

103^D CONGRESS
2^D SESSION

H. R. 5134

To protect victims of crime.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 29, 1994

Mr. SANTORUM (for himself, Ms. PRYCE of Ohio, Mr. CANADY, Mr. CLINGER, Mr. WELDON, Mr. BOEHNER, Mr. ARMEY, Mr. RIDGE, Ms. MOLINARI, Mr. KYL, Mr. DELAY, Mr. CUNNINGHAM, Mr. LIVINGSTON, Mr. BACHUS of Alabama, Mr. HUNTER, Mr. TORKILDSSEN, Mr. INGLIS of South Carolina, Mr. LINDER, Mr. ROTH, Mr. MCCOLLUM, Ms. DUNN, Mr. DUNCAN, and Mr. KNOLLENBERG) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To protect victims of crime.

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 “Victims’ Rights Act
5 of 1994”.

1 **TITLE I—ELIMINATING EXCES-**
2 **SIVE AND REDUNDANT AP-**
3 **PEALS**

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

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

9 “(d) A one-year period of limitation shall apply to an
10 application for a writ of habeas corpus by a person in cus-
11 tody pursuant to the judgment of a State court. The limi-
12 tation period shall run from the latest of the following:

13 “(1) The time at which State remedies are ex-
14 hausted.

15 “(2) The time at which the impediment to filing
16 an application created by State action in violation of
17 the Constitution or laws of the United States is re-
18 moved, where the applicant was prevented from fil-
19 ing by such State action.

20 “(3) The time at which the Federal right as-
21 serted was initially recognized by the Supreme
22 Court, where the right has been newly recognized by
23 the Court and is retroactively applicable.

24 “(4) The time at which the factual predicate of
25 the claim or claims presented could have been dis-

1 covered through the exercise of reasonable dili-
2 gence.”.

3 **SEC. 102. AUTHORITY OF APPELLATE JUDGES TO ISSUE**
4 **CERTIFICATES OF PROBABLE CAUSE FOR AP-**
5 **PEAL IN HABEAS CORPUS AND FEDERAL COL-**
6 **LATERAL RELIEF PROCEEDINGS.**

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

9 **“§ 2253. Appeal**

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

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

21 “(c) An appeal may not be taken to the court of ap-
22 peals from the final order in a habeas corpus proceeding
23 where the detention complained of arises out of process
24 issued by a State court, or from the final order in a pro-

ceeding under section 2255 of this title, unless a circuit justice or judge issues a certificate of probable cause.”.

SEC. 103. CONFORMING AMENDMENT TO THE RULES OF APPELLATE PROCEDURE.

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

“RULE 22

“HABEAS CORPUS AND SECTION 2255 PROCEEDINGS

“(a) APPLICATION FOR AN ORIGINAL WRIT OF HABEAS CORPUS.—An application for a writ of habeas corpus shall be made to the appropriate district court. If application is made to a circuit judge, the application will ordinarily be transferred to the appropriate district court. If an application is made to or transferred to the district court and denied, renewal of the application before a circuit judge is not favored; the proper remedy is by appeal to the court of appeals from the order of the district court denying the writ.

“(b) NECESSITY OF CERTIFICATE OR PROBABLE CAUSE FOR APPEAL.—In a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court, and in a motion proceeding pursuant to section 2255 of title 28, United States Code, an appeal by the applicant or movant may not proceed unless a circuit judge issues a certificate of probable cause. If

1 a request for a certificate of probable cause is addressed
2 to the court of appeals, it shall be deemed addressed to
3 the judges thereof and shall be considered by a circuit
4 judge or judges as the court deems appropriate. If no ex-
5 press request for a certificate is filed, the notice of appeal
6 shall be deemed to constitute a request addressed to the
7 judges of the court of appeals. If an appeal is taken by
8 a State or the Government or its representative, a certifi-
9 cate of probable cause is not required.”.

10 **SEC. 104. DISCRETION TO DENY HABEAS CORPUS APPLICA-**
11 **TION DESPITE FAILURE TO EXHAUST STATE**
12 **REMEDIES.**

13 Section 2254(b) of title 28, United State Code, is
14 amended to read as follows:

15 “(b) An application for a writ of habeas corpus in
16 behalf of a person in custody pursuant to the judgment
17 of a State court shall not be granted unless it appears
18 that the applicant has exhausted the remedies available
19 in the courts of the State, or that there is either an ab-
20 sence of available State corrective process or the existence
21 of circumstances rendering such process ineffective to pro-
22 tect the rights of the applicant. An application may be
23 denied on the merits notwithstanding the failure of the
24 applicant to exhaust the remedies available in the courts
25 of the State.”.

1 **SEC. 105. PERIOD OF LIMITATION FOR FEDERAL PRIS-**
2 **ONERS FILING FOR COLLATERAL REMEDY.**

3 Section 2255 of title 28, United States Code, is
4 amended by striking the second paragraph and the penul-
5 timate paragraph thereof, and by adding at the end the
6 following:

7 “A two-year period of limitation shall apply to a mo-
8 tion under this section. The limitation period shall run
9 from the latest of the following:

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

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

17 “(3) The time at which the right asserted was
18 initially recognized by the Supreme Court, where the
19 right has been newly recognized by the Court and is
20 retroactively applicable.

21 “(4) The time at which the factual predicate of
22 the claim or claims presented could have been dis-
23 covered through the exercise of reasonable dili-
24 gence.”.

1 **SEC. 106. SPECIAL PROCEDURES FOR COLLATERAL PRO-**
 2 **CEEDINGS IN CAPITAL CASES.**

3 (a) Title 28, United States Code, is amended by in-
 4 serting the following new chapter after chapter 153:

“CHAPTER 154—HABEAS CORPUS 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; suc-
 cessive petitions.

“2258. Filing of habeas corpus petition; time requirements; tolling rules.

“2259. Evidentiary hearings; scope of Federal review; district court adjudica-
 tion.

“2260. Certificate of probable cause inapplicable.

“2261. Application to State unitary review procedure.

“2262. Limitation periods for determining petitions.

“2263. Rule of construction.

5 **“§ 2256. Prisoners in State custody subject to capital**
 6 **sentence; appointment of counsel; re-**
 7 **quirement of rule of court or statute; pro-**
 8 **cedures for appointment**

9 “(a) IN GENERAL.—This chapter applies to cases
 10 arising under section 2254 brought by prisoners in State
 11 custody who are subject to a capital sentence. It applies
 12 only as provided in subsections (b) and (c).

13 “(b) STATEMENT RULE.—This chapter applies if a
 14 State establishes by rule of its court of last resort or by
 15 statute a mechanism for the appointment, compensation
 16 and payment of reasonable litigation expenses of com-
 17 petent counsel in State postconviction proceedings brought
 18 by indigent prisoners whose capital convictions and sen-

1 tences have been upheld on direct appeal to the court of
2 last resort in the State or have otherwise become final for
3 State law purposes. The rule of court or statute must pro-
4 vide standards of competency for the appointment of such
5 counsel.

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

19 “(d) DISQUALIFICATION FOR APPOINTMENT.—No
20 counsel appointment pursuant to subsections (b) and (c)
21 to represent a State prisoner under capital sentence shall
22 have previously represented the prisoner at trial or on di-
23 rect appeal in the case for which the appointment is made
24 unless the prisoner and counsel expressly request contin-
25 ued representation.

1 “(e) LIMITATION ON GROUND FOR RELIEF.—The in-
2 effectiveness or incompetence of counsel during State or
3 Federal collateral postconviction proceedings in a capital
4 case shall not be a ground for relief in a proceeding arising
5 under section 2254. This limitation shall not preclude the
6 appointment of different counsel, on the court’s own mo-
7 tion or at the request of the prisoner, at any phase of
8 State or Federal postconviction proceedings on the basis
9 of the ineffectiveness or incompetence of counsel in such
10 proceedings.

11 **“§ 2257. Mandatory stay of execution; duration; limits**
12 **on stays of execution; successive peti-**
13 **tions**

14 “(a) STAY OF EXECUTION.—Upon the entry in the
15 appropriate State court of record of an order under section
16 2256(c), a warrant or order setting an execution date for
17 a State prisoner shall be stayed upon application to any
18 court that would have jurisdiction over any proceedings
19 filed under section 2254. The application must recite that
20 the State has invoked the postconviction review procedures
21 of this chapter and that the scheduled execution is subject
22 to stay.

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

1 “(1) a State prisoner fails to file a habeas cor-
2 pus petition under section 2254 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) LIMITATION ON COURT AUTHORITY.—If one of
22 the conditions in subsection (b) has occurred, no Federal
23 court thereafter shall have the authority to enter a stay
24 of execution or grant relief in a 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 or eligible for the death pen-
18 alty under State law.

19 “(d) SUCCESSIVE HABEAS STAYS.—Notwithstanding
20 any other provision of law, no Federal district court or
21 appellate judge shall have the authority to enter a stay
22 of execution, issue injunctive relief, or grant any equitable
23 or other relief in a capital case on any successive habeas
24 petition (or other action which follows the final determina-
25 tion of a first habeas corpus petition) unless the court first

1 determines the petition or other action does not constitute
2 an abuse of the writ. This determination shall be made
3 only by the district judge or appellate panel who adju-
4 dicated the merits of the original habeas petition (or to
5 the district judge or appellate panel to which the case may
6 have been subsequently assigned as a result of the unavail-
7 ability of the original court or judges). In the Federal
8 courts of appeal, a stay may issue pursuant to the terms
9 of this provision only when a majority of the original panel
10 or majority of the active judges determines the petition
11 does not constitute an abuse of the writ.

12 **“§ 2258. Filing of habeas corpus petition; time re-**
13 **quirements; tolling rules**

14 “Any petition for habeas corpus relief under section
15 2254 must be filed in the appropriate district court within
16 one hundred and eighty days from the filing in the appro-
17 priate State court of record of an order under section
18 2256(c). The time requirements established by this section
19 shall be tolled—

20 “(1) from the date that a petition for certiorari
21 is filed in the Supreme Court until the date of final
22 disposition of the petition if a State prisoner files
23 the petition to secure review by the Supreme Court
24 of the affirmance of a capital sentence on direct re-

1 view by the court of last resort of the State or other
2 final State court decision on direct review;

3 “(2) during any period in which a State pris-
4 oner under capital sentence has a properly filed re-
5 quest for postconviction review pending before a
6 State court of competent jurisdiction; if all State fil-
7 ing rules are met in a timely manner, this period
8 shall run continuously from the date that the State
9 prisoner initially files for postconviction review until
10 final disposition of the case by the highest court of
11 the State, but the time requirements established by
12 this section are not tolled during the pendency of a
13 petition for certiorari before the Supreme Court ex-
14 cept as provided in paragraph (1); and

15 “(3) during an additional period not to exceed
16 sixty days, if (A) a motion for an extension of time
17 is filed in the Federal district court that would have
18 proper jurisdiction over the case upon the filing of
19 a habeas corpus petition under section 2254; and
20 (B) a showing of good cause is made for the failure
21 to file the habeas corpus petition within the time pe-
22 riod established by this section.

1 **§ 2259. Evidentiary hearings; scope of Federal review;**
2 **district court adjudication**

3 “(a) PROCEDURE.—Whenever a State prisoner under
4 a capital sentence files a petition for habeas corpus relief
5 to which this chapter applies, the district court shall—

6 “(1) determine the sufficiency of the record for
7 habeas corpus review based on the claims actually
8 presented and litigated in the State courts except
9 when the prisoner can show that the failure to raise
10 or develop a claim in the State courts is (A) the re-
11 sult of State action in violation of the Constitution
12 or laws of the United States; (B) the result of the
13 Supreme Court recognition of a new Federal right
14 that is retroactively applicable; or (C) based on a
15 factual predicate that could not have been discovered
16 through the exercise of reasonable diligence in time
17 to present the claim for State postconviction review;
18 and

19 “(2) conduct any requested evidentiary hearing
20 necessary to complete the record for habeas corpus
21 review.

22 “(b) RULING ON CLAIMS.—Upon the development of
23 a complete evidentiary record, the district court shall rule
24 on the claims that are properly before it.

1 **“§ 2260. Certificate of probable cause inapplicable**

2 “The requirement of a certificate of probable cause
3 in order to appeal from the district court to the court of
4 appeals does not apply to habeas corpus cases subject to
5 the provisions of this chapter except when a second or suc-
6 cessive petition is filed.

7 **§ 2261. Application to State unitary review procedure**

8 “(a) DEFINITION.—For purposes of this section, a
9 ‘unitary review’ procedure means a State procedure that
10 authorizes a person under sentence of death to raise, in
11 the course of direct review of the judgment, such claims
12 as could be raised on collateral attack. The provisions of
13 this chapter shall apply, as provided in this section, in re-
14 lation to a State unitary review procedure if the State es-
15 tablished by rule of its court of last resort or by statute
16 a mechanism for the appointment, compensation and pay-
17 ment of reasonable litigation expenses of competent coun-
18 sel in the unitary review proceedings, including expenses
19 relating to the litigation of collateral claims in the proceed-
20 ings. The rule of court of statute must provide standards
21 of competency for the appointment of such counsel.

22 “(b) QUALIFICATION.—A unitary review procedure,
23 to qualify under this section, must include an offer of
24 counsel following trial for the purpose of representation
25 on unitary review, and entry of an order, as provided in
26 section 2256(c), concerning appointment of counsel or

1 waiver or denial of appointment of counsel for that pur-
2 pose. No counsel appointed to represent the prisoner in
3 the unitary review proceedings shall have previously rep-
4 resented the prisoner at trial in the case for which the
5 appointment is made unless the prisoner and counsel ex-
6 pressly request continued representation.

7 “(c) EFFECT OF QUALIFICATION.—Sections 2257,
8 2258, 2259, 2260, and 2262 shall apply in relation to
9 cases involving a sentence of death from any State having
10 a unitary review procedure that qualifies under this sec-
11 tion. References to State ‘post-conviction review’ and ‘di-
12 rect review’ in those sections shall be understood as refer-
13 ring to unitary review under the State procedure. The ref-
14 erences in sections 2257(a) and 2258 to ‘an order under
15 section 2256(c)’ shall be understood as referring to the
16 post-trial order under subsection (b) concerning represen-
17 tation in the unitary review proceedings, but if a tran-
18 script of the trial proceedings is unavailable at the time
19 of the filing of such an order in the appropriate State
20 court, then the start of the one hundred and eighty day
21 limitation period under section 2258 shall be deferred
22 until a transcript is made available to the prisoner or his
23 counsel.

24 **“§ 2262. Limitation periods for determining petitions**

25 “(a) IN GENERAL.—

1 “(1) A Federal district court shall determine
2 such a petition or motion within 60 days of any ar-
3 gument heard on an evidentiary hearing, or where
4 no evidentiary hearing is held, within 60 days of any
5 final argument heard in the case.

6 “(2)(A) The court of appeals shall hear and de-
7 termine any appeal relating to such a petition or
8 motion within 90 days after the filing of any reply
9 brief or within 90 days after such reply brief would
10 be due. For purposes of this provision, any reply
11 brief shall be due within 14 days of the opposition
12 brief.

13 “(B) The court of appeals shall decide any peti-
14 tion for rehearing and or request by an appropriate
15 judge for rehearing en banc within 20 days of the
16 filing of such a petition or request unless a respon-
17 sive pleading is required in which case the court of
18 appeals shall decide the application within 20 days
19 of the filing of the responsive pleading. If en banc
20 consideration is granted, the en banc court shall de-
21 termine the appeal within 90 days of the decision to
22 grant such consideration.

23 “(3) The time limitations contained in para-
24 graphs (1) and (2) may be extended only once for
25 20 days, upon an express good cause finding by the

1 court that the interests of justice warrant such a
2 one-time extension. The specific grounds for the
3 good cause finding shall be set forth in writing in
4 any extension order of the court.

5 “(4) Since the matters under paragraphs (1)
6 and (2)(A) are to be handled on a priority basis, the
7 time from filing of the petition or motion to final ar-
8 gument (under paragraph (1)) or of the notice of
9 appeal to the hearing of the appeal (under para-
10 graph (2)(A)) shall not exceed 4 months, unless ex-
11 ceptional circumstances require a longer period.
12 Where such time period exceeds 4 months in any pe-
13 tition or motion (under paragraph (2)(A)), the court
14 shall set forth in writing the exceptional cir-
15 cumstances causing the delay.

16 “(b) APPLICATION OF LIMITATION.—The time limi-
17 tations under section (a) shall apply to an initial petition
18 or motion, and to any second or successive petition or mo-
19 tion. The same limitations shall also apply to the re-deter-
20 mination of a petition or motion or related appeal follow-
21 ing a remand by the court of appeals or the Supreme
22 Court for further proceedings, and in such case the limita-
23 tion period shall run from the date of the remand.

24 “(c) CONSTRUCTION.—The time limitations under
25 this section shall not be construed to entitle a petitioner

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

4 “(d) EFFECT OF FAILURE.—The failure of a court
5 to meet or comply with the time limitations under this sec-
6 tion shall not be a ground for granting relief from a judg-
7 ment of conviction or sentence. The State or Government
8 may enforce the time limitations under this section by ap-
9 plying to the court of appeals or the Supreme Court for
10 a writ of mandamus.

11 “(e) REPORT.—The Administrative Office of United
12 States Courts shall report annually to Congress on the
13 compliance by the courts with the time limits established
14 in this section.

15 **“§ 2263. Rule of construction**

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

19 (b) CLERICAL AMENDMENT.—The table of chapters
20 at the beginning of part VI of title 28, United States Code,
21 is amended by inserting after the item relating to chapter
22 153 the following new item:

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

TITLE II—REFORM OF EXCLUSIONARY RULE

SEC. 201. REFORM OF EXCLUSIONARY RULE.

(a) IN GENERAL.—Chapter 223 of title 18, United States Code, is amended by adding at the end the following:

“§ 3510. Admissibility of evidence obtained by search or seizure assured

“(a) EVIDENCE OBTAINED BY OBJECTIVELY REASONABLE SEARCH OR SEIZURE.—Evidence which is obtained as a result of a search or seizure shall not be excluded in a proceeding in a court of the United States on the grounds that the search or seizure was in violation of the fourth amendment to the Constitution of the United States, if the search or seizure was carried out in circumstances justifying an objectively reasonable belief that it was in conformity with the fourth amendment. The fact that evidence was obtained pursuant to and within the scope of a warrant constitutes prima facie evidence of the existence of such circumstances.

“(b) EVIDENCE NOT EXCLUDABLE BY STATUTE OR RULE.—Evidence shall not be excluded in a proceeding in a court of the United States on the ground that it was obtained in violation of a statute, an administrative rule or regulation, or a rule of procedure unless exclusion is

1 expressly authorized by statute or by a rule prescribed by
 2 the Supreme Court pursuant to statutory authority.

3 “(c) RULE OF CONSTRUCTION.—This section shall
 4 not be construed to require or authorize the exclusion of
 5 evidence in any proceeding.”.

6 (b) CLERICAL AMENDMENT.—The table of sections
 7 at the beginning of chapter 223 of title 18, United States
 8 Code, is amended by adding at the end the following:

“3510. Admissibility of evidence obtained by search or seizure.”.

9 **TITLE III—PRISONS**

10 **SEC. 301. LUXURIES ABOLISHED.**

11 Section 4001(b)(2) of title 18, United States Code,
 12 is amended by adding at the end: “The Attorney General
 13 shall, not later than 120 days from the enactment of this
 14 section, implement and enforce regulations mandating
 15 prison work for all able-bodied inmates in Federal penal
 16 and correctional institutions. Such regulations shall also
 17 prohibit the government provision in inmates’ cells of tele-
 18 vision, radio, telephone stereo or other similar amenities.”.

19 **SEC. 302. PRISON SECURITY.**

20 (a) IN GENERAL.—Chapter 303 of title 18, United
 21 States Code, is amended by adding at the end the follow-
 22 ing new section:

23 **“§ 4047. Strength-training of prisoners prohibited**

24 “The Bureau of Prisons shall take care that—

1 “(1) prisoners under its jurisdiction do not en-
 2 gage in any activities designed to increase both their
 3 physical strength and their fighting ability; and

4 “(2) that all equipment designed for this pur-
 5 pose be removed from Federal correctional facili-
 6 ties.”.

7 (b) CLERICAL AMENDMENT.—The table of sections
 8 at the beginning of chapter 303 of title 18, United States
 9 Code, is amended by adding at the end the following new
 10 item:

“4047. Strength-training of prisoners prohibited.”.

11 **TITLE IV—ENHANCED GUN** 12 **PENALTIES**

13 **SEC. 401. ENHANCED PENALTIES FOR PERSONS CON-** 14 **VICTED OF USING OR CARRYING A FIREARM** 15 **DURING AND IN RELATION TO A FELONY.**

16 (a) IN GENERAL.—Section 924(c) of title 18, United
 17 States Code, is amended to read as follows:

18 “(c) Whoever, during and in relation to a crime that
 19 is a felony (including a felony which provides for an en-
 20 hanced punishment if committed by the use of a deadly
 21 or dangerous weapon or device) for which he may be pros-
 22 ecuted in a court of the United States, uses or carries a
 23 firearm, shall, in addition to the punishment provided for
 24 such crime, be sentenced to imprisonment for 5 years, and
 25 if the firearm is a short-barreled rifle or short-barreled

1 shotgun, to imprisonment for 10 years, and if the firearm
 2 is a machinegun or destructive device, or is equipped with
 3 a firearm silencer or firearm muffler, to imprisonment for
 4 30 years. In the case of the 2nd or subsequent conviction
 5 of the person under this subsection, the person shall be
 6 sentenced to life imprisonment without release. Notwith-
 7 standing any other provision of law, a term of imprison-
 8 ment imposed under this subsection shall not run concur-
 9 rently with any other term of imprisonment including that
 10 imposed for the crime in which the firearm was used or
 11 carried.”.

12 (b) CONFORMING AMENDMENT.—Section 101(a)(43)
 13 of the Immigration and Nationality Act (8 U.S.C.
 14 1101(a)(43)) is amended by inserting “(as in effect imme-
 15 diately before the enactment of the Gun Crime Control
 16 Act)” after “18” the 1st place such term appears.

17 **TITLE V—DEATH PENALTY**

18 **SEC. 501. FINDING BY JURY.**

19 Section 3593(e) of title 18, United States Code, is
 20 amended by striking “the jury” the first place it appears
 21 and all that follows through the end of subsection (e) and
 22 inserting the following: “the jury, or if there is no jury,
 23 the court, shall then consider whether the aggravating fac-
 24 tor or factors found to exist outweigh any mitigating fac-
 25 tors. The jury, or if there is no jury, the court shall rec-

1 ommend a sentence of death if it unanimously finds at
 2 least one aggravating factor and no mitigating factor or
 3 if it finds one or more aggravating factors which outweigh
 4 any mitigating factors. In any other case, it shall not rec-
 5 ommend a sentence of death. The jury shall be instructed
 6 that it must avoid any influence of sympathy, sentiment,
 7 passion, prejudice, or other arbitrary factors in its deci-
 8 sion, and should make such a recommendation as the in-
 9 formation warrants. The jury shall be instructed that its
 10 recommendation concerning a sentence of death is to be
 11 based on the aggravating factor or factors and any miti-
 12 gating factors which have been found, but that the final
 13 decision concerning the balance of aggravating and miti-
 14 gating factors is a matter for the jury's judgment.”.

15 **SEC. 502. CONFORMING AMENDMENT.**

16 Section 3594 of title 18, United States Code, is
 17 amended by striking “or life imprisonment without possi-
 18 bility of release”.

19 **TITLE VI—CIVIL RIGHTS OF IN-**
 20 **STITUTIONALIZED PERSONS**
 21 **ACT**

22 **SEC. 601. EXHAUSTION REQUIREMENT.**

23 Section 8 of the Civil Rights of Institutionalized Per-
 24 sons Act (42 U.S.C. 1997e) is amended in subsection
 25 (a)—

1 (1) in paragraph (1)—

2 (A) by striking “in any action brought”
3 and inserting “no action shall be brought”;

4 (B) by striking “the court shall” and all
5 that follows through “require exhaustion of”
6 and insert “until”; and

7 (C) by inserting “are exhausted” after
8 “available”; and

9 (2) in paragraph (2), by inserting “or are oth-
10 erwise fair and effective” before the period at the
11 end.

12 **SEC. 602. FRIVOLOUS ACTIONS.**

13 Section 8(a) of the Civil Rights of Institutionalized
14 Persons Act (42 U.S.C. 1997e(a)) is amended by adding
15 at the end the following:

16 “(3) The court shall on its own motion or on
17 motion of a party dismiss any action brought pursu-
18 ant to section 1979 of the Revised Statutes of the
19 United States by an adult convicted of a crime and
20 confined in any jail, prison, or other correctional fa-
21 cility if the court is satisfied that the action fails to
22 state a claim upon which relief can be granted or is
23 frivolous or malicious.”.

1 **SEC. 603. MODIFICATION OF REQUIRED MINIMUM STAND-**
2 **ARDS.**

3 Section 8(b)(2) of the Civil Rights of Institutionalized
4 Persons Act (42 U.S.C. 1997e(b)(2)) is amended by strik-
5 ing subparagraph (A) and redesignating subparagraphs
6 (B) through (E) as subparagraphs (A) through (D), re-
7 spectively.

8 **SEC. 604. REVIEW AND CERTIFICATION PROCEDURE**
9 **CHANGES.**

10 Section 8(c) of the Civil Rights of Institutionalized
11 Persons Act (42 U.S.C. 1997e(c)) is amended—

12 (1) in paragraph (1), by inserting “or are oth-
13 erwise fair and effective” before the period at the
14 end; and

15 (2) in paragraph (2), by inserting “or is no
16 longer fair and effective” before the period at the
17 end.

18 **SEC. 605. PROCEEDINGS IN FORMA PAUPERIS.**

19 (a) DISMISSAL.—Section 1915(d) of title 28, United
20 States Code, is amended—

21 (1) by inserting “at any time” after “counsel
22 and may”;

23 (2) by striking “and may” and inserting “and
24 shall”;

1 (3) by inserting “fails to state a claim upon
2 which relief may be granted or” after “that the ac-
3 tion”; and

4 (4) by inserting “even if partial failing fees
5 have been imposed by the court” before the period.

6 (b) PRISONER’S STATEMENT OF ASSETS.—Section
7 1915 of title 28, United States Code, is amended by add-
8 ing at the end the following:

9 “(f) If a prisoner in a correctional institution files
10 an affidavit in accordance with subsection (a) of this sec-
11 tion, such prisoner shall include in that affidavit a state-
12 ment of all assets such prisoner possesses. The court shall
13 make inquiry of the correctional institution in which the
14 prisoner is incarcerated for information available to that
15 institution relating to the extent of the prisoner’s assets.
16 The court shall require full or partial payment of filing
17 fees according to the prisoner’s ability to pay.”.

18 **TITLE VII—CONDITIONS OF** 19 **CONFINEMENT**

20 **SEC. 701. ACTIONS CHALLENGING CONDITIONS OF CON-** 21 **FINEMENT.**

22 (a) IN GENERAL.—Title 28, United States Code is
23 amended by inserting after chapter 176 the following new
24 chapter:

1 **“CHAPTER 177—ACTIONS CHALLENGING**
 2 **CONDITIONS OF CONFINEMENT**

“Sec.

“3401. Limitations on remedies.

3 **“§ 3401. Limitations on remedies**

4 “The district court, in any action challenging the con-
 5 stitutionality of conditions of confinement in any prison,
 6 jail, detention facility, or other correctional institution
 7 housing persons accused or convicted of a crime or juve-
 8 niles adjudicated delinquent, shall have no jurisdiction to
 9 issue or enforce any order (including entering or enforcing
 10 any consent decree) that—

11 “(1) imposes a ceiling on the population of any
 12 institution or requires any adjustment of the release
 13 dates of inmates; or

14 “(2) prohibits the use of tents or prefabricated
 15 structures for housing inmates.”.

16 (b) CLERICAL AMENDMENT.—The table of chapters
 17 at the beginning of part VI of title 28, United States Code,
 18 is amended by inserting after the item relating to chapter
 19 176 the following:

“177. Actions Challenging Conditions of Confinement 3401”.



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