

104TH CONGRESS
1ST SESSION

H. R. 729

AN ACT

To control crime by a more effective death penalty.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

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

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

1 limitation period shall run from the latest of the following
2 times:

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

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

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

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

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

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

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

7 **“§ 2253. Appeal**

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

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

19 “(c) An appeal may not be taken to the court of ap-
20 peals from the final order in a habeas corpus proceeding
21 where the detention complained of arises out of process
22 issued by a State court, or from the final order in a pro-
23 ceeding under section 2255 of this title, unless a circuit
24 justice or judge issues a certificate of probable cause. A
25 certificate of probable cause may only issue if the peti-
26 tioner has made a substantial showing of the denial of a

1 Federal right. The certificate of probable cause must indi-
2 cate which specific issue or issues satisfy this standard.”.

3 **SEC. 103. CONFORMING AMENDMENT TO THE RULES OF AP-**
4 **PELLATE PROCEDURE.**

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

7 “RULE 22

8 “HABEAS CORPUS AND SECTION 2255 PROCEEDINGS

9 “(a) APPLICATION FOR AN ORIGINAL WRIT OF HA-
10 BEAS CORPUS.—An application for a writ of habeas cor-
11 pus shall be made to the appropriate district court. If ap-
12 plication is made to a circuit judge, the application will
13 ordinarily be transferred to the appropriate district court.
14 If an application is made to or transferred to the district
15 court and denied, renewal of the application before a cir-
16 cuit judge is not favored; the proper remedy is by appeal
17 to the court of appeals from the order of the district court
18 denying the writ.

19 “(b) NECESSITY OF CERTIFICATE OF PROBABLE
20 CAUSE FOR APPEAL.—In a habeas corpus proceeding in
21 which the detention complained of arises out of process
22 issued by a State court, and in a motion proceeding pursu-
23 ant to section 2255 of title 28, United States Code, an
24 appeal by the applicant or movant may not proceed unless
25 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. EFFECT OF PRIOR STATE CONSIDERATION.**

11 (a) EXHAUSTION OF REMEDIES.—Section 2254(b) of
12 title 28, United States Code, is amended to read as fol-
13 lows:

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

1 upon the requirement unless through its counsel it waives
2 the requirement expressly.”.

3 (b) STANDARD OF DEFERENCE TO STATE JUDICIAL
4 DECISIONS.—Section 2254 of title 28, United States
5 Code, is amended by adding at the end the following:

6 “(g) An application for a writ of habeas corpus on
7 behalf of a person in custody pursuant to the judgment
8 of a State court shall not be granted with respect to any
9 claim that was decided on the merits in State proceedings
10 unless the adjudication of the claim—

11 “(1) resulted in a decision that was based on an
12 arbitrary or unreasonable interpretation of clearly
13 established Federal law as articulated in the deci-
14 sions of the Supreme Court of the United States;

15 “(2) resulted in a decision that was based on an
16 arbitrary or unreasonable application to the facts of
17 clearly established Federal law as articulated in the
18 decisions of the Supreme Court of the United States;

19 or

20 “(3) resulted in a decision that was based on an
21 arbitrary or unreasonable determination of the facts
22 in light of the evidence presented in the State pro-
23 ceeding.”.

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 new paragraphs:

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 times:

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 **Subtitle B—Special Procedures for**
 2 **Collateral Proceedings in Cap-**
 3 **ital Cases**

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

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

8 **“CHAPTER 154—SPECIAL HABEAS CORPUS**
 9 **PROCEDURES IN CAPITAL CASES**

“Sec.

“2256. Prisoners in State custody subject to capital sentence; appointment of counsel; requirement of rule of court or statute; procedures for appointment.

“2257. Mandatory stay of execution; duration; limits on stays of execution; successive petitions.

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

“2259. Scope of Federal review; district court adjudications.

“2260. Certificate of probable cause.

“2261. Application to State unitary review procedure.

“2262. Limitation periods for determining petitions.

“2263. Rule of construction.

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

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

18 “(b) This chapter is applicable if a State establishes
 19 by rule of its court of last resort or by statute a mecha-

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

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

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

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

3 “(e) The ineffectiveness or incompetence of counsel
4 during State or Federal collateral postconviction proceed-
5 ings in a capital case shall not be a ground for relief in
6 a proceeding arising under section 2254 of this chapter.
7 This limitation shall not preclude the appointment of dif-
8 ferent counsel, on the court’s own motion or at the request
9 of the prisoner, at any phase of State or Federal
10 postconviction proceedings on the basis of the ineffective-
11 ness or incompetence of counsel in such proceedings.

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

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

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

1 “(1) a State prisoner fails to file a habeas cor-
2 pus petition under section 2254 within the time re-
3 quired in section 2258;

4 “(2) before a court of competent jurisdiction, in
5 the presence of counsel and after having been ad-
6 vised of the consequences of his decision, a State
7 prisoner under capital sentence waives the right to
8 pursue habeas corpus review under section 2254; or

9 “(3) a State prisoner files a habeas corpus peti-
10 tion under section 2254 within the time required in
11 section 2258 and fails to make a substantial showing
12 of the denial of a Federal right or is denied relief
13 in the district court or at any subsequent stage of
14 review.

15 “(c) On a second or later habeas corpus petition
16 under section 2254, no Federal court shall have the au-
17 thority to enter a stay of execution or grant relief in a
18 capital case unless—

19 “(1) the basis for the stay and request for relief
20 is a claim not previously presented in the State or
21 Federal courts;

22 “(2) the failure to raise the claim is (A) the re-
23 sult of State action in violation of the Constitution
24 or laws of the United States; (B) the result of the
25 Supreme Court recognition of a new Federal right

1 that is retroactively applicable; or (C) based on a
2 factual predicate that could not have been discovered
3 through the exercise of reasonable diligence in time
4 to present the claim for State or Federal
5 postconviction review; and

6 “(3) the facts underlying the claim would be
7 sufficient to establish by clear and convincing evi-
8 dence that but for constitutional error, no reasonable
9 fact finder would have found the petitioner guilty of
10 the underlying offense.

11 “(d) Notwithstanding any other provision of law, no
12 Federal district court or appellate judge shall have the au-
13 thority to enter a stay of execution, issue injunctive relief,
14 or grant any equitable or other relief in a capital case on
15 any successive habeas petition unless the court first deter-
16 mines the petition or other action does not constitute an
17 abuse of the writ. This determination shall be made only
18 by the district judge or appellate panel who adjudicated
19 the merits of the original habeas petition (or to the district
20 judge or appellate panel to which the case may have been
21 subsequently assigned as a result of the unavailability of
22 the original court or judges). In the Federal courts of ap-
23 peal, a stay may issue pursuant to the terms of this provi-
24 sion only when a majority of the original panel or majority

1 of the active judges determines the petition does not con-
2 stitute an abuse of the writ.

3 **“§2258. Filing of habeas corpus petition; time re-
4 quirements; tolling rules**

5 “Any petition for habeas corpus relief under section
6 2254 must be filed in the appropriate district court within
7 one hundred and eighty days from the filing in the appro-
8 priate State court of record of an order under section
9 2256(c). The time requirements established by this section
10 shall be tolled—

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

18 “(2) during any period in which a State pris-
19 oner under capital sentence has a properly filed re-
20 quest for postconviction review pending before a
21 State court of competent jurisdiction; if all State fil-
22 ing rules are met in a timely manner, this period
23 shall run continuously from the date that the State
24 prisoner initially files for postconviction review until
25 final disposition of the case by the highest court of

1 the State, but the time requirements established by
2 this section are not tolled during the pendency of a
3 petition for certiorari before the Supreme Court ex-
4 cept as provided in paragraph (1); and

5 “(3) during an additional period not to exceed
6 sixty days, if (A) a motion for an extension of time
7 is filed in the Federal district court that would have
8 proper jurisdiction over the case upon the filing of
9 a habeas corpus petition under section 2254; and
10 (B) a showing of good cause is made for the failure
11 to file the habeas corpus petition within the time pe-
12 riod established by this section.

13 **“§ 2259. Scope of Federal review; district court adju-
14 dications**

15 “(a) Whenever a State prisoner under capital sen-
16 tence files a petition for habeas corpus relief to which this
17 chapter applies, the district court shall only consider a
18 claim or claims that have been raised and decided on the
19 merits in the State courts, unless the failure to raise the
20 claim properly is—

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

23 “(2) the result of the Supreme Court recogni-
24 tion of a new Federal right that is retroactively ap-
25 plicable; or

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

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

21 “(c) Sections 2257, 2258, 2259, 2260, and 2262
22 shall apply in relation to cases involving a sentence of
23 death from any State having a unitary review procedure
24 that qualifies under this section. References to State ‘post-
25 conviction review’ and ‘direct review’ in those sections

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

12 **“§ 2262. Limitation periods for determining petitions**

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

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

24 “(B) The court of appeals shall decide any petition
25 for rehearing and or request by an appropriate judge for

1 rehearing en banc within 20 days of the filing of such a
2 petition or request unless a responsive pleading is required
3 in which case the court of appeals shall decide the applica-
4 tion within 20 days of the filing of the responsive pleading.
5 If en banc consideration is granted, the en banc court shall
6 determine the appeal within 90 days of the decision to
7 grant such consideration.

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

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

22 “(c) The time limitations under this section shall not
23 be construed to entitle a petitioner or movant to a stay
24 of execution, to which the petitioner or movant would oth-

1 erwise not be entitled, for the purpose of litigating any
2 petition, motion, or appeal.

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

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

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

19 **“§ 2263. Rule of construction**

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

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

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

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

3 **Subtitle C—Funding for Litigation**
4 **of Federal Habeas Corpus Peti-**
5 **tions in Capital Cases**

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

7 (a) **IN GENERAL.**—Part E of title I of the Omnibus
8 Crime Control and Safe Streets Act of 1968 (42 U.S.C.
9 3711 et seq.) is amended by adding at the end the follow-
10 ing new section:

11 “FUNDING FOR LITIGATION OF FEDERAL HABEAS
12 CORPUS PETITIONS IN CAPITAL CASES

13 “SEC. 523. Notwithstanding any other provision of
14 this subpart, the Director is authorized to provide grants
15 to the States, from the funding allocated pursuant to sec-
16 tion 511, for the purpose of supporting litigation pertain-
17 ing to Federal habeas corpus petitions in capital cases.
18 The total funding available for such grants within any fis-
19 cal year shall be equal to the funding provided to capital
20 resource centers, pursuant to Federal appropriation, in
21 the same fiscal year.”.

22 (b) **CLERICAL AMENDMENT.**—The table of contents
23 at the beginning of title I of the Omnibus Crime Control
24 and Safe Streets Act of 1968 is amended by inserting

1 after the item relating to section 522 the following new
2 item:

“Sec. 523. Funding for litigation of Federal habeas corpus petitions in capital cases.”.

3 **TITLE II—FEDERAL DEATH PEN-**
4 **ALTY PROCEDURES REFORM**

5 **SEC. 201. FEDERAL DEATH PENALTY PROCEDURES RE-**
6 **FORM.**

7 (a) IN GENERAL.—Subsection (e) of section 3593 of
8 title 18, United States Code, is amended by striking “shall
9 consider” and all that follows through the end of such sub-
10 section and inserting the following: “shall then consider
11 whether the aggravating factor or factors found to exist
12 outweigh any mitigating factors. The jury, or if there is
13 no jury, the court shall recommend a sentence of death
14 if it unanimously finds at least one aggravating factor and
15 no mitigating factor or if it finds one or more aggravating
16 factors which outweigh any mitigating factors. In any
17 other case, it shall not recommend a sentence of death.
18 The jury shall be instructed that it must avoid any influ-
19 ence of sympathy, sentiment, passion, prejudice, or other
20 arbitrary factors in its decision, and should make such a
21 recommendation as the information warrants. The jury
22 shall be instructed that its recommendation concerning a
23 sentence of death is to be based on the aggravating factor
24 or factors and any mitigating factors which have been

1 found, but that the final decision concerning the balance
2 of aggravating and mitigating factors is a matter for the
3 jury's judgment.''.

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

Passed the House of Representatives February 8,
1995.

Attest:

Clerk.

104TH CONGRESS
1ST SESSION

H. R. 729

AN ACT

To control crime by a more effective death penalty.