

108TH CONGRESS  
2D SESSION

# S. 2760

To limit and expedite Federal collateral review of convictions for killing  
a public safety officer.

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IN THE SENATE OF THE UNITED STATES

JULY 22, 2004

Mr. KYL (for himself, Mr. HATCH, Mr. CRAIG, Mr. CORNYN, and Mr. SESSIONS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To limit and expedite Federal collateral review of convictions  
for killing a public safety officer.

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 “Public Safety Officers’  
5 Defense Act”.

6 **SEC. 2. SUBSTANTIVE LIMITS.**

7 Section 2254 of title 28, United States Code, is  
8 amended by adding at the end the following:

9 “(j) **CRIMES AGAINST PUBLIC SAFETY OFFICER.**—

1           “(1) DEFINITION OF PUBLIC SAFETY OFFI-  
2           CER.—In this subsection, the term ‘public safety of-  
3           ficer’ has the meaning given such term in section  
4           1204 of the Omnibus Crime Control and Safe  
5           Streets Act of 1968 (42 U.S.C. 3796b).

6           “(2) IN GENERAL.—A court, justice, or judge  
7           shall not have jurisdiction to consider any claim re-  
8           lating to the judgment or sentence in an application  
9           described under paragraph (3), unless the applicant  
10          shows that the claim qualifies for consideration on  
11          the grounds described in subsection (e)(2). Any such  
12          application that is presented to a court, justice, or  
13          judge other than a district court shall be transferred  
14          to the appropriate district court for consideration or  
15          dismissal in conformity with this subsection, except  
16          that a court of appeals panel must authorize any  
17          second or successive application in conformity with  
18          section 2244 prior to any consideration by the dis-  
19          trict court.

20          “(3) APPLICATION OF SUBSECTION.—This sub-  
21          section shall apply to an application for a writ of ha-  
22          beas corpus on behalf of a person in custody pursu-  
23          ant to the judgment of a State court for a crime  
24          that involved the killing of a public safety officer  
25          while the public safety officer was engaged in the

1 performance of official duties, or on account of the  
2 public safety officer's performance of official du-  
3 ties.”.

4 **SEC. 3. TIME LIMITS.**

5 Section 2254(j) of title 28, United States Code, as  
6 added by section 2 of this Act, is further amended by add-  
7 ing at the end the following:

8 “(4) TIME LIMITS IN DISTRICT COURT.—For  
9 any application described under paragraph (3), in  
10 the district court the following shall apply:

11 “(A) Any motion by either party for an  
12 evidentiary hearing shall be filed and served not  
13 later than 90 days after the State files its an-  
14 swer or, if no timely answer is filed, the date  
15 on which such answer is due.

16 “(B) Any motion for an evidentiary hear-  
17 ing shall be granted or denied not later than 30  
18 days after the date on which the party opposing  
19 such motion files a pleading in opposition to  
20 such motion or, if no timely pleading in opposi-  
21 tion is filed, the date on which such pleading in  
22 opposition is due.

23 “(C) Any evidentiary hearing shall be—

24 “(i) convened not less than 60 days  
25 after the order granting such hearing; and

1                   “(ii) completed not more than 150  
2                   days after the order granting such hearing.

3                   “(D) A district court shall enter a final  
4                   order, granting or denying the application for a  
5                   writ of habeas corpus, not later than 15 months  
6                   after the date on which the State files its an-  
7                   swer or, if no timely answer is filed, the date  
8                   on which such answer is due, or not later than  
9                   60 days after the case is submitted for decision,  
10                  whichever is earlier.

11                  “(E) If the district court fails to comply  
12                  with the requirements of this paragraph, the  
13                  State may petition the court of appeals for a  
14                  writ of mandamus to enforce the requirements.  
15                  The court of appeals shall grant or deny the pe-  
16                  tition for a writ of mandamus not later than 30  
17                  days after such petition is filed with the court.

18                  “(5) TIME LIMITS IN COURT OF APPEALS.—For  
19                  any application described under paragraph (3), in  
20                  the court of appeals the following shall apply:

21                  “(A) A timely filed notice of appeal from  
22                  an order issuing a writ of habeas corpus shall  
23                  operate as a stay of that order pending final  
24                  disposition of the appeal.

1           “(B) The court of appeals shall decide the  
2 appeal from an order granting or denying a  
3 writ of habeas corpus—

4           “(i) not later than 120 days after the  
5 date on which the brief of the appellee is  
6 filed or, if no timely brief is filed, the date  
7 on which such brief is due; or

8           “(ii) if a cross-appeal is filed, not  
9 later than 120 days after the date on  
10 which the appellant files a brief in re-  
11 sponse to the issues presented by the  
12 cross-appeal or, if no timely brief is filed,  
13 the date on which such brief is due.

14           “(C)(i) Following a decision by a panel of  
15 the court of appeals under subparagraph (B), a  
16 petition for panel rehearing is not allowed, but  
17 rehearing by the court of appeals en banc may  
18 be requested. The court of appeals shall decide  
19 whether to grant a petition for rehearing en  
20 banc not later than 30 days after the date on  
21 which the petition is filed, unless a response is  
22 required, in which case the court shall decide  
23 whether to grant the petition not later than 30  
24 days after the date on which the response is

1 filed or, if no timely response is filed, the date  
2 on which the response is due.

3 “(ii) If rehearing en banc is granted, the  
4 court of appeals shall make a final determina-  
5 tion of the appeal not later than 120 days after  
6 the date on which the order granting rehearing  
7 en banc is entered.

8 “(D) If the court of appeals fails to comply  
9 with the requirements of this paragraph, the  
10 State may petition the Supreme Court or a jus-  
11 tice thereof for a writ of mandamus to enforce  
12 the requirements.

13 “(6) APPLICATION OF TIME LIMITS.—

14 “(A) IN GENERAL.—The time limitations  
15 under paragraphs (4) and (5) shall apply to an  
16 initial application described under paragraph  
17 (3), any second or successive application de-  
18 scribed under paragraph (3), and any redeter-  
19 mination of an application described under  
20 paragraph (3) or related appeal following a re-  
21 mand by the court of appeals or the Supreme  
22 Court for further proceedings.

23 “(B) REMAND IN DISTRICT COURT.—In  
24 proceedings following remand in the district  
25 court, time limits running from the time the

1 State files its answer under paragraph (4) shall  
2 run from the date the remand is ordered if fur-  
3 ther briefing is not required in the district  
4 court. If there is further briefing following re-  
5 mand in the district court, such time limits  
6 shall run from the date on which a responsive  
7 brief is filed or, if no timely responsive brief is  
8 filed, the date on which such brief is due.

9 “(C) REMAND IN COURT OF APPEALS.—In  
10 proceedings following remand in the court of  
11 appeals, the time limit specified in paragraph  
12 (5)(B) shall run from the date the remand is  
13 ordered if further briefing is not required in the  
14 court of appeals. If there is further briefing in  
15 the court of appeals, the time limit specified in  
16 paragraph (5)(B) shall run from the date on  
17 which a responsive brief is filed or, if no timely  
18 responsive brief is filed, from the date on which  
19 such brief is due.

20 “(7) FAILURE TO COMPLY.—The failure of a  
21 court to meet or comply with a time limitation under  
22 this subsection shall not be a ground for granting  
23 relief from a judgment of conviction or sentence, nor  
24 shall the time limitations under this subsection be  
25 construed to entitle a capital applicant to a stay of

1 execution, to which the applicant would otherwise  
2 not be entitled, for the purpose of litigating any ap-  
3 plication or appeal.”.

4 **SEC. 4. APPLICATION TO PENDING CASES.**

5 (a) **IN GENERAL.**—The amendments made by this  
6 Act shall apply to cases pending on or after the date of  
7 enactment of this Act.

8 (b) **TIME LIMITS.**—In a case pending on the date of  
9 enactment of this Act, if the amendments made by this  
10 Act provide that a time limit runs from an event or time  
11 that has occurred prior to such date of enactment, the  
12 time limit shall run instead from such date of enactment.

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