

[116H7532]

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(Original Signature of Member)

118TH CONGRESS  
2D SESSION

**H. R.** \_\_\_\_\_

To amend title 28, United States Code, to clarify the availability of Federal habeas corpus relief for a person who is sentenced to death though actually innocent.

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**IN THE HOUSE OF REPRESENTATIVES**

Mr. JOHNSON of Georgia introduced the following bill; which was referred to the Committee on \_\_\_\_\_

\_\_\_\_\_  
**A BILL**

To amend title 28, United States Code, to clarify the availability of Federal habeas corpus relief for a person who is sentenced to death though actually innocent.

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 “Effective Death Pen-  
5       alty Appeals Act”.

1 **SEC. 2. CLARIFICATION OF THE AVAILABILITY OF FEDERAL**  
2 **HABEAS CORPUS RELIEF FOR A PERSON WHO**  
3 **IS SENTENCED TO DEATH THOUGH ACTU-**  
4 **ALLY INNOCENT.**

5 Section 2254(d) of title 28, United States Code, is  
6 amended—

7 (1) in paragraph (1), by striking “; or” and in-  
8 serting a semicolon;

9 (2) in paragraph (2), by striking the period and  
10 inserting “; or”; and

11 (3) by adding at the end the following:

12 “(3) resulted in, or left in force, a sentence of  
13 death that was imposed without consideration of  
14 newly discovered evidence which, in combination  
15 with the evidence presented at trial, demonstrates  
16 that the applicant is probably not guilty of the un-  
17 derlying offense.”.

18 **SEC. 3. CLARIFICATION OF THE AVAILABILITY OF AN EVI-**  
19 **DENTIARY HEARING.**

20 Section 2254(e)(2)(A) of title 28, United States  
21 Code, is amended—

22 (1) in clause (i), by striking “or” at the end;

23 (2) in clause (ii) by striking “and” at the end  
24 and inserting “or”; and

25 (3) by adding at the end the following:

1 “(iii) in the case of an applicant sen-  
2 tenced to death, such failure was the result  
3 of ineffective assistance of postconviction  
4 counsel in a State that prohibits an inef-  
5 fective assistance of counsel claim on direct  
6 appeal; and”.

7 **SEC. 4. CONFORMING AMENDMENTS RELATING TO SECOND**  
8 **AND SUCCESSIVE PETITIONS.**

9 (a) STATE CONVICTIONS.—Section 2244(b) of title  
10 28, United States Code, is amended—

11 (1) in paragraph (1), by striking “A” and in-  
12 serting “Except as provided in paragraph (5), a”;  
13 and

14 (2) by adding at the end the following:

15 “(5) A claim that an applicant was sentenced to  
16 death without consideration of newly discovered evi-  
17 dence which, in combination with the evidence pre-  
18 sented at trial, could reasonably be expected to dem-  
19 onstrate that the applicant is probably not guilty of  
20 the underlying offense may be presented in a second  
21 or successive habeas corpus application.”.

22 (b) FEDERAL CONVICTIONS.—Section 2255(h) of  
23 title 28, United States Code, is amended—

24 (1) in paragraph (1), by striking “or”;

1           (2) by striking the period at the end of para-  
2       graph (2) and inserting “; or”; and  
3           (3) by adding at the end the following:  
4           “(3) a claim that an applicant was sentenced to  
5       death without consideration of newly discovered evi-  
6       dence which, in combination with the evidence pre-  
7       sented at trial, could reasonably be expected to dem-  
8       onstrate that the applicant is probably not guilty of  
9       the underlying offense.”.