

106TH CONGRESS
2D SESSION

S. 2073

To reduce the risk that innocent persons may be executed, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 10, 2000

Mr. LEAHY (for himself, Mr. LEVIN, Mr. FEINGOLD, Mr. MOYNIHAN, and Mr. AKAKA) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To reduce the risk that innocent persons may be executed,
and for other purposes.

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; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Innocence Protection Act of 2000”.

6 (b) **TABLE OF CONTENTS.**—The table of contents for
7 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—EXONERATING THE INNOCENT THROUGH DNA TESTING

Sec. 101. Findings and purposes.

Sec. 102. DNA testing in Federal criminal justice system.

Sec. 103. DNA testing in State criminal justice systems.

Sec. 104. Prohibition pursuant to section 5 of the 14th amendment.

TITLE II—ENSURING COMPETENT LEGAL SERVICES IN CAPITAL
CASES

Sec. 201. Amendments to Byrne grant programs.

Sec. 202. Effect on procedural default rules.

Sec. 203. Capital representation grants.

TITLE III—COMPENSATING THE UNJUSTLY CONDEMNED

Sec. 301. Increased compensation in Federal cases.

Sec. 302. Compensation in State death penalty cases.

TITLE IV—MISCELLANEOUS PROVISIONS

Sec. 401. Accommodation of State interests in Federal death penalty prosecutions.

Sec. 402. Alternative of life imprisonment without possibility of release.

Sec. 403. Right to an informed jury.

Sec. 404. Annual reports.

Sec. 405. Discretionary appellate review.

Sec. 406. Sense of the Senate regarding the execution of juvenile offenders and the mentally retarded.

1 **TITLE I—EXONERATING THE IN-**
2 **NOCENT THROUGH DNA**
3 **TESTING**

4 **SEC. 101. FINDINGS AND PURPOSES.**

5 (a) FINDINGS.—Congress makes the following find-
6 ings:

7 (1) Over the past decade, deoxyribonucleic acid
8 testing (referred to in this section as “DNA test-
9 ing”) has emerged as the most reliable forensic tech-
10 nique for identifying criminals when biological mate-
11 rial is left at a crime scene.

12 (2) Because of its scientific precision, DNA
13 testing can, in some cases, conclusively establish the
14 guilt or innocence of a criminal defendant. In other

1 cases, DNA testing may not conclusively establish
2 guilt or innocence, but may have significant pro-
3 bative value to a finder of fact.

4 (3) While DNA testing is increasingly common-
5 place in pretrial investigations today, it was not
6 widely available in cases tried prior to 1994. More-
7 over, new forensic DNA testing procedures have
8 made it possible to get results from minute samples
9 that could not previously be tested, and to obtain
10 more informative and accurate results than earlier
11 forms of forensic DNA testing could produce. Con-
12 sequently, in some cases convicted inmates have
13 been exonerated by new DNA tests after earlier tests
14 had failed to produce definitive results.

15 (4) Since DNA testing is often feasible on rel-
16 evant biological material that is decades old, it can,
17 in some circumstances, prove that a conviction that
18 predated the development of DNA testing was based
19 upon incorrect factual findings. Uniquely, DNA evi-
20 dence showing innocence, produced decades after a
21 conviction, provides a more reliable basis for estab-
22 lishing a correct verdict than any evidence proffered
23 at the original trial. DNA testing, therefore, can and
24 has resulted in the post-conviction exoneration of in-
25 nocent men and women.

1 (5) In the past decade, there have been more
2 than 65 post-conviction exonerations in the United
3 States and Canada based upon DNA testing. At
4 least 8 individuals sentenced to death have been ex-
5 onerated through post-conviction DNA testing, some
6 of whom came within days of being executed.

7 (6) The 2 States that have established statutory
8 processes for post-conviction DNA testing, Illinois
9 and New York, have the most post-conviction DNA
10 exonerations, 14 and 7, respectively.

11 (7) The advent of DNA testing raises serious
12 concerns regarding the prevalence of wrongful con-
13 victions, especially wrongful convictions arising out
14 of mistaken eyewitness identification testimony. Ac-
15 cording to a 1996 Department of Justice study enti-
16 tled “Convicted by Juries, Exonerated by Science:
17 Case Studies of Post-Conviction DNA Exonera-
18 tions”, in approximately 20 to 30 percent of the
19 cases referred for DNA testing, the results excluded
20 the primary suspect. Without DNA testing, many of
21 these individuals might have been wrongfully con-
22 victed.

23 (8) Laws in more than 30 States require that
24 a motion for a new trial based on newly discovered
25 evidence of innocence be filed within 6 months or

1 less. These laws are premised on the belief—inappli-
2 cable to DNA testing—that evidence becomes less
3 reliable over time. Such time limits have been used
4 to deny inmates access to DNA testing, even when
5 guilt or innocence could be conclusively established
6 by such testing. For example, in *Dedge v. Florida*,
7 723 So.2d 322 (Fla. Dist. Ct. App. 1998), the court
8 without opinion affirmed the denial of a motion to
9 release trial evidence for the purpose of DNA test-
10 ing. The trial court denied the motion as proce-
11 durally barred under the 2-year limitation on claims
12 of newly discovered evidence established by the State
13 of Florida, which has since adopted a 6-month limi-
14 tation on such claims.

15 (9) Even when DNA testing has been done and
16 has persuasively demonstrated the actual innocence
17 of an inmate, States have sometimes relied on time
18 limits and other procedural barriers to deny release.

19 (10) The National Commission on the Future
20 of DNA Evidence, a Federal panel established by
21 the Department of Justice and comprised of law en-
22 forcement, judicial, and scientific experts, has issued
23 a report entitled “Recommendations For Handling
24 Post-Conviction DNA Applications” that urges post-
25 conviction DNA testing in 2 carefully defined cat-

1 egories of cases, notwithstanding procedural rules
2 that could be invoked to preclude such testing, and
3 notwithstanding the inability of the inmate to pay
4 for the testing.

5 (11) The number of cases in which post-convic-
6 tion DNA testing is appropriate is relatively small
7 and will decrease as pretrial testing becomes more
8 common and accessible.

9 (12) The cost of DNA testing has also de-
10 creased in recent years. The typical case, involving
11 the analysis of 8 samples, currently costs between
12 \$2,400 and \$5,000, depending upon jurisdictional
13 differences in personnel costs.

14 (13) In 1994, Congress authorized funding to
15 improve the quality and availability of DNA analysis
16 for law enforcement identification purposes. Since
17 then, States have been awarded over \$50,000,000 in
18 DNA-related grants.

19 (14) Although the Supreme Court has never an-
20 nounced a standard for addressing constitutional
21 claims of innocence, in *Herrera v. Collins*, 506 U.S.
22 390 (1993), a majority of the Court expressed the
23 view that, “a truly persuasive demonstration of ‘ac-
24 tual innocence’” made after trial would render im-
25 position of punishment by a State unconstitutional.

1 (15) If biological material is not subjected to
2 DNA testing in appropriate cases, there is a signifi-
3 cant risk that persuasive evidence of innocence will
4 not be detected and, accordingly, that innocent per-
5 sons will be unconstitutionally incarcerated or exe-
6 cuted.

7 (16) To prevent violations of the Constitution
8 of the United States that the Supreme Court antici-
9 pated in *Herrera v. Collins*, it is necessary and prop-
10 er to enact national legislation that ensures that the
11 Federal Government and the States will permit
12 DNA testing in appropriate cases.

13 (17) There is also a compelling need to ensure
14 the preservation of biological material for post-con-
15 viction DNA testing. Since 1992, the Innocence
16 Project at the Benjamin N. Cardozo School of Law
17 has received thousands of letters from inmates who
18 claim that DNA testing could prove them innocent.
19 In over 70 percent of those cases in which DNA
20 testing could have been dispositive of guilt or inno-
21 cence if the biological material were available, the
22 material had been destroyed or lost. In two-thirds of
23 the cases in which the evidence was found, and DNA
24 testing conducted, the results have exonerated the
25 inmate.

1 (18) In at least 14 cases, post-conviction DNA
2 testing that has exonerated a wrongly convicted per-
3 son has also provided evidence leading to the appre-
4 hension of the actual perpetrator, thereby enhancing
5 public safety. This would not have been possible if
6 the biological evidence had been destroyed.

7 (b) PURPOSES.—The purposes of this title are to—

8 (1) substantially implement the Recommenda-
9 tions of the National Commission on the Future of
10 DNA Evidence in the Federal criminal justice sys-
11 tem, by ensuring the availability of DNA testing in
12 appropriate cases;

13 (2) prevent the imposition of unconstitutional
14 punishments through the exercise of power granted
15 by clause 1 of section 8 and clause 2 of section 9
16 of article I of the Constitution of the United States
17 and section 5 of the 14th amendment to the Con-
18 stitution of the United States; and

19 (3) ensure that wrongfully convicted persons
20 have an opportunity to establish their innocence
21 through DNA testing, by requiring the preservation
22 of DNA evidence for a limited period.

1 **SEC. 102. DNA TESTING IN FEDERAL CRIMINAL JUSTICE**
 2 **SYSTEM.**

3 (a) IN GENERAL.—Part VI of title 28, United States
 4 Code, is amended by inserting after chapter 155 the fol-
 5 lowing:

6 **“CHAPTER 156—DNA TESTING**

“Sec.

“2291. DNA testing.

“2292. Preservation of biological material.

7 **“§ 2291. DNA testing**

8 “(a) APPLICATION.—Notwithstanding any other pro-
 9 vision of law, a person in custody pursuant to the judg-
 10 ment of a court established by an Act of Congress may,
 11 at any time after conviction, apply to the court that en-
 12 tered the judgment for forensic DNA testing of any bio-
 13 logical material that—

14 “(1) is related to the investigation or prosecu-
 15 tion that resulted in the judgment;

16 “(2) is in the actual or constructive possession
 17 of the Government; and

18 “(3) was not previously subjected to DNA test-
 19 ing, or can be subjected to retesting with new DNA
 20 techniques that provide a reasonable likelihood of
 21 more accurate and probative results.

22 “(b) NOTICE TO GOVERNMENT.—

23 “(1) IN GENERAL.—The court shall notify the
 24 Government of an application made under subsection

1 (a) and shall afford the Government an opportunity
2 to respond.

3 “(2) PRESERVATION OF REMAINING BIOLOGI-
4 CAL MATERIAL.—Upon receiving notice of an appli-
5 cation made under subsection (a), the Government
6 shall take such steps as are necessary to ensure that
7 any remaining biological material that was secured
8 in connection with the case is preserved pending the
9 completion of proceedings under this section.

10 “(c) ORDER.—The court shall order DNA testing
11 pursuant to an application made under subsection (a)
12 upon a determination that testing may produce noncumu-
13 lative, exculpatory evidence relevant to the claim of the
14 applicant that the applicant was wrongfully convicted or
15 sentenced.

16 “(d) COST.—The cost of DNA testing ordered under
17 subsection (c) shall be borne by the Government or the
18 applicant, as the court may order in the interests of jus-
19 tice, if it is shown that the applicant is not indigent and
20 possesses the means to pay.

21 “(e) COUNSEL.—The court may at any time appoint
22 counsel for an indigent applicant under this section.

23 “(f) POST-TESTING PROCEDURES.—

24 “(1) PROCEDURES FOLLOWING RESULTS UNFA-
25 VORABLE TO APPLICANT.—If the results of DNA

1 testing conducted under this section are unfavorable
2 to the applicant, the court—

3 “(A) shall dismiss the application; and

4 “(B) in the case of an applicant who is not
5 indigent, may assess the applicant for the cost
6 of such testing.

7 “(2) PROCEDURES FOLLOWING RESULTS FA-
8 VORABLE TO APPLICANT.—If the results of DNA
9 testing conducted under this section are favorable to
10 the applicant, the court shall—

11 “(A) order a hearing, notwithstanding any
12 provision of law that would bar such a hearing;
13 and

14 “(B) enter any order that serves the inter-
15 ests of justice, including an order—

16 “(i) vacating and setting aside the
17 judgment;

18 “(ii) discharging the applicant if the
19 applicant is in custody;

20 “(iii) resentencing the applicant; or

21 “(iv) granting a new trial.

22 “(g) RULE OF CONSTRUCTION.—Nothing in this sec-
23 tion shall be construed to limit the circumstances under
24 which a person may obtain DNA testing or other post-
25 conviction relief under any other provision of law.

1 **“§ 2292. Preservation of biological material**

2 “(a) IN GENERAL.—Notwithstanding any other pro-
3 vision of law and subject to subsection (b), the Govern-
4 ment shall preserve any biological material secured in con-
5 nection with a criminal case for such period of time as
6 any person remains incarcerated in connection with that
7 case.

8 “(b) EXCEPTION.—The Government may destroy bio-
9 logical material before the expiration of the period of time
10 described in subsection (a) if—

11 “(1) the Government notifies any person who
12 remains incarcerated in connection with the case,
13 and any counsel of record or public defender organi-
14 zation for the judicial district in which the judgment
15 of conviction for such person was entered, of—

16 “(A) the intention of the Government to
17 destroy the material; and

18 “(B) the provisions of this chapter;

19 “(2) no person makes an application under sec-
20 tion 2291(a) within 90 days of receiving notice
21 under paragraph (1) of this subsection; and

22 “(3) no other provision of law requires that
23 such biological material be preserved.”.

24 (b) TECHNICAL AND CONFORMING AMENDMENT.—
25 The analysis for part VI of title 28, United States Code,

1 is amended by inserting after the item relating to chapter
2 155 the following:

“156. DNA Testing 2291”.

3 **SEC. 103. DNA TESTING IN STATE CRIMINAL JUSTICE SYS-**
4 **TEMS.**

5 (a) DNA IDENTIFICATION GRANT PROGRAM.—Sec-
6 tion 2403 of title I of the Omnibus Crime Control and
7 Safe Streets Act of 1968 (42 U.S.C. 3796kk-2) is
8 amended—

9 (1) in paragraph (2)—

10 (A) in the matter preceding subparagraph
11 (A), by striking “shall” and inserting “will”;

12 (B) in subparagraph (C), by striking “is
13 charged” and inserting “was charged or con-
14 victed”; and

15 (C) in subparagraph (D), by striking
16 “and” at the end;

17 (2) in paragraph (3)—

18 (A) by striking “shall” and inserting
19 “will”; and

20 (B) by striking the period at the end and
21 inserting “; and”; and

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

23 “(4) the State will—

24 “(A) preserve all biological material se-
25 cured in connection with a State criminal case

1 for not less than the period of time that biologi-
2 cal material is required to be preserved under
3 section 2292 of title 28, United States Code, in
4 the case of a person incarcerated in connection
5 with a Federal criminal case; and

6 “(B) make DNA testing available to any
7 person convicted in State court to the same ex-
8 tent, and under the same conditions, that DNA
9 testing is available under section 2291 of title
10 28, United States Code, to any person convicted
11 in a court established by an Act of Congress.”.

12 (b) DRUG CONTROL AND SYSTEM IMPROVEMENT
13 GRANT PROGRAM.—Section 503(a)(12) of title I of the
14 Omnibus Crime Control and Safe Streets Act of 1968 (42
15 U.S.C. 3753(a)(12)) is amended—

16 (1) in subparagraph (B)—

17 (A) in clause (iii), by striking “is charged”
18 and inserting “was charged or convicted”; and

19 (B) in clause (iv), by striking “and” at the
20 end;

21 (2) in subparagraph (C), by striking the period
22 at the end and inserting “; and”; and

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

24 “(D) the State will—

1 “(i) preserve all biological material se-
2 cured in connection with a State criminal
3 case for not less than the period of time
4 that biological material is required to be
5 preserved under section 2292 of title 28,
6 United States Code, in the case of a per-
7 son incarcerated in connection with a Fed-
8 eral criminal case; and

9 “(ii) make DNA testing available to a
10 person convicted in State court to the
11 same extent, and under the same condi-
12 tions, that DNA testing is available under
13 section 2291 of title 28, United States
14 Code, to a person convicted in a court es-
15 tablished by an Act of Congress.”.

16 (c) PUBLIC SAFETY AND COMMUNITY POLICING
17 GRANT PROGRAM.—Section 1702(c) of title I of the Om-
18 nibus Crime Control and Safe Streets Act of 1968 (42
19 U.S.C. 3796dd–1(c)) is amended—

20 (1) in paragraph (10), by striking “and” at the
21 end;

22 (2) in paragraph (11), by striking the period at
23 the end and inserting “; and”; and

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

1 “(12) if any part of funds received from a grant
2 made under this subchapter is to be used to develop
3 or improve a DNA analysis capability in a forensic
4 laboratory, or to obtain or analyze DNA samples for
5 inclusion in the Combined DNA Index System
6 (CODIS), certify that—

7 “(A) DNA analyses performed at such lab-
8 oratory will satisfy or exceed the current stand-
9 ards for a quality assurance program for DNA
10 analysis, issued by the Director of the Federal
11 Bureau of Investigation under section 210303
12 of the DNA Identification Act of 1994 (42
13 U.S.C. 14131);

14 “(B) DNA samples and analyses obtained
15 and performed by such laboratory will be acces-
16 sible only—

17 “(i) to criminal justice agencies for
18 law enforcement purposes;

19 “(ii) in judicial proceedings, if other-
20 wise admissible under applicable statutes
21 and rules;

22 “(iii) for criminal defense purposes, to
23 a defendant, who shall have access to sam-
24 ples and analyses performed in connection

1 with the case in which the defendant was
2 charged or convicted; or

3 “(iv) if personally identifiable infor-
4 mation is removed, for a population statis-
5 tics database, for identification research
6 and protocol development purposes, or for
7 quality control purposes;

8 “(C) the laboratory and each analyst per-
9 forming DNA analyses at the laboratory will
10 undergo, at regular intervals not exceeding 180
11 days, external proficiency testing by a DNA
12 proficiency testing program that meets the
13 standards issued under section 210303 of the
14 DNA Identification Act of 1994 (42 U.S.C.
15 14131); and

16 “(D) the State will—

17 “(i) preserve all biological material se-
18 cured in connection with a State criminal
19 case for not less than the period of time
20 that biological material is required to be
21 preserved under section 2292 of title 28,
22 United States Code, in the case of a per-
23 son incarcerated in connection with a Fed-
24 eral criminal case; and

1 “(ii) make DNA testing available to
2 any person convicted in State court to the
3 same extent, and under the same condi-
4 tions, that DNA testing is available under
5 section 2291 of title 28, United States
6 Code, to a person convicted in a court es-
7 tablished by an Act of Congress.”.

8 **SEC. 104. PROHIBITION PURSUANT TO SECTION 5 OF THE**
9 **14TH AMENDMENT.**

10 (a) REQUEST FOR DNA TESTING.—

11 (1) IN GENERAL.—No State shall deny a re-
12 quest, made by a person in custody resulting from
13 a State court judgment, for DNA testing of biologi-
14 cal material that—

15 (A) is related to the investigation or pros-
16 ecution that resulted in the conviction of the
17 person or the sentence imposed on the person;

18 (B) is in the actual or constructive posses-
19 sion of the State; and

20 (C) was not previously subjected to DNA
21 testing, or can be subjected to retesting with
22 new DNA techniques that provide a reasonable
23 likelihood of more accurate and probative re-
24 sults.

1 (2) EXCEPTION.—A State may deny a request
 2 under paragraph (1) upon a judicial determination
 3 that testing could not produce noncumulative evi-
 4 dence establishing a reasonable probability that the
 5 person was wrongfully convicted or sentenced.

6 (b) OPPORTUNITY TO PRESENT RESULTS OF DNA
 7 TESTING.—No State shall rely upon a time limit or proce-
 8 dural default rule to deny a person an opportunity to
 9 present noncumulative, exculpatory DNA results in court,
 10 or in an executive or administrative forum in which a deci-
 11 sion is made in accordance with procedural due process.

12 (c) REMEDY.—A person may enforce subsections (a)
 13 and (b) in a civil action for declaratory or injunctive relief,
 14 filed either in a State court of general jurisdiction or in
 15 a district court of the United States, naming either the
 16 State or an executive or judicial officer of the State as
 17 defendant. No State or State executive or judicial officer
 18 shall have immunity from actions under this subsection.

19 **TITLE II—ENSURING COM-**
 20 **PETENT LEGAL SERVICES IN**
 21 **CAPITAL CASES**

22 **SEC. 201. AMENDMENTS TO BYRNE GRANT PROGRAMS.**

23 (a) CERTIFICATION REQUIREMENT; FORMULA
 24 GRANTS.—Section 503 of title I of the Omnibus Crime

1 Control and Safe Streets Act of 1968 (42 U.S.C. 3753)
2 is amended—

3 (1) in subsection (a), by adding at the end the
4 following:

5 “(13) If the State prescribes, authorizes, or
6 permits the penalty of death for any offense, a cer-
7 tification that the State has established and main-
8 tains an effective system for providing competent
9 legal services to indigents at every phase of a State
10 criminal prosecution in which a death sentence is
11 sought or has been imposed, up to and including di-
12 rect appellate review and post-conviction review in
13 State court.”; and

14 (2) in subsection (b)—

15 (A) by striking “(b) Within 30 days after
16 the date of enactment of this part, the” and in-
17 serting the following:

18 “(b) REGULATIONS.—

19 “(1) IN GENERAL.—The”; and

20 (B) by adding at the end the following:

21 “(2) CERTIFICATION REGULATIONS.—The Di-
22 rector of the Administrative Office of the United
23 States Courts, after notice and an opportunity for
24 comment, shall promulgate regulations specifying
25 the elements of an effective system within the mean-

1 ing of subsection (a)(13), which elements shall
2 include—

3 “(A) a centralized and independent ap-
4 pointing authority, which shall have authority
5 and responsibility to—

6 “(i) recruit attorneys who are quali-
7 fied to represent indigents in the capital
8 proceedings specified in subsection (a)(13);

9 “(ii) draft and annually publish a ros-
10 ter of qualified attorneys;

11 “(iii) draft and annually publish quali-
12 fications and performance standards that
13 attorneys must satisfy to be listed on the
14 roster and procedures by which qualified
15 attorneys are identified;

16 “(iv) periodically review the roster,
17 monitor the performance of all attorneys
18 appointed, provide a mechanism by which
19 members of the Bar may comment on the
20 performance of their peers, and delete the
21 name of any attorney who fails to complete
22 regular training programs on the represen-
23 tation of clients in capital cases, fails to
24 meet performance standards in a case to
25 which the attorney is appointed, or other-

1 wise fails to demonstrate continuing com-
2 petence to represent clients in capital
3 cases;

4 “(v) conduct or sponsor specialized
5 training programs for attorneys rep-
6 resenting clients in capital cases;

7 “(vi) appoint lead counsel and co-
8 counsel from the roster to represent a de-
9 fendant in a capital case promptly upon re-
10 ceiving notice of the need for an appoint-
11 ment from the relevant State court; and

12 “(vii) report the appointment, or the
13 failure of the defendant to accept such ap-
14 pointment, to the court requesting the ap-
15 pointment;

16 “(B) compensation of private attorneys for
17 actual time and service, computed on an hourly
18 basis and at a reasonable hourly rate in light of
19 the qualifications and experience of the attorney
20 and the local market for legal representation in
21 cases reflecting the complexity and responsi-
22 bility of capital cases;

23 “(C) reimbursement of private attorneys
24 and public defender organizations for attorney
25 expenses reasonably incurred in the representa-

1 tion of a client in a capital case, computed on
2 an hourly basis reflecting the local market for
3 such services; and

4 “(D) reimbursement of private attorneys
5 and public defender organizations for the rea-
6 sonable costs of law clerks, paralegals, inves-
7 tigators, experts, scientific tests, and other sup-
8 port services necessary in the representation of
9 a defendant in a capital case, computed on an
10 hourly basis reflecting the local market for such
11 services.”.

12 (b) CERTIFICATION REQUIREMENT; DISCRETIONARY
13 GRANTS.—Section 517(a) of title I of the Omnibus Crime
14 Control and Safe Streets Act of 1968 (42 U.S.C. 3763(a))
15 is amended—

16 (1) in paragraph (3), by striking “and” at the
17 end;

18 (2) in paragraph (4), by striking the period at
19 the end and inserting “; and”; and

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

21 “(5) satisfies the certification requirement es-
22 tablished by section 503(a)(13).”.

23 (c) DIRECTOR’S REPORTS TO CONGRESS.—Section
24 522(b) of title I of the Omnibus Crime Control and Safe
25 Streets Act of 1968 (42 U.S.C. 3766b(b)) is amended—

1 (1) in paragraph (4), by striking “and” at the
2 end;

3 (2) by redesignating paragraph (5) as para-
4 graph (6); and

5 (3) by inserting after paragraph (4) the fol-
6 lowing:

7 “(5) descriptions and a comparative analysis of
8 the systems established by each State in order to
9 satisfy the certification requirement established by
10 section 503(a)(13), except that the descriptions and
11 the comparative analysis shall include—

12 “(A) the qualifications and performance
13 standards established pursuant to section
14 503(b)(2)(A)(iii);

15 “(B) the rates of compensation paid under
16 section 503(b)(2)(B); and

17 “(C) the rates of reimbursement paid
18 under subparagraphs (C) and (D) of section
19 503(b)(2); and”.

20 (d) EFFECTIVE DATE.—

21 (1) IN GENERAL.—Subject to paragraph (2),
22 the amendments made by this section shall apply
23 with respect to any application submitted on or after
24 the date that is 1 year after the date of enactment
25 of this Act.

1 (2) EXCEPTION.—The amendments made by
2 this section shall not take effect until the amount
3 made available for a fiscal year to carry out part E
4 of title I of the Omnibus Crime Control and Safe
5 Streets Act of 1968 equals or exceeds an amount
6 that is \$50,000,000 greater than the amount made
7 available to carry out that part for fiscal year 2000.

8 (e) REGULATIONS.—The Director of the Administra-
9 tive Office of the United States Courts shall issue all regu-
10 lations necessary to carry out the amendments made by
11 this section not later than 180 days before the effective
12 date of those regulations.

13 **SEC. 202. EFFECT ON PROCEDURAL DEFAULT RULES.**

14 Section 2254(e) of title 28, United States Code, is
15 amended—

16 (1) in paragraph (1), by striking “In a pro-
17 ceeding” and inserting “Except as provided in para-
18 graph (3), in a proceeding”; and

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

20 “(3) In a proceeding instituted by an indigent
21 applicant under sentence of death, the court shall
22 neither presume a finding of fact made by a State
23 court to be correct nor decline to consider a claim
24 on the ground that the applicant failed to raise such

1 claim in State court at the time and in the manner
2 prescribed by State law, unless—

3 “(A) the State provided the applicant with
4 legal services at the stage of the State pro-
5 ceedings at which the State court made the
6 finding of fact or the applicant failed to raise
7 the claim; and

8 “(B) the legal services the State provided
9 satisfied the regulations promulgated by the Di-
10 rector of the Administrative Office of the
11 United States Courts pursuant to section
12 503(b)(2) of title I of the Omnibus Crime Con-
13 trol and Safe Streets Act of 1968.”.

14 **SEC. 203. CAPITAL REPRESENTATION GRANTS.**

15 Section 3006A of title 18, United States Code, is
16 amended—

17 (1) by redesignating subsections (i), (j), and (k)
18 as subsections (j), (k), and (l), respectively; and

19 (2) by inserting after subsection (h) the fol-
20 lowing:

21 “(i) CAPITAL REPRESENTATION GRANTS.—

22 “(1) DEFINITIONS.—In this subsection—

23 “(A) the term ‘capital case’—

24 “(i) means any criminal case in which
25 a defendant prosecuted in a State court is

1 subject to a sentence of death or in which
2 a death sentence has been imposed; and

3 “(ii) includes all proceedings filed in
4 connection with the case, including trial,
5 appellate, and Federal and State post-con-
6 viction proceedings;

7 “(B) the term ‘defense services’ includes—

8 “(i) recruitment of counsel;

9 “(ii) training of counsel;

10 “(iii) legal and administrative support
11 and assistance to counsel;

12 “(iv) direct representation of defend-
13 ants, if the availability of other qualified
14 counsel is inadequate to meet the need in
15 the jurisdiction served by the grant recipi-
16 ent; and

17 “(v) investigative, expert, or other
18 services necessary for adequate representa-
19 tion; and

20 “(C) the term ‘Director’ means the Direc-
21 tor of the Administrative Office of the United
22 States Courts.

23 “(2) GRANT AWARD AND CONTRACT AUTHOR-
24 ITY.—Notwithstanding subsection (g), the Director
25 shall award grants to, or enter into contracts with,

1 public agencies or private nonprofit organizations for
2 the purpose of providing defense services in capital
3 cases.

4 “(3) PURPOSES.—Grants and contracts award-
5 ed under this subsection shall be used in connection
6 with capital cases in the jurisdiction of the grant re-
7 cipient for 1 or more of the following purposes:

8 “(A) Enhancing the availability, com-
9 petence, and prompt assignment of counsel.

10 “(B) Encouraging continuity of represen-
11 tation between Federal and State proceedings.

12 “(C) Decreasing the cost of providing
13 qualified counsel.

14 “(D) Increasing the efficiency with which
15 such cases are resolved.

16 “(4) GUIDELINES.—The Director, in consulta-
17 tion with the Judicial Conference of the United
18 States, shall develop guidelines to ensure that de-
19 fense services provided by recipients of grants and
20 contracts awarded under this subsection are con-
21 sistent with applicable legal and ethical proscriptions
22 governing the duties of counsel in capital cases.

23 “(5) CONSULTATION.—In awarding grants and
24 contracts under this subsection, the Director shall
25 consult with representatives of the highest State

1 court, the organized bar, and the defense bar of the
2 jurisdiction to be served by the recipient of the grant
3 or contract.”.

4 **TITLE III—COMPENSATING THE**
5 **UNJUSTLY CONDEMNED**

6 **SEC. 301. INCREASED COMPENSATION IN FEDERAL CASES.**

7 Section 2513 of title 28, United States Code, is
8 amended by striking subsection (e) and inserting the fol-
9 lowing:

10 “(e) DAMAGES.—

11 “(1) IN GENERAL.—The amount of damages
12 awarded in an action described in subsection (a)
13 shall not exceed \$50,000 for each 12-month period
14 of incarceration, except that a plaintiff who was un-
15 justly sentenced to death may be awarded not more
16 than \$100,000 for each 12-month period of incarcer-
17 ation.

18 “(2) FACTORS FOR CONSIDERATION IN ASSESS-
19 ING DAMAGES.—In assessing damages in an action
20 described in subsection (a), the court shall
21 consider—

22 “(A) the circumstances surrounding the
23 unjust conviction of the plaintiff, including any
24 misconduct by officers or employees of the Fed-
25 eral Government;

1 “(B) the length and conditions of the un-
2 just incarceration of the plaintiff; and

3 “(C) the family circumstances, loss of
4 wages, and pain and suffering of the plaintiff.”.

5 **SEC. 302. COMPENSATION IN STATE DEATH PENALTY**
6 **CASES.**

7 (a) **CRIMINAL JUSTICE FACILITY CONSTRUCTION**
8 **GRANT PROGRAM.**—Section 603(a) of title I of the Omni-
9 bus Crime Control and Safe Streets Act of 1968 (42
10 U.S.C. 3769b(a)) is amended—

11 (1) in paragraph (5), by striking “and” at the
12 end;

13 (2) in paragraph (6), by striking the period at
14 the end and inserting “; and”; and

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

16 “(7) reasonable assurance that the applicant, or
17 the State in which the applicant is located—

18 “(A) does not prescribe, authorize, or per-
19 mit the penalty of death for any offense; or

20 “(B)(i) has established and maintains an
21 effective procedure by which any person un-
22 justly convicted of an offense against the State
23 and sentenced to death may be awarded reason-
24 able damages upon substantial proof that the

1 person did not commit any of the acts with
 2 which the person was charged; and

3 “(ii)(I) the conviction of that person was
 4 reversed or set aside on the ground that the
 5 person was not guilty of the offense or offenses
 6 of which the person was convicted;

7 “(II) the person was found not guilty of
 8 such offense or offenses on new trial or rehear-
 9 ing; or

10 “(III) the person was pardoned upon the
 11 stated ground of innocence and unjust convic-
 12 tion.”.

13 (b) EFFECTIVE DATE.—The amendments made by
 14 this section shall apply with respect to any application
 15 submitted on or after the date that is 1 year after the
 16 date of enactment of this Act.

17 **TITLE IV—MISCELLANEOUS**
 18 **PROVISIONS**

19 **SEC. 401. ACCOMMODATION OF STATE INTERESTS IN FED-**
 20 **ERAL DEATH PENALTY PROSECUTIONS.**

21 (a) RECOGNITION OF STATE INTERESTS.—Chapter
 22 228 of title 18, United States Code, is amended by adding
 23 at the end the following:

1 **“§ 3599. Accommodation of State interests; certifi-**
2 **cation requirement**

3 “(a) IN GENERAL.—Notwithstanding any other pro-
4 vision of law, the Government shall not seek the death
5 penalty in any case initially brought before a district court
6 of the United States that sits in a State that does not
7 prescribe, authorize, or permit the imposition of such pen-
8 alty for the alleged conduct, except upon the certification
9 in writing of the Attorney General or the designee of the
10 Attorney General that—

11 “(1) the State does not have jurisdiction or re-
12 fuses to assume jurisdiction over the defendant with
13 respect to the alleged conduct;

14 “(2) the State has requested that the Federal
15 Government assume jurisdiction; or

16 “(3) the offense charged is an offense described
17 in section 32, 229, 351, 794, 1091, 1114, 1118,
18 1203, 1751, 1992, 2340A, or 2381, or chapter
19 113B.

20 “(b) “STATE DEFINED.—In this section, the term
21 ‘State’ means each of the several States of the United
22 States, the District of Columbia, and the territories and
23 possessions of the United States.”

1 (b) TECHNICAL AND CONFORMING AMENDMENT.—

2 The analysis for chapter 228 of title 18, United States

3 Code, is amended by adding at the end the following:

“3599. Accommodation of State interests; certification requirement.”.

4 **SEC. 402. ALTERNATIVE OF LIFE IMPRISONMENT WITHOUT**

5 **POSSIBILITY OF RELEASE.**

6 Section 408(l) of the Controlled Substances Act (21

7 U.S.C. 848(l)), is amended by striking the first 2 sen-

8 tences and inserting the following: “Upon a recommenda-

9 tion under subsection (k) that the defendant should be

10 sentenced to death or life imprisonment without possibility

11 of release, the court shall sentence the defendant accord-

12 ingly. Otherwise, the court shall impose any lesser sen-

13 tence that is authorized by law.”.

14 **SEC. 403. RIGHT TO AN INFORMED JURY.**

15 (a) ADDITIONAL REQUIREMENTS.—Section 20105 of

16 the Violent Crime Control and Law Enforcement Act of

17 1994 (42 U.S.C. 13705) is amended by striking subsection

18 (b) and inserting the following:

19 “(b) ADDITIONAL REQUIREMENTS.—To be eligible to

20 receive a grant under section 20103 or 20104, a State

21 shall provide assurances to the Attorney General that—

22 “(1) the State has implemented policies that

23 provide for the recognition of the rights and needs

24 of crime victims; and

1 “(2) in any capital case in which the jury has
2 a role in determining the sentence imposed on the
3 defendant, the court, at the request of the defend-
4 ant, shall inform the jury of all statutorily author-
5 ized sentencing options in the particular case, in-
6 cluding applicable parole eligibility rules and
7 terms.”.

8 (b) **EFFECTIVE DATE.**—The amendments made by
9 this section shall apply with respect to any application for
10 a grant under section 20103 or 20104 of the Violent
11 Crime Control and Law Enforcement Act of 1994 (42
12 U.S.C. 13703; 13704) that is submitted on or after the
13 date that is 1 year after the date of enactment of this
14 Act.

15 **SEC. 404. ANNUAL REPORTS.**

16 (a) **REPORT.**—Not later than 2 years after the date
17 of enactment of this Act, and annually thereafter, the At-
18 torney General shall prepare and transmit to Congress a
19 report concerning the administration of capital punish-
20 ment laws by the Federal Government and the States.

21 (b) **REPORT ELEMENTS.**—The report required under
22 subsection (a) shall include substantially the same cat-
23 egories of information as are included in the Bureau of
24 Justice Statistics Bulletin entitled “Capital Punishment

1 1998” (December 1999, NCJ 179012), and the following
2 additional categories of information:

3 (1) The percentage of death-eligible cases in
4 which a death sentence is sought, and the percent-
5 age in which it is imposed.

6 (2) The race of the defendants in death-eligible
7 cases, including death-eligible cases in which a death
8 sentence is not sought, and the race of the victims.

9 (3) An analysis of the effect of *Witherspoon v.*
10 *Illinois*, 391 U.S. 510 (1968), and its progeny, on
11 the composition of juries in capital cases, including
12 the racial composition of such juries, and on the ex-
13 clusion of otherwise eligible and available jurors
14 from such cases.

15 (4) An analysis of the effect of peremptory
16 challenges, by the prosecution and defense respec-
17 tively, on the composition of juries in capital cases,
18 including the racial composition of such juries, and
19 on the exclusion of otherwise eligible and available
20 jurors from such cases.

21 (5) The percentage of capital cases in which life
22 without parole is available as an alternative to a
23 death sentence, and the sentences imposed in such
24 cases.

1 (6) The percentage of capital cases in which life
2 without parole is not available as an alternative to
3 a death sentence, and the sentences imposed in such
4 cases.

5 (7) The percentage of capital cases in which
6 counsel is retained by the defendant, and the per-
7 centage in which counsel is appointed by the court.

8 (8) A comparative analysis of systems for ap-
9 pointing counsel in capital cases in different States.

10 (9) A State-by-State analysis of the rates of
11 compensation paid in capital cases to appointed
12 counsel and their support staffs.

13 (10) The percentage of cases in which a death
14 sentence or a conviction underlying a death sentence
15 is vacated, reversed, or set aside, and the reasons
16 therefore.

17 (c) PUBLIC DISCLOSURE.—The Attorney General or
18 the Director of the Bureau of Justice Assistance, as ap-
19 propriate, shall ensure that the reports referred to in sub-
20 section (a) are—

21 (1) distributed to national print and broadcast
22 media; and

23 (2) posted on an Internet website maintained
24 by the Department of Justice.

1 **SEC. 405. DISCRETIONARY APPELLATE REVIEW.**

2 Section 2254(c) of title 28, United States Code, is
3 amended—

4 (1) by inserting “(1)” after “(c)”; and

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

6 “(2) For purposes of paragraph (1), if the highest
7 court of a State has discretion to decline appellate review
8 of a case or a claim, a petition asking that court to enter-
9 tain a case or a claim is not an available State court proce-
10 dure.”.

11 **SEC. 406. SENSE OF THE SENATE REGARDING THE EXECU-**
12 **TION OF JUVENILE OFFENDERS AND THE**
13 **MENTALLY RETARDED.**

14 It is the sense of the Senate that the death penalty
15 is disproportionate and offends contemporary standards of
16 decency when applied to a person who is mentally retarded
17 or who had not attained the age of 18 years at the time
18 of the offense.

○