

PROVIDING FOR CONSIDERATION OF H.R. 1751, SECURE  
ACCESS TO JUSTICE AND COURT PROTECTION ACT OF  
2005

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NOVEMBER 8, 2005.—Referred to the House Calendar and ordered to be printed

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Mr. GINGREY, from the Committee on Rules,  
submitted the following

R E P O R T

[To accompany H. Res. 540]

The Committee on Rules, having had under consideration House Resolution 540, by a nonrecord vote, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for the consideration of H.R. 1751, the Secure Access to Justice and Court Protection Act of 2005, under a structured rule. The rule provides one hour of general debate equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary. The rule waives all points of order against consideration of the bill.

The rule provides that the amendment in the nature of a substitute recommended by the Committee on the Judiciary now printed in the bill shall be considered as an original bill for the purpose of amendment and shall be considered as read. The rule waives all points of order against the committee amendment in the nature of a substitute.

The rule makes in order only those amendments printed in this report. The rule provides that the amendments made in order may be offered only in the order printed in this report, may be offered only by a Member designated in this report, shall be considered as read, shall be debatable for the time specified in this report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. The rule waives all points of order against the amendments printed in this report.

Finally, the rule provides one motion to recommit with or without instructions.

#### EXPLANATION OF WAIVERS

The waiver of all points of order against consideration of the bill includes a waiver of clause 4(a) of rule XIII (requiring a three-day layover of the committee report). The waiver is necessary because the Committee on the Judiciary filed its report (H. Rept. 109–271) with the House on Monday, November 7, 2005 and the bill may be considered by the House as early as Wednesday, November 9, 2005.

#### SUMMARY OF AMENDMENTS MADE IN ORDER TO H.R. 1751—SECURE ACCESS TO JUSTICE AND COURT PROTECTION ACT OF 2005

(Summaries derived from information provided by the sponsors.)

1. Sensenbrenner: Manager’s Amendment. Clarifies that the death penalty shall apply only where death results and covers only those offenders who qualify as principals in the killing. In addition, the amendment makes eligible tribal courts for court security grants. Also corrects drafting of coordination requirement between U.S. Marshals and Administrative Office of the U.S. Courts on security measures. (10 minutes)

2. Scott (VA): Replaces all mandatory minimum sentences with higher maximum sentences. (10 minutes)

3. Scott (VA): Removes the death penalty for the killing of Federally funded public safety officers. (10 minutes)

4. Cuellar: Adds a category of preferential consideration for witness protection grants. The new category will add another tool for border prosecutors to encourage witnesses to testify against cross-border crimes. (10 minutes)

5. Jackson-Lee: Requires the Attorney General to work, through the Office of Justice Programs, to make grants to the highest State courts in States participating in the threat assessment database. (10 minutes)

6. Filner: Adds the following grant guideline for young witness assistance, “support for young witnesses who are trying to leave a criminal gang and information to prevent initial gang recruitment.” (10 minutes)

7. Weiner: Ensures that courts are authorized to apply directly to the Federal government for law enforcement grants. (10 minutes)

8. King (IA): Allows any justice or judge of the United States, any judge of a court created under article I of the United States Constitution, any bankruptcy judge, any magistrate judge, any United States Attorney, and any other officer or employee of the Department of Justice whose duties include representing the U.S. in a court of law, to carry firearms subject to training and regulation as prescribed by the Attorney General. (10 minutes)

9. Flake: Gives States an incentive to provide quality counsel to capital defendants during post-conviction review (also called State habeas). (10 minutes)

## TEXT OF AMENDMENTS MADE IN ORDER

## 1. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE SENSENBRENNER OF WISCONSIN, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

In the matter proposed to be inserted by section 2 as subsection (b)(2)(C) of section 115 of title 18, United States Code, after “if death results” insert “and the offender is prosecuted as a principal”.

In the matter proposed to be inserted by section 4(a) as section 1123(a) of title 18, United States Code, after “if death results” insert “and the offender is prosecuted as a principal”.

In the matter proposed to be inserted by section 18(a) as subparagraph (C) of section 901(a)(3) of the Omnibus Crime Control and Safe Streets Act of 1968 insert after “within the State” the following: “or of an Indian tribe,”.

In section 18(b), strike “local unit of government” and insert “unit of local government or Indian tribe” and strike “State or unit” each place it appears and insert “State, unit, or tribe”.

In the matter proposed to be inserted by section 13(b)(3) as paragraph (24) of section 604(a) of title 28, United States Code, strike “, and inform” and all that follows through “requirements”.

## 2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE SCOTT OF VIRGINIA, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

In the matter proposed to be inserted by section 2 as a subsection (b)(2)(A)(ii) of section 115 of title 18, United States Code, strike “and a term of imprisonment” and all that follows through “10 years” and insert “or a term of imprisonment for not more than 20 years, or both”.

In the matter proposed to be inserted by section 2 as a subsection (b)(2)(A)(iii) of section 115 of title 18, United States Code, strike “and a term of imprisonment” and all that follows through “12 years” and insert “or a term of imprisonment for not more than 30 years, or both”.

In the matter proposed to be inserted by section 2 as a subsection (b)(2)(A)(iv) of section 115 of title 18, United States Code, strike “and a term of imprisonment” and all that follows through “30 years” and insert “or a term of imprisonment for not more than 40 years, or both”.

In the matter proposed to be inserted by section 2 as a subsection (b)(2)(B), strike “not less than 30”.

In the matter proposed to be inserted by section 2 as a subsection (b)(2)(C), strike “not less than 30”.

In the matter proposed to be inserted by section 2 as a subsection (b)(2)(D) of section 115 of title 18, United States Code, strike “and imprisonment” and all that follows through “10 years” and insert “or imprisonment for not more than 20 years, or both”.

In the matter proposed to be inserted by section 2 as a subsection (b)(2)(E) of section 115 of title 18, United States Code, strike “5 years” and insert “not more than 10 years”.

In the matter proposed to be inserted by section 3(b) as a subsection (c)(1)(B) of section 111 of title 18, United States Code,

strike “not less” and all that follows through “10 years” and insert “not more than 20 years”.

In the matter proposed to be inserted by section 3(b) as a subsection (c)(1)(C) of section 111 of title 18, United States Code, strike “not less” and all that follows through “12 years” and insert “not more than 30 years”.

In the matter proposed to be inserted by section 3(b) as a subsection (c)(1)(D) of section 111 of title 18, United States Code, strike “not less” and all that follows through “30 years” and insert “not more than 40 years”.

In the matter proposed to be inserted by section 3(b) as a subsection (c)(2) of section 111 of title 18, United States Code, strike “5 years” and insert “not more than 10 years”.

In the matter proposed to be inserted by section 20(a) as a section 1075 of title 18, United States Code, strike “not less than 10” and insert “not more than 20”.

In the matter proposed to be inserted by section 21(a) as a subsection (b) of section 1114 of title 18, United States Code, strike “and imprisonment” and all that follows through “or for life” and insert “or imprisonment for any term of years, or for life, or both”.

In the matter proposed to be inserted by section 21(b) in section 1201(a) of title 18, United States Code, strike “and imprisonment” and all that follows through “or for life” and insert “or imprisonment for any term of years, or for life, or both”.

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3. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE SCOTT OF VIRGINIA, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

In the matter proposed to be inserted by section 4 as section 1123(a) of title 18, United States Code, strike “shall be punished” and all that follows through “death” and insert “shall be fined under this title or imprisoned for any term or years or for life, or both”.

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4. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE CUELLAR OF TEXAS, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Section 11(c) is amended—

- (1) by striking “and” at the end of paragraph (2);
- (2) by striking the period at the end of paragraph (3) and inserting “; and”; and
- (3) by inserting after paragraph (3) the following:
  - (4) shares an international border and faces a demonstrable threat from cross border crime and violence.

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5. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE JACKSON-LEE OF TEXAS, OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

In section 25, strike subsection (a) and insert the following:

“(a) IN GENERAL.—The Attorney General, through the Office of Justice Programs, shall make grants under this section to the highest State courts in States participating in the program, for the purpose of enabling such courts to establish and maintain a threat assessment database described in subsection (b).”.

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6. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE FILNER OF CALIFORNIA, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Section 26(d)(3) is amended

(1) by redesignating subparagraphs “(D)” and “(E)” as subparagraphs “(E)” and “(F)”, respectively; and

(2) by inserting after subparagraph (C) the following:

“(D) support for young witnesses who are trying to leave a criminal gang and information to prevent initial gang recruitment.”.

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7. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE WEINER OF NEW YORK, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of the bill add the following:

**SEC. \_\_\_\_ . STATE AND LOCAL COURT ELIGIBILITY.**

(a) BUREAU GRANTS.—Section 302(c)(1) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3732(c)(1)) is amended by inserting “State and local courts,” after “contracts with”.

(b) EDWARD BRYNE GRANTS.—

(1) FORMULA GRANTS.—Section 501 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3751) is amended—

(A) in subsection (a), by striking “and units of local government” and inserting “, units of local government, and State and local courts”; and

(B) in subsection (b), by inserting “, State and local courts,” after “use by States”.

(2) DISCRETIONARY GRANTS.—Section 510(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3760(a)) is amended by inserting “, State and local courts,” after “private agencies,”.

(c) ARMOR VESTS.—Section 2501 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (3796ii) is amended—

(1) in subsection (a), by inserting “State and local court,” after “local,”; and

(2) in subsection (b), by inserting “State and local court” after “government,”.

(d) CHILD ABUSE PREVENTION.—Section 105 of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5106) is amended—

(1) in the section heading, by inserting “**STATE AND LOCAL COURTS,**” after “**AGENCIES**”;

(2) in subsection (a), by inserting “and State and local courts” after “such agencies or organizations”; and

(3) in subsection (a)(1), by inserting “and State and local courts” after “organizations”.

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8. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE KING OF IOWA, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of the bill, add the following:

**SEC. \_\_\_\_ . AUTHORITY OF FEDERAL JUDGES AND PROSECUTORS TO CARRY FIREARMS.**

(a) IN GENERAL.—Chapter 203 of title 18, United States Code, is amended by inserting after section 3053 the following:

**“§ 3054. Authority of Federal judges and prosecutors to carry firearms**

“Any justice of the United States or judge of the United States (as defined in section 451 of title 28), any judge of a court created under article I of the United States Constitution, any bankruptcy judge, any magistrate judge, any United States attorney, and any other officer or employee of the Department of Justice whose duties include representing the United States in a court of law, may carry firearms, subject to such regulations as the Attorney General shall prescribe. Such regulations shall provide for training and regular certification in the use of firearms and shall, with respect to justices, judges, bankruptcy judges, and magistrate judges, be prescribed after consultation with the Judicial Conference of the United States.”.

(b) CLERICAL AMENDMENT.—The table of sections for such chapter is amended by inserting after the item relating to section 3053 the following:

“3054. Authority of Federal judges and prosecutors to carry firearms.”.

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

Add at the end the following:

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

(a) REVIEW BY ATTORNEY GENERAL.—

(1) APPLICABILITY.—Section 2261 of title 28, United States Code, is amended by striking subsection (b) and inserting the following:

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

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

“(2) counsel was appointed pursuant to that mechanism, petitioner validly waived counsel, petitioner retained counsel, or petitioner was found not to be indigent.”.

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

(3) CERTIFICATION AND JUDICIAL REVIEW.—

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

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

“(a) CERTIFICATION.—

“(1) IN GENERAL.—If requested by an appropriate State official, the Attorney General of the United States shall determine—

“(A) whether the State has established a mechanism for the appointment, compensation, and payment of reason-

able litigation expenses of competent counsel in State postconviction proceedings brought by indigent prisoners who have been sentenced to death;

“(B) the date on which the mechanism described in subparagraph (A) was established; and

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

“(2) EFFECTIVE DATE.—The date the mechanism described in paragraph (1)(A) was established shall be the effective date of the certification under this subsection.

“(3) REQUIREMENTS.—

“(A) IN GENERAL.—To qualify for certification under paragraph (1)—

“(i) any mechanism described in subsection (1)(A) that was created on or after the effective date of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104–132) shall be created by statute, rule of the court of last resort, or rule of an agency authorized by State law to promulgate statewide rules of court and must meet the requirements of section 2261(c); and

“(ii) for any mechanism described in subsection (1)(A) that was created prior to the effective date of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104–132), all or part of the qualifying mechanism and standards may have been created by published policies, practices, and standards of the court of last resort or of a statewide judicial administrative agency, and the State must have substantially complied with the requirements of this section and section 2261 in providing qualified counsel to indigent prisoners sentenced to death who did not validly waive counsel.

“(B) ONLY EXPRESS REQUIREMENTS.—There are no requirements for certification or for application of this chapter other than those expressly stated in this chapter.

“(b) REGULATIONS.—The Attorney General shall promulgate regulations to implement the certification procedure under subsection (a).

“(c) REVIEW OF CERTIFICATION.—

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

“(2) VENUE.—The Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction over matters under paragraph (1), subject to review by the Supreme Court under section 2350 of this title.

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

(B) CLERICAL AMENDMENT.—The table of sections for chapter 154 of title 28, United States Code, is amended by

striking the item related to section 2265 and inserting the following:

“2265. Certification and judicial review.”.

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

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

(1) by redesignating paragraphs (1) through (3) as paragraphs (2) through (4), respectively; and

(2) by inserting before paragraph (2) the following:

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

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

“(b) VALIDITY OF CONVICTION.—A court, justice, or judge shall not have jurisdiction to consider a claim in an application under this chapter unless the claim concerns the validity of the conviction of the applicant for the underlying offense for which the applicant was sentenced to death. For a claim involving the offense of murder, conviction for the underlying offense means conviction for murder in any degree.

“(c) RELIEF.—For any claim brought under this section, relief shall not be granted, unless the denial of relief—

“(1) is contrary to, or would entail an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

“(2) would entail an unreasonable determination of a factual matter.”.

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

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

“(a) IN GENERAL.—

“(1) PENDING MATTERS.—A justice”;

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

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

(3) in subsection (a), as so designated by paragraph (1), by adding at the end the following:

“(2) MATTER NOT PENDING.—

“(A) IN GENERAL.—A habeas corpus proceeding is not pending, for this purpose, until the application is filed.

“(B) APPLICATION FOR COUNSEL.—If a State prisoner sentenced to death applies for appointment of counsel pursuant to section 408(q)(4)(B) of the Controlled Substances Act (21 U.S.C. 848(q)(4)(B)) in a court that would have jurisdiction to entertain a habeas application regarding that sentence, that court may stay execution of the sentence of death, but such a prefiling stay shall terminate not later



than 60 days after counsel is appointed or the application for appointment of counsel is withdrawn or denied.”; and  
 (4) by adding at the end the following:

“(c) STAY OF MATTERS.—

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

“(2) PRIORITY OF CASES.—Any case in which a stay of a sentence of death has been entered pursuant to this section shall have priority over all noncapital cases.

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

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

(f) ADDITIONAL PROVISIONS.—

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

(2) FINALITY OF REVIEW.—Section 2244(b)(3)(E) of title 28, United States Code, is amended by striking “the subject of a petition” and all that follows through the end of the subparagraph and inserting the following: “reheard in the court of appeals or reviewed by writ of certiorari.”.

(3) CLEMENCY AND PARDON DECISIONS.—

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

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

“(a) IN GENERAL.—Except as provided under subsection (b), and notwithstanding any other provision of law, no Federal court shall have jurisdiction to hear any cause or claim arising from the exercise of a State’s executive clemency or pardon power, or the process or procedures used under such power.

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

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

“1370. State clemency and pardon decisions.”.

(g) APPLICATION TO PENDING CASES.—

(1) IN GENERAL.—Except as otherwise provided in this section, this section and the amendments made by this section shall apply to cases pending on and after the date of enactment of this Act.

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

