

104TH CONGRESS  
1ST SESSION

# H. R. 729

To control crime by a more effective death penalty.

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IN THE HOUSE OF REPRESENTATIVES

JANUARY 30, 1995

Mr. McCOLLUM introduced the following bill; which was referred to the  
Committee on the Judiciary

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## A BILL

To control crime by a more effective death penalty.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Effective Death Penalty Act of 1995”.

6 (b) TABLE OF CONTENTS.—The table of contents is  
7 as follows:

Sec. 1. Short title; table of contents.

### TITLE I—HABEAS CORPUS REFORM

#### SUBTITLE A—POST CONVICTION PETITIONS: GENERAL HABEAS CORPUS REFORM

Sec. 101. Period of limitation for filing writ of habeas corpus following final  
judgment of a State court.

Sec. 102. Authority of appellate judges to issue certificates of probable cause for appeal in habeas corpus and Federal collateral relief proceedings.

Sec. 103. Conforming amendment to the rules of appellate procedure.

Sec. 104. Effect of failure to exhaust State remedies.

Sec. 105. Period of limitation for Federal prisoners filing for collateral remedy.

SUBTITLE B—SPECIAL PROCEDURES FOR COLLATERAL PROCEEDINGS IN CAPITAL CASES

Sec. 111. Death penalty litigation procedures.

SUBTITLE C—FUNDING FOR LITIGATION OF FEDERAL HABEAS CORPUS PETITIONS IN CAPITAL CASES

Sec. 121. Funding for death penalty prosecutions.

TITLE II—FEDERAL DEATH PENALTY PROCEDURES REFORM

Sec. 201. Federal death penalty procedures reform.

1           **TITLE I—EFFECTIVE DEATH**  
2                                   **PENALTY**  
3       **Subtitle A—Post Conviction Peti-**  
4       **tions: General Habeas Corpus**  
5       **Reform**

6       **SEC. 101. PERIOD OF LIMITATION FOR FILING WRIT OF HA-**  
7                                   **BEAS CORPUS FOLLOWING FINAL JUDGMENT**  
8                                   **OF A STATE COURT.**

9           Section 2244 of title 28, United States Code, is  
10 amended by adding at the end the following:

11           “(d)(1) A one-year period of limitation shall apply to  
12 an application for a writ of habeas corpus by a person  
13 in custody pursuant to the judgment of a State court. The  
14 limitation period shall run from the latest of the following  
15 times:

1           “(A) The time at which the judgment became  
2           final by the conclusion of direct review or the expira-  
3           tion of the time for seeking such review.

4           “(B) The time at which the impediment to fil-  
5           ing an application created by State action in viola-  
6           tion of the Constitution or laws of the United States  
7           is removed, where the applicant was prevented from  
8           filing by such State action.

9           “(C) The time at which the Federal right as-  
10          serted was initially recognized by the Supreme  
11          Court, where the right has been newly recognized by  
12          the Court and is retroactively applicable.

13          “(D) The time at which the factual predicate of  
14          the claim or claims presented could have been dis-  
15          covered through the exercise of reasonable diligence.

16          “(2) Time that passes during the pendency of a prop-  
17          erly filed application for State review with respect to the  
18          pertinent judgment or claim shall not be counted toward  
19          any period of limitation under this subsection.”.

20   **SEC. 102. AUTHORITY OF APPELLATE JUDGES TO ISSUE**  
21                   **CERTIFICATES OF PROBABLE CAUSE FOR AP-**  
22                   **PEAL IN HABEAS CORPUS AND FEDERAL COL-**  
23                   **LATERAL RELIEF PROCEEDINGS.**

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

1 **“§ 2253. Appeal**

2       “(a) In a habeas corpus proceeding or a proceeding  
3 under section 2255 of this title before a circuit or district  
4 judge, the final order shall be subject to review, on appeal,  
5 by the court of appeals for the circuit where the proceed-  
6 ing is had.

7       “(b) There shall be no right of appeal from such an  
8 order in a proceeding to test the validity of a warrant to  
9 remove, to another district or place for commitment or  
10 trial, a person charged with a criminal offense against the  
11 United States, or to test the validity of his detention pend-  
12 ing removal proceedings.

13       “(c) An appeal may not be taken to the court of ap-  
14 peals from the final order in a habeas corpus proceeding  
15 where the detention complained of arises out of process  
16 issued by a State court, or from the final order in a pro-  
17 ceeding under section 2255 of this title, unless a circuit  
18 justice or judge issues a certificate of probable cause. A  
19 certificate of probable cause may only issue if the peti-  
20 tioner has made a substantial showing of the denial of a  
21 Federal right. The certificate of probable cause must indi-  
22 cate which specific issue or issues satisfy this standard.”.

23 **SEC. 103. CONFORMING AMENDMENT TO THE RULES OF AP-**  
24 **PELLATE PROCEDURE.**

25       Federal Rule of Appellate Procedure 22 is amended  
26 to read as follows:

## “RULE 22

1

2 “HABEAS CORPUS AND SECTION 2255 PROCEEDINGS

3 “(a) APPLICATION FOR AN ORIGINAL WRIT OF HA-

4 BEAS CORPUS.—An application for a writ of habeas cor-

5 pus shall be made to the appropriate district court. If ap-

6 plication is made to a circuit judge, the application will

7 ordinarily be transferred to the appropriate district court.

8 If an application is made to or transferred to the district

9 court and denied, renewal of the application before a cir-

10 cuit judge is not favored; the proper remedy is by appeal

11 to the court of appeals from the order of the district court

12 denying the writ.

13 “(b) NECESSITY OF CERTIFICATE OF PROBABLE

14 CAUSE FOR APPEAL.—In a habeas corpus proceeding in

15 which the detention complained of arises out of process

16 issued by a State court, and in a motion proceeding pursu-

17 ant to section 2255 of title 28, United States Code, an

18 appeal by the applicant or movant may not proceed unless

19 a circuit judge issues a certificate of probable cause. If

20 a request for a certificate of probable cause is addressed

21 to the court of appeals, it shall be deemed addressed to

22 the judges thereof and shall be considered by a circuit

23 judge or judges as the court deems appropriate. If no ex-

24 press request for a certificate is filed, the notice of appeal

25 shall be deemed to constitute a request addressed to the

1 judges of the court of appeals. If an appeal is taken by  
2 a State or the Government or its representative, a certifi-  
3 cate of probable cause is not required.”.

4 **SEC. 104. EFFECT OF FAILURE TO EXHAUST STATE REM-**  
5 **EDIES.**

6 Section 2254(b) of title 28, United States Code, is  
7 amended to read as follows:

8 “(b) An application for a writ of habeas corpus in  
9 behalf of a person in custody pursuant to the judgment  
10 of a State court shall not be granted unless it appears  
11 that the applicant has exhausted the remedies available  
12 in the courts of the State, or that there is either an ab-  
13 sence of available State corrective process or the existence  
14 of circumstances rendering such process ineffective to pro-  
15 tect the rights of the applicant. An application may be  
16 denied on the merits notwithstanding the failure of the  
17 applicant to exhaust the remedies available in the courts  
18 of the State. A State shall not be deemed to have waived  
19 the exhaustion requirement, or be estopped from reliance  
20 upon the requirement unless through its counsel it waives  
21 the requirement expressly.”.

22 **SEC. 105. PERIOD OF LIMITATION FOR FEDERAL PRIS-**  
23 **ONERS FILING FOR COLLATERAL REMEDY.**

24 Section 2255 of title 28, United States Code, is  
25 amended by striking the second paragraph and the penul-

1 timate paragraph thereof, and by adding at the end the  
2 following new paragraphs:

3 “A two-year period of limitation shall apply to a mo-  
4 tion under this section. The limitation period shall run  
5 from the latest of the following times:

6 “(1) The time at which the judgment of convic-  
7 tion becomes final.

8 “(2) The time at which the impediment to mak-  
9 ing a motion created by governmental action in vio-  
10 lation of the Constitution or laws of the United  
11 States is removed, where the movant was prevented  
12 from making a motion by such governmental action.

13 “(3) The time at which the right asserted was  
14 initially recognized by the Supreme Court, where the  
15 right has been newly recognized by the Court and is  
16 retroactively applicable.

17 “(4) The time at which the factual predicate of  
18 the claim or claims presented could have been dis-  
19 covered through the exercise of reasonable dili-  
20 gence.”.

1 **Subtitle B—Special Procedures for Collateral**  
 2 **Proceedings in Capital Cases**

3 **SEC. 111. DEATH PENALTY LITIGATION PROCEDURES.**

4 (a) IN GENERAL.—Title 28, United States Code, is  
 5 amended by inserting the following new chapter after  
 6 chapter 153:

7 **“CHAPTER 154—SPECIAL HABEAS CORPUS**  
 8 **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. Scope of Federal review; district court adjudications.

“2260. Certificate of probable cause inapplicable.

“2261. Application to State unitary review procedures.

“2262. Limitation periods for determining petitions.

“2263. Rule of construction.

9 **“§ 2256. Prisoners in State custody subject to capital**  
 10 **sentence; appointment of counsel; re-**  
 11 **quirement of rule of court or statute; pro-**  
 12 **cedures for appointment**

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

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 litigation expenses of competent counsel in  
2 State postconviction proceedings brought by indigent pris-  
3 oners whose capital convictions and sentences have been  
4 upheld on direct appeal to the court of last resort in the  
5 State or have otherwise become final for State law pur-  
6 poses. The rule of court or statute must provide standards  
7 of competency for the appointment of such counsel.

8       “(c) Any mechanism for the appointment, compensa-  
9 tion and reimbursement of counsel as provided in sub-  
10 section (b) must offer counsel to all State prisoners under  
11 capital sentence and must provide for the entry of an  
12 order by a court of record: (1) appointing one or more  
13 counsel to represent the prisoner upon a finding that the  
14 prisoner is indigent and accepted the offer or is unable  
15 competently to decide whether to accept or reject the offer;  
16 (2) finding, after a hearing if necessary, that the prisoner  
17 rejected the offer of counsel and made the decision with  
18 an understanding of its legal consequences; or (3) denying  
19 the appointment of counsel upon a finding that the pris-  
20 oner is not indigent.

21       “(d) No counsel appointed pursuant to subsections  
22 (b) and (c) to represent a State prisoner under capital  
23 sentence shall have previously represented the prisoner at  
24 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 collateral postconviction proceed-  
5 ings in a capital case shall not be a ground for relief in  
6 a proceeding arising under section 2254 of this chapter.  
7 This limitation shall not preclude the appointment of dif-  
8 ferent counsel, on the court’s own motion or at the request  
9 of the prisoner, at any phase of State or Federal  
10 postconviction proceedings on the basis of the ineffective-  
11 ness or incompetence of counsel in such proceedings.

12 **“§ 2257. 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 2256(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 must recite that the State has in-  
21 voked the postconviction 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           “(1) a State prisoner fails to file a habeas cor-  
2           pus petition under section 2254 within the time re-  
3           quired in section 2258, or fails to make a timely ap-  
4           plication for court of appeals review following the de-  
5           nial of such a petition by a district court;

6           “(2) upon completion of district court and court  
7           of appeals review under section 2254 the petition for  
8           relief is denied and (A) the time for filing a petition  
9           for certiorari has expired and no petition has been  
10          filed; (B) a timely petition for certiorari was filed  
11          and the Supreme Court denied the petition; or (C)  
12          a timely petition for certiorari was filed and upon  
13          consideration of the case, the Supreme Court dis-  
14          posed of it in a manner that left the capital sentence  
15          undisturbed; or

16          “(3) before a court of competent jurisdiction, in  
17          the presence of counsel and after having been ad-  
18          vised of the consequences of his decision, a State  
19          prisoner under capital sentence waives the right to  
20          pursue habeas corpus review under section 2254.

21          “(c) If one of the conditions in subsection (b) has  
22          occurred, no Federal court thereafter shall have the au-  
23          thority to enter a stay of execution or grant relief in a  
24          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 is (A) the re-  
5           sult of State action in violation of the Constitution  
6           or laws of the United States; (B) the result of the  
7           Supreme Court recognition of a new Federal right  
8           that is retroactively applicable; or (C) based on a  
9           factual predicate that could not have been discovered  
10          through the exercise of reasonable diligence in time  
11          to present the claim for State or Federal  
12          postconviction review; and

13          “(3) the facts underlying the claim would be  
14          sufficient to establish by clear and convincing evi-  
15          dence that but for constitutional error, no reasonable  
16          fact finder would have found the petitioner guilty of  
17          the underlying offense.

18          “(d) Notwithstanding any other provision of law, no  
19          Federal district court or appellate judge shall have the au-  
20          thority to enter a stay of execution, issue injunctive relief,  
21          or grant any equitable or other relief in a capital case on  
22          any successive habeas petition unless the court first deter-  
23          mines the petition or other action does not constitute an  
24          abuse of the writ. This determination shall be made only  
25          by the district judge or appellate panel who adjudicated

1 the merits of the original habeas petition (or to the district  
2 judge or appellate panel to which the case may have been  
3 subsequently assigned as a result of the unavailability of  
4 the original court or judges). In the Federal courts of ap-  
5 peal, a stay may issue pursuant to the terms of this provi-  
6 sion only when a majority of the original panel or majority  
7 of the active judges determines the petition does not con-  
8 stitute an abuse of the writ.

9 **“§2258. Filing of habeas corpus petition; time re-**  
10 **quirements; tolling rules**

11 “Any petition for habeas corpus relief under section  
12 2254 must be filed in the appropriate district court within  
13 one hundred and eighty days from the filing in the appro-  
14 priate State court of record of an order under section  
15 2256(c). The time requirements established by this section  
16 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 files  
20 the petition to secure review by the Supreme Court  
21 of the affirmance of a capital sentence on direct re-  
22 view by the court of last resort of the State or other  
23 final State court decision on direct review;

24 “(2) during any period in which a State pris-  
25 oner under capital sentence has a properly filed re-



1 merits in the State courts, unless the failure to raise the  
2 claim properly is—

3 “(1) the result of State action in violation of  
4 the Constitution or laws of the United States;

5 “(2) the result of the Supreme Court recogni-  
6 tion of a new Federal right that is retroactively ap-  
7 plicable; or

8 “(3) based on a factual predicate that could not  
9 have been discovered through the exercise of reason-  
10 able diligence in time to present the claim for State  
11 or Federal postconviction review.

12 “(b) Following review subject to the constraints set  
13 forth in subsection (a) and section 2254(d) of this title,  
14 the court shall rule on the 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 the provisions of this chapter except when a second or suc-  
20 cessive petition is filed.

21 **“§ 2261. Application to State unitary review proce-  
22 dure**

23 “(a) For purposes of this section, a ‘unitary review’  
24 procedure means a State procedure that authorizes a per-  
25 son under sentence of death to raise, in the course of di-

1 rect review of the judgment, such claims as could be raised  
2 on collateral attack. The provisions of this chapter shall  
3 apply, as provided in this section, in relation to a State  
4 unitary review procedure if the State establishes by rule  
5 of its court of last resort or by statute a mechanism for  
6 the appointment, compensation and payment of reasonable  
7 litigation expenses of competent counsel in the unitary re-  
8 view proceedings, including expenses relating to the litiga-  
9 tion of collateral claims in the proceedings. The rule of  
10 court or statute must provide standards of competency for  
11 the appointment of such counsel.

12       “(b) A unitary review procedure, to qualify under this  
13 section, must include an offer of counsel following trial  
14 for the purpose of representation on unitary review, and  
15 entry of an order, as provided in section 2256(c), concern-  
16 ing appointment of counsel or waiver or denial of appoint-  
17 ment of counsel for that purpose. No counsel appointed  
18 to represent the prisoner in the unitary review proceedings  
19 shall have previously represented the prisoner at trial in  
20 the case for which the appointment is made unless the  
21 prisoner and counsel expressly request continued represen-  
22 tation.

23       “(c) Sections 2257, 2258, 2259, 2260, and 2262  
24 shall apply in relation to cases involving a sentence of  
25 death from any State having a unitary review procedure

1 that qualifies under this section. References to State ‘post-  
2 conviction review’ and ‘direct review’ in those sections  
3 shall be understood as referring to unitary review under  
4 the State procedure. The references in sections 2257(a)  
5 and 2258 to ‘an order under section 2256(c)’ shall be un-  
6 derstood as referring to the post-trial order under sub-  
7 section (b) concerning representation in the unitary review  
8 proceedings, but if a transcript of the trial proceedings  
9 is unavailable at the time of the filing of such an order  
10 in the appropriate State court, then the start of the one  
11 hundred and eighty day limitation period under section  
12 2258 shall be deferred until a transcript is made available  
13 to the prisoner or his counsel.

14 **“§ 2262. Limitation periods for determining petitions**

15       “(a)(1) A Federal district court shall determine such  
16 a petition or motion within 60 days of any argument heard  
17 on an evidentiary hearing, or where no evidentiary hearing  
18 is held, within 60 days of any final argument heard in  
19 the case.

20       “(2)(A) The court of appeals shall determine any ap-  
21 peal relating to such a petition or motion within 90 days  
22 after the filing of any reply brief or within 90 days after  
23 such reply brief would be due. For purposes of this provi-  
24 sion, any reply brief shall be due within 14 days of the  
25 opposition brief.

1       “(B) The court of appeals shall decide any petition  
2 for rehearing and or request by an appropriate judge for  
3 rehearing en banc within 20 days of the filing of such a  
4 petition or request unless a responsive pleading is required  
5 in which case the court of appeals shall decide the applica-  
6 tion within 20 days of the filing of the responsive pleading.  
7 If en banc consideration is granted, the en banc court shall  
8 determine the appeal within 90 days of the decision to  
9 grant such consideration.

10       “(3) The time limitations contained in paragraphs  
11 (1) and (2) may be extended only once for 20 days, upon  
12 an express good cause finding by the court that the inter-  
13 ests of justice warrant such a one-time extension. The spe-  
14 cific grounds for the good cause finding shall be set forth  
15 in writing in any extension order of the court.

16       “(b) The time limitations under subsection (a) shall  
17 apply to an initial petition or motion, and to any second  
18 or successive petition or motion. The same limitations  
19 shall also apply to the re-determination of a petition or  
20 motion or related appeal following a remand by the court  
21 of appeals or the Supreme Court for further proceedings,  
22 and in such a case the limitation period shall run from  
23 the date of the remand.

24       “(c) The time limitations under this section shall not  
25 be construed to entitle a petitioner or movant to a stay

1 of execution, to which the petitioner or movant would oth-  
2 erwise not be entitled, for the purpose of litigating any  
3 petition, motion, or appeal.

4 “(d) The failure of a court to meet or comply with  
5 the time limitations under this section shall not be a  
6 ground for granting relief from a judgment of conviction  
7 or sentence. The State or Government may enforce the  
8 time limitations under this section by applying to the court  
9 of appeals or the Supreme Court for a writ of mandamus.

10 “(e) The Administrative Office of United States  
11 Courts shall report annually to Congress on the compli-  
12 ance by the courts with the time limits established in this  
13 section.

14 “(f) The adjudication of any petition under section  
15 2254 of this title that is subject to this chapter, and the  
16 adjudication of any motion under section 2255 of this title  
17 by a person under sentence of death, shall be given prior-  
18 ity by the district court and by the court of appeals over  
19 all noncapital matters.

20 **“§ 2263. Rule of construction**

21 “This chapter shall be construed to promote the expe-  
22 ditious conduct and conclusion of State and Federal court  
23 review in capital cases.”.

24 (b) CLERICAL AMENDMENT.—The table of chapters  
25 at the beginning of part VI of title 28, United States Code,

1 is amended by inserting after the item relating to chapter  
2 153 the following new item:

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

3 **Subtitle C—Funding for Litigation of Federal**  
4 **Habeas Corpus Petitions in Capital Cases**

5 **SEC. 121. FUNDING FOR DEATH PENALTY PROSECUTIONS.**

6 Part E of title I of the Omnibus Crime Control and  
7 Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is  
8 amended by adding at the end the following new section:

9 “SEC. 515. Notwithstanding any other provision of  
10 this subpart, the Director shall provide grants to the  
11 States, from the funding allocated pursuant to section  
12 511, for the purpose of supporting litigation pertaining to  
13 Federal habeas corpus petitions in capital cases. The total  
14 funding available for such grants within any fiscal year  
15 shall be equal to the funding provided to capital resource  
16 centers, pursuant to Federal appropriation, in the same  
17 fiscal year.”.

18 **TITLE II—FEDERAL DEATH PEN-**  
19 **ALTY PROCEDURES REFORM**

20 **SEC. 201. FEDERAL DEATH PENALTY PROCEDURES RE-**  
21 **FORM.**

22 (a) **IN GENERAL.**—Subsection (e) of section 3593 of  
23 title 18, United States Code, is amended by striking  
24 “Based upon this consideration” and all that follows  
25 through the end of such subsection and inserting the fol-

1 lowing: “The jury, or if there is no jury, the court, shall  
2 then consider whether the aggravating factor or factors  
3 found to exist outweigh any mitigating factors. The jury,  
4 or if there is no jury, the court shall recommend a sen-  
5 tence of death if it unanimously finds at least one aggra-  
6 vating factor and no mitigating factor or if it finds one  
7 or more aggravating factors which outweigh any mitigat-  
8 ing factors. In any other case, it shall not recommend a  
9 sentence of death. The jury shall be instructed that it  
10 must avoid any influence of sympathy, sentiment, passion,  
11 prejudice, or other arbitrary factors in its decision, and  
12 should make such a recommendation as the information  
13 warrants. The jury shall be instructed that its rec-  
14 ommendation concerning a sentence of death is to be  
15 based on the aggravating factor or factors and any miti-  
16 gating factors which have been found, but that the final  
17 decision concerning the balance of aggravating and miti-  
18 gating factors is a matter for the jury’s judgment.”.

19 (b) CONFORMING AMENDMENT.—Section 3594 of  
20 title 18, United States Code, is amended by striking “or  
21 life imprisonment without possibility of release”.

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