

9. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE  
FLAKE OF ARIZONA, OR HIS  
DESIGNEE, DEBATABLE FOR 10 MINUTES:

~~AMENDMENT TO H.R. 1751~~  
~~OFFERED BY MR. FLAKE OF ARIZONA~~

Add at the end the following:

1 SEC. \_\_\_\_ . COLLATERAL REVIEW IN CAPITAL CASES.

2 (a) REVIEW BY ATTORNEY GENERAL.—

3 (1) APPLICABILITY.—Section 2261 of title 28,  
4 United States Code, is amended by striking sub-  
5 section (b) and inserting the following:

6 “(b) COUNSEL.—This chapter is applicable if—

7 “(1) the Attorney General of the United States  
8 certifies that a State has established a mechanism  
9 for providing counsel in postconviction proceedings  
10 as provided in section 2265; and

11 “(2) counsel was appointed pursuant to that  
12 mechanism, petitioner validly waived counsel, peti-  
13 tioner retained counsel, or petitioner was found not  
14 to be indigent.”.

15 (2) SCOPE OF PRIOR REPRESENTATION.—Sec-  
16 tion 2261(d) of title 28, United States Code is  
17 amended by striking “or on direct appeal”.

18 (3) CERTIFICATION AND JUDICIAL REVIEW.—



1 (A) IN GENERAL.—Chapter 154 of title  
2 28, United States Code, is amended by striking  
3 section 2265 and inserting the following:

4 **“§ 2265. Certification and judicial review**

5 “(a) CERTIFICATION.—

6 “(1) IN GENERAL.—If requested by an appro-  
7 priate State official, the Attorney General of the  
8 United States shall determine—

9 “(A) whether the State has established a  
10 mechanism for the appointment, compensation,  
11 and payment of reasonable litigation expenses  
12 of competent counsel in State postconviction  
13 proceedings brought by indigent prisoners who  
14 have been sentenced to death;

15 “(B) the date on which the mechanism de-  
16 scribed in subparagraph (A) was established;  
17 and

18 “(C) whether the State provides standards  
19 of competency for the appointment of counsel in  
20 proceedings described in subparagraph (A).

21 “(2) EFFECTIVE DATE.—The date the mecha-  
22 nism described in paragraph (1)(A) was established  
23 shall be the effective date of the certification under  
24 this subsection.

25 “(3) REQUIREMENTS.—



1           “(A) IN GENERAL.—To qualify for certifi-  
2 cation under paragraph (1)—

3           “(i) any mechanism described in sub-  
4 section (1)(A) that was created on or after  
5 the effective date of the Antiterrorism and  
6 Effective Death Penalty Act of 1996 (Pub-  
7 lic Law 104–132) shall be created by stat-  
8 ute, rule of the court of last resort, or rule  
9 of an agency authorized by State law to  
10 promulgate statewide rules of court and  
11 must meet the requirements of section  
12 2261(e); and

13           “(ii) for any mechanism described in  
14 subsection (1)(A) that was created prior to  
15 the effective date of the Antiterrorism and  
16 Effective Death Penalty Act of 1996 (Pub-  
17 lic Law 104–132), all or part of the quali-  
18 fying mechanism and standards may have  
19 been created by published policies, prac-  
20 tices, and standards of the court of last re-  
21 sort or of a statewide judicial administra-  
22 tive agency, and the State must have sub-  
23 stantially complied with the requirements  
24 of this section and section 2261 in pro-  
25 viding qualified counsel to indigent pris-



1           oners sentenced to death who did not val-  
2           idly waive counsel.

3           “(B) ONLY EXPRESS REQUIREMENTS.—

4           There are no requirements for certification or  
5           for application of this chapter other than those  
6           expressly stated in this chapter.

7           “(b) REGULATIONS.—The Attorney General shall  
8           promulgate regulations to implement the certification pro-  
9           cedure under subsection (a).

10          “(c) REVIEW OF CERTIFICATION.—

11           “(1) IN GENERAL.—The determination by the  
12           Attorney General regarding whether to certify a  
13           State under this section is subject to review exclu-  
14           sively as provided under chapter 158 of this title.

15           “(2) VENUE.—The Court of Appeals for the  
16           District of Columbia Circuit shall have exclusive ju-  
17           risdiction over matters under paragraph (1), subject  
18           to review by the Supreme Court under section 2350  
19           of this title.

20           “(3) STANDARD OF REVIEW.—The determina-  
21           tion by the Attorney General regarding whether to  
22           certify a State under this section shall be conclusive,  
23           unless manifestly contrary to the law and an abuse  
24           of discretion.”



1 (B) CLERICAL AMENDMENT.—The table of  
2 sections for chapter 154 of title 28, United  
3 States Code, is amended by striking the item  
4 related to section 2265 and inserting the fol-  
5 lowing:

“2265. Certification and judicial review.”.

6 (b) TIME LIMITS.—Section 2266(b)(1)(A) of title 28,  
7 United States Code, is amended by striking “180 days  
8 after the date on which the application is filed.” and in-  
9 serting “450 days after the date on which the application  
10 is filed, or 60 days after the date on which the case is  
11 submitted for decision, whichever is earlier.”.

12 (c) TOLLING.—Section 2263(b) of title 28, United  
13 States Code, is amended—

14 (1) by redesignating paragraphs (1) through  
15 (3) as paragraphs (2) through (4), respectively; and  
16 (2) by inserting before paragraph (2) the fol-  
17 lowing:

18 “(1) if counsel is offered to a State prisoner  
19 under section 2261(c)(1), during the period prior to  
20 such offer;”.

21 (d) SCOPE OF REVIEW.—Section 2264 of title 28,  
22 United States Code, is amended by redesignating sub-  
23 section (b) as subsection (d) and inserting after subsection  
24 (a) the following:



1       “(b) VALIDITY OF CONVICTION.—A court, justice, or  
2 judge shall not have jurisdiction to consider a claim in an  
3 application under this chapter unless the claim concerns  
4 the validity of the conviction of the applicant for the un-  
5 derlying offense for which the applicant was sentenced to  
6 death. For a claim involving the offense of murder, convic-  
7 tion for the underlying offense means conviction for mur-  
8 der in any degree.

9       “(c) RELIEF.—For any claim brought under this sec-  
10 tion, relief shall not be granted, unless the denial of  
11 relief—

12           “(1) is contrary to, or would entail an unrea-  
13 sonable application of, clearly established Federal  
14 law, as determined by the Supreme Court of the  
15 United States; or

16           “(2) would entail an unreasonable determina-  
17 tion of a factual matter.”.

18       (e) PRIORITY TO CAPITAL CASES.—Section 2251 of  
19 title 28, United States Code, is amended—

20           (1) in the first undesignated paragraph by  
21 striking “A justice” and inserting the following:

22           “(a) IN GENERAL.—

23           “(1) PENDING MATTERS.—A justice”;

24           (2) in the second undesignated paragraph, by  
25 striking “After the” and inserting the following:



1 “(b) NO FURTHER PROCEEDINGS.—After the”;

2 (3) in subsection (a), as so designated by para-  
3 graph (1), by adding at the end the following:

4 “(2) MATTER NOT PENDING.—

5 “(A) IN GENERAL.—A habeas corpus pro-  
6 ceeding is not pending, for this purpose, until  
7 the application is filed.

8 “(B) APPLICATION FOR COUNSEL.—If a  
9 State prisoner sentenced to death applies for  
10 appointment of counsel pursuant to section  
11 408(q)(4)(B) of the Controlled Substances Act  
12 (21 U.S.C. 848(q)(4)(B)) in a court that would  
13 have jurisdiction to entertain a habeas applica-  
14 tion regarding that sentence, that court may  
15 stay execution of the sentence of death, but  
16 such a prefiling stay shall terminate not later  
17 than 60 days after counsel is appointed or the  
18 application for appointment of counsel is with-  
19 drawn or denied.”; and

20 (4) by adding at the end the following:

21 “(c) STAY OF MATTERS.—

22 “(1) SCOPE OF AUTHORITY TO STAY.—This  
23 section, section 2262, and section 2101 are the ex-  
24 clusive sources of authority for Federal courts to  
25 stay sentences of death entered by State courts.



1           “(2) PRIORITY OF CASES.—Any case in which  
2           a stay of a sentence of death has been entered pur-  
3           suant to this section shall have priority over all non-  
4           capital cases.

5           “(3) PLAN FOR CASES.—Every Federal court  
6           that hears capital habeas corpus cases shall adopt a  
7           plan to ensure that such cases are completed in the  
8           minimum amount of time that is consistent with due  
9           process.

10          “(4) MENTAL CONDITION.—A Federal court  
11          shall not stay a capital habeas proceeding on the  
12          basis of the mental condition of the petitioner unless  
13          the petitioner is incompetent to be executed.”

14          (f) ADDITIONAL PROVISIONS.—

15                (1) UNIFORM REVIEW STANDARD.—Section  
16                107(c) of the Antiterrorism and Effective Death  
17                Penalty Act of 1996 (28 U.S.C. 2261 note) is  
18                amended by striking “Chapter 154 of title 28,  
19                United States Code (as amended by subsection (a))”  
20                and inserting “This title and the amendments made  
21                by this title”.

22                (2) FINALITY OF REVIEW.—Section  
23                2244(b)(3)(E) of title 28, United States Code, is  
24                amended by striking “the subject of a petition” and  
25                all that follows through the end of the subparagraph



1 and inserting the following: “reheard in the court of  
2 appeals or reviewed by writ of certiorari.”.

3 (3) CLEMENCY AND PARDON DECISIONS.—

4 (A) IN GENERAL.—Chapter 85 of title 28,  
5 United States Code, is amended by adding at  
6 the end the following:

7 **“§ 1370. State clemency and pardon decisions**

8 “(a) IN GENERAL.—Except as provided under sub-  
9 section (b), and notwithstanding any other provision of  
10 law, no Federal court shall have jurisdiction to hear any  
11 cause or claim arising from the exercise of a State’s execu-  
12 tive clemency or pardon power, or the process or proce-  
13 dures used under such power.

14 “(b) EXCEPTION.—This section does not affect the  
15 jurisdiction of the Supreme Court to review any decision  
16 of the highest court of a State that involves a cause or  
17 claim arising from the exercise of a State’s executive clem-  
18 ency or pardon power, or the process or procedures used  
19 under such power.”.

20 (B) CLERICAL AMENDMENT.—The table of  
21 sections for chapter 85 of title 28, United  
22 States Code, is amended by adding at the end  
23 the following:

“1370. State clemency and pardon decisions.”.

24 (g) APPLICATION TO PENDING CASES.—



1           (1) IN GENERAL.—Except as otherwise pro-  
2           vided in this section, this section and the amend-  
3           ments made by this section shall apply to cases  
4           pending on and after the date of enactment of this  
5           Act.

6           (2) TIME LIMITS.—In a case pending on the  
7           date of enactment of this Act, if the amendments  
8           made by this section establish a time limit for taking  
9           certain action, the period of which began on the date  
10          of an event that occurred prior to the date of enact-  
11          ment of this Act, the period of such time limit shall  
12          instead begin on the date of enactment of this Act.

