

109TH CONGRESS  
1ST SESSION

# H. R. 1151

To amend title 28, United States Code, to provide the protections of habeas corpus for certain incapacitated individuals whose life is in jeopardy, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 8, 2005

Mr. WELDON of Florida (for himself, Mr. STUPAK, Mr. TAYLOR of Mississippi, Mr. ORTIZ, Mr. RAHALL, Mr. MOLLOHAN, Mr. HOLDEN, Mr. LIPINSKI, Mr. MCINTYRE, Mr. PENCE, Mr. ADERHOLT, Mr. HERGER, Mr. AKIN, Mr. SAM JOHNSON of Texas, Mrs. MYRICK, Mr. FEENEY, Ms. HART, Mr. GARRETT of New Jersey, Ms. FOXX, Mr. BARTLETT of Maryland, Mr. PITTS, Mr. HOSTETTLER, Mrs. MUSGRAVE, Mr. BARRETT of South Carolina, Mr. RYUN of Kansas, Mr. ISTOOK, Mr. CHOCOLA, Mr. SODREL, Mr. SHADEGG, Mr. CANTOR, Mr. COX, Mr. TANCREDO, Mr. DOOLITTLE, Mr. SULLIVAN, Mr. GUTKNECHT, Mr. MCHENRY, Mr. SMITH of New Jersey, Mr. KING of Iowa, Mr. MILLER of Florida, Mr. CHABOT, Mr. MCCOTTER, Mr. KENNEDY of Minnesota, Mr. BILIRAKIS, Mr. SOUDER, Mr. FRANKS of Arizona, Mr. WESTMORELAND, Mr. INGLIS of South Carolina, Mr. RENZI, Mr. GREEN of Wisconsin, Mr. MICA, Mr. LINCOLN DIAZ-BALART of Florida, Mrs. JO ANN DAVIS of Virginia, Mr. CRENSHAW, Mr. KELLER, Mr. MARIO DIAZ-BALART of Florida, Mr. STEARNS, Mr. WILSON of South Carolina, Mr. HYDE, Mr. BLUNT, Mrs. BLACKBURN, Mr. FITZPATRICK of Pennsylvania, Mr. DAVIS of Kentucky, and Mr. PLATTS) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend title 28, United States Code, to provide the protections of habeas corpus for certain incapacitated individuals whose life is in jeopardy, and for other purposes.

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 “Incapacitated Persons  
5 Legal Protection Act of 2005”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7        (a) FINDINGS.—The Congress finds the following:

8            (1) Under the Fourteenth Amendment to the  
9        Constitution of the United States, “No State . . .  
10       shall deprive any person of life . . . without due  
11       process of law...nor deny to any person within its ju-  
12       risdiction the equal protection of the laws.”

13            (2) Section 5 of the Fourteenth Amendment  
14       empowers Congress “to enforce, by appropriate leg-  
15       islation, the provisions” of the Amendment. The  
16       United States Supreme Court has held that under  
17       this section, while Congress may not work a “sub-  
18       stantive change in the governing law” under the  
19       other sections of the Fourteenth Amendment, it may  
20       adopt remedial measures exhibiting “a congruence  
21       and proportionality between the injury to be pre-  
22       vented or remedied and the means adopted to that  
23       end.” *Tennessee v. Lane*, 541 U.S. 509, 21 (2004);  
24       *City of Boerne v. Flores*, 521 U.S. 507, 519–20  
25       (1997).

1 (b) PURPOSES.—It is the purpose of this Act—

2 (1) to facilitate balancing the acknowledged  
3 right of persons to refuse consent to medical treat-  
4 ment and unwanted bodily intrusions with the right  
5 to consent to treatment, food, and fluids so as to  
6 preserve their lives; and

7 (2) in circumstances in which there is a con-  
8 tested judicial proceeding because of dispute about  
9 the expressed previous wishes or best interests of a  
10 person presently incapable of making known a choice  
11 concerning treatment, food, and fluids the denial of  
12 which will result in death, to provide that the funda-  
13 mental due process and equal protection rights of in-  
14 capacitated persons are protected by ensuring the  
15 availability of collateral review through habeas cor-  
16 pus proceedings.

17 **SEC. 3. EXTENSION OF HABEAS PROTECTIONS.**

18 (a) IN GENERAL.—Chapter 153 of title 28, United  
19 States Code, is amended by striking section 2256 and in-  
20 serting the following:

21 **“§ 2256. Extension of habeas protections to certain**  
22 **persons subject to court orders**

23 “(a) For the purposes of this chapter, an incapaci-  
24 tated person shall be deemed to be in custody under sen-  
25 tence of a court established by Congress, or deemed to

1 be in custody pursuant to the judgment of a State Court,  
2 as the case may be, when an order of such a court author-  
3 izes or directs the withholding or withdrawal of food or  
4 fluids or medical treatment necessary to sustain the per-  
5 son’s life. In a habeas corpus proceeding under this section  
6 the person having custody shall be deemed to encompass  
7 those parties authorized or directed by the court order to  
8 withdraw or withhold food, fluids, or medical treatment,  
9 and there shall be no requirement to produce at the hear-  
10 ing the body of the incapacitated person.

11 “(b) Subsection (a) does not apply in the case of a  
12 judicial proceeding in which no party disputes, and the  
13 court finds, that the incapacitated person, while having  
14 capacity, had executed a written advance directive valid  
15 under applicable law that clearly authorized the with-  
16 holding or withdrawal of food or fluids or medical treat-  
17 ment in the applicable circumstances.

18 “(c) As used in this section, the term “incapacitated  
19 person” means an individual who is presently incapable  
20 of making relevant decisions concerning the provision,  
21 withholding, or withdrawal of food, fluids or medical treat-  
22 ment under applicable state law.

23 “(d) Nothing in this section shall be construed to cre-  
24 ate substantive rights not otherwise secured by the Con-

1 stitution and laws of the United States or of the several  
2 States. ”.

3 (b) CLERICAL AMENDMENT.—The item relating to  
4 section 2256 in the table of sections at the beginning of  
5 chapter 153 of title 28, United States Code, is amended  
6 to read as follows:

“2256. Extension of habeas protections to certain persons subject to court orders.”.

7 (c) PROSPECTIVE EFFECT.—The remedies specified  
8 by this Act shall be available on behalf of any incapacitated  
9 person deemed to be in custody by its terms who  
10 is alive on or after the effective date of this Act.

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