

108TH CONGRESS
2D SESSION

S. 2760

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

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

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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