incompetence of counsel  
21          during Federal or State collateral post-conviction proceed-  
22          ings shall not be a ground for relief in a proceeding arising  
23          under section 2254.”.

1 **SEC. 6. SECTION 2255 AMENDMENTS.**

2 Section 2255 of title 28, United States Code, is  
3 amended—

4 (1) by striking the second and fifth paragraphs;  
5 and

6 (2) by adding at the end the following new  
7 paragraphs:

8 “A one-year period of limitation shall apply to a mo-  
9 tion under this section. The limitation period shall run  
10 from the latest of—

11 “(1) the date on which the judgment of convic-  
12 tion becomes final;

13 “(2) the date on which the impediment to mak-  
14 ing a motion created by governmental action in vio-  
15 lation of the Constitution or laws of the United  
16 States is removed, if the movant was prevented from  
17 making a motion by such governmental action;

18 “(3) the date on which the right asserted was  
19 initially recognized by the Supreme Court, if that  
20 right has been newly recognized by the Supreme  
21 Court and is made retroactively applicable; or

22 “(4) the date on which the facts supporting the  
23 claim or claims presented could have been discovered  
24 through the exercise of due diligence.

25 “In all proceedings brought under this section, and  
26 any subsequent proceedings on review, appointment of

1 counsel for a movant who is or becomes financially unable  
2 to afford counsel shall be in the discretion of the court,  
3 except as provided by a rule promulgated by the Supreme  
4 Court pursuant to statutory authority. Appointment of  
5 counsel under this section shall be governed by section  
6 3006A of title 18.

7 “A second or successive motion must be certified as  
8 provided in section 2244 by a panel of the appropriate  
9 court of appeals to contain—

10 “(1) newly discovered evidence that, if proven  
11 and viewed in light of the evidence as a whole, would  
12 be sufficient to establish by clear and convincing evi-  
13 dence that no reasonable factfinder would have  
14 found the movant guilty of the offense; or

15 “(2) a new rule of constitutional law, made ret-  
16 roactive by the Supreme Court, that was previously  
17 unavailable.”.

18 **SEC. 7. LIMITS ON SECOND OR SUCCESSIVE APPLICATIONS.**

19 (a) CONFORMING AMENDMENT TO SECTION  
20 2244(a).—Section 2244(a) of title 28, United States  
21 Code, is amended by striking “and the petition” and all  
22 that follows through “by such inquiry.” and inserting “,  
23 except as provided in section 2255.”.

1 (b) LIMITS ON SECOND OR SUCCESSIVE APPLICA-  
2 TIONS.—Section 2244(b) of title 28, United States Code,  
3 is amended to read as follows:

4 “(b)(1) A claim presented in a second or successive  
5 habeas corpus application under section 2254 that was  
6 presented in a prior application shall be dismissed.

7 “(2) A claim presented in a second or successive ha-  
8 beas corpus application under section 2254 that was not  
9 presented in a prior application shall be dismissed un-  
10 less—

11 “(A) the applicant shows that the claim relies  
12 on a new rule of constitutional law, made retroactive  
13 by the Supreme Court, that was previously unavail-  
14 able; or

15 “(B)(i) the factual predicate for the claim could  
16 not have been discovered previously through the ex-  
17 ercise of due diligence; and

18 “(ii) the facts underlying the claim, if proven  
19 and viewed in light of the evidence as a whole, would  
20 be sufficient to establish by clear and convincing evi-  
21 dence that, but for constitutional error, no reason-  
22 able factfinder would have found the applicant guilty  
23 of the underlying offense.

24 “(3)(A) Before a second or successive application per-  
25 mitted by this section is filed in the district court, the ap-

1 plicant shall move in the appropriate court of appeals for  
2 an order authorizing the district court to consider the ap-  
3 plication.

4 “(B) A motion in the court of appeals for an order  
5 authorizing the district court to consider a second or suc-  
6 cessive application shall be determined by a three-judge  
7 panel of the court of appeals.

8 “(C) The court of appeals may authorize the filing  
9 of a second or successive application only if it determines  
10 that the application makes a prima facie showing that the  
11 application satisfies the requirements of this subsection.

12 “(D) The court of appeals shall grant or deny the  
13 authorization to file a second or successive application not  
14 later than 30 days after the filing of the motion.

15 “(E) The grant or denial of an authorization by a  
16 court of appeals to file a second or success application  
17 shall not be appealable and shall not be the subject of a  
18 petition for rehearing or for a writ of certiorari.

19 “(4) A district court shall dismiss any claim pre-  
20 sented in a second or successive application that the court  
21 of appeals has authorized to be filed unless the applicant  
22 shows that the claim satisfies the requirements of this sec-  
23 tion.”.

1 **SEC. 8. DEATH PENALTY LITIGATION PROCEDURES.**

2 (a) ADDITION OF CHAPTER TO TITLE 28, UNITED  
 3 STATES CODE.—Title 28, United States Code, is amended  
 4 by inserting after chapter 153 the following new chapter:  
 5 **“CHAPTER 154—SPECIAL HABEAS CORPUS**  
 6 **PROCEDURES IN CAPITAL CASES**

“Sec.

“2261. 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; second or abusive petitions.

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

“2264. Scope of Federal review; district court adjudications.

“2265. Application to State unitary review procedure.

“2266. Limitation periods for determining applications and motions.

7 **“§ 2261. Prisoners in State custody subject to capital**  
 8 **sentence; appointment of counsel; re-**  
 9 **quirement of rule of court or statute; pro-**  
 10 **cedures for appointment**

11 “(a) This chapter shall apply to cases arising under  
 12 section 2254 brought by prisoners in State custody who  
 13 are subject to a capital sentence. It shall apply only if the  
 14 provisions of subsections (b) and (c) are satisfied.

15 “(b) This chapter is applicable if a State establishes  
 16 by statute, rule of its court of last resort, or by another  
 17 agency authorized by State law, a mechanism for the ap-  
 18 pointment, compensation, and payment of reasonable liti-  
 19 gation expenses of competent counsel in State post-convic-  
 20 tion proceedings brought by indigent prisoners whose cap-

1 ital convictions and sentences have been upheld on direct  
2 appeal to the court of last resort in the State or have oth-  
3 erwise become final for State law purposes. The rule of  
4 court or statute must provide standards of competency for  
5 the appointment of such counsel.

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

11 “(1) appointing one or more counsel to rep-  
12 resent the prisoner upon a finding that the prisoner  
13 is indigent and accepted the offer or is unable com-  
14 petently to decide whether to accept or reject the  
15 offer;

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

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

22 “(d) No counsel appointed pursuant to subsections  
23 (b) and (c) to represent a State prisoner under capital  
24 sentence shall have previously represented the prisoner at  
25 trial or on direct appeal in the case for which the appoint-

1 ment is made unless the prisoner and counsel expressly  
2 request continued representation.

3 “(e) The ineffectiveness or incompetence of counsel  
4 during State or Federal post-conviction proceedings in a  
5 capital case shall not be a ground for relief in a proceeding  
6 arising under section 2254. This limitation shall not pre-  
7 clude the appointment of different counsel, on the court’s  
8 own motion or at the request of the prisoner, at any phase  
9 of State or Federal post-conviction proceedings on the  
10 basis of the ineffectiveness or incompetence of counsel in  
11 such proceedings.

12 **“§ 2262. Mandatory stay of execution; duration; limits**  
13 **on stays of execution; successive peti-**  
14 **tions**

15 “(a) Upon the entry in the appropriate State court  
16 of record of an order under section 2261(c), a warrant  
17 or order setting an execution date for a State prisoner  
18 shall be stayed upon application to any court that would  
19 have jurisdiction over any proceedings filed under section  
20 2254. The application shall recite that the State has in-  
21 voked the post-conviction review procedures of this chapter  
22 and that the scheduled execution is subject to stay.

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



1 appropriate district court not later than 180 days after final  
2 State court affirmance of the conviction and sentence on  
3 direct review or the expiration of the time for seeking such  
4 review.

5 “(b) The time requirements established by subsection  
6 (a) shall be tolled—

7 “(1) from the date that a petition for certiorari  
8 is filed in the Supreme Court until the date of final  
9 disposition of the petition if a State prisoner files  
10 the petition to secure review by the Supreme Court  
11 of the affirmance of a capital sentence on direct re-  
12 view by the court of last resort of the State or other  
13 final State court decision on direct review;

14 “(2) from the date on which the first petition  
15 for post-conviction review or other collateral relief is  
16 filed until the final State court disposition of such  
17 petition; and

18 “(3) during an additional period not to exceed  
19 30 days, if—

20 “(A) a motion for an extension of time is  
21 filed in the Federal district court that would  
22 have jurisdiction over the case upon the filing  
23 of a habeas corpus application under section  
24 2254; and







1       “(b)(1)(A) A district court shall render a final deter-  
2 mination and enter a final judgment on any application  
3 for a writ of habeas corpus brought under this chapter  
4 in a capital case not later than 180 days after the date  
5 on which the application is filed.

6       “(B) A district court shall afford the parties at least  
7 120 days in which to complete all actions, including the  
8 preparation of all pleadings and briefs, and if necessary,  
9 a hearing, prior to the submission of the case for decision.

10       “(C)(i) A district court may delay for not more than  
11 one additional 30-day period beyond the period specified  
12 in subparagraph (A), the rendering of a determination of  
13 an application for a writ of habeas corpus if the court is-  
14 sues a written order making a finding, and stating the  
15 reasons for the finding, that the ends of justice that would  
16 be served by allowing the delay outweigh the best interests  
17 of the public and the applicant in a speedy disposition of  
18 the application.

19       “(ii) The factors, among others, that a court shall  
20 consider in determining whether a delay in the disposition  
21 of an application is warranted are as follows:

22               “(I) Whether the failure to allow the delay  
23 would be likely to result in a miscarriage of justice.

24               “(II) Whether the case is so unusual or so com-  
25 plex, due to the number of defendants, the nature of

1 the prosecution, or the existence of novel questions  
2 of fact or law, that it is unreasonable to expect ade-  
3 quate briefing within the time limitations established  
4 by subparagraph (A).

5 “(III) Whether the failure to allow a delay in  
6 a case, that, taken as a whole, is not so unusual or  
7 so complex as described in subclause (II), but would  
8 otherwise deny the applicant reasonable time to ob-  
9 tain counsel, would unreasonably deny the applicant  
10 or the government continuity of counsel, or would  
11 deny counsel for the applicant or the government the  
12 reasonable time necessary for effective preparation,  
13 taking into account the exercise of due diligence.

14 “(iii) No delay in disposition shall be permissible be-  
15 cause of general congestion of the court’s calendar.

16 “(iv) The court shall transmit a copy of any order  
17 issued under clause (i) to the Director of the Administra-  
18 tive Office of the United States Courts for inclusion in  
19 the report under paragraph (5).

20 “(2) The time limitations under paragraph (1) shall  
21 apply to—

22 “(A) an initial application for a writ of habeas  
23 corpus;

24 “(B) any second or successive application for a  
25 writ of habeas corpus; and

1           “(C) any redetermination of an application for  
2           a writ of habeas corpus following a remand by the  
3           court of appeals or the Supreme Court for further  
4           proceedings, in which case the limitation period shall  
5           run from the date the remand is ordered.

6           “(3)(A) The time limitations under this section shall  
7           not be construed to entitle an applicant to a stay of execu-  
8           tion, to which the applicant would otherwise not be enti-  
9           tled, for the purpose of litigating any application or ap-  
10          peal.

11          “(B) No amendment to an application for a writ of  
12          habeas corpus under this chapter shall be permitted after  
13          the filing of the answer to the application, except on the  
14          grounds specified in section 2244(b).

15          “(4)(A) The failure of a court to meet or comply with  
16          a time limitation under this section shall not be a ground  
17          for granting relief from a judgment of conviction or sen-  
18          tence.

19          “(B) The State may enforce a time limitation under  
20          this section by petitioning for a writ of mandamus to the  
21          court of appeals. The court of appeals shall act on the  
22          petition for a writ or mandamus not later than 30 days  
23          after the filing of the petition.

24          “(5)(A) The Administrative Office of United States  
25          Courts shall submit to Congress an annual report on the

1 compliance by the district courts with the time limitations  
2 under this section.

3 “(B) The report described in subparagraph (A) shall  
4 include copies of the orders submitted by the district  
5 courts under paragraph (1)(B)(iv).

6 “(c)(1)(A) A court of appeals shall hear and render  
7 a final determination of any appeal of an order granting  
8 or denying, in whole or in part, an application brought  
9 under this chapter in a capital case not later than 120  
10 days after the date on which the reply brief is filed, or  
11 if no reply brief is filed, not later than 120 days after  
12 the date on which the answering brief is filed.

13 “(B)(i) A court of appeals shall decide whether to  
14 grant a petition for rehearing or other request for rehear-  
15 ing en banc not later than 30 days after the date on which  
16 the petition for rehearing is filed unless a responsive  
17 pleading is required, in which case the court shall decide  
18 whether to grant the petition not later than 30 days after  
19 the date on which the responsive pleading is filed.

20 “(ii) If a petition for rehearing or rehearing en banc  
21 is granted, the court of appeals shall hear and render a  
22 final determination of the appeal not later than 120 days  
23 after the date on which the order granting rehearing or  
24 rehearing en banc is entered.

1       “(2) The time limitations under paragraph (1) shall  
2 apply to—

3               “(A) an initial application for a writ of habeas  
4 corpus;

5               “(B) any second or successive application for a  
6 writ of habeas corpus; and

7               “(C) any redetermination of an application for  
8 a writ of habeas corpus or related appeal following  
9 a remand by the court of appeals en banc or the Su-  
10 preme Court for further proceedings, in which case  
11 the limitation period shall run from the date the re-  
12 mand is ordered.

13       “(3) The time limitations under this section shall not  
14 be construed to entitle an applicant to a stay of execution,  
15 to which the applicant would otherwise not be entitled, for  
16 the purpose of litigating any application or appeal.

17       “(4)(A) The failure of a court to meet or comply with  
18 a time limitation under this section shall not be a ground  
19 for granting relief from a judgment of conviction or sen-  
20 tence.

21       “(B) The State may enforce a time limitation under  
22 this section by applying for a writ of mandamus to the  
23 Supreme Court.

24       “(5) The Administrative Office of United States  
25 Courts shall submit to Congress an annual report on the

1 compliance by the courts of appeals with the time limita-  
2 tions under this section.”.

3 (b) TECHNICAL AMENDMENT.—The part analysis for  
4 part IV of title 28, United States Code, is amended by  
5 adding after the item relating to chapter 153 the following  
6 new item:

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

7 **SEC. 9. TECHNICAL AMENDMENT.**

8 Section 408(q) of the Controlled Substances Act (21  
9 U.S.C. 848(q)) is amended—

10 (1) in paragraph (4)(A), by striking “shall” and  
11 inserting “may”;

12 (2) in paragraph (4)(B), by striking “shall”  
13 and inserting “may”; and

14 (3) by amending paragraph (9) to read as fol-  
15 lows:

16 “(9) Upon a finding that investigative, expert, or  
17 other services are reasonably necessary for the representa-  
18 tion of the defendant, whether in connection with issues  
19 relating to guilt or the sentence, the court may authorize  
20 the defendant’s attorneys to obtain such services on behalf  
21 of the defendant and, if so authorized, shall order the pay-  
22 ment of fees and expenses therefor under paragraph (10).  
23 No ex parte proceeding, communication, or request may  
24 be considered pursuant to this section unless a proper

1 showing is made concerning the need for confidentiality.  
2 Any such proceeding, communication, or request shall be  
3 transcribed and made a part of the record available for  
4 appellate review.”.

5 **SEC. 10. SEVERABILITY.**

6 If any provision of this Act, an amendment made by  
7 this Act, or the application of such provision or amend-  
8 ment to any person or circumstance is held to be unconsti-  
9 tutional, the remainder of this Act, the amendments made  
10 by this Act, and the application of the provisions of such  
11 to any person or circumstance shall not be affected there-  
12 by.

○

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