

103<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4018

To revise habeas corpus proceedings.

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IN THE HOUSE OF REPRESENTATIVES

MARCH 11, 1994

Mr. EDWARDS of California introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To revise habeas corpus proceedings.

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 title may be cited as the “Habeas Corpus Revi-  
5 sion Act of 1994”.

6 **SEC. 2. STATUTE OF LIMITATIONS.**

7 Section 2254 of title 28, United States Code, is  
8 amended by adding at the end the following:

9 “(g)(1) In the case of an applicant under sentence  
10 of death, any application for habeas corpus relief under  
11 this section must be filed in the appropriate district court  
12 not later than 1 year after—

1           “(A) the date of denial of a writ of certiorari,  
2 if a petition for a writ of certiorari to the highest  
3 court of the State on direct appeal or unitary review  
4 of the conviction and sentence is filed, within the  
5 time limits established by law, in the Supreme  
6 Court;

7           “(B) the date of issuance of the mandate of the  
8 highest court of the State on direct appeal or uni-  
9 tary review of the conviction and sentence, if a peti-  
10 tion for a writ of certiorari is not filed, within the  
11 time limits established by law, in the Supreme  
12 Court; or

13           “(C) the date of issuance of the mandate of the  
14 Supreme Court, if on a petition for a writ of certio-  
15 rari the Supreme Court grants the writ and disposes  
16 of the case in a manner that leaves the capital sen-  
17 tence undisturbed.

18           “(2) The time requirements established by this sec-  
19 tion shall be tolled—

20           “(A) during any period in which the State has  
21 failed to provide counsel as required in section 2257  
22 of this chapter;

23           “(B) during the period from the date the appli-  
24 cant files an application for State postconviction re-  
25 lief until final disposition of the application by the

1 State appellate courts, if all filing deadlines are met;  
2 and

3 “(C) during an additional period not to exceed  
4 90 days, if counsel moves for an extension in the  
5 district court that would have jurisdiction of a ha-  
6 beas corpus application and makes a showing of  
7 good cause.”.

8 **SEC. 3. STAYS OF EXECUTION IN CAPITAL CASES.**

9 Section 2251 of title 28, United States Code, is  
10 amended—

11 (1) by inserting “(a)(1)” before the first para-  
12 graph;

13 (2) by inserting “(2)” before the second para-  
14 graph; and

15 (3) by adding at the end the following:

16 “(b) In the case of an individual under sentence of  
17 death, a warrant or order setting an execution shall be  
18 stayed upon application to any court that would have ju-  
19 risdiction over an application for habeas corpus under this  
20 chapter. The stay shall be contingent upon reasonable dili-  
21 gence by the individual in pursuing relief with respect to  
22 such sentence and shall expire if—

23 “(1) the individual fails to apply for relief  
24 under this chapter within the time requirements es-  
25 tablished by section 2254(g) of this chapter;

1           “(2) upon completion of district court and court  
2 of appeals review under section 2254 of this chapter,  
3 the application is denied and—

4           “(A) the time for filing a petition for a  
5 writ of certiorari expires before a petition is  
6 filed;

7           “(B) a timely petition for a writ of certio-  
8 rari is filed and the Supreme Court denies the  
9 petition; or

10           “(C) a timely petition for certiorari is filed  
11 and, upon consideration of the case, the Su-  
12 preme Court disposes of it in a manner that  
13 leaves the capital sentence undisturbed; or

14           “(3) before a court of competent jurisdiction, in  
15 the presence of counsel qualified under section 2257  
16 of this chapter and after being advised of the con-  
17 sequences of the decision, an individual waives the  
18 right to pursue relief under this chapter.”.

19 **SEC. 4. LAW APPLICABLE.**

20           (a) IN GENERAL.—Chapter 153 of title 28, United  
21 States Code, is amended by adding at the end the follow-  
22 ing:

1 **“§ 2256. Law applicable**

2 “(a) Except as provided in subsection (b), in an ac-  
3 tion under this chapter, the court shall not apply a new  
4 rule.

5 “(b) A court shall apply a new rule, if the new rule—

6 “(1) places the claimant’s conduct beyond the  
7 power of the criminal law-making authority to pro-  
8 scribe or punish with the sanction imposed; or

9 “(2) requires the observance of procedures  
10 without which the likelihood of an accurate convic-  
11 tion or valid capital sentence is seriously diminished.

12 “(c) As used in this section, the term ‘new rule’  
13 means a clear break from precedent, announced by the  
14 Supreme Court of the United States, that could not rea-  
15 sonably have been anticipated at the time the claimant’s  
16 sentence became final in State court. A rule is not ‘new’  
17 merely because it was not dictated or compelled by the  
18 precedents existing at that time or because, at that time,  
19 it was susceptible to debate among reasonable minds.”.

20 (b) CLERICAL AMENDMENT.—The table of sections  
21 at the beginning of chapter 153 of title 28, United States  
22 Code, is amended by adding at the end the following:

“2256. Law applicable.”.

1 **SEC. 5. COUNSEL IN CAPITAL CASES; STATE COURT.**

2 (a) IN GENERAL.—Chapter 153 of title 28, United  
3 States Code, is amended by adding after the provision  
4 added by section 804 of this subtitle the following:

5 **“§ 2257. Counsel in capital cases; State court**

6 “(a) Notwithstanding section 2254(d) of this chapter,  
7 the court in an action under this chapter shall neither pre-  
8 sume a finding of fact made in a State court proceeding  
9 specified in subsection (b)(1) of this section to be correct  
10 nor decline to consider a claim on the ground that it was  
11 not raised in such a proceeding at the time or in the man-  
12 ner prescribed by State law, unless—

13 “(1) the relevant State maintains a mechanism  
14 for providing legal services to indigents in capital  
15 cases that meets the specifications in subsection (b)  
16 of this section;

17 “(2) if the applicant in the instant case was eli-  
18 gible for the appointment of counsel and did not  
19 waive such an appointment, the State actually ap-  
20 pointed an attorney or attorneys to represent the ap-  
21 plicant in the State proceeding in which the finding  
22 of fact was made or the default occurred; and

23 “(3) the attorney or attorneys so appointed  
24 substantially met both the qualification standards  
25 specified in subsection (b)(3)(A) or (b)(4) of this

1 section and the performance standards established  
2 by the appointing authority.

3 “(b) A mechanism for providing legal services to  
4 indigents within the meaning of subsection (a)(1) of this  
5 section shall include the following elements:

6 “(1) The State shall provide legal services to—

7 “(A) indigents charged with offenses for  
8 which capital punishment is sought;

9 “(B) indigents who have been sentenced to  
10 death and who seek appellate, collateral, or uni-  
11 tary review in State court; and

12 “(C) indigents who have been sentenced to  
13 death and who seek certiorari review of State  
14 court judgments in the United States Supreme  
15 Court.

16 “(2) The State shall establish a counsel author-  
17 ity, which shall be—

18 “(A) a statewide defender organization;

19 “(B) a resource center; or

20 “(C) a counsel authority appointed by the  
21 highest State court having jurisdiction over  
22 criminal matters, consisting of members of the  
23 bar with substantial experience in, or commit-  
24 ment to, the representation of criminal defend-  
25 ants in capital cases, and comprised of a bal-

1           anced representation from each segment of the  
2           State’s criminal defense bar.

3           “(3) The counsel authority shall—

4                   “(A) publish a roster of attorneys qualified  
5                   to be appointed in capital cases, procedures by  
6                   which attorneys are appointed, and standards  
7                   governing qualifications and performance of  
8                   counsel, which shall include—

9                           “(i) knowledge and understanding of  
10                           pertinent legal authorities regarding issues  
11                           in capital cases; and

12                           “(ii) skills in the conduct of negotia-  
13                           tions and litigation in capital cases, the in-  
14                           vestigation of capital cases and the psy-  
15                           chiatric history and current condition of  
16                           capital clients, and the preparation and  
17                           writing of legal papers in capital cases;

18                           “(B) monitor the performance of attorneys  
19                           appointed and delete from the roster any attor-  
20                           ney who fails to meet qualification and perform-  
21                           ance standards; and

22                           “(C) appoint a defense team, which shall  
23                           include at least 2 attorneys, to represent a cli-  
24                           ent at the relevant stage of proceedings, within



1           30 days after receiving notice of the need for  
2           the appointment from the relevant State court.

3           “(4) An attorney who is not listed on the roster  
4           shall be appointed only on the request of the client  
5           concerned and in circumstances in which the attor-  
6           ney requested is able to provide the client with qual-  
7           ity legal representation.

8           “(5) No counsel appointed pursuant to this sec-  
9           tion to represent a prisoner in State postconviction  
10          proceedings shall have previously represented the  
11          prisoner at trial or on direct appeal in the case for  
12          which the appointment is made, unless the prisoner  
13          and counsel expressly request continued representa-  
14          tion.

15          “(6) The ineffectiveness or incompetence of  
16          counsel appointed pursuant to this section during  
17          State or Federal postconviction proceedings shall not  
18          be a ground for relief in a proceeding arising under  
19          section 2254 of this title. This limitation shall not  
20          preclude the appointment of different counsel at any  
21          phase of State or Federal postconviction proceed-  
22          ings.

23          “(7) Upon receipt of notice from the counsel  
24          authority that an individual entitled to the appoint-  
25          ment of counsel under this section has declined to

1 accept such an appointment, the court requesting  
2 the appointment shall conduct, or cause to be con-  
3 ducted, a hearing, at which the individual and coun-  
4 sel proposed to be appointed under this section shall  
5 be present, to determine the individual's competency  
6 to decline the appointment, and whether the individ-  
7 ual has knowingly and intelligently declined it.

8 “(8) Attorneys appointed pursuant to this sec-  
9 tion shall be compensated on an hourly basis pursu-  
10 ant to a schedule of hourly rates as periodically es-  
11 tablished by the counsel authority after consultation  
12 with the highest State court with jurisdiction over  
13 criminal matters. Appointed counsel shall be reim-  
14 bursed for expenses reasonably incurred in rep-  
15 resenting the client, including the costs of law clerks,  
16 paralegals, investigators, experts, or other support  
17 services.

18 “(9) Support services for staff attorneys of a  
19 defender organization or resource center shall be  
20 equal to the services listed in paragraph (8).”.

21 (b) CLERICAL AMENDMENT.—The table of sections  
22 at the beginning of chapter 153 of title 28, United States  
23 Code, is amended by adding after the provision added by  
24 section 804 the following:

“2257. Counsel in capital cases; State court.”.

1 **SEC. 6. SUCCESSIVE FEDERAL PETITIONS.**

2 Section 2244(b) of title 28, United States Code, is  
3 amended—

4 (1) by inserting “(1)” after “(b)”;

5 (2) by inserting “, in the case of an applicant  
6 not under sentence of death,” after “When”; and

7 (3) by adding at the end the following:

8 “(2) In the case of an applicant under sentence  
9 of death, a claim presented in a second or successive  
10 application, that was not presented in a prior appli-  
11 cation under this chapter, shall be dismissed un-  
12 less—

13 “(A) the applicant shows that—

14 “(i) the basis of the claim could not  
15 have been discovered by the exercise of  
16 reasonable diligence before the applicant  
17 filed the prior application; or

18 “(ii) the failure to raise the claim in  
19 the prior application was due to action by  
20 State officials in violation of the Constitu-  
21 tion of the United States; and

22 “(B) the facts underlying the claim would  
23 be sufficient, if proven, to undermine the  
24 court’s confidence in the applicant’s guilt of the  
25 offense or offenses for which the capital sen-

1           tence was imposed, or in the validity of that  
2           sentence under Federal law.”.

3 **SEC. 7. CERTIFICATES OF PROBABLE CAUSE.**

4           The third paragraph of section 2253, of title 28,  
5 United States Code, is amended to read as follows:

6           “An appeal may not be taken to the court of  
7 appeals from the final order in a habeas corpus pro-  
8 ceeding where the detention complained of arises out  
9 of process issued by a State court, unless the justice  
10 or judge who rendered the order or a circuit justice  
11 or judge issues a certificate of probable cause. How-  
12 ever, an applicant under sentence of death shall have  
13 a right of appeal without a certification of probable  
14 cause, except after denial of a second or successive  
15 application.”.

16 **SEC. 8. DUTIES OF THE DISTRICT COURT.**

17           Section 2254(a) of title 28, United States Code, is  
18 amended by adding at the end the following:

19           “In adjudicating the merits of any such ground,  
20 the court shall exercise independent judgment in  
21 ascertaining the pertinent Federal legal standards  
22 and in applying those standards to the facts and  
23 shall not defer to a previous State court judgment  
24 regarding a Federal legal standard or its application.  
25 Upon request, the court shall permit the parties to

1 present evidence regarding material facts that were  
2 not adequately developed in State court. The court  
3 shall award relief with respect to any meritorious  
4 constitutional ground, unless, in the case of a viola-  
5 tion that can be harmless, the respondent shows that  
6 the error was harmless beyond a reasonable doubt.”.

7 **SEC. 9. CLAIMS OF INNOCENCE.**

8 (a) IN GENERAL.—Chapter 153 of title 28, United  
9 States Code, is amended by adding after the provision  
10 added by section 805 of this subtitle the following:

11 **“§ 2258. Claims of innocence**

12 “(a) At any time, and notwithstanding any other pro-  
13 vision of law, a district court shall issue habeas corpus  
14 relief on behalf of an applicant under sentence of death,  
15 imposed either in Federal or in State court, who offers  
16 credible newly discovered evidence which, had it been pre-  
17 sented to the trier of fact or sentencing authority at trial,  
18 would probably have resulted in—

19 “(1) an acquittal of the offense for which the  
20 death sentence was imposed; or

21 “(2) a sentence other than death.

22 “(b) An application filed pursuant to subsection (a)  
23 shall offer substantial evidence which, if credible, would  
24 establish one of the standards in subsection (a)(1) or (2).

25 An application that fails to do so may be dismissed.

1       “(c) If the court concludes that an application meets  
2 the requirements in subsection (b), the court shall—

3               “(1) order the respondent to file an answer;

4               “(2) permit the parties to conduct reasonable  
5 discovery;

6               “(3) conduct a hearing to resolve disputed is-  
7 sues of fact; and

8               “(4) upon request, issue a stay of execution  
9 pending further proceedings in the district court and  
10 on direct review of the district court’s judgment.

11       “(d) If the court concludes that the applicant meets  
12 the standards established by subsection (a)(1) or (2), the  
13 court shall order his or her release, unless a new trial or,  
14 in an appropriate case, a new sentencing proceeding, is  
15 conducted within a reasonable time.

16       “(e) If the court determines that the applicant is cur-  
17 rently entitled to pursue other available and effective rem-  
18 edies in either State or Federal court, the court may, at  
19 the request of either party, suspend its consideration of  
20 the application under this section until the applicant has  
21 exhausted those remedies. A stay issued pursuant to sub-  
22 section (c) shall remain in effect during such a suspension.

23       “(f) An application under this section may be consoli-  
24 dated with any other pending application under this chap-  
25 ter, filed by the same applicant.”.

1 (b) CLERICAL AMENDMENT.—The table of sections  
2 at the beginning of chapter 153 of title 28, United States  
3 Code, is amended by adding after the provision added by  
4 section 805 of this subtitle the following:

“2258. Claims of innocence.”.

5 **SEC. 10. PROCEDURAL DEFAULT IN STATE COURT.**

6 Section 2254 of title 28, United States Code, is  
7 amended by adding the following:

8 “(h)(1) A district court shall decline to consider a  
9 claim under this section if—

10 “(A) the applicant previously failed to raise the  
11 claim in State court at the time and in the manner  
12 prescribed by State law; the State courts, for that  
13 reason, refused or would refuse to entertain the  
14 claim; such refusal would constitute an adequate and  
15 independent State law ground that would foreclose  
16 direct review of the State court judgment in the Su-  
17 preme Court of the United States; and

18 “(B) the applicant fails to show cause for the  
19 failure to raise the claim in State court and preju-  
20 dice to the applicant’s right to fair proceedings or to  
21 an accurate outcome resulting from the alleged viola-  
22 tion of the Federal right asserted, or that failure to  
23 consider the claim would result in a miscarriage of  
24 justice.

1       “(2) The court shall not find cause in any case in  
2 which it appears that the applicant or counsel deliberately  
3 withheld a claim from the State courts for strategic pur-  
4 poses. An applicant may establish cause by showing that—

5           “(A) the factual basis of the claim could not  
6 have been discovered by the exercise of reasonable  
7 diligence before the applicant could have raised the  
8 claim in State court;

9           “(B) the claim relies on a decision of the Su-  
10 preme Court of the United States, announced after  
11 the applicant might have raised the claim in State  
12 court; or

13           “(C) the failure to raise the claim in State  
14 court was due to interference by State officials,  
15 counsel’s ignorance or neglect, or counsel’s ineffec-  
16 tive assistance in violation of the Constitution.”.

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