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MEMORANDUM

TO: Interested Persons

FROM: American Civil Liberties Union

RE: Analysis of the Habeas Corpus Provision in Omnibus Crime
Bill - Title XIII of H.R. 5269

Background

In the past several years, there has been a growing debate over the proper oversight role of the federal courts in state criminal matters. While most observers agree that the availability of the federal writ of habeas corpus is critical to the fair administration of justice - particularly in capital cases - some states have argued that the process takes too long, is subject to abuse, and ought to be eliminated. Others, including the American Bar Association have argued that the problems attributed to the writ are principally caused by the failure of the states to provide adequate legal counsel throughout the criminal process. Rather than restricting access to the writ, they argue for the provision of competent counsel at each stage of the criminal process and a simplification and streamlining of the habeas process.

The Judiciary Committee adopted a habeas corpus reform provision sponsored by Reps. Hughes (D-NJ) and Kastenmeier (D-WI) which builds on the A.B.A. model to address the problems of delay associated with postconviction death penalty litigation. The Committee defeated a substitute offered by Rep. Hyde which incorporates an approach first advocated by the Meese Justice Department. A brief analysis of each proposal is presented below.

H.R. 4737

H.R. 4737 differs from many other bills, including that adopted in the Senate, in that it would not establish a special optional chapter of the Judicial Code for death penalty habeas.

Instead, it contains a series of straightforward amendments to the existing habeas corpus statutes. It would make changes where reform is widely thought to be needed, and it establishes special rules for death penalty cases where the nature of capital litigation calls for different treatment.

With respect to capital cases, H.R. 4737 would establish a streamlined system in which petitioners would generally be entitled to only a single, expedited pass through federal habeas corpus. Death row prisoners would not be permitted to delay federal petitions, but would have to seek federal relief promptly after state court litigation is completed or face a strict statute of limitations. Once in federal court, they would have a fair chance to raise and litigate whatever federal claims they may have on the merits. If, however, relief is denied, in all but rare instances, second or successive petitions would be barred. In return for this expedited process, access to competent counsel would be assured.

The key elements of H.R. 4737 are as follows:

1. A one-year statute of limitations for death penalty habeas petitions, running from the end of direct review. The statute is tolled during any period in which a petitioner is not represented by counsel and while a petitioner is pursuing state postconviction relief. The statute of limitations would not toll during time spent seeking certiorari in the Supreme Court. An extension of 90 days is available on a showing of good cause. This is the first time a statute of limitations has been imposed on federal habeas corpus.
2. An automatic stay of execution in death penalty cases, which continues while a petitioner is pursuing judicial relief and expires if a petitioner fails to comply with the statute of limitations or after the completion of federal habeas corpus litigation. This will eliminate eleventh hour appeals. This approach was recommended by the Powell Commission, the ABA and the Judicial Conference.
3. A strict rule for death penalty cases, barring successive petitions raising new claims, except in three exceptional situations: 1) where a petitioner shows that state authorities unconstitutionally interfered with the petitioner's ability to raise a claim in a prior petition; 2) where the Supreme Court has announced a new rule of law retroactively applicable; or 3) where previously unknown facts have come to light that could not have been previously discovered through reasonable diligence. Even if one of those factors is shown, the petitioner must further demonstrate that the claim undermines confidence in the petitioner's guilt or the validity of the death sentence. This standard for successive petitions was adopted by the Judicial Conference.

4. A section clarifying the law that should govern in habeas cases, which restores the Supreme Court's approach to "retroactivity" prior to Teague v. Lane and other very recent cases. This section would assure uniformity in the application of new Supreme Court precedents, so that two prisoners with identical claims would be treated the same by the federal courts. The Powell Committee made no recommendation on this point. Some other bills have proposed other ways of reaching essentially the same result that H.R. 4737 reaches, using different language. The ABA has recommended legislation consistent with this provision of H.R. 4737.

5. A rule regarding procedural default in state court, which tracks the Supreme Court's doctrine as set forth in Wainwright v. Sykes. Petitioners raising claims that were not, but might have been, raised in state court will be barred from federal court unless they show that the constitutional error committed in state court was prejudicial to them and that there is cause for the failure to raise claims in state court. "Ignorance or neglect" by counsel may constitute cause although the burden rests with the petitioner to demonstrate that the failure to raise the claim was not deliberate.

6. A requirement that death penalty states provide qualified counsel at all stages of capital litigation in state court. H.R. 4737 would insist that statewide appointing authorities be established to develop rosters of qualified attorneys, to conduct training in capital litigation, and generally to ensure that qualified lawyers are provided to indigent clients. Habeas relief cannot be granted based on noncompliance with the counsel requirement. This provision is consistent with American Bar Association and Judicial Conference recommendations.

Together, the provisions in H.R. 4737 form a systematic, coherent package that promises to balance the states interest in finality with the petitioners interest in full federal review. This bill would directly address the serious problems that have been identified, but would retain the ability of the federal courts to enforce the Bill of Rights in habeas corpus.

The Republican Substitute

The substitute offered in committee consists of two provisions: Subtitle A which outlines optional procedures for death penalty cases; and subtitle B, which would apply to all habeas cases (including death penalty in states that do not elect to operate under subtitle A). Together they promise to put an