

103^D CONGRESS
1ST SESSION

S. 1441

To reform habeas corpus.

IN THE SENATE OF THE UNITED STATES

AUGUST 6 (legislative day, JUNE 30), 1993

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

A BILL

To reform habeas corpus.

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 1993”.

6 **SEC. 2. FILING DEADLINES.**

7 (a) IN GENERAL.—Section 2242 of title 28, United
8 States Code, is amended—

9 (1) by amending the heading to read as follows:

1 **“§2242. Filing of habeas corpus petition; time re-**
2 **quirements; tolling rules”;**

3 (2) by inserting “(a)(1)” before the first para-
4 graph, “(2)” before the second paragraph, “(3)” be-
5 fore the third paragraph, and “(4)” before the
6 fourth paragraph;

7 (3) by amending the third paragraph, as des-
8 ignated by paragraph (3), to read as follows:

9 “(3) Leave to amend or supplement the petition shall
10 be freely given, as provided in the rules of procedure appli-
11 cable to civil actions.”; and

12 (4) by adding at the end the following new sub-
13 sections:

14 “(b) An application for habeas corpus relief under
15 section 2254 shall be filed in the appropriate district court
16 not later than 180 days after—

17 “(1) the last day for filing a petition for writ
18 of certiorari in the United States Supreme Court on
19 direct appeal or unitary review of the conviction and
20 sentence, if such a petition has not been filed within
21 the time limits established by law;

22 “(2) the date of the denial of a writ of certio-
23 rari, if a petition for a writ of certiorari to the high-
24 est court of the State on direct appeal or unitary re-
25 view of the conviction and sentence is filed, within

1 the time limits established by law, in the United
2 States Supreme Court; or

3 “(3) the date of the issuance of the mandate of
4 the United States Supreme Court, if on a petition
5 for a writ of certiorari the Supreme Court grants
6 the writ and disposes of the case in a manner that
7 leaves the sentence undisturbed.

8 “(c)(1) Notwithstanding the filing deadline imposed
9 by subsection (b), if a petitioner under a sentence of death
10 has filed a petition for post-conviction review in State
11 court within 270 days of the appointment of counsel as
12 required by section 2258, the petitioner shall have 180
13 days to file a petition under this chapter upon completion
14 of the State court review.

15 “(2) The time requirements established by subsection
16 (b) shall not apply unless the State has provided notice
17 to a petitioner under sentence of death of the time require-
18 ments established by this section. Such notice shall be pro-
19 vided upon the final disposition of the initial petition for
20 State post-conviction review.

21 “(3) In a case in which a sentence of death has been
22 imposed, the time requirements established by subsection
23 (b) shall be tolled—

1 “(A) during any period in which the State has
2 failed to appoint counsel for State post-conviction re-
3 view as required in section 2258;

4 “(B) during any period in which the petitioner
5 is incompetent; and

6 “(C) during an additional period, not to exceed
7 60 days, if the petitioner makes a showing of good
8 cause.

9 “(d)(1) Notwithstanding the filing deadline imposed
10 by subsection (b), if a petitioner under a sentence other
11 than death has filed—

12 “(A) a petition for post-conviction review in
13 State court; or

14 “(B) a request for counsel for post-conviction
15 review,

16 before the expiration of the period described in subsection
17 (b), the petitioner shall have 180 days to file a petition
18 under this chapter upon completion of the State court re-
19 view.

20 “(2) The time requirements established by subsection
21 (b) shall not apply in a case in which a sentence other
22 than death has been imposed unless—

23 “(A) the State has provided notice to the peti-
24 tioner of the time requirements established by this
25 section and of the availability of counsel as described

1 in subparagraph (B); such notice shall be provided
2 orally at the time of sentencing and in writing at the
3 time the petitioner's conviction becomes final, except
4 that in a case in which the petitioner's conviction be-
5 comes final within 30 days of sentencing, the State
6 may provide both the oral and the written notice at
7 sentencing; in all cases, the written notice to peti-
8 tioner shall include easily understood instructions for
9 filing a request for counsel for State post-conviction
10 review; and

11 “(B)(i) the State provides counsel to the peti-
12 tioner upon the filing of a request for counsel for
13 State post-conviction review; or

14 “(ii) the State provides counsel to the peti-
15 tioner, if a request for counsel for State post-convic-
16 tion review is not filed, upon the filing of a petition
17 for post-conviction review.

18 “(3) The time requirements established by subsection
19 (b) shall be tolled in a case in which a sentence other than
20 death has been imposed—

21 “(A) during any period in which the petitioner
22 is incompetent; and

23 “(B) during an additional period, not to exceed
24 60 days, if the petitioner makes a showing of good
25 cause.

1 “(e) An application that is not filed within the time
2 requirements established by subsection (b) shall be gov-
3 erned by section 2244(b).”.

4 (b) TECHNICAL AMENDMENT.—The chapter analysis
5 for chapter 153 of title 28, United States Code is amended
6 by amending the item relating to section 2242 to read as
7 follows:

“2242. Filing of habeas corpus petition; time requirements; tolling rules.”.

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 and “(2)” before the second paragraph; and

13 (2) by adding at the end the following new sub-
14 sections:

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

22 “(1) the applicant fails to file for relief under
23 this chapter within the time requirements estab-
24 lished by section 2242;

1 “(2) upon completion of district court and court
2 of appeals review under section 2254, the application
3 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, and after being advised of
16 the consequences of the decision, the applicant com-
17 petently and knowingly waives the right to pursue
18 habeas corpus relief under this chapter.

19 “(c) If any 1 of the conditions in subsection (b) has
20 occurred, no Federal court thereafter shall have the au-
21 thority to enter a stay of execution unless the applicant
22 has filed a habeas corpus petition that satisfies, on its
23 face, section 2244(b) or 2256. A stay granted pursuant
24 to this subsection shall expire if, after the grant of the

1 stay, 1 of the conditions specified in subsection (b) (2)
2 or (3) occurs.”.

3 **SEC. 4. LIMITS ON NEW RULES; STANDARD OF REVIEW.**

4 (a) LIMITS ON NEW RULES.—

5 (1) IN GENERAL.—Chapter 153 of Title 28,
6 United States Code, as amended by section 306(a),
7 is amended by adding at the end the following new
8 section:

9 **“§ 2257. Law applicable**

10 “(a) Except as provided in subsection (b), in a case
11 subject to this chapter, the court shall not announce or
12 apply a new rule to grant habeas corpus relief.

13 “(b) A court considering a claim under this chapter
14 shall apply a new rule when—

15 “(1) the new rule places a class of individual
16 conduct beyond the power of the criminal lawmaking
17 authority to proscribe or prohibits the imposition of
18 a certain type of punishment for a class of persons
19 because of their status or offense; or

20 “(2) the new rule constitutes a watershed rule
21 of criminal procedure implicating the fundamental
22 fairness and accuracy of the criminal proceeding.

23 “(c) As used in this section, a ‘new rule’ is a rule
24 that changes the constitutional or statutory standards

1 that prevailed at the time the petitioner’s conviction and
2 sentence became final on direct appeal.”.

3 (2) TECHNICAL AMENDMENT.—The chapter
4 analysis for chapter 153 of title 28, United States
5 Code, as amended by section 306(b), is amended by
6 adding at the end the following new item:

“2257. Law applicable.”.

7 (b) STANDARD OF REVIEW.—Section 2254(a) of title
8 28, United States Code, is amended by adding at the end
9 the following: “Except as to Fourth Amendment claims
10 controlled by *Stone v. Powell*, 428 U.S. 465 (1976), the
11 Federal courts, in reviewing an application under this sec-
12 tion, shall review de novo the rulings of a State court on
13 matters of Federal law, including the application of Fed-
14 eral law to facts, regardless of whether the opportunity
15 for a full and fair hearing on such Federal questions has
16 been provided in the State court. In the case of a violation
17 that can be harmless, the State shall bear the burden of
18 proving harmlessness.”.

19 **SEC. 5. LIMITS ON SUCCESSIVE PETITIONS.**

20 Section 2244(b) of title 28, United States Code, is
21 amended to read as follows:

22 “(b)(1) A claim presented in a habeas corpus petition
23 that was not timely presented in a prior petition shall be
24 dismissed unless—

25 “(A) the petitioner shows that—

1 “(i) the failure to raise the claim pre-
2 viously was the result of interference by State
3 officials with the presentation of the claim, in
4 violation of the Constitution or laws of the
5 United States;

6 “(ii) the claim relies on a new rule that is
7 applicable under section 2257 and was pre-
8 viously unavailable; or

9 “(iii) the factual predicate for the claim
10 could not have been discovered previously
11 through the exercise of reasonable diligence;
12 and

13 “(B) the facts underlying the claim, if proven
14 and viewed in light of the evidence as a whole, would
15 be sufficient to—

16 “(i) undermine the court’s confidence in
17 the factfinder’s determination of the applicant’s
18 guilt of the offense or offenses for which the
19 sentence was imposed; or

20 “(ii) demonstrate that no reasonable sen-
21 tencing authority would have found an aggra-
22 vating circumstance or other condition of eligi-
23 bility for a capital or noncapital sentence, or
24 otherwise would have imposed a sentence of
25 death.

1 “(2) Notwithstanding other matters pending before
2 the court, claims for relief under this subsection from a
3 case in which a sentence of death was imposed shall re-
4 ceive a prompt review in a manner consistent with the in-
5 terests of justice.”.

6 **SEC. 6. NEW EVIDENCE.**

7 (a) IN GENERAL.—Chapter 153 of title 28, United
8 States Code, as amended by section 304(a)(1), is amended
9 by adding at the end the following new section:

10 **“§ 2256. Capital cases; new evidence**

11 “For purposes of this chapter, a claim arising from
12 a violation of the Constitution, laws, or treaties of the
13 United States shall include a claim by a person under sen-
14 tence of death that is based on factual allegations that,
15 if proven and viewed in light of the evidence as a whole,
16 would be sufficient to demonstrate that no reasonable
17 factfinder would have found the petitioner guilty of the
18 offense or that no reasonable sentencing authority would
19 have found an aggravating circumstance or other condi-
20 tion of eligibility for the sentence. Such a claim shall be
21 dismissed if the facts supporting the claim were actually
22 known to the petitioner during a prior stage of the litiga-
23 tion in which the claim was not raised. Notwithstanding
24 any other provision of this chapter, the claim shall not
25 be subject to section 2244(b) or the time requirements es-

1 tablished by section 2242. In all other respects, the claim
2 shall be subject to the rules applicable to claims under this
3 chapter.”.

4 (b) TECHNICAL AMENDMENT.—The chapter analysis
5 for chapter 153 of title 28, United States Code, as amend-
6 ed by section 304(a)(2), is amended by adding at the end
7 the following new item:

“2258. Capital cases; new evidence.”.

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

9 The third paragraph of section 2253, title 28, United
10 States Code, is amended by adding at the end the follow-
11 ing: “However, an applicant under sentence of death shall
12 have a right of appeal without a certificate of probable
13 cause, except after denial of a habeas corpus petition filed
14 under section 2244(b).”.

15 **SEC. 8. PROVISION OF COUNSEL.**

16 (a) IN GENERAL.—Chapter 153 of title 28, United
17 States Code, as amended by section 304(a)(1), is amended
18 by adding at the end the following new section:

19 **“§ 2258. Counsel in capital cases; State court**

20 “(a) COUNSEL.—(1) A State in which a sentence of
21 death may be imposed under State law shall provide legal
22 services to—

23 “(A) indigents charged with offenses for which
24 capital punishment is sought;

1 “(B) indigents who have been sentenced to
2 death and who seek appellate, post-conviction, or
3 unitary review in State court; and

4 “(C) indigents who have been sentenced to
5 death and who seek certiorari review of State court
6 judgments in the United States Supreme Court.

7 “(2) This section shall not apply or form a basis for
8 relief to nonindigents.

9 “(b) COUNSEL CERTIFICATION AUTHORITY.—A
10 State in which a sentence of death may be imposed under
11 State law shall, within 180 days after the date of enact-
12 ment of this subsection, establish a State counsel certifi-
13 cation authority, which shall be comprised of members of
14 the bar with substantial experience in, or commitment to,
15 the representation of criminal defendants in capital cases,
16 and shall be comprised of a balanced representation from
17 each segment of the State’s criminal defense bar, such as
18 a statewide defender organization, a capital case resource
19 center, local public defender’s offices and private attorneys
20 involved in criminal trial, appellate, post-conviction, or
21 unitary review practice. If a State fails to establish a coun-
22 sel certification authority within 180 days after the date
23 of enactment of this subsection, a private cause of action
24 may be brought in Federal district court to enforce this
25 subsection by any aggrieved party, including a defendant

1 eligible for appointed representation under this subsection
2 or a member of an organization eligible for representation
3 on the counsel certification authority. If the court finds
4 that the State has failed to establish a counsel certification
5 authority as required by this subsection, the court shall
6 grant appropriate injunctive and declaratory relief, except
7 that the court shall not grant relief that disturbs any
8 criminal conviction or sentence, obstructs the prosecution
9 of State criminal proceedings, or alters proceedings arising
10 under this chapter.

11 “(c) DUTIES OF AUTHORITY; CERTIFICATION OF
12 COUNSEL.—The counsel certification authority shall—

13 “(1) establish and publish standards governing
14 qualifications of counsel, which shall include—

15 “(A) knowledge and understanding of per-
16 tinent legal authorities regarding issues in cap-
17 ital cases;

18 “(B) skills in the conduct of negotiations
19 and litigation in capital cases, the investigation
20 of capital cases and the psychiatric history and
21 current condition of capital clients, and the
22 preparation and writing of legal papers in cap-
23 ital cases;

24 “(C) the minimum qualifications required
25 by subsection (d); and

1 “(D) any additional qualifications relevant
2 to the representation of capital defendants;

3 “(2) establish application and certification pro-
4 cedures for attorneys who possess the qualifications
5 established pursuant to paragraph (1);

6 “(3) establish application and certification pro-
7 cedures for attorneys who do not possess all the
8 qualifications established pursuant to paragraph (1)
9 but who possess, in addition to the minimum quali-
10 fications required by subsection (d), additional re-
11 sources (such as an affiliation with a publicly funded
12 defender organization) and experience that enable
13 them to provide quality legal representation com-
14 parable to that of an attorney possessing the quali-
15 fications established pursuant to paragraph (1);

16 “(4) establish application and certification pro-
17 cedures, to be used on a case by case basis, for at-
18 torneys who do not necessarily possess the minimum
19 qualifications required by subsection (d), but who
20 possess other extraordinary experience and resources
21 that enable them to provide quality legal representa-
22 tion comparable to that of an attorney possessing
23 the qualifications established pursuant to paragraph
24 (1);

1 “(5) publish a current roster of attorneys cer-
2 tified pursuant to paragraphs (2) and (3) to be ap-
3 pointed in capital cases;

4 “(6) establish and publish standards governing
5 the performance of counsel in capital cases, includ-
6 ing standards that proscribe abusive practices and
7 mandate sound practices in order to further the fair
8 and orderly administration of justice;

9 “(7) monitor the performance of attorneys cer-
10 tified pursuant to this subsection; and

11 “(8) delete from the roster the name of any at-
12 torney who fails to meet the qualification or per-
13 formance standards established pursuant to this
14 subsection.

15 “(d) MINIMUM COUNSEL STANDARDS.—All counsel
16 certified pursuant to paragraph (2) or (3) of subsection
17 (c) or appointed pursuant to subsection (f) shall possess,
18 in addition to any qualifications required by State or local
19 law, the following minimum qualifications:

20 “(1) Familiarity with the performance stand-
21 ards established by the counsel certification author-
22 ity.

23 “(2) Familiarity with the appropriate court sys-
24 tem, including the procedural rules regarding timeli-
25 ness of filings and procedural default.

1 “(3) In the case of counsel appointed for the
2 trial or sentencing stages, at least 2 of the qualifica-
3 tions listed in subparagraph (A) and 1 of the quali-
4 fications listed in subparagraph (B), or 1 of the al-
5 ternative qualifications listed in subparagraph (C).

6 “(A) QUALIFYING TRIAL EXPERIENCE
7 (MUST HAVE 2).—Prior experience within the
8 last 10 years as—

9 “(i) lead or sole counsel in 12 jury
10 trials, of which no fewer than 5 were crimi-
11 nal jury trials;

12 “(ii) lead or sole counsel in 3 criminal
13 jury trials in which the charge was murder
14 or aggravated murder;

15 “(iii) co-counsel in 5 criminal jury
16 trials in which the charge was murder or
17 aggravated murder; or

18 “(iv) lead or sole counsel in no fewer
19 than 5 criminal jury trials involving crimes
20 of violence against persons, punishable by
21 imprisonment of over 1 year,

22 which were tried to a verdict or to a deadlocked
23 jury.

24 “(B) QUALIFYING CAPITAL TRIAL EXPERI-
25 ENCE (MUST HAVE 1).—

1 “(i) lead or sole counsel within the
2 last 5 years in the trial of at least 1 capital
3 case that was tried through sentencing;

4 “(ii) co-counsel in the trial of no fewer
5 than 2 capital cases (1 of which occurred
6 within the last 5 years) that were tried
7 through sentencing; or

8 “(iii) successful completion within the
9 preceding 2 years of a training program in
10 capital trial litigation that has been cer-
11 tified by the counsel certification authority
12 or, if the authority has not certified a pro-
13 gram, successful completion of an at least
14 12-hour training program in capital trial
15 litigation for which continuing legal edu-
16 cation (CLE) credit is available, and which
17 the CLE authority in the State has cer-
18 tified as comporting with the objectives
19 and requirements of this section.

20 “(C) ALTERNATIVE QUALIFYING EXPERI-
21 ENCE FOR TRIAL.—Notwithstanding subpara-
22 graphs (A) and (B), an attorney shall be eligi-
23 ble for certification pursuant to paragraph (2)
24 or (3) of subsection (c) or appointment pursu-
25 ant to subsection (f) if the attorney—

1 “(i) has conducted 5 evidentiary hear-
2 ings and has been employed for more than
3 1 year by a capital resource center, a unit
4 or its equivalent that specializes in capital
5 cases within a public defender office, or a
6 public interest law office specializing in
7 capital litigation; or

8 “(ii) has conducted 5 evidentiary
9 hearings and has been certified by the
10 State capital litigation resource center as
11 competent to be assigned to a capital trial;

12 “(4) in the case of counsel appointed for appel-
13 late or unitary review, at least 1 of the qualifications
14 listed in subparagraph (A) and 1 of the qualifica-
15 tions listed in subparagraph (B), or 1 of the alter-
16 native qualifications listed in subparagraph (C).

17 “(A) QUALIFYING APPELLATE EXPERI-
18 ENCE (MUST HAVE 1).—Prior experience within
19 the past 5 years as—

20 “(i) lead or sole counsel in no fewer
21 than 10 appeals, of which no fewer than 5
22 were criminal appeals;

23 “(ii) lead or sole counsel in at least 6
24 criminal felony appeals; or

1 “(iii) lead or sole counsel in 3 crimi-
2 nal or felony appeals, at least 1 of which
3 was an appeal of a murder or aggravated
4 murder conviction,
5 which were fully briefed.

6 “(B) QUALIFYING CAPITAL APPELLATE
7 EXPERIENCE (MUST HAVE 1).—

8 “(i) lead or sole counsel within the
9 last 5 years in the appeal or unitary review
10 of at least 1 capital case;

11 “(ii) co-counsel in the appeal or uni-
12 tary review of no fewer than 2 capital
13 cases, 1 of which occurred within the last
14 5 years; or

15 “(iii) successful completion within the
16 preceding 2 years of a training program in
17 the litigation of capital appeals that has
18 been certified by the counsel certification
19 authority or, if the authority has not cer-
20 tified a program, successful completion of
21 an at least 12-hour training program in
22 capital litigation with a focus on appeals
23 for which continuing legal education
24 (CLE) credit is available, and which the
25 CLE authority in the State has certified as

1 comporting with the objectives and the re-
2 quirements of this section.

3 “(C) ALTERNATIVE QUALIFYING EXPERI-
4 ENCE FOR APPEALS.—Notwithstanding sub-
5 paragraphs (A) and (B), an attorney shall be
6 eligible for certification pursuant to paragraph
7 (2) or (3) of subsection (c) or for appointment
8 pursuant to subsection (f) if the attorney—

9 “(i) has been employed for more than
10 1 year by a capital resource center, a unit
11 or its equivalent that specializes in capital
12 cases within a public defender office, or a
13 public interest law office specializing in
14 capital litigation; or

15 “(ii) has been certified by the State
16 capital litigation resource center as com-
17 petent to be assigned to a capital appeal;
18 and

19 “(5) in the case of counsel appointed for post-
20 conviction proceedings, at least 2 of the qualifica-
21 tions listed in subparagraph (A) and at least 1 of
22 the qualifications listed in subparagraph (B), or 1 of
23 the alternative qualifications listed in subparagraph
24 (C).

1 “(A) QUALIFYING POST-CONVICTION EXPE-
2 RIENCE (MUST HAVE 2).—Prior experience with-
3 in the past 10 years as—

4 “(i) lead or sole counsel in no fewer
5 than 3 post-conviction proceedings;

6 “(ii) co-counsel in no fewer than 5
7 post-conviction proceedings;

8 “(iii) 1 of the trial qualifications listed
9 in paragraph (3)(A); or

10 “(iv) 1 of the appellate qualifications
11 listed in paragraph (4)(A).

12 “(B) QUALIFYING CAPITAL POST-CONVIC-
13 TION EXPERIENCE (MUST HAVE 1).—

14 “(i) lead or sole counsel within the
15 last 5 years in the trial (through sentenc-
16 ing), appeal, or post-conviction review of at
17 least 1 capital case;

18 “(ii) co-counsel in the trial (through
19 sentencing), appeal, or post-conviction re-
20 view of no fewer than 2 capital cases, 1 of
21 which occurred within the last 5 years; or

22 “(iii) successful completion during the
23 preceding 2 years of a training program in
24 the litigation of capital post-conviction pro-
25 ceedings that has been certified by the

1 counsel certification authority or, if the au-
2 thority has not certified a program, suc-
3 cessful completion of an at least 12-hour
4 training program in capital litigation with
5 a focus on post-conviction proceedings for
6 which continuing legal education (CLE)
7 credit is available, and which the CLE au-
8 thority in the State has certified as com-
9 porting with the objectives and require-
10 ments of this section.

11 “(C) ALTERNATIVE QUALIFYING EXPERI-
12 ENCE FOR POST-CONVICTION PROCEEDINGS.—
13 Notwithstanding subparagraphs (A) and (B),
14 an attorney shall be eligible for certification
15 pursuant to paragraph (2) or (3) of subsection
16 (c) or appointment pursuant to subsection (f) if
17 the attorney—

18 “(i) has conducted 3 evidentiary hear-
19 ings and has been employed for more than
20 1 year by a capital litigation resource cen-
21 ter, by a unit or its equivalent that special-
22 izes in capital cases within a public de-
23 fender office, or by a public interest law of-
24 fice specializing in capital litigation; or

1 “(ii) has conducted 3 evidentiary
2 hearings and has been certified by the
3 State capital litigation resource center as
4 competent to be assigned to a capital post-
5 conviction proceeding.

6 “(e) APPOINTMENT OF CERTIFIED COUNSEL.—(1)
7 The State court shall appoint at least 2 attorneys to rep-
8 resent an indigent at trial, and at least 1 attorney to rep-
9 resent an indigent at the appellate, unitary or post-convic-
10 tion review stage, including—

11 “(A) a lead counsel who is named on the roster
12 published pursuant to subsection (c)(5);

13 “(B) a defender organization or resource cen-
14 ter, which shall designate appropriate attorneys af-
15 filiated with the organization, including a lead coun-
16 sel who is named on the roster; or

17 “(C) a lead counsel certified pursuant to sub-
18 section (c)(4).

19 “(2) The State court may appoint additional attor-
20 neys upon a showing of need.

21 “(f) APPOINTMENT OF NONCERTIFIED COUNSEL.—
22 (1) If there is no roster of attorneys published pursuant
23 to subsection (c)(5), or if no attorney on the roster can
24 accept the appointment and if no attorney certified pursu-
25 ant to subsection (c)(4) has been appointed, the State

1 court shall appoint at least 2 attorneys to represent an
2 indigent at trial, and at least 1 attorney to represent an
3 indigent at the appellate, unitary or post-conviction review
4 stage, including—

5 “(A) a lead counsel who possesses the minimum
6 qualifications required by subsection (d); or

7 “(B) a defender organization or resource cen-
8 ter, which shall designate appropriate attorneys af-
9 filiated with the organization, including a lead coun-
10 sel who possesses the qualifications required by sub-
11 section (d).

12 “(2) No attorney shall be appointed pursuant to this
13 subsection unless the State court has first conducted an
14 evidentiary hearing on the record in which the court deter-
15 mines, after the attorney gives sworn testimony and pre-
16 sents documentary proof that the attorney possesses each
17 of the qualifications required by subsection (d), that the
18 attorney possesses the requisite qualifications. In making
19 its determination, the court, shall, to each qualification re-
20 quired by subsection (d), shall make a specific finding on
21 the record that the attorney possesses the qualification.

22 “(g) No attorney may be denied certification pursu-
23 ant to paragraph (2) or (3) of subsection (c) or appoint-
24 ment pursuant to subsection (f) solely because of prior em-
25 ployment as a prosecutor.

1 “(h) Prior to appointing counsel pursuant to this sec-
2 tion, the State court shall inquire as to whether counsel
3 maintains a workload which, by reason of its excessive
4 size, will interfere with the rendering of quality represen-
5 tation or create a substantial risk of a breach of profes-
6 sional obligations.

7 “(i) If a person entitled to an appointment of counsel
8 declines to accept an appointment, the State court shall
9 conduct, or cause to be conducted, a hearing, at which
10 the person and counsel proposed to be appointed shall be
11 present, to determine the person’s competence to decline
12 the appointment, and whether the person has competently
13 and knowingly declined it.

14 “(j) If a State court fails to appoint counsel in a pro-
15 ceeding specified in subsection (a), or if a State court in
16 a proceeding described in subsection (a)—

17 “(1) fails to appoint the number of counsel re-
18 quired in subsection (e);

19 “(2) appoints counsel whose name is not on the
20 roster published pursuant to subsection (c)(5);

21 “(3) appoints counsel who has failed to present
22 a certification issued pursuant to subsection (c)(4);
23 or

24 “(4) when subsection (f) applies, fails to hold
25 the hearing, receive the requisite testimony and

1 proof, or make the determination required by sub-
2 section (f),
3 a Federal court, in a proceeding under this chapter, shall
4 neither presume findings of fact made at such proceeding
5 to be correct nor decline to consider a claim on the ground
6 that it was not raised in such proceeding at the time or
7 in the manner prescribed by State law. In no cir-
8 cumstances other than those described in this subsection
9 shall a determination of noncompliance with this section
10 provide a basis for relief to a petitioner proceeding under
11 this chapter.

12 “(k) No attorney appointed to represent a prisoner
13 in State post-conviction proceedings shall have previously
14 represented the prisoner at trial or on direct appeal in the
15 case for which the appointment is made, unless the pris-
16 oner and attorney expressly request continued representa-
17 tion.

18 “(l) Notwithstanding the rates and maximum limits
19 generally applicable to criminal cases and any other provi-
20 sion of law to the contrary, the highest State court with
21 jurisdiction over criminal cases shall, after notice and com-
22 ment, establish a schedule of hourly rates for the com-
23 pensation of attorneys appointed pursuant to this section
24 that are reasonable in light of the qualifications of attor-
25 neys appointed and the local practices for legal representa-

1 tion in cases reflecting the complexity and responsibility
2 of capital cases. For each attorney appointed pursuant to
3 this section, the State court shall separately order com-
4 pensation at the rates set by the highest State court for
5 the hours the attorneys reasonably expended on the case
6 and for reasonable expenses paid for investigative, expert,
7 and other reasonably necessary services. Any aggrieved
8 party may bring a private cause of action in Federal dis-
9 trict court to enforce the provisions of this subsection for
10 the establishment of a schedule of reasonable hourly rates
11 for the compensation of attorneys. In such an action, the
12 Federal court shall not independently determine the ap-
13 propriate rates, but shall decide whether the hourly rates
14 as scheduled by the State court are within the range of
15 reasonableness consistent with the criteria stated in this
16 subsection. If the hourly rates as scheduled are not within
17 the range of reasonableness, or if no schedule of rates has
18 been established, the court shall grant appropriate injunc-
19 tive or declaratory relief, except that the court shall not
20 grant relief that disturbs any criminal conviction or sen-
21 tence, obstructs the prosecution of State criminal proceed-
22 ings, or alters proceedings arising under this chapter.

23 “(m) The ineffectiveness or incompetence of counsel
24 appointed pursuant to this section during State or Federal
25 post-conviction proceedings shall not be a ground for relief

1 in a proceeding arising under section 2254. This limitation
2 shall not preclude the appointment of different counsel at
3 any phase of State or Federal post-conviction proceedings.

4 “(n) Nothing in this section changes the constitu-
5 tional standard governing claims of ineffective assistance
6 of counsel pursuant to the sixth amendment to the Con-
7 stitution of the United States. A determination of non-
8 compliance with this section (as opposed to the facts which
9 support such a determination) shall not provide a basis
10 for a claim of constitutionally ineffective assistance of
11 counsel.

12 “(o) The requirements of this section shall apply to
13 any appointment of counsel made after the effective date
14 of this Act in any trial, direct appeal, or unitary review
15 of a capital indigent. Counsel shall be appointed as pro-
16 vided in this section in any post-conviction proceeding
17 commenced after the effective date of this Act. In no case
18 shall counsel appointed for a proceeding commenced be-
19 fore the effective date of this Act be subject to the require-
20 ments of this section, nor shall any person whose counsel
21 was appointed for any trial, appeal, post-conviction or uni-
22 tary review before the effective date of this Act be entitled
23 to any relief, including application of subsection (j), based
24 on a claim that counsel was not appointed in conformity
25 with subsection (e) or (f).”.

1 (b) TECHNICAL AMENDMENT.—The chapter analysis
2 for chapter 153 of title 28, United States Code, as amend-
3 ed by section 304(a)(2), is amended by adding at the end
4 the following new item:

“2258. Counsel in capital cases; State court.”.

5 **SEC. 9. CAPITAL LITIGATION FUNDING.**

6 (a) GRANTS UNDER THE EDWARD BYRNE GRANT
7 PROGRAM.—

8 (1) IN GENERAL.—Part E of title I of the Om-
9 nibus Crime Control and Safe Streets Act of 1968
10 (42 U.S.C. 3711 et seq.) is amended by adding at
11 the end the following new section:

12 “HABEAS CORPUS LITIGATION

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

22 (2) TECHNICAL AMENDMENT.—The table of
23 contents of title I of the Omnibus Crime Control and
24 Safe Streets Act of 1968 (42 U.S.C. preceding

1 3701) is amended by inserting after the item relat-
 2 ing to section 511 the following new item:

“Sec. 511A. Habeas corpus litigation.”.

3 (b) GRANTS FOR STATE CAPITAL LITIGATION.—Title
 4 I of the Omnibus Crime Control and Safe Streets Act of
 5 1968 (42 U.S.C. 3711 et seq.), as amended by section
 6 103(a) is amended—

7 (1) by redesignating part R as part S;

8 (2) by redesignating section 1801 as section
 9 1901; and

10 (3) by inserting after part Q the following new
 11 part:

12 **“PART R—GRANTS FOR STATE CAPITAL**
 13 **LITIGATION**

14 **“SEC. 1801. GRANT AUTHORIZATION.**

15 “The Director of the Bureau of Justice Assistance
 16 shall make grants to States from amounts appropriated
 17 to carry out this part for the use by States and by local
 18 entities in the States to comply with section 2258 of title
 19 28, United States Code.

20 **“SEC. 1802. STATE APPLICATIONS.**

21 “(a) IN GENERAL.—(1) To request a grant under
 22 this part, the Chief Executive of a State shall submit an
 23 application to the Director in such form and containing
 24 such information as the Director may reasonably require.

1 “(2) An application under paragraph (1) shall include
2 assurances that Federal funds received under this part
3 shall be used to supplement, not supplant, non-Federal
4 funds that would otherwise be available for activities fund-
5 ed under this part.

6 “(b) STATE OFFICE.—The office designated under
7 section 507—

8 “(1) shall prepare an application under this sec-
9 tion; and

10 “(2) shall administer grant funds received
11 under this part, including review of spending, proc-
12 essing, progress, financial reporting, technical assist-
13 ance, grant adjustments, accounting, auditing, and
14 fund disbursement.

15 **“SEC. 1803. REVIEW OF STATE APPLICATIONS.**

16 “(a) IN GENERAL.—The Director shall make a grant
17 under section 1801 to carry out the activities described
18 in the application submitted by an applicant under section
19 1802 upon determining that—

20 “(1) the application is consistent with the re-
21 quirements of this part; and

22 “(2) before the approval of the application, the
23 Bureau has made an affirmative finding in writing
24 that the proposed activities have been reviewed in
25 accordance with this part.

1 “(b) APPROVAL.—Each application submitted under
2 section 1802 shall be considered to be approved, in whole
3 or in part, by the Director not later than 45 days after
4 first received unless the Director informs the applicant of
5 specific reasons for disapproval.

6 “(c) DISAPPROVAL NOTICE AND RECONSIDER-
7 ATION.—The Director shall not disapprove any application
8 without first affording the applicant reasonable notice and
9 opportunity for reconsideration.

10 **“SEC. 1804. DISTRIBUTION OF FUNDS.**

11 “For fiscal years 1994, 1995, and 1996, the Federal
12 share of a grant made under this part may not exceed
13 75 percent of the total costs of the activities described in
14 the application submitted under section 1702 for the fiscal
15 year for which the project receives assistance under this
16 part. Thereafter, the Federal share of a grant made under
17 this part may not exceed 50 percent.

18 **“SEC. 1805. EVALUATION.**

19 “(a) IN GENERAL.—(1) A State that receives a grant
20 under this part shall submit to the Director an evaluation
21 not later than March 1 of each year in accordance with
22 guidelines issued by the Director.

23 “(2) The Director may waive the requirement speci-
24 fied in subsection (a) if the Director determines that such

1 evaluation is not warranted in the case of any particular
2 State.

3 “(b) DISTRIBUTION.—A State or local entity may use
4 not more than 5 percent of the funds it receives under
5 this part to develop an evaluation program under this sec-
6 tion.”.

7 (c) TECHNICAL AMENDMENT.—The table of contents
8 of title I of the Omnibus Crime Control and Safe Streets
9 Act of 1968 (42 U.S.C. 3711 et seq.), as amended by sec-
10 tion 103(b), is amended by striking the matter relating
11 to part R and inserting the following:

“PART R—GRANTS FOR STATE CAPITAL LITIGATION

“Sec. 1801. Grant authorization.

“Sec. 1802. State applications.

“Sec. 1803. Review of State applications.

“Sec. 1804. Distribution of funds.

“Sec. 1805. Evaluation.

“PART S—TRANSITION; EFFECTIVE DATE; REPEALER”

12 (d) AUTHORIZATION OF APPROPRIATIONS.—Section
13 1001(a) of title I of the Omnibus Crime Control and Safe
14 Streets Act of 1968 (42 U.S.C. 3793(a)), as amended by
15 section 103(c), is amended by adding at the end the fol-
16 lowing new paragraph:

17 “(12) There are authorized to be appropriated such
18 sums as are necessary to carry out activities under part
19 R.”.

1 **SEC. 10. CERTIFICATION OF COMPLIANCE.**

2 (a) IN GENERAL.—Subpart 1 of part E of title I of
3 the Omnibus Crime Control and Safe Streets Act of 1968
4 (42 U.S.C. 501 et seq.) is amended by adding at the end
5 the following new section:

6 “CERTIFICATION OF COMPLIANCE

7 “SEC. 509A. In any application for a grant under this
8 subpart, a State in which a sentence of death may be im-
9 posed shall certify whether it will comply with the provi-
10 sions of section 2258 of title 28, United States Code. If
11 the State chooses not to certify that it will comply with
12 the provisions of that section, the amount of funds that
13 the State is eligible to receive under that subpart shall
14 be reduced by 75 percent. If the State certifies that it will
15 comply with the provisions of section 2258 of title 28,
16 United States Code, the amount of funds that the State
17 is eligible to receive under that subpart shall not be re-
18 duced by virtue of any failure or alleged failure to carry
19 out any of the requirements of that section. The sole en-
20 forcement mechanisms for the requirements set forth in
21 that section shall be those provided in that section, to
22 which the State shall be deemed to have consented by cer-
23 tifying that it will comply with the provisions of that sec-
24 tion.”.

25 (b) TECHNICAL AMENDMENT.—The table of contents
26 of title I of the Omnibus Crime Control and Safe Streets

1 Act of 1968 (42 U.S.C. preceding 3701) is amended by
 2 inserting after the item relating to section 509 the follow-
 3 ing new item:

“Sec. 509A. Certification of compliance.”.

4 **SEC. 11. EFFECTIVE DATE.**

5 (a) IN GENERAL.—Except as provided in subsection
 6 (b), this title and the amendments made by this title shall
 7 take effect on the date that is 180 days after the date
 8 of enactment of this Act.

9 (b) SECTION 2258(b) OF TITLE 28, UNITED STATES
 10 CODE.—Section 2258(b) of title 28, United States Code,
 11 as added by section 208(a), shall take effect on the date
 12 of enactment of this Act.

○

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S 1441 IS—3