

Calendar No. 731107TH CONGRESS
2^D SESSION**S. 486****[Report No. 107-315]**

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

IN THE SENATE OF THE UNITED STATES

MARCH 7, 2001

Mr. LEAHY (for himself, Mr. SMITH of Oregon, Ms. COLLINS, Mr. LEVIN, Mr. FEINGOLD, Mr. JEFFORDS, Mr. KENNEDY, Mr. CHAFEE, Mr. AKAKA, Ms. MIKULSKI, Mr. DODD, Mr. LIEBERMAN, Mr. TORRICELLI, Mr. WELLSTONE, Mrs. BOXER, Mr. CORZINE, Mrs. CLINTON, Mr. BINGAMAN, Ms. CANTWELL, Mr. REED, Mr. DURBIN, Mr. SARBANES, Mr. KERRY, Mr. WARNER, Mr. INOUE, Mr. EDWARDS, Mrs. MURRAY, Mr. BIDEN, Mr. SPECTER, Mrs. FEINSTEIN, and Mr. SCHUMER) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

OCTOBER 16, 2002

Reported by Mr. LEAHY, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

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,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) **SHORT TITLE.**—This Act may be cited as the
3 “Innocence Protection Act of 2001”.

4 (b) **TABLE OF CONTENTS.**—The table of contents for
5 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. Post-conviction DNA testing in Federal criminal justice system.

Sec. 103. Post-conviction DNA testing in State criminal justice systems.

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

Sec. 105. Grants to prosecutors for DNA testing programs.

**TITLE II—ENSURING COMPETENT LEGAL SERVICES IN CAPITAL
CASES**

Sec. 201. National Commission on Capital Representation.

Sec. 202. Capital defense incentive grants.

Sec. 203. Amendments to prison grant programs.

Sec. 204. Effect on procedural default rules.

Sec. 205. Capital defense resource grants.

TITLE III—MISCELLANEOUS PROVISIONS

Sec. 301. Increased compensation in Federal cases.

Sec. 302. Compensation in State death penalty cases.

Sec. 303. Certification requirement in Federal death penalty prosecutions.

Sec. 304. Alternative of life imprisonment without possibility of release.

Sec. 305. Right to an informed jury.

Sec. 306. Annual reports.

Sec. 307. Sense of Congress regarding the execution of juvenile offenders and
the mentally retarded.

6 **TITLE I—EXONERATING THE IN-**
7 **NOCENT THROUGH DNA**
8 **TESTING**

9 **SEC. 101. FINDINGS AND PURPOSES.**

10 (a) **FINDINGS.**—Congress makes the following find-
11 ings:

12 (1) Over the past decade, deoxyribonucleic acid
13 testing (referred to in this section as “DNA test-

1 ing”) has emerged as the most reliable forensic tech-
2 nique for identifying criminals when biological mate-
3 rial is left at a crime scene.

4 (2) Because of its scientific precision, DNA
5 testing can, in some cases, conclusively establish the
6 guilt or innocence of a criminal defendant. In other
7 cases, DNA testing may not conclusively establish
8 guilt or innocence, but may have significant pro-
9 bative value to a finder of fact.

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

21 (4) Since DNA testing is often feasible on rel-
22 evant biological material that is decades old, it can,
23 in some circumstances, prove that a conviction that
24 predated the development of DNA testing was based
25 upon incorrect factual findings. Uniquely, DNA evi-

1 dence showing innocence, produced decades after a
2 conviction, provides a more reliable basis for estab-
3 lishing a correct verdict than any evidence proffered
4 at the original trial. DNA testing, therefore, can and
5 has resulted in the post-conviction exoneration of in-
6 nocent men and women.

7 (5) In more than 80 cases in the United States,
8 DNA evidence has led to the exoneration of innocent
9 men and women who were wrongfully convicted.
10 This number includes at least 10 individuals sen-
11 tenced to death, some of whom came within days of
12 being executed.

13 (6) In more than a dozen cases, post-conviction
14 DNA testing that has exonerated an innocent person
15 has also enhanced public safety by providing evi-
16 dence that led to the identification of the actual per-
17 petrator.

18 (7) Experience has shown that it is not unduly
19 burdensome to make DNA testing available to in-
20 mates. The cost of that testing is relatively modest
21 and has decreased in recent years. Moreover, the
22 number of cases in which post-conviction DNA test-
23 ing is appropriate is small, and will decrease as pre-
24 trial testing becomes more common.

1 (8) Under current Federal and State law, it is
2 difficult to obtain post-conviction DNA testing be-
3 cause of time limits on introducing newly discovered
4 evidence. Under Federal law, motions for a new trial
5 based on newly discovered evidence must be made
6 within 3 years after conviction. In most States, those
7 motions must be made not later than 2 years after
8 conviction, and sometimes much sooner. The result
9 is that laws intended to prevent the use of evidence
10 that has become less reliable over time have been
11 used to preclude the use of DNA evidence that re-
12 mains highly reliable even decades after trial.

13 (9) The National Commission on the Future of
14 DNA Evidence, a Federal panel established by the
15 Department of Justice and comprised of law en-
16 forcement, judicial, and scientific experts, has urged
17 that post-conviction DNA testing be permitted in the
18 relatively small number of cases in which it is appro-
19 priate, notwithstanding procedural rules that could
20 be invoked to preclude that testing, and notwith-
21 standing the inability of an inmate to pay for the
22 testing.

23 (10) Since New York passed the Nation's first
24 post-conviction DNA statute in 1994, only a few
25 States have adopted post-conviction DNA testing

1 procedures, and some of these procedures are unduly
2 restrictive. Moreover, only a handful of States have
3 passed legislation requiring that biological evidence
4 be adequately preserved.

5 (11) In 1994, Congress passed the DNA Identifi-
6 cation Act, which authorized the construction of
7 the Combined DNA Index System, a national data-
8 base to facilitate law enforcement exchange of DNA
9 identification information, and authorized funding to
10 improve the quality and availability of DNA testing
11 for law enforcement identification purposes. In
12 2000, Congress passed the DNA Analysis Backlog
13 Elimination Act and the Paul Coverdell Forensic
14 Sciences Improvement Act, which together author-
15 ized an additional \$908,000,000 over 6 years in
16 DNA-related grants.

17 (12) Congress should continue to provide finan-
18 cial assistance to the States to increase the capacity
19 of State and local laboratories to carry out DNA
20 testing for law enforcement identification purposes.
21 At the same time, Congress should insist that States
22 which accept financial assistance make DNA testing
23 available to both sides of the adversarial system in
24 order to enhance the reliability and integrity of that
25 system.

1 (13) In *Herrera v. Collins*, 506 U.S. 390
2 (1993), a majority of the members of the Court sug-
3 gested that a persuasive showing of innocence made
4 after trial would render the execution of an inmate
5 unconstitutional.

6 (14) It shocks the conscience and offends social
7 standards of fairness and decency to execute inno-
8 cent persons or to deny inmates the opportunity to
9 present persuasive evidence of their innocence.

10 (15) If biological material is not subjected to
11 DNA testing in appropriate cases, there is a signifi-
12 cant risk that persuasive evidence of innocence will
13 not be detected and, accordingly, that innocent per-
14 sons will be unconstitutionally executed.

15 (16) Given the irremediable constitutional harm
16 that would result from the execution of an innocent
17 person and the failure of many States to ensure that
18 innocent persons are not sentenced to death, a Fed-
19 eral statute assuring the availability of DNA testing
20 and a chance to present the results of testing in
21 court is a congruent and proportional prophylactic
22 measure to prevent constitutional injuries from oc-
23 curring.

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

1 (1) substantially implement the Recommenda-
 2 tions of the National Commission on the Future of
 3 DNA Evidence in the Federal criminal justice sys-
 4 tem; by authorizing DNA testing in appropriate
 5 cases;

6 (2) prevent the imposition of unconstitutional
 7 punishments through the exercise of power granted
 8 by clause 1 of section 8 and clause 2 of section 9
 9 of article I of the Constitution of the United States
 10 and section 5 of the 14th amendment to the Con-
 11 stitution of the United States; and

12 (3) ensure that wrongfully convicted persons
 13 have an opportunity to establish their innocence
 14 through DNA testing; by requiring the preservation
 15 of DNA evidence for a limited period.

16 **SEC. 102. POST-CONVICTION DNA TESTING IN FEDERAL**
 17 **CRIMINAL JUSTICE SYSTEM.**

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

21 **“CHAPTER 156—DNA TESTING**

“Sec.

“2291. DNA testing.

“2292. Preservation of evidence.

22 **“§ 2291. DNA testing**

23 “(a) APPLICATION.—Notwithstanding any other pro-
 24 vision of law, a person convicted of a Federal crime may

1 apply to the appropriate Federal court for DNA testing
2 to support a claim that the person did not commit—

3 “(1) the Federal crime of which the person was
4 convicted; or

5 “(2) any other offense that a sentencing au-
6 thority may have relied upon when it sentenced the
7 person with respect to the Federal crime either to
8 death or to an enhanced term of imprisonment as a
9 career offender or armed career criminal.

10 “(b) NOTICE TO GOVERNMENT.—The court shall no-
11 tify the Government of an application made under sub-
12 section (a) and shall afford the Government an oppor-
13 tunity to respond.

14 “(c) PRESERVATION ORDER.—The court shall order
15 that all evidence secured in relation to the case that could
16 be subjected to DNA testing must be preserved during the
17 pendency of the proceeding. The court may impose appro-
18 priate sanctions, including criminal contempt, for the in-
19 tentional destruction of evidence after such an order.

20 “(d) ORDER.—

21 “(1) IN GENERAL.—The court shall order DNA
22 testing pursuant to an application made under sub-
23 section (a) upon a determination that—

1 “(A) the evidence is still in existence, and
2 in such a condition that DNA testing may be
3 conducted;

4 “(B) the evidence was never previously
5 subjected to DNA testing, or was not subject to
6 the type of DNA testing that is now requested
7 and that may resolve an issue not resolved by
8 previous testing;

9 “(C) the proposed DNA testing uses a sci-
10 entifically valid technique; and

11 “(D) the proposed DNA testing has the
12 scientific potential to produce new, noncumu-
13 lative evidence material to the claim of the ap-
14 plicant that the applicant did not commit—

15 “(i) the Federal crime of which the
16 applicant was convicted; or

17 “(ii) any other offense that a sen-
18 tencing authority may have relied upon
19 when it sentenced the applicant with re-
20 spect to the Federal crime either to death
21 or to an enhanced term of imprisonment as
22 a career offender or armed career criminal.

23 “(2) LIMITATION.—The court shall not order
24 DNA testing under paragraph (1) if the Government
25 proves by a preponderance of the evidence that the

1 application for testing was made to unreasonably
2 delay the execution of sentence or administration of
3 justice, rather than to support a claim described in
4 paragraph (1)(D).

5 “(3) TESTING PROCEDURES.—If the court or-
6 ders DNA testing under paragraph (1), the court
7 shall impose reasonable conditions on such testing
8 designed to protect the integrity of the evidence and
9 the testing process and the reliability of the test re-
10 sults.

11 “(e) COST.—The cost of DNA testing ordered under
12 subsection (e) shall be borne by the Government or the
13 applicant, as the court may order in the interests of jus-
14 tice, except that an applicant shall not be denied testing
15 because of an inability to pay the cost of testing.

16 “(f) COUNSEL.—The court may at any time appoint
17 counsel for an indigent applicant under this section pursu-
18 ant to section 3006A(a)(2)(B) of title 18.

19 “(g) POST-TESTING PROCEDURES.—

20 “(1) INCONCLUSIVE RESULTS.—If the results of
21 DNA testing conducted under this section are incon-
22 clusive, the court may order such further testing as
23 may be appropriate or dismiss the application.

1 “(2) RESULTS UNFAVORABLE TO APPLICANT.—

2 If the results of DNA testing conducted under this
3 section inculcate the applicant, the court shall—

4 “(A) dismiss the application;

5 “(B) assess the applicant for the cost of
6 the testing; and

7 “(C) make such further orders as may be
8 appropriate.

9 “(3) RESULTS FAVORABLE TO APPLICANT.—If

10 the results of DNA testing conducted under this sec-
11 tion are favorable to the applicant, the court shall
12 order a hearing and thereafter make such further
13 orders as may be appropriate under applicable rules
14 and statutes regarding post-conviction proceedings,
15 notwithstanding any provision of law that would bar
16 such hearing or orders as untimely.

17 “(h) RULES OF CONSTRUCTION.—

18 “(1) OTHER POST-CONVICTION RELIEF UNAF-
19 FECTED.—Nothing in this section shall be construed
20 to limit the circumstances under which a person may
21 obtain DNA testing or other post-conviction relief
22 under any other provision of law.

23 “(2) FINALITY RULE UNAFFECTED.—An appli-
24 cation under this section shall not be considered a
25 motion under section 2255 for purposes of deter-

1 mining whether it or any other motion is a second
 2 or successive motion under section 2255.

3 “(i) DEFINITIONS.—In this section:

4 “(1) APPROPRIATE FEDERAL COURT.—The
 5 term ‘appropriate Federal court’ means—

6 “(A) the United States District Court
 7 which imposed the sentence from which the ap-
 8 plicant seeks relief; or

9 “(B) in relation to a crime under the Uni-
 10 form Code of Military Justice, the United
 11 States District Court having jurisdiction over
 12 the place where the court martial was convened
 13 that imposed the sentence from which the appli-
 14 cant seeks relief; or the United States District
 15 Court for the District of Columbia, if no United
 16 States District Court has jurisdiction over the
 17 place where the court martial was convened.

18 “(2) FEDERAL CRIME.—The term ‘Federal
 19 crime’ includes a crime under the Uniform Code of
 20 Military Justice.

21 **“§ 2292. Preservation of evidence**

22 “(a) IN GENERAL.—Notwithstanding any other pro-
 23 vision of law and subject to subsection (b), the Govern-
 24 ment shall preserve all evidence that was secured in rela-
 25 tion to the investigation or prosecution of a Federal crime

1 (as that term is defined in section 2291(i)), and that could
2 be subjected to DNA testing, for not less than the period
3 of time that any person remains subject to incarceration
4 in connection with the investigation or prosecution.

5 “(b) EXCEPTIONS.—The Government may dispose of
6 evidence before the expiration of the period of time de-
7 scribed in subsection (a) if—

8 “(1) other than subsection (a), no statute, regu-
9 lation, court order, or other provision of law requires
10 that the evidence be preserved; and

11 “(2)(A)(i) the Government notifies any person
12 who remains incarcerated in connection with the in-
13 vestigation or prosecution and any counsel of record
14 for such person (or, if there is no counsel of record,
15 the public defender for the judicial district in which
16 the conviction for such person was imposed), of the
17 intention of the Government to dispose of the evi-
18 dence and the provisions of this chapter; and

19 “(ii) the Government affords such person not
20 less than 180 days after such notification to make
21 an application under section 2291(a) for DNA test-
22 ing of the evidence; or

23 “(B)(i) the evidence must be returned to its
24 rightful owner, or is of such a size, bulk, or physical
25 character as to render retention impracticable; and

1 “(ii) the Government takes reasonable measures
2 to remove and preserve portions of the material evi-
3 dence sufficient to permit future DNA testing.

4 “(c) REMEDIES FOR NONCOMPLIANCE.—

5 “(1) GENERAL LIMITATION.—Nothing in this
6 section shall be construed to give rise to a claim for
7 damages against the United States, or any employee
8 of the United States, any court official or officer of
9 the court, or any entity contracting with the United
10 States.

11 “(2) CIVIL PENALTY.—

12 “(A) IN GENERAL.—Notwithstanding para-
13 graph (1), an individual who knowingly violates
14 a provision of this section or a regulation pre-
15 scribed under this section shall be liable to the
16 United States for a civil penalty in an amount
17 not to exceed \$1,000 for the first violation and
18 \$5,000 for each subsequent violation, except
19 that the total amount imposed on the individual
20 for all such violations during a calendar year
21 may not exceed \$25,000.

22 “(B) PROCEDURES.—The provisions of
23 section 405 of the Controlled Substances Act
24 (21 U.S.C. 844a) (other than subsections (a)
25 through (d) and subsection (j)) shall apply to

1 the imposition of a civil penalty under subpara-
2 graph (A) in the same manner as such provi-
3 sions apply to the imposition of a penalty under
4 section 405.

5 “(C) PRIOR CONVICTION.—A civil penalty
6 may not be assessed under subparagraph (A)
7 with respect to an act if that act previously re-
8 sulted in a conviction under chapter 73 of title
9 18.

10 “(3) REGULATIONS.—

11 “(A) IN GENERAL.—The Attorney General
12 shall promulgate regulations to implement and
13 enforce this section.

14 “(B) CONTENTS.—The regulations shall
15 include the following:

16 “(i) Disciplinary sanctions, including
17 suspension or termination from employ-
18 ment, for employees of the Department of
19 Justice who knowingly or repeatedly violate
20 a provision of this section.

21 “(ii) An administrative procedure
22 through which parties can file formal com-
23 plaints with the Department of Justice al-
24 leging violations of this section.”

1 (b) CRIMINAL PENALTY.—Chapter 73 of title 18,
2 United States Code, is amended by inserting at the end
3 the following:

4 **“§ 1519. Destruction or altering of DNA evidence**

5 “Whoever willfully or maliciously destroys, alters,
6 conceals, or tampers with evidence that is required to be
7 preserved under section 2292 of title 28, United States
8 Code, with intent to—

9 “(1) impair the integrity of that evidence;

10 “(2) prevent that evidence from being subjected
11 to DNA testing; or

12 “(3) prevent the production or use of that evi-
13 dence in an official proceeding;

14 shall be fined under this title or imprisoned not
15 more than 5 years, or both.”.

16 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

17 (1) The analysis for part VI of title 28, United
18 States Code, is amended by inserting after the item
19 relating to chapter 155 the following:

“156. DNA testing 2291”.

20 (2) The table of contents for Chapter 73 of title
21 18, United States Code, is amended by inserting
22 after the item relating to section 1518 the following:

“1519. Destruction or altering of DNA Evidence.”.

1 **SEC. 103. POST-CONVICTION DNA TESTING IN STATE CRIMI-**
2 **NAL JUSTICE SYSTEMS.**

3 (a) CERTIFICATION REGARDING POST-CONVICTION
4 TESTING AND PRESERVATION OF DNA EVIDENCE.—If
5 any part of funds received from a grant made under a
6 program listed in subsection (b) is to be used to develop
7 or improve a DNA analysis capability in a forensic labora-
8 tory, or to collect, analyze, or index DNA samples for law
9 enforcement identification purposes, the State applying for
10 that grant must certify that it will—

11 (1) make post-conviction DNA testing available
12 to any person convicted of a State crime in a man-
13 ner consistent with section 2291 of title 28, United
14 States Code, and, if the results of such testing are
15 favorable to such person, allow such person to apply
16 for post-conviction relief, notwithstanding any provi-
17 sion of law that would bar such application as un-
18 timely; and

19 (2) preserve all evidence that was secured in re-
20 lation to the investigation or prosecution of a State
21 crime, and that could be subjected to DNA testing,
22 for not less than the period of time that such evi-
23 dence would be required to be preserved under sec-
24 tion 2292 of title 28, United States Code, if the evi-
25 dence were related to a Federal crime.

1 (b) PROGRAMS AFFECTED.—The certification re-
2 quirement established by subsection (a) shall apply with
3 respect to grants made under the following programs:

4 (1) DNA ANALYSIS BACKLOG ELIMINATION
5 GRANTS.—Section 2 of the DNA Analysis Backlog
6 Elimination Act of 2000 (Public Law 106–546).

7 (2) PAUL COVERDELL NATIONAL FORENSIC
8 SCIENCES IMPROVEMENT GRANTS.—Part BB of title
9 I of the Omnibus Crime Control and Safe Streets
10 Act of 1968 (as added by Public Law 106–561).

11 (3) DNA IDENTIFICATION GRANTS.—Part X of
12 title I of the Omnibus Crime Control and Safe
13 Streets Act of 1968 (42 U.S.C. 3796kk et seq.).

14 (4) DRUG CONTROL AND SYSTEM IMPROVE-
15 MENT GRANTS.—Subpart 1 of part E of title I of
16 the Omnibus Crime Control and Safe Streets Act of
17 1968 (42 U.S.C. 3751 et seq.).

18 (5) PUBLIC SAFETY AND COMMUNITY POLICING
19 GRANTS.—Part Q of title I of the Omnibus Crime
20 Control and Safe Streets Act of 1968 (42 U.S.C.
21 3796dd et seq.).

22 (c) EFFECTIVE DATE.—This section shall apply with
23 respect to any grant made on or after the date that is
24 1 year after the date of enactment of this Act.

1 **SEC. 104. PROHIBITION PURSUANT TO SECTION 5 OF THE**
 2 **14TH AMENDMENT.**

3 (a) APPLICATION FOR DNA TESTING.—No State
 4 shall deny an application for DNA testing made by a pris-
 5 oner in State custody who is under sentence of death, if
 6 the proposed DNA testing has the scientific potential to
 7 produce new, noncumulative evidence material to the claim
 8 of the prisoner that the prisoner did not commit—

9 (1) the offense for which the prisoner was sen-
 10 tenced to death; or

11 (2) any other offense that a sentencing author-
 12 ity may have relied upon when it sentenced the pris-
 13 oner to death.

14 (b) OPPORTUNITY TO PRESENT RESULTS OF DNA
 15 TESTING.—No State shall rely upon a time limit or proce-
 16 dural default rule to deny a prisoner in State custody who
 17 is under sentence of death an opportunity to present in
 18 an appropriate State court new, noncumulative DNA re-
 19 sults that establish a reasonable probability that the pris-
 20 oner did not commit an offense described in subsection
 21 (a).

22 (c) REMEDY.—A prisoner in State custody who is
 23 under sentence of death may enforce subsections (a) and
 24 (b) in a civil action for declaratory or injunctive relief,
 25 filed either in a State court of general jurisdiction or in

1 a district court of the United States, naming an executive
2 or judicial officer of the State as defendant.

3 (d) **FINALITY RULE UNAFFECTED.**—An application
4 under this section shall not be considered an application
5 for a writ of habeas corpus under section 2254 of title
6 28, United States Code, for purposes of determining
7 whether it or any other application is a second or succes-
8 sive application under section 2254.

9 **SEC. 105. GRANTS TO PROSECUTORS FOR DNA TESTING**
10 **PROGRAMS.**

11 Section 501(b) of title I of the Omnibus Crime Con-
12 trol and Safe Streets Act of 1968 (42 U.S.C. 3751(b))
13 is amended by—

14 (1) striking “and” at the end of paragraph
15 (25);

16 (2) striking the period at the end of paragraph
17 (26) and inserting “; and”; and

18 (3) adding at the end the following:

19 “(27) prosecutor-initiated programs to conduct
20 a systematic review of convictions to identify cases
21 in which DNA testing is appropriate and to offer
22 DNA testing to inmates in such cases.”.

1 **TITLE II—ENSURING COM-**
2 **PETENT LEGAL SERVICES IN**
3 **CAPITAL CASES**

4 **SEC. 201. NATIONAL COMMISSION ON CAPITAL REPRESENTATION.**
5

6 (a) **ESTABLISHMENT.**—There is established the Na-
7 tional Commission on Capital Representation (referred to
8 in this section as the “Commission”).

9 (b) **DUTIES.**—The Commission shall—

10 (1) survey existing and proposed systems for
11 appointing counsel in capital cases; and the amounts
12 actually paid by governmental entities for capital de-
13 fense services; and

14 (2) formulate standards specifying the elements
15 of an effective system for providing adequate rep-
16 resentation, including counsel and investigative, ex-
17 pert, and other services necessary for adequate rep-
18 resentation, to—

19 (A) indigents charged with offenses for
20 which capital punishment is sought;

21 (B) indigents who have been sentenced to
22 death and who seek appellate or collateral re-
23 view in State court; and

1 (C) indigents who have been sentenced to
2 death and who seek certiorari review in the Su-
3 preme Court of the United States.

4 (e) ELEMENTS.—The elements of an effective system
5 described in subsection (b)(2) shall include—

6 (1) a centralized and independent appointing
7 authority, which shall—

8 (A) recruit attorneys who are qualified to
9 be appointed in the proceedings specified in
10 subsection (b)(2);

11 (B) draft and annually publish a roster of
12 qualified attorneys;

13 (C) draft and annually publish qualifica-
14 tions and performance standards that attorneys
15 must satisfy to be listed on the roster and pro-
16 cedures by which qualified attorneys are identi-
17 fied;

18 (D) periodically review the roster, monitor
19 the performance of all attorneys appointed, pro-
20 vide a mechanism by which members of the rel-
21 evant State Bar may comment on the perform-
22 ance of their peers, and delete the name of any
23 attorney who fails to satisfactorily complete reg-
24 ular training programs on the representation of
25 clients in capital cases, fails to meet perform-

1 ance standards in a case to which the attorney
2 is appointed; or otherwise fails to demonstrate
3 continuing competence to represent clients in
4 capital cases;

5 (E) conduct or sponsor specialized training
6 programs for attorneys representing clients in
7 capital cases;

8 (F) appoint lead counsel and co-counsel
9 from the roster to represent a client in a capital
10 case promptly upon receiving notice of the need
11 for an appointment from the relevant State
12 court; and

13 (G) report the appointment, or the failure
14 of the client to accept such appointment, to the
15 court requesting the appointment;

16 (2) adequate compensation of private attorneys
17 for actual time and service; computed on an hourly
18 basis and at a reasonable hourly rate in light of the
19 qualifications and experience of the attorney and the
20 local market for legal representation in cases reflect-
21 ing the complexity and responsibility of capital
22 cases;

23 (3) reimbursement of private attorneys and
24 public defender organizations for attorney expenses

1 reasonably incurred in the representation of a client
2 in a capital case; and

3 (4) reimbursement of private attorneys and
4 public defender organizations for the reasonable
5 costs of law clerks, paralegals, investigators, experts,
6 scientific tests, and other support services necessary
7 in the representation of a client in a capital case.

8 (d) MEMBERSHIP.—

9 (1) NUMBER AND APPOINTMENT.—The Com-
10 mission shall be composed of 9 members, as follows:

11 (A) Four members appointed by the Presi-
12 dent on the basis of their expertise and emi-
13 nence within the field of criminal justice, 2 of
14 whom have 10 years or more experience in rep-
15 resenting defendants in State capital pro-
16 ceedings, including trial, direct appeal, or post-
17 conviction proceedings, and 2 of whom have 10
18 years or more experience in prosecuting defend-
19 ants in such proceedings.

20 (B) Two members appointed by the Con-
21 ference of Chief Justices, from among the mem-
22 bers of the judiciaries of the several States.

23 (C) Two members appointed by the Chief
24 Justice of the United States, from among the
25 members of the Federal Judiciary.

1 (D) The Chairman of the Committee on
2 Defender Services of the Judicial Conference of
3 the United States, or a designee of the Chair-
4 man.

5 (2) EX OFFICIO MEMBER.—The Executive Di-
6 rector of the State Justice Institute, or a designee
7 of the Executive Director, shall serve as an ex officio
8 nonvoting member of the Commission.

9 (3) POLITICAL AFFILIATION.—Not more than 2
10 members appointed under paragraph (1)(A) may be
11 of the same political party.

12 (4) GEOGRAPHIC DISTRIBUTION.—The appoint-
13 ment of individuals under paragraph (1) shall, to the
14 maximum extent practicable, be made so as to en-
15 sure that different geographic areas of the United
16 States are represented in the membership of the
17 Commission.

18 (5) TERMS.—Members of the Commission ap-
19 pointed under subparagraphs (A), (B), and (C) of
20 paragraph (1) shall be appointed for the life of the
21 Commission.

22 (6) DEADLINE FOR APPOINTMENTS.—All ap-
23 pointments to the Commission shall be made not
24 later than 45 days after the date of enactment of
25 this Act.

1 (7) VACANCIES.—A vacancy in the Commission
2 shall not affect its powers, and shall be filled in the
3 same manner in which the original appointment was
4 made.

5 (8) NO COMPENSATION.—Members of the Com-
6 mission shall serve without compensation for their
7 service.

8 (9) TRAVEL EXPENSES.—Members of the Com-
9 mission shall receive travel expenses, including per
10 diem in lieu of subsistence, in accordance with sec-
11 tions 5702 and 5703 of title 5, United States Code.

12 (10) QUORUM.—A majority of the members of
13 the Commission shall constitute a quorum, but a
14 lesser number may hold hearings.

15 (11) INITIAL MEETING.—The initial meeting of
16 the Commission shall occur not later than 30 days
17 after the date on which all initial members of the
18 Commission have been appointed.

19 (12) CHAIRPERSON.—At the initial meeting of
20 the Commission, a majority of the members of the
21 Commission present and voting shall elect a Chair-
22 person from among the members of the Commission
23 appointed under paragraph (1).

24 (c) STAFF.—

1 (1) ~~IN GENERAL.~~—The Commission may ap-
 2 point and fix the pay of such personnel as the Com-
 3 mission considers appropriate.

4 (2) ~~EXPERTS AND CONSULTANTS.~~—The Com-
 5 mission may procure temporary and intermittent
 6 services under section 3109(b) of title 5, United
 7 States Code.

8 (f) ~~POWERS.~~—

9 (1) ~~INFORMATION-GATHERING ACTIVITIES.~~—
 10 The Commission may, for the purpose of carrying
 11 out this section, hold hearings, receive public com-
 12 ment and testimony, initiate surveys, and undertake
 13 such other activities to gather information as the
 14 Commission may find advisable.

15 (2) ~~OBTAINING OFFICIAL INFORMATION.~~—The
 16 Commission may secure directly from any depart-
 17 ment or agency of the United States such informa-
 18 tion as the Commission considers necessary to carry
 19 out this section. Upon request of the chairperson of
 20 the Commission, the head of that department or
 21 agency shall provide such information, except to the
 22 extent prohibited by law.

23 (3) ~~ADMINISTRATIVE SUPPORT SERVICES.~~—
 24 Upon the request of the Commission, the Adminis-
 25 trator of General Services shall provide to the Com-

1 mission, on a reimbursable basis, the administrative
2 support services necessary for the Commission to
3 carry out its responsibilities under this section.

4 (4) ~~POSTAL SERVICES.~~—The Commission may
5 use the United States mails in the same manner and
6 under the same conditions as other departments and
7 agencies of the United States.

8 (g) ~~REPORT.~~—

9 (1) ~~IN GENERAL.~~—The Commission shall sub-
10 mit a report to the President and the Congress be-
11 fore the end of the 1-year period beginning after the
12 first meeting of all members of the Commission.

13 (2) ~~CONTENTS.~~—The report submitted under
14 paragraph (1) shall contain—

15 (A) a comparative analysis of existing and
16 proposed systems for appointing counsel in cap-
17 ital cases, and the amounts actually paid by
18 governmental entities for capital defense serv-
19 ices; and

20 (B) such standards as are formulated by
21 the Commission pursuant to subsection (b)(2),
22 together with such commentary and rec-
23 ommendations as the Commission considers ap-
24 propriate.

1 (h) ~~TERMINATION.~~—The Commission shall terminate
2 90 days after submitting the report under subsection (g).

3 (i) ~~EXPENSES OF COMMISSION.~~—There are author-
4 ized to be appropriated to pay any expenses of the Com-
5 mission such sums as may be necessary not to exceed
6 \$1,000,000. Any sums appropriated for such purposes are
7 authorized to remain available until expended, or until the
8 termination of the Commission pursuant to subsection (h),
9 whichever occurs first.

10 **SEC. 202. CAPITAL DEFENSE INCENTIVE GRANTS.**

11 The State Justice Institute Act of 1984 (42 U.S.C.
12 10701 et seq.) is amended by inserting after section 207
13 the following:

14 **“SEC. 207A. CAPITAL DEFENSE INCENTIVE GRANTS.**

15 “(a) ~~PROGRAM AUTHORIZED.~~—The State Justice In-
16 stitute (referred to in this section as the ‘Institute’) may
17 make grants to State agencies and organizations respon-
18 sible for the administration of standards of legal com-
19 petence for counsel in capital cases, for the purposes of—

20 “(1) implementing new mechanisms or sup-
21 porting existing mechanisms for providing represen-
22 tation in capital cases that comply with the stand-
23 ards promulgated by the National Commission on
24 Capital Representation pursuant to section 201(b) of
25 the Innocence Protection Act of 2001; and

1 ~~“(2) otherwise improving the quality of legal~~
2 ~~representation in capital cases.~~

3 ~~“(b) USE OF FUNDS.—Funds made available under~~
4 ~~this section may be used for any purpose that the Institute~~
5 ~~determines is likely to achieve the purposes described in~~
6 ~~subsection (a), including—~~

7 ~~“(1) training and development of training ca-~~
8 ~~pacify to ensure that attorneys assigned to capital~~
9 ~~cases meet such standards;~~

10 ~~“(2) augmentation of attorney, paralegal, inves-~~
11 ~~tigator, expert witness, and other staff and services~~
12 ~~necessary for capital defense; and~~

13 ~~“(3) development of new mechanisms for ad-~~
14 ~~dressing complaints about attorney competence and~~
15 ~~performance in capital cases.~~

16 ~~“(c) APPLICATIONS.—~~

17 ~~“(1) IN GENERAL.—No grant may be made~~
18 ~~under this section unless an application has been~~
19 ~~submitted to, and approved by, the Institute.~~

20 ~~“(2) APPLICATION.—An application for a grant~~
21 ~~under this section shall be submitted in such form,~~
22 ~~and contain such information, as the Institute may~~
23 ~~prescribe by regulation or guideline.~~

24 ~~“(3) CONTENTS.—In accordance with the regu-~~
25 ~~lations or guidelines established by the Institute,~~

1 each application for a grant under this section
2 shall—

3 “(A) include a long-term strategy and de-
4 tailed implementation program that reflects
5 consultation with the organized bar of the
6 State, the highest court of the State, and the
7 Attorney General of the State, and reflects con-
8 sideration of a statewide strategy; and

9 “(B) specify plans for obtaining necessary
10 support and continuing the proposed program
11 following the termination of Federal support.

12 “(d) RULES AND REGULATIONS.—The Institute may
13 issue rules, regulations, guidelines, and instructions, as
14 necessary, to carry out the purposes of this section.

15 “(e) TECHNICAL ASSISTANCE AND TRAINING.—To
16 assist and measure the effectiveness and performance of
17 programs funded under this section, the Institute may
18 provide technical assistance and training, as required.

19 “(f) GRANT PERIOD.—A grant under this section
20 shall be made for a period not longer than 3 years, but
21 may be renewed on such terms as the Institute may re-
22 quire.

23 “(g) LIMITATIONS ON USE OF FUNDS.—

24 “(1) NONSUPPLANTING REQUIREMENT.—Funds
25 made available under this section shall not be used

1 to supplant State or local funds, but shall be used
 2 to supplement the amount of funds that would, in
 3 the absence of Federal funds received under this sec-
 4 tion, be made available from States or local sources.

5 “(2) FEDERAL SHARE.—The Federal share of a
 6 grant made under this part may not exceed—

7 “(A) for the first fiscal year for which a
 8 program receives assistance, 75 percent of the
 9 total costs of such program; and

10 “(B) for subsequent fiscal years for which
 11 a program receives assistance, 50 percent of the
 12 total costs of such program.

13 “(3) ADMINISTRATIVE COSTS.—A State agency
 14 or organization may not use more than 5 percent of
 15 the funds it receives from this section for adminis-
 16 trative expenses, including expenses incurred in pre-
 17 paring reports under subsection (h).

18 “(h) REPORT.—Each State agency or organization
 19 that receives a grant under this section shall submit to
 20 the Institute, at such times and in such format as the In-
 21 stitute may require, a report that contains—

22 “(1) a summary of the activities carried out
 23 under the grant and an assessment of the effective-
 24 ness of such activities in achieving ongoing compli-
 25 ance with the standards formulated pursuant to sec-

1 tion 201(b) of the Innocence Protection Act of 2001
2 and improving the quality of representation in cap-
3 ital cases; and

4 “(2) such other information as the Institute
5 may require.

6 “(i) REPORT TO CONGRESS.—Not later than 90 days
7 after the end of each fiscal year for which grants are made
8 under this section, the Institute shall submit to Congress
9 a report that includes—

10 “(1) the aggregate amount of grants made
11 under this part to each State agency or organization
12 for such fiscal year;

13 “(2) a summary of the information provided in
14 compliance with subsection (h); and

15 “(3) an independent evaluation of the effective-
16 ness of the programs that received funding under
17 this section in achieving ongoing compliance with the
18 standards formulated pursuant to section 201(b) of
19 the Innocence Protection Act of 2001 and improving
20 the quality of representation in capital cases.

21 “(j) DEFINITIONS.—In this section—

22 “(1) the term ‘capital case’—

23 “(A) means any criminal case in which a
24 defendant prosecuted in a State court is subject

1 to a sentence of death or in which a death sen-
 2 tence has been imposed; and

3 “(B) includes all proceedings filed in con-
 4 nection with the case, up to and including di-
 5 rect appellate review and post-conviction review
 6 in State court; and

7 “(2) the term ‘representation’ includes counsel
 8 and investigative, expert, and other services nec-
 9 essary for adequate representation.

10 “(k) AUTHORIZATION OF APPROPRIATIONS.—

11 “(1) IN GENERAL.—There are authorized to be
 12 appropriated to carry out this section, in addition to
 13 other amounts authorized by this Act, to remain
 14 available until expended, \$50,000,000 for fiscal year
 15 2002, and such sums as may be necessary for fiscal
 16 years 2003 and 2004.

17 “(2) TECHNICAL ASSISTANCE AND TRAINING.—

18 Not more than 3 percent of the amount made avail-
 19 able under paragraph (1) for a fiscal year shall be
 20 available for technical assistance and training activi-
 21 ties by the Institute under subsection (e).

22 “(3) EVALUATIONS.—Up to 5 percent of the
 23 amount authorized to be appropriated under para-
 24 graph (1) in any fiscal year may be used for admin-

1 administrative expenses, including expenses incurred in
2 preparing reports under subsection (i).”.

3 **SEC. 203. AMENDMENTS TO PRISON GRANT PROGRAMS.**

4 (a) **IN GENERAL.**—Subtitle A of title II of the Violent
5 Crime Control and Law Enforcement Act of 1994 (42
6 U.S.C. 13701 et seq.) is amended by adding at the end
7 the following:

8 **“SEC. 20110. STANDARDS FOR CAPITAL REPRESENTATION.**

9 ~~“(a) WITHHOLDING OF FUNDS FOR NONCOMPLI-~~
10 ~~ANCE WITH STANDARDS FOR CAPITAL REPRESENTA-~~
11 ~~TION.—~~

12 ~~“(1) IN GENERAL.—The Attorney General shall~~
13 ~~withhold a portion of any grant funds awarded to a~~
14 ~~State or unit of local government under this subtitle~~
15 ~~on the first day of each fiscal year after the second~~
16 ~~fiscal year beginning after September 30, 2001, if~~
17 ~~such State, or the State to which such unit of local~~
18 ~~government appertains—~~

19 ~~“(A) prescribes, authorizes, or permits the~~
20 ~~penalty of death for any offense, and sought,~~
21 ~~imposed, or administered such penalty at any~~
22 ~~time during the preceding 5 fiscal years; and~~

23 ~~“(B) has not established or does not main-~~
24 ~~tain an effective system for providing adequate~~
25 ~~representation for indigent persons in capital~~

1 cases, in compliance with the standards formu-
2 lated by the National Commission on Capital
3 Representation pursuant to section 201(b) of
4 the Innocence Protection Act of 2001.

5 “(2) WITHHOLDING FORMULA.—The amount to
6 be withheld under paragraph (1) shall be, in the
7 first fiscal year that a State is not in compliance, 10
8 percent of any grant funds awarded under this sub-
9 title to such State and any unit of local government
10 appertaining thereto, and shall increase by 10 per-
11 cent for each year of noncompliance thereafter, up
12 to a maximum of 60 percent.

13 “(3) DISPOSITION OF WITHHELD FUNDS.—
14 Funds withheld under this subsection from appor-
15 tionment to any State or unit of local government
16 shall be allotted by the Attorney General and paid
17 to the States and units of local government receiving
18 a grant under this subtitle, other than any State re-
19 ferred to in paragraph (1), and any unit of local
20 government appertaining thereto, in a manner equiv-
21 alent to the manner in which the allotment under
22 this subtitle was determined.

23 “(b) WAIVER OF WITHHOLDING REQUIREMENT.—

24 “(1) IN GENERAL.—The Attorney General may
25 waive in whole or in part the application of the re-

1 requirement of subsection (a) for any 1-year period
2 with respect to any State, where immediately pre-
3 ceeding such 1-year period the Attorney General finds
4 that such State has made and continues to make a
5 good faith effort to comply with the standards for-
6 mulated by the National Commission on Capital
7 Representation pursuant to section 201(b) of the In-
8 nocence Protection Act of 2001.

9 “(2) LIMITATION ON WAIVER AUTHORITY.—The
10 Attorney General may not grant a waiver under
11 paragraph (1) with respect to any State for 2 con-
12 secutive 1-year periods.

13 “(3) LIMITATION ON USE OF FUNDS.—If the
14 Attorney General grants a waiver under paragraph
15 (1), the State shall be required to use the total
16 amount of grant funds awarded to such State or any
17 unit of local government appertaining thereto under
18 this subtitle that would have been withheld under
19 subsection (a) but for the waiver to improve the ca-
20 pability of such State to provide adequate represen-
21 tation in capital cases.

22 “(c) REPORT TO CONGRESS.—Not later than 180
23 days after the end of each fiscal year for which grants
24 are made under this subtitle, the Attorney General shall
25 submit to Congress a report that includes, with respect

1 to each State that prescribes, authorizes, or permits the
2 penalty of death for any offense—

3 “(1) a detailed description of such State’s sys-
4 tem for providing representation to indigent persons
5 in capital cases;

6 “(2) the amount of any grant funds withheld
7 under subsection (a) for such fiscal year from such
8 State or any unit of local government appertaining
9 thereto, and an explanation of why such funds were
10 withheld; and

11 “(3) the amount of any grant funds released to
12 such State for such fiscal year pursuant to a waiver
13 by the Attorney General under subsection (b), and
14 an explanation of why waiver was granted.”.

15 (b) TECHNICAL AND CONFORMING AMENDMENT.—

16 The table of contents in section 2 of the Violent Crime
17 Control and Law Enforcement Act of 1994 is amended
18 by inserting after the item relating to section 20109 the
19 following:

“Sec. 20110. Standards for capital representation.”.

20 **SEC. 204. EFFECT ON PROCEDURAL DEFAULT RULES.**

21 (a) IN GENERAL.—Section 2254(e) of title 28,
22 United States Code, is amended—

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

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

2 “~~(3)~~ In a proceeding instituted by an applicant
3 under sentence of death, the court shall neither pre-
4 sume a finding of fact made by a State court to be
5 correct nor decline to consider a claim on the ground
6 that the applicant failed to raise such claim in State
7 court at the time and in the manner prescribed by
8 State law, if—

9 “~~(A)~~ the applicant was financially unable
10 to obtain adequate representation at the stage
11 of the State proceedings at which the State
12 court made the finding of fact or the applicant
13 failed to raise the claim, and the applicant did
14 not waive representation by counsel; and

15 “~~(B)~~ the State did not provide representa-
16 tion to the applicant under a State system for
17 providing representation that satisfied the
18 standards formulated by the National Commis-
19 sion on Capital Representation pursuant to sec-
20 tion 201(b) of the Innocence Protection Act of
21 2001.”.

22 (b) **NO RETROACTIVE EFFECT.**—The amendments
23 made by this section shall not apply to any case in which
24 the relevant State court proceeding occurred before the
25 end of the first fiscal year following the formulation of

1 standards by the National Commission on Capital Rep-
 2 resentation pursuant to section 201(b) of the Innocence
 3 Protection Act of 2001.

4 **SEC. 205. CAPITAL DEFENSE RESOURCE GRANTS.**

5 Section 3006A of title 18, United States Code, is
 6 amended—

7 (1) by redesignating subsections (i), (j), and (k)
 8 as subsections (j), (k), and (l), respectively; and

9 (2) by inserting after subsection (h) the fol-
 10 lowing:

11 “(i) CAPITAL DEFENSE RESOURCE GRANTS.—

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

13 “(A) the term ‘capital case’—

14 “(i) means any criminal case in which
 15 a defendant prosecuted in a State court is
 16 subject to a sentence of death or in which
 17 a death sentence has been imposed; and

18 “(ii) includes all proceedings filed in
 19 connection with the case, including trial,
 20 appellate, and Federal and State post-con-
 21 viction proceedings;

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

23 “(i) recruitment of counsel;

24 “(ii) training of counsel; and

1 “~~(iii)~~ legal and administrative support
2 and assistance to counsel; and

3 “~~(C)~~ the term ‘Director’ means the Direc-
4 tor of the Administrative Office of the United
5 States Courts.

6 “~~(2)~~ GRANT AWARD AND CONTRACT AUTHOR-
7 ITY.—Notwithstanding subsection ~~(g)~~, the Director
8 shall award grants to, or enter into contracts with,
9 public agencies or private nonprofit organizations for
10 the purpose of providing defense services in capital
11 cases.

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

16 “~~(A)~~ Enhancing the availability, com-
17 petence, and prompt assignment of counsel.

18 “~~(B)~~ Encouraging continuity of represen-
19 tation between Federal and State proceedings.

20 “~~(C)~~ Increasing the efficiency with which
21 such cases are resolved.

22 “~~(4)~~ GUIDELINES.—The Director, in consulta-
23 tion with the Judicial Conference of the United
24 States, shall develop guidelines to ensure that de-
25 fense services provided by recipients of grants and

1 contracts awarded under this subsection are con-
2 sistent with applicable legal and ethical proscriptions
3 governing the duties of counsel in capital cases.

4 “(5) CONSULTATION.—In awarding grants and
5 contracts under this subsection, the Director shall
6 consult with representatives of the highest State
7 court, the organized bar, and the defense bar of the
8 jurisdiction to be served by the recipient of the grant
9 or contract, and shall ensure coordination with
10 grants administered by the State Justice Institute
11 pursuant to section 207A of the State Justice Insti-
12 tute Act of 1984.”.

13 **TITLE III—MISCELLANEOUS** 14 **PROVISIONS**

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

16 Section 2513(c) of title 28, United States Code, is
17 amended by striking “\$5,000” and inserting “\$50,000 for
18 each 12-month period of incarceration, except that a plain-
19 tiff who was unjustly sentenced to death may be awarded
20 not more than \$100,000 for each 12-month period of in-
21 carceration.”.

1 **SEC. 302. COMPENSATION IN STATE DEATH PENALTY**
2 **CASES.**

3 Section 20105(b)(1) of the Violent Crime Control and
4 Law Enforcement Act of 1994 (42 U.S.C. 13705(b)(1))
5 is amended by—

6 (1) striking “and” at the end of subparagraph
7 (A);

8 (2) striking the period at the end of subpara-
9 graph (B) and inserting “; and”; and

10 (3) adding at the end the following:

11 “(C) provide assurances to the Attorney
12 General that the State, if it prescribes, author-
13 izes, or permits the penalty of death for any of-
14 fense, has established or will establish not later
15 than 18 months after the enactment of the In-
16 nocence Protection Act of 2001, effective proce-
17 dures for—

18 “(i) reasonably compensating persons
19 found to have been unjustly convicted of
20 an offense against the State and sentenced
21 to death; and

22 “(ii) investigating the causes of such
23 unjust convictions, publishing the results
24 of such investigations, and taking steps to
25 prevent such errors in future cases.”.

1 **SEC. 303. CERTIFICATION REQUIREMENT IN FEDERAL**
2 **DEATH PENALTY PROSECUTIONS.**

3 (a) **IN GENERAL.**—Chapter 228 of title 28, United
4 States Code, is amended by adding at the end the fol-
5 lowing:

6 **“§ 3599. Certification requirement**

7 “(a) **CERTIFICATION BY ATTORNEY GENERAL.**—The
8 Government shall not seek a sentence of death in any case
9 brought before a court of the United States except upon
10 the certification in writing of the Attorney General, which
11 function of certification may not be delegated, that the
12 Federal interest in the prosecution is more substantial
13 than the interests of the State or local authorities.

14 “(b) **REQUIREMENTS.**—A certification under sub-
15 section (a) shall state the basis on which the certification
16 was made and the reasons for the certification.

17 “(c) **STATE INTEREST.**—In States where the imposi-
18 tion of a sentence of death is not authorized by law, the
19 fact that the maximum Federal sentence is death does not
20 constitute a more substantial interest in Federal prosecu-
21 tion.

22 “(d) **DEFINITION OF STATE.**—For purposes of this
23 section, the term ‘State’ includes a State of the United
24 States, the District of Columbia, and any commonwealth,
25 territory, or possession of the United States.

1 (1) striking “and” at the end of subparagraph
2 (B);

3 (2) striking the period at the end of subpara-
4 graph (C) and inserting “; and”; and

5 (3) adding at the end the following:

6 “(D) provide assurances to the Attorney
7 General that in any capital sentencing pro-
8 ceeding occurring after the date of enactment of
9 the Innocence Protection Act of 2001 in which
10 the jury has a role in determining the sentence
11 imposed on the defendant, the court, at the re-
12 quest of the defendant, shall inform the jury of
13 all statutorily authorized sentencing options in
14 the particular case, including applicable parole
15 eligibility rules and terms.”.

16 **SEC. 306. ANNUAL REPORTS.**

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

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

1 1999” (December 2000, NCJ 184795), and shall also in-
2 clude the following additional categories of information, if
3 such information can practicably be obtained:

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

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

10 (3) The percentage of capital cases in which
11 counsel is retained by the defendant, and the per-
12 centage in which counsel is appointed by the court.

13 (4) The percentage of capital cases in which life
14 without parole is available as an alternative to a
15 death sentence, and the sentences imposed in such
16 cases.

17 (5) The percentage of capital cases in which life
18 without parole is not available as an alternative to
19 a death sentence, and the sentences imposed in such
20 cases.

21 (6) The frequency with which various statutory
22 aggravating factors are invoked by the prosecution.

23 (7) The percentage of cases in which a death
24 sentence or a conviction underlying a death sentence

1 is vacated, reversed, or set aside, and a short state-
2 ment of the reasons therefore.

3 (c) ~~REQUEST FOR ASSISTANCE.~~—In compiling the in-
4 formation referred to in subsection (b), the Attorney Gen-
5 eral shall, when necessary, request assistance from State
6 and local prosecutors, defense attorneys, and courts, as
7 appropriate. Requested assistance, whether provided or
8 denied by a State or local official or entity, shall be noted
9 in the reports referred to in subsection (a).

10 (d) ~~PUBLIC DISCLOSURE.~~—The Attorney General or
11 the Director of the Bureau of Justice Assistance, as ap-
12 propriate, shall ensure that the reports referred to in sub-
13 section (a) are—

14 (1) distributed to national print and broadcast
15 media; and

16 (2) posted on an Internet website maintained
17 by the Department of Justice.

18 **SEC. 307. SENSE OF CONGRESS REGARDING THE EXECU-**
19 **TION OF JUVENILE OFFENDERS AND THE**
20 **MENTALLY RETARDED.**

21 It is the sense of Congress that the death penalty is
22 disproportionate and offends contemporary standards of
23 decency when applied to a person who is mentally retarded
24 or who had not attained the age of 18 years at the time
25 of the offense.

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) *SHORT TITLE.*—*This Act may be cited as the “In-*
 3 *nocence Protection Act of 2002”.*

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

Sec. 1. Short title; table of contents.

Sec. 2. Severability clause.

TITLE I—EXONERATING THE INNOCENT THROUGH DNA TESTING

Sec. 101. Post-conviction DNA testing in Federal criminal justice system.

Sec. 102. Post-conviction DNA testing in State criminal justice systems.

Sec. 103. Prohibition pursuant to section 5 of the 14th amendment.

Sec. 104. Grants to prosecutors for DNA testing programs.

*TITLE II—IMPROVING STATE SYSTEMS FOR PROVIDING
 COMPETENT LEGAL SERVICES IN CAPITAL CASES*

Sec. 201. Capital representation system improvement grants.

Sec. 202. Enforcement suits.

Sec. 203. Grants to qualified capital defender organizations.

*Sec. 204. Grants to train prosecutors, defense counsel, and State and local judges
 handling State capital cases.*

*TITLE III—RIGHT TO REVIEW OF THE DEATH PENALTY UPON THE
 GRANT OF CERTIORARI*

*Sec. 301. Protecting the rights of death row inmates to review of cases granted
 certiorari.*

TITLE IV—COMPENSATION FOR THE WRONGFULLY CONVICTED

Sec. 401. Increased compensation in Federal cases.

Sec. 402. Sense of Congress regarding compensation in State death penalty cases.

TITLE V—STUDENT LOAN REPAYMENT FOR PUBLIC ATTORNEYS

Sec. 501. Student loan repayment for public attorneys.

6 **SEC. 2. SEVERABILITY CLAUSE.**

7 *If any provision of this Act, an amendment made by*
 8 *this Act, or the application of such provision or amendment*
 9 *to any person or circumstance is held to be unconstitu-*
 10 *tional, the remainder of this Act, the amendments made by*

1 *this Act, and the application of the provisions of such to*
 2 *any person or circumstance shall not be affected thereby.*

3 **TITLE I—EXONERATING THE IN-**
 4 **NOCENT THROUGH DNA**
 5 **TESTING**

6 **SEC. 101. POST-CONVICTION DNA TESTING IN FEDERAL**
 7 **CRIMINAL JUSTICE SYSTEM.**

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

11 **“CHAPTER 156—DNA TESTING**

“Sec.

“2291. DNA testing.

“2292. Preservation of evidence.

12 **“§ 2291. DNA testing**

13 *“(a) APPLICATION.—Notwithstanding any other provi-*
 14 *sion of law, a person convicted of a Federal crime may*
 15 *apply to the appropriate Federal court for DNA testing by*
 16 *asserting under oath that the person did not commit—*

17 *“(1) the Federal crime of which the person was*
 18 *convicted; or*

19 *“(2) any other offense that a sentencing author-*
 20 *ity may have relied upon when it sentenced the per-*
 21 *son with respect to the Federal crime either to death*
 22 *or to an enhanced term of imprisonment as a career*
 23 *offender or armed career criminal.*

1 “(b) *NOTICE TO GOVERNMENT.*—*The court shall notify*
2 *the Government of an application made under subsection*
3 *(a) and shall afford the Government an opportunity to re-*
4 *spond.*

5 “(c) *PRESERVATION ORDER.*—*The court shall order*
6 *that all evidence secured in relation to the case that could*
7 *be subjected to DNA testing must be preserved during the*
8 *pendency of the proceeding. The court may impose appro-*
9 *priate sanctions, including criminal contempt, for the in-*
10 *tentional destruction of evidence after such an order.*

11 “(d) *ORDER.*—

12 “(1) *IN GENERAL.*—*The court shall order DNA*
13 *testing pursuant to an application made under sub-*
14 *section (a) upon a determination that—*

15 “(A) *the evidence is still in existence, and*
16 *in such a condition that DNA testing may be*
17 *conducted;*

18 “(B) *the evidence was never previously sub-*
19 *jected to DNA testing, or was not subject to the*
20 *type of DNA testing that is now requested and*
21 *that may resolve an issue not resolved by pre-*
22 *vious testing;*

23 “(C) *the proposed DNA testing uses a sci-*
24 *entifically valid technique;*

1 “(D) the proposed DNA testing has the sci-
2 entific potential to produce new, noncumulative
3 evidence which is material to the claim of the
4 applicant that the applicant did not commit,
5 and which raises a reasonable probability that
6 the applicant would not have been convicted of—

7 “(i) the Federal crime of which the ap-
8 plicant was convicted; or

9 “(ii) any other offense that a sen-
10 tencing authority may have relied upon
11 when it sentenced the applicant with respect
12 to the Federal crime either to death or to an
13 enhanced term of imprisonment as a career
14 offender or armed career criminal; and

15 “(E) the identity of the perpetrator was or
16 should have been a significant issue in the case.

17 “(2) LIMITATION.—

18 “(A) IN GENERAL.—The court shall not
19 order DNA testing under paragraph (1) if the
20 Government proves by a preponderance of the
21 evidence that the application for testing was
22 made to interfere with the administration of jus-
23 tice rather than to support a claim described in
24 paragraph (1)(D).

1 “(B) *GOVERNMENT’S CLAIM.*—*The Govern-*
2 *ment’s claim under subparagraph (A)—*

3 “(i) *may be supported by evidence of*
4 *the defendant’s unexplained delay in seek-*
5 *ing testing;*

6 “(ii) *may be supported by evidence*
7 *that the defendant’s attorney presented at*
8 *trial an affirmative defense that is factually*
9 *inconsistent with the current application;*
10 *and*

11 “(iii) *shall succeed if the defendant tes-*
12 *tified at trial in support of an affirmative*
13 *defense that is factually inconsistent with*
14 *the current application.*

15 “(3) *TESTING PROCEDURES.*—*If the court orders*
16 *DNA testing under paragraph (1), the court shall im-*
17 *pose reasonable conditions on such testing designed to*
18 *protect the integrity of the evidence and the testing*
19 *process and the reliability of the test results, includ-*
20 *ing a condition that the test results are simulta-*
21 *neously disclosed to defense counsel, prosecuting coun-*
22 *sel, and the court of jurisdiction.*

23 “(e) *COST.*—*The cost of DNA testing ordered under*
24 *subsection (c) shall be borne by the Government or the ap-*
25 *plicant, as the court may order in the interests of justice,*

1 *except that an applicant shall not be denied testing because*
 2 *of an inability to pay the cost of testing.*

3 “(f) *COUNSEL.*—*The court may at any time appoint*
 4 *counsel for an indigent applicant under this section pursu-*
 5 *ant to section 3006A(a)(2)(B) of title 18.*

6 “(g) *POST-TESTING PROCEDURES.*—

7 “(1) *INCONCLUSIVE RESULTS.*—*If the results of*
 8 *DNA testing conducted under this section are incon-*
 9 *clusive, the court may order such further testing as*
 10 *may be appropriate or dismiss the application.*

11 “(2) *RESULTS UNFAVORABLE TO APPLICANT.*—*If*
 12 *the results of DNA testing conducted under this sec-*
 13 *tion inculcate the applicant, the court shall—*

14 “(A) *dismiss the application;*

15 “(B) *assess the applicant for the cost of the*
 16 *testing;*

17 “(C) *submit applicant’s DNA testing results*
 18 *to the Department of Justice for inclusion in the*
 19 *Combined DNA Index System; and*

20 “(D) *make such further orders as may be*
 21 *appropriate, including an order of contempt.*

22 “(3) *RESULTS FAVORABLE TO APPLICANT.*—*If*
 23 *the results of DNA testing conducted under this sec-*
 24 *tion are favorable to the applicant, the court shall*
 25 *order a hearing and thereafter make such further or-*

1 *ders as may be appropriate under applicable rules*
2 *and statutes regarding post-conviction proceedings,*
3 *notwithstanding any provision of law that would bar*
4 *such hearing or orders as untimely.*

5 *“(h) RULES OF CONSTRUCTION.—*

6 *“(1) OTHER POST-CONVICTION RELIEF UNAF-*
7 *FECTED.—Nothing in this section shall be construed*
8 *to limit the circumstances under which a person may*
9 *obtain DNA testing or other post-conviction relief*
10 *under any other provision of law.*

11 *“(2) FINALITY RULE UNAFFECTED.—An applica-*
12 *tion under this section shall not be considered a mo-*
13 *tion under section 2255 for purposes of determining*
14 *whether it or any other motion is a second or succes-*
15 *sive motion under section 2255.*

16 *“(i) DEFINITIONS.—In this section:*

17 *“(1) APPROPRIATE FEDERAL COURT.—The term*
18 *‘appropriate Federal court’ means—*

19 *“(A) the United States District Court which*
20 *imposed the sentence from which the applicant*
21 *seeks relief; or*

22 *“(B) in relation to a crime under the Uni-*
23 *form Code of Military Justice, the United States*
24 *District Court having jurisdiction over the place*
25 *where the court martial was convened that im-*

1 posed the sentence from which the applicant seeks
 2 relief, or the United States District Court for the
 3 District of Columbia, if no United States Dis-
 4 trict Court has jurisdiction over the place where
 5 the court martial was convened.

6 “(2) *FEDERAL CRIME*.—The term ‘Federal crime’
 7 includes a crime under the Uniform Code of Military
 8 Justice.

9 **“§ 2292. Preservation of evidence**

10 “(a) *IN GENERAL*.—Notwithstanding any other provi-
 11 sion of law and subject to subsection (b), the Government
 12 shall preserve all evidence that was secured in relation to
 13 the investigation or prosecution of a Federal crime (as that
 14 term is defined in section 2291(i)), and that could be sub-
 15 jected to DNA testing, for not less than the period of time
 16 that any person remains subject to incarceration in connec-
 17 tion with the investigation or prosecution.

18 “(b) *EXCEPTIONS*.—The Government may dispose of
 19 evidence before the expiration of the period of time described
 20 in subsection (a) if—

21 “(1) other than subsection (a), no statute, regula-
 22 tion, court order, or other provision of law requires
 23 that the evidence be preserved; and

24 “(2)(A)(i) the Government notifies any person
 25 who remains incarcerated in connection with the in-

1 *vestigation or prosecution and any counsel of record*
2 *for such person (or, if there is no counsel of record,*
3 *the public defender for the judicial district in which*
4 *the conviction for such person was imposed), of the*
5 *intention of the Government to dispose of the evidence*
6 *and the provisions of this chapter; and*

7 *“(ii) the Government affords such person not less*
8 *than 180 days after such notification to make an ap-*
9 *plication under section 2291(a) for DNA testing of*
10 *the evidence; or*

11 *“(B)(i) the evidence must be returned to its*
12 *rightful owner, or is of such a size, bulk, or physical*
13 *character as to render retention impracticable; and*

14 *“(ii) the Government takes reasonable measures*
15 *to remove and preserve portions of the material evi-*
16 *dence sufficient to permit future DNA testing.*

17 *“(c) REMEDIES FOR NONCOMPLIANCE.—*

18 *“(1) GENERAL LIMITATION.—Nothing in this sec-*
19 *tion shall be construed to give rise to a claim for*
20 *damages against the United States, or any employee*
21 *of the United States, any court official or officer of*
22 *the court, or any entity contracting with the United*
23 *States.*

24 *“(2) CIVIL PENALTY.—*

1 “(A) *IN GENERAL.*—Notwithstanding para-
2 graph (1), an individual who knowingly violates
3 a provision of this section or a regulation pre-
4 scribed under this section shall be liable to the
5 United States for a civil penalty in an amount
6 not to exceed \$1,000 for the first violation and
7 \$5,000 for each subsequent violation, except that
8 the total amount imposed on the individual for
9 all such violations during a calendar year may
10 not exceed \$25,000.

11 “(B) *PROCEDURES.*—The provisions of sec-
12 tion 405 of the Controlled Substances Act (21
13 U.S.C. 844a) (other than subsections (a) through
14 (d) and subsection (j)) shall apply to the imposi-
15 tion of a civil penalty under subparagraph (A)
16 in the same manner as such provisions apply to
17 the imposition of a penalty under section 405.

18 “(C) *PRIOR CONVICTION.*—A civil penalty
19 may not be assessed under subparagraph (A)
20 with respect to an act if that act previously re-
21 sulted in a conviction under chapter 73 of title
22 18.

23 “(3) *REGULATIONS.*—

1 “(A) *IN GENERAL.*—*The Attorney General*
2 *shall promulgate regulations to implement and*
3 *enforce this section.*

4 “(B) *CONTENTS.*—*The regulations shall in-*
5 *clude the following:*

6 “(i) *Disciplinary sanctions, including*
7 *suspension or termination from employ-*
8 *ment, for employees of the Department of*
9 *Justice who knowingly or repeatedly violate*
10 *a provision of this section.*

11 “(ii) *An administrative procedure*
12 *through which parties can file formal com-*
13 *plaints with the Department of Justice al-*
14 *leging violations of this section.”.*

15 (b) *CRIMINAL PENALTY.*—*Chapter 73 of title 18,*
16 *United States Code, is amended by inserting at the end the*
17 *following:*

18 “**§ 1519. Destruction or altering of DNA evidence**

19 “*Whoever willfully or maliciously destroys, alters, con-*
20 *ceals, or tampers with evidence that is required to be pre-*
21 *served under section 2292 of title 28, United States Code,*
22 *with intent to—*

23 “(1) *impair the integrity of that evidence;*

24 “(2) *prevent that evidence from being subjected*
25 *to DNA testing; or*

1 “(3) prevent the production or use of that evi-
 2 dence in an official proceeding,
 3 shall be fined under this title or imprisoned not more than
 4 5 years, or both.”.

5 (c) *TESTING OF FEDERAL INMATES.*—*The Attorney*
 6 *General is authorized to conduct a systematic review of Fed-*
 7 *eral cases in which a defendant was sentenced to death to*
 8 *identify cases in which DNA evidence is readily accessible*
 9 *and DNA testing is appropriate and to conduct DNA test-*
 10 *ing in such cases within 12 months of enactment of this*
 11 *Act.*

12 (d) *TECHNICAL AND CONFORMING AMENDMENTS.*—

13 (1) *The analysis for part VI of title 28, United*
 14 *States Code, is amended by inserting after the item*
 15 *relating to chapter 155 the following:*

 “**156. DNA testing** **2291**”.

16 (2) *The table of contents for Chapter 73 of title*
 17 *18, United States Code, is amended by inserting after*
 18 *the item relating to section 1518 the following:*

 “1519. *Destruction or altering of DNA evidence.*”.

19 **SEC. 102. POST-CONVICTION DNA TESTING IN STATE CRIMI-**
 20 **NAL JUSTICE SYSTEMS.**

21 (a) *CERTIFICATION REGARDING POST-CONVICTION*
 22 *TESTING AND PRESERVATION OF DNA EVIDENCE.*—*If any*
 23 *part of funds received from a grant made under a program*
 24 *listed in subsection (b) is to be used to develop or improve*

1 *a DNA analysis capability in a forensic laboratory, or to*
2 *collect, analyze, or index DNA samples for law enforcement*
3 *identification purposes, the State applying for that grant*
4 *must certify that it will—*

5 (1) *make post-conviction DNA testing available*
6 *to any person convicted of a State crime in a manner*
7 *consistent with section 2291 of title 28, United States*
8 *Code, and, if the results of such testing are favorable*
9 *to such person, allow such person to apply for post-*
10 *conviction relief, notwithstanding any provision of*
11 *law that would bar such application as untimely;*

12 (2) *preserve all evidence that was secured in re-*
13 *lation to the investigation or prosecution of a State*
14 *crime, and that could be subjected to DNA testing, for*
15 *not less than the period of time that such evidence*
16 *would be required to be preserved under section 2292*
17 *of title 28, United States Code, if the evidence were*
18 *related to a Federal crime;*

19 (3) *in cases where DNA evidence exonerates an*
20 *inmate, investigate the causes of such convictions,*
21 *publish the results of such investigations, and take*
22 *steps to prevent such errors in future cases; and*

23 (4) *establish a program under which State and*
24 *local prosecutors shall conduct a systematic review of*
25 *cases in which a defendant was sentenced to death to*

1 *identify cases in which DNA evidence is readily ac-*
2 *cessible and DNA testing is appropriate and to con-*
3 *duct DNA testing in such cases not later than 18*
4 *months after the date of enactment of this Act.*

5 **(b) PROGRAMS AFFECTED.**—*The certification require-*
6 *ment established by subsection (a) shall apply with respect*
7 *to grants made under the following programs or any suc-*
8 *cessor program:*

9 **(1) DNA ANALYSIS BACKLOG ELIMINATION**
10 *GRANTS.*—*Section 2 of the DNA Analysis Backlog*
11 *Elimination Act of 2000 (Public Law 106–546).*

12 **(2) PAUL COVERDELL NATIONAL FORENSIC**
13 *SCIENCES IMPROVEMENT GRANTS.*—*Part BB of title I*
14 *of the Omnibus Crime Control and Safe Streets Act*
15 *of 1968 (as added by Public Law 106–561).*

16 **(3) DNA IDENTIFICATION GRANTS.**—*Part X of*
17 *title I of the Omnibus Crime Control and Safe Streets*
18 *Act of 1968 (42 U.S.C. 3796kk et seq.).*

19 **(4) DRUG CONTROL AND SYSTEM IMPROVEMENT**
20 *GRANTS.*—*Subpart 1 of part E of title I of the Omni-*
21 *bus Crime Control and Safe Streets Act of 1968 (42*
22 *U.S.C. 3751 et seq.).*

23 **(5) PUBLIC SAFETY AND COMMUNITY POLICING**
24 *GRANTS.*—*Part Q of title I of the Omnibus Crime*

1 *samples that could not previously be tested, and*
2 *to obtain more informative and accurate results*
3 *than earlier forms of forensic DNA testing could*
4 *produce. Consequently, in some cases convicted*
5 *inmates have been exonerated by new DNA tests*
6 *after earlier tests had failed to produce definitive*
7 *results.*

8 *(D) Since DNA testing is often feasible on*
9 *relevant biological material that is decades old,*
10 *it can, in some circumstances, prove that a con-*
11 *viction that predated the development of DNA*
12 *testing was based upon incorrect factual find-*
13 *ings. Uniquely, DNA evidence showing inno-*
14 *cence, produced decades after a conviction, pro-*
15 *vides a more reliable basis for establishing a cor-*
16 *rect verdict than any evidence proffered at the*
17 *original trial. DNA testing, therefore, can and*
18 *has resulted in the post-conviction exoneration of*
19 *innocent men and women.*

20 *(E) In more than 100 cases in the United*
21 *States, DNA evidence has led to the exoneration*
22 *of innocent men and women who were wrong-*
23 *fully convicted. This number includes at least 12*
24 *individuals sentenced to death, some of whom*
25 *came within days of being executed.*

1 (F) *In more than a dozen cases, post-convic-*
2 *tion DNA testing that has exonerated an inno-*
3 *cent person has also enhanced public safety by*
4 *providing evidence that led to the identification*
5 *of the actual perpetrator.*

6 (G) *Experience has shown that it is not un-*
7 *duly burdensome to make DNA testing available*
8 *to inmates. The cost of that testing is relatively*
9 *modest and has decreased in recent years. More-*
10 *over, the number of cases in which post-convic-*
11 *tion DNA testing is appropriate is small, and*
12 *will decrease as pretrial testing becomes more*
13 *common.*

14 (H) *Under current law in many States, it*
15 *is difficult to obtain post-conviction DNA testing*
16 *because of time limits on introducing newly dis-*
17 *covered evidence. Motions for a new trial based*
18 *on newly discovered evidence must be made not*
19 *later than 2 years after conviction, and some-*
20 *times much sooner. The result is that laws in-*
21 *tended to prevent the use of evidence that has be-*
22 *come less reliable over time have been used to*
23 *preclude the use of DNA evidence that remains*
24 *highly reliable even decades after trial.*

1 (I) Since New York passed the Nation's first
2 post-conviction DNA statute in 1994, a number
3 of States have adopted post-conviction DNA test-
4 ing procedures, but some of these procedures are
5 unduly restrictive, and many States have not
6 adopted such procedures. Moreover, only a hand-
7 ful of States have passed legislation requiring
8 that biological evidence be adequately preserved.

9 (J) In *Herrera v. Collins*, 506 U.S. 390
10 (1993), a majority of the members of the Court
11 suggested that a persuasive showing of innocence
12 made after trial would render the execution of an
13 inmate unconstitutional. The principle is no dif-
14 ferent for one who has been sentenced not to
15 death, but to a term of extended incarceration.

16 (K) It shocks the conscience and offends so-
17 cial standards of fairness to deny inmates a
18 right of access to evidence for tests that could
19 produce persuasive evidence of their innocence.

20 (L) If biological material is not subjected to
21 DNA testing in appropriate cases, there is a sig-
22 nificant risk that persuasive evidence of inno-
23 cence will not be detected and, accordingly, that
24 innocent persons will be unconstitutionally in-
25 carcerated or executed.

1 (M) *Given the irremediable constitutional*
2 *harm that would result from the punishment of*
3 *an innocent person, a Federal statute assuring*
4 *access to evidence for the purpose of DNA testing*
5 *is a congruent and proportional prophylactic*
6 *measure to prevent constitutional injuries from*
7 *occurring.*

8 (2) *PURPOSE.*—*The purpose of this section is to*
9 *prevent the imposition of unconstitutional punish-*
10 *ments through the exercise of power granted by clause*
11 *1 of section 8 and clause 2 of section 9 of article I*
12 *of the Constitution of the United States and section*
13 *5 of the 14th amendment to the Constitution of the*
14 *United States.*

15 (b) *APPLICATION FOR DNA TESTING.*—*No State shall*
16 *deny a prisoner in State custody access to evidence for the*
17 *purpose of DNA testing, if the proposed DNA testing has*
18 *the scientific potential to produce new, noncumulative evi-*
19 *dence which is material to the claim of the prisoner that*
20 *the prisoner did not commit, and which raises a reasonable*
21 *probability that the prisoner would not have been convicted*
22 *of—*

23 (1) *the crime of which the prisoner was con-*
24 *victed; or*

1 (3) by redesignating paragraph (27), as added
2 by Public Law 106–561, as paragraph (29);

3 (4) in paragraph (29), as redesignated, by strik-
4 ing the period and inserting “; and”; and

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

6 “(30) prosecutor-initiated programs to conduct a
7 systematic review of convictions to identify cases in
8 which DNA testing is appropriate and to offer DNA
9 testing to inmates in such cases.”.

10 **TITLE II—IMPROVING STATE**
11 **SYSTEMS FOR PROVIDING**
12 **COMPETENT LEGAL SERVICES**
13 **IN CAPITAL CASES**

14 **SEC. 201. CAPITAL REPRESENTATION SYSTEM IMPROVE-**
15 **MENT GRANTS.**

16 (a) *GRANT AUTHORIZATION.*—The Attorney General
17 shall make available grants to States for the purpose of im-
18 proving the quality of legal representation provided to indi-
19 gent defendants in State capital cases.

20 (b) *DEFINITION.*—In this title, the term “legal rep-
21 resentation” means legal counsel and investigative, expert,
22 and other services necessary for competent representation.

23 (c) *PURPOSES.*—Grants awarded under subsection (a)
24 shall—

1 (1) *be used to establish, implement, or improve*
2 *an effective system described in subsection (d) for pro-*
3 *viding competent legal representation to—*

4 (A) *indigents charged with an offense sub-*
5 *ject to capital punishment;*

6 (B) *indigents who have been sentenced to*
7 *death and who seek appellate or collateral relief*
8 *in State court; and*

9 (C) *indigents who have been sentenced to*
10 *death and who seek review in the Supreme Court*
11 *of the United States;*

12 (2) *supplement, not supplant, existing State and*
13 *local funding; and*

14 (3) *not be used to fund representation in par-*
15 *ticular cases.*

16 (d) *EFFECTIVE SYSTEM.—An effective system for pro-*
17 *viding competent legal representation is a system that—*

18 (1) *invests the responsibility for identifying and*
19 *appointing qualified attorneys to represent indigents*
20 *in capital cases in an entity that—*

21 (A) *is established by statute or by the high-*
22 *est State court with jurisdiction in criminal*
23 *cases;*

24 (B) *carries out its core functions independ-*
25 *ently of the executive, legislative, and judicial*

1 *branches of State government, provided that the*
2 *participation of appellate judges is not pre-*
3 *cluded; and*

4 *(C) may be structured to take account of the*
5 *size and demography of the State;*

6 *(2) requires the entity described in paragraph*
7 *(1) to—*

8 *(A) establish qualifications for attorneys*
9 *who may be appointed to represent indigents in*
10 *capital cases;*

11 *(B) establish and maintain a roster of*
12 *qualified attorneys;*

13 *(C) appoint 2 attorneys from the roster to*
14 *represent an indigent in a capital case upon re-*
15 *ceiving notice of the need;*

16 *(D) provide for periodic training programs*
17 *for attorneys representing indigents in capital*
18 *cases; and*

19 *(E) monitor the performance of attorneys*
20 *who are appointed and their attendance at*
21 *training programs, and remove from the roster*
22 *attorneys who fail to deliver effective representa-*
23 *tion or who fail to comply with such require-*
24 *ments as the entity may establish regarding*
25 *training programs; and*

1 (3) provides attorneys appointed to represent
2 indigents in capital cases—

3 (A) reasonable compensation for actual time
4 and service, computed on an hourly basis, at a
5 rate of compensation that is comparable (subject
6 to cost of living differences among States) to the
7 rate typically paid to attorneys appointed to
8 represent capital clients in Federal court pro-
9 ceedings, except that the requirement of reason-
10 able compensation shall not be interpreted to re-
11 quire a State to compensate counsel at a rate in
12 excess of the Federal rate; and

13 (B) reasonable reimbursement for the costs
14 of staff, investigators, experts, tests and other
15 support services in a manner comparable to the
16 manner in which such expenses are reimbursed
17 in Federal capital cases.

18 (e) *FACTORS.*—In determining whether to include or
19 maintain an attorney on the roster of attorneys who may
20 be appointed to represent indigents in capital cases, an en-
21 tity described in subsection (d)(1) shall—

22 (1) consider whether, during the past 5 years, the
23 attorney—

24 (A) has been sanctioned by a bar associa-
25 tion or court for ethical misconduct relating to

1 *the attorney's conduct as defense counsel in a fel-*
2 *ony case in Federal or State court;*

3 *(B) has been found, after a final determina-*
4 *tion by a Federal or State court, to have ren-*
5 *dered constitutionally ineffective assistance of*
6 *counsel in a felony case in Federal or State*
7 *court; or*

8 *(C) has asserted under oath or in writing in*
9 *relation to 3 or more felony cases in Federal or*
10 *State court that he or she has rendered constitu-*
11 *tionally ineffective assistance of counsel, regard-*
12 *less of whether a court found the attorney to have*
13 *rendered such ineffective assistance; and*

14 *(2) if a consideration in paragraph (1) pertains,*
15 *consider the nature of the act or omission that led to*
16 *that sanction, finding, or assertion.*

17 *(f) APPLICATIONS.—*

18 *(1) IN GENERAL.—The Attorney General shall es-*
19 *tablish a process by which States may apply for a*
20 *grant under this section.*

21 *(2) REQUIREMENTS.—Each application shall in-*
22 *clude, in addition to such other information as the*
23 *Attorney General may reasonably require—*

24 *(A) a description of the communities to be*
25 *served by the grant, including the nature of ex-*

1 *isting capital defender services within such com-*
2 *munities;*

3 *(B) assurances that Federal funds received*
4 *under this section shall be used to supplement*
5 *and not supplant non-Federal funds that would*
6 *otherwise be available for activities funded under*
7 *this section;*

8 *(C) a long-term statewide strategy and de-*
9 *tailed implementation plan that reflects con-*
10 *sultation with the judiciary, the organized bar,*
11 *and the attorney general of the State;*

12 *(D) a plan for obtaining necessary resources*
13 *to maintain the system following termination of*
14 *Federal support; and*

15 *(E) the State's agreement to submit to en-*
16 *forcement suits under section 202.*

17 *(g) FEDERAL SHARE.—The Attorney General shall es-*
18 *tablish a schedule to ensure that the Federal share of total*
19 *expenditures to carry out the purposes of a grant under this*
20 *section shall decrease and the State's share shall increase*
21 *over the years in which a State receives assistance under*
22 *this section, except that a State shall have no obligation*
23 *to match any portion of the Federal expenditure in the first*
24 *fiscal year in which it receives such assistance.*

1 (h) *REPORT.*—*Each State receiving funds under this*
2 *section shall submit an annual report to the Attorney*
3 *General—*

4 (1) *explaining the activities carried out with the*
5 *funds received;*

6 (2) *evaluating the effectiveness of such activities*
7 *in establishing or maintaining an effective system;*
8 *and*

9 (3) *containing such additional information as*
10 *the Attorney General may require.*

11 (i) *MONITORING.*—

12 (1) *IN GENERAL.*—*The Attorney General shall*
13 *monitor whether a State receiving funds under this*
14 *section maintains an effective system within the*
15 *meaning of this section.*

16 (2) *COMPLIANCE.*—*If the Attorney General finds*
17 *that a State does not maintain an effective system, he*
18 *shall direct the State to take such measures as he*
19 *deems necessary to achieve compliance with the terms*
20 *of the grant and may enforce such measures in Fed-*
21 *eral district court. A State may challenge the need for*
22 *such measures in Federal district court.*

23 (3) *ENFORCEMENT SUIT.*—*An enforcement suit*
24 *under section 202 shall lie regardless of whether the*
25 *Attorney General takes action under paragraph (2).*

1 (j) *REPORTS TO CONGRESS.*—

2 (1) *ATTORNEY GENERAL.*—Not later than 90
3 days after the end of each fiscal year for which grants
4 are made under this section, the Attorney General
5 shall submit a report to Congress that includes the
6 size of the grant made under this section to each State
7 for such fiscal year and an assessment of each State’s
8 system for providing competent legal representation to
9 indigents in capital cases.

10 (2) *GAO.*—Not later than 30 months after the
11 date of enactment of this Act, and every 24 months
12 thereafter if grants were made under this section dur-
13 ing the preceding 24-month period, the General Ac-
14 counting Office shall submit a report to Congress that
15 includes, with respect to each State that prescribes,
16 authorizes, or permits the penalty of death for any
17 offense—

18 (A) a detailed description of any system for
19 providing representation, including counsel and
20 investigative, expert, and other services necessary
21 for effective representation, to indigent persons
22 in capital cases;

23 (B) an evaluation of the effectiveness of such
24 system in providing such representation, includ-
25 ing an assessment as to whether such system in-

1 *cludes the elements set forth in subsection (d);*
2 *and*

3 *(C) a summary of the amounts actually*
4 *paid by governmental entities for such represen-*
5 *tation during the fiscal years covered by the re-*
6 *port.*

7 *(k) AUTHORIZATION OF APPROPRIATIONS.—To carry*
8 *out this section there are authorized to be appropriated—*

9 *(1) for fiscal year 2003, \$50,000,000;*

10 *(2) for fiscal year 2004, \$75,000,000;*

11 *(3) for fiscal years 2005 and 2006, \$100,000,000;*

12 *(4) for fiscal year 2007, \$75,000,000; and*

13 *(5) for fiscal year 2008, \$50,000,000.*

14 *(l) SPECIAL AUTHORIZATION RULE.—In any fiscal*
15 *year in which the amount appropriated under this section*
16 *falls below the amount authorized, the Attorney General*
17 *shall expend such portion of the sum appropriated to carry*
18 *out the programs under parts D and E of title I of the*
19 *Omnibus Crime Control and Safe Streets Act of 1968 (re-*
20 *ferred to in this subsection as the “Byrne programs”), or*
21 *any successor programs, as is necessary to ensure that the*
22 *program authorized in this section is funded at the author-*
23 *ized amount, provided that in no event shall the portion*
24 *of the funding for the Byrne programs used for this purpose*

1 *exceed 10 percent of the sums appropriated for the Byrne*
2 *programs.*

3 *(m) CONFORMING CHANGE.—Section 506 of the Omni-*
4 *bus Crime Control and Safe Streets Act of 1968 (42 U.S.C.*
5 *3756) is amended by adding at the end the following:*

6 *“(g) RULE.—Funding under this section is subject to*
7 *the special authorization rule set forth at section 201(l) of*
8 *the Innocence Protection Act of 2002.”.*

9 **SEC. 202. ENFORCEMENT SUITS.**

10 *(a) RIGHT OF ACTION.—A person, acting on his own*
11 *behalf and on behalf of the United States, may commence*
12 *a civil action in a United States district court against an*
13 *executive officer of a State that receives a grant under sec-*
14 *tion 201, alleging that the officer fails to maintain an effec-*
15 *tive system for providing competent legal representation in*
16 *capital cases within the meaning of section 201.*

17 *(b) LIMITATIONS.—A suit may not be brought under*
18 *this section prior to the date that is 1 year after the date*
19 *on which the State receives a grant under section 201. A*
20 *suit dismissed with prejudice may not be refiled within 1*
21 *year of the date on which the first suit was dismissed.*

22 *(c) CONSOLIDATION.—All suits pending at the same*
23 *time in 1 or more Federal districts against the executive*
24 *officers of a single State shall be consolidated.*

25 *(d) PROCEDURE.—*

1 (1) *SERVICE.*—A person who files a civil action
2 authorized by subsection (a) shall serve a copy of the
3 complaint to the Attorney General of the United
4 States.

5 (2) *INTERVENTION.*—Not later than 90 days
6 after a filing under paragraph (1), the Attorney Gen-
7 eral shall either intervene in the action or notify both
8 the person who filed the action and the Court that the
9 United States declines to intervene.

10 (3) *UNITED STATES DECLINES.*—If the United
11 States declines to intervene, the person who filed the
12 action shall be entitled to conduct the action.

13 (4) *LATER INTERVENTION.*—The United States
14 may intervene at a later time only with leave of
15 Court on a showing of good cause.

16 (5) *EFFECT OF UNITED STATES INTERVEN-*
17 *TION.*—If the United States intervenes—

18 (A) the Attorney General shall assume re-
19 sponsibility for conducting the action; and

20 (B) the person who filed the action shall be
21 entitled to continue as a party and to partici-
22 pate in all formal and informal pretrial, trial,
23 and appellate proceedings, including settlement
24 negotiations.

1 (e) *RELIEF.*—If the court concludes that the State sys-
2 tem, for which the officer named as defendant is responsible,
3 is not effective within the meaning of section 201, or fails
4 to meet any other condition established by the Attorney
5 General under that section, the court shall order appro-
6 priate declaratory or injunctive relief. The court shall also
7 award costs and fees, including attorney and expert witness
8 fees, to the person who commenced the action.

9 (f) *STATUS OF GRANT.*—The pendency of a suit under
10 this section shall not result in suspension of the grant under
11 section 201, except as a court may order. If the court finds
12 that the State system, for which the officer named as defend-
13 ant is responsible, will not become effective in a reasonable
14 period of time, it may order that the grant be disbursed
15 pursuant to section 203.

16 **SEC. 203. GRANTS TO QUALIFIED CAPITAL DEFENDER OR-**
17 **GANIZATIONS.**

18 (a) *ALTERNATIVE GRANTS.*—If a State that authorizes
19 capital punishment does not seek or does not qualify for
20 a grant under section 201, the Attorney General shall
21 award a grant to 1 or more qualified capital defender orga-
22 nizations in that State in an amount determined under
23 subsection (d). A grant under this section may not be made
24 to an organization to provide services in a State in the

1 *same fiscal year that State receives a grant under section*
2 *201 except pursuant to section 202(f).*

3 (b) *QUALIFIED CAPITAL DEFENDER ORGANIZA-*
4 *TIONS.—A qualified capital defender organization eligible*
5 *to receive a grant under this section is a nonprofit organi-*
6 *zation or public defender organization comprised of attor-*
7 *neys who specialize or have substantial experience in pro-*
8 *viding legal services in the State to defendants in capital*
9 *cases.*

10 (c) *USES OF FUNDS.—Grants made under this section*
11 *may be used to—*

12 (1) *strengthen systems for providing competent*
13 *legal representation to—*

14 (A) *indigents charged with an offense sub-*
15 *ject to capital punishment;*

16 (B) *indigents who have been sentenced to*
17 *death and who seek appellate or collateral relief*
18 *in State court; and*

19 (C) *indigents who have been sentenced to*
20 *death and who seek review in the Supreme Court*
21 *of the United States;*

22 (2) *recruit and train attorneys to provide com-*
23 *petent legal representation in capital cases; and*

24 (3) *augment the organization's resources for pro-*
25 *viding competent legal representation in capital cases.*

1 (d) *FORMULA.*—A grant under subsection (a) shall not
2 be more than the amount that results from calculating *X*
3 percent of the sum appropriated to carry out section 201
4 pursuant to subsections (k) and (l) of that section, and shall
5 not be less than one-half that amount, where *X* equals the
6 aggregate general population of all States that authorize the
7 death penalty divided by the general population of the State
8 in which the grantee will provide services.

9 (e) *PROHIBITION.*—Grants made under this section
10 may not be used to sponsor any political activities, except
11 that—

12 (1) a grantee may use grant funds to respond to
13 requests from a legislative entity regarding activities
14 under the grant; and

15 (2) nothing in this section shall interfere with an
16 attorney's duty to represent a client consistent with
17 applicable ethical rules.

18 (f) *CONSIDERATIONS.*—

19 (1) *IN GENERAL.*—In selecting which qualified
20 capital defender organization or organizations pro-
21 viding services in a State shall be awarded a grant
22 under this section, the Attorney General shall consider
23 whether an organization—

24 (A) has been found to have filed large num-
25 bers of frivolous claims in State capital cases,

1 *with the effect of unreasonably delaying or other-*
2 *wise interfering with the State's administration*
3 *of its capital sentencing scheme; or*

4 *(B) employs 1 or more attorneys who, dur-*
5 *ing the past 5 years—*

6 *(i) has been sanctioned by a bar asso-*
7 *ciation or court for ethical misconduct re-*
8 *lating to the attorney's conduct as defense*
9 *counsel in a felony case in Federal or State*
10 *court;*

11 *(ii) has been found, after a final deter-*
12 *mination by a Federal or State court, to*
13 *have rendered constitutionally ineffective as-*
14 *sistance of counsel in a felony case in Fed-*
15 *eral or State court; or*

16 *(iii) has asserted under oath or in*
17 *writing in relation to 3 or more felony cases*
18 *in Federal or State court that he or she has*
19 *rendered constitutionally ineffective assist-*
20 *ance of counsel, regardless of whether a*
21 *court has found the attorney to have ren-*
22 *dered such ineffective assistance.*

23 (2) *NATURE OF THE ACT.—If a consideration in*
24 *paragraph (1)(B) pertains, the Attorney General shall*

1 *training programs to improve the performance and com-*
2 *petency of defense counsel representing defendants charged*
3 *with capital offenses in State and local courts.*

4 “(b) *ELIGIBILITY.*—*Grants authorized by this section*
5 *may only be made for the training of defense counsel in*
6 *a State that has capital punishment.*

7 “(c) *AUTHORIZATION OF APPROPRIATIONS.*—*There are*
8 *authorized to be appropriated \$15,000,000 for fiscal years*
9 *2003 through 2007 to carry out this section.*

10 **“SEC. 207B. GRANTS TO TRAIN STATE AND LOCAL JUDGES.**

11 “(a) *GRANTS AUTHORIZED.*—*The Institute may make*
12 *grants to State and local courts to conduct programs to*
13 *train trial judges in handling capital cases.*

14 “(b) *ELIGIBILITY.*—*Grants authorized by this section*
15 *may only be made to a State or local court in a State that*
16 *has capital punishment.*

17 “(c) *AUTHORIZATION OF APPROPRIATIONS.*—*There are*
18 *authorized to be appropriated \$15,000,000 for fiscal years*
19 *2003 through 2007 to carry out this section.”.*

20 **(b) GRANTS TO TRAIN PROSECUTORS.**—

21 (1) *GRANTS AUTHORIZED.*—*The Attorney Gen-*
22 *eral may make grants to States and units of local*
23 *government to conduct programs to train prosecutors*
24 *in handling capital cases.*

1 (2) *ELIGIBILITY.*—Grants authorized by this
 2 subsection may only be made to a State or unit of
 3 local government in a State that has capital punish-
 4 ment.

5 (3) *AUTHORIZATION OF APPROPRIATIONS.*—
 6 There are authorized to be appropriated \$15,000,000
 7 for fiscal years 2003 through 2007 to carry out this
 8 subsection.

9 **TITLE III—RIGHT TO REVIEW OF**
 10 **THE DEATH PENALTY UPON**
 11 **THE GRANT OF CERTIORARI**

12 **SEC. 301. PROTECTING THE RIGHTS OF DEATH ROW IN-**
 13 **MATES TO REVIEW OF CASES GRANTED CER-**
 14 **TIORARI.**

15 Section 2101 of title 28, United States Code, is amend-
 16 ed by adding at the end the following:

17 “(h) Upon notice that the requisite number of justices
 18 of the Supreme Court have voted to grant certiorari, the
 19 Director of the Bureau of Prisons, the Secretary of a mili-
 20 tary branch, or any other Federal official with authority
 21 to carry out a death sentence, shall suspend the execution
 22 of the sentence of death until the Supreme Court enters a
 23 stay of execution or until certiorari is acted upon and the
 24 case is disposed of by the Supreme Court.

1 “(i) For purposes of this section, the Supreme Court
2 shall treat a motion for a stay of execution as a petition
3 for certiorari.

4 “(j) In an appeal from, or petition for certiorari in,
5 a case in which the sentence is death, a stay of execution
6 shall immediately issue if the requisite number of justices
7 vote to grant certiorari. The stay shall remain in effect
8 until the Supreme Court disposes of the case.”.

9 **TITLE IV—COMPENSATION FOR**
10 **THE WRONGFULLY CONVICTED**

11 **SEC. 401. INCREASED COMPENSATION IN FEDERAL CASES.**

12 Section 2513(e) of title 28, United States Code, is
13 amended by striking “\$5,000” and inserting “\$10,000 for
14 each 12-month period of incarceration”.

15 **SEC. 402. SENSE OF CONGRESS REGARDING COMPENSA-**
16 **TION IN STATE DEATH PENALTY CASES.**

17 It is the sense of Congress that States should provide
18 reasonable compensation to any person found to have been
19 unjustly convicted of an offense against the State and sen-
20 tenced to death.

1 **TITLE V—STUDENT LOAN REPAY-**
 2 **MENT FOR PUBLIC ATTOR-**
 3 **NEYS**

4 **SEC. 501. STUDENT LOAN REPAYMENT FOR PUBLIC ATTOR-**
 5 **NEYS.**

6 (a) *IN GENERAL.*—*The Higher Education Act of 1965*
 7 *is amended by inserting after section 428K (20 U.S.C.*
 8 *1078–11) the following:*

9 **“SEC. 428L. LOAN FORGIVENESS FOR PUBLIC ATTORNEYS.**

10 “(a) *PURPOSE.*—*The purpose of this section is to en-*
 11 *courage qualified individuals to enter and continue employ-*
 12 *ment as prosecutors and public defenders.*

13 “(b) *DEFINITIONS.*—*In this section:*

14 “(1) *PROSECUTOR.*—*The term ‘prosecutor’*
 15 *means a full-time employee of a State or local agency*
 16 *who—*

17 “(A) *is continually licensed to practice law;*
 18 *and*

19 “(B) *prosecutes criminal cases at the State*
 20 *or local level.*

21 “(2) *PUBLIC DEFENDER.*—*The term ‘public de-*
 22 *fender’ means an attorney who—*

23 “(A) *is continually licensed to practice law;*
 24 *and*

1 “(B) is a full-time employee of a State or
2 local agency, or of a nonprofit organization op-
3 erating under a contract with a State or unit of
4 local government, which provides legal represen-
5 tation services to indigent persons charged with
6 criminal offenses.

7 “(3) *STUDENT LOAN*.—The term ‘student loan’
8 means—

9 “(A) a loan made, insured, or guaranteed
10 under this part;

11 “(B) a loan made under part D or E; and

12 “(C) a health education assistance loan
13 made or ensured under part A of title VII of the
14 Public Health Service Act (42 U.S.C. 292 et seq.)
15 or under part E of title VIII of such Act (42
16 U.S.C. 297a et seq.).

17 “(c) *PROGRAM AUTHORIZED*.—For the purpose of en-
18 couraging qualified individuals to enter and continue em-
19 ployment as prosecutors and public defenders, the Secretary
20 shall carry out a program, through the holder of a loan,
21 of assuming the obligation to repay (by direct payments
22 on behalf of a borrower) a qualified loan amount for a loan
23 made under section 428 or 428H, in accordance with sub-
24 section (d), for any borrower who—

1 “(1) is employed as a prosecutor or public de-
2 fender; and

3 “(2) is not in default on a loan for which the
4 borrower seeks forgiveness.

5 “(d) *TERMS OF AGREEMENT.*—

6 “(1) *IN GENERAL.*—To be eligible to receive re-
7 payment benefits under this section, a borrower shall
8 enter into a written agreement that specifies that—

9 “(A) the borrower will remain employed as
10 a prosecutor or public defender for a required pe-
11 riod of service specified in the agreement (but
12 not less than 3 years), unless involuntarily sepa-
13 rated from that employment;

14 “(B) if the borrower is involuntarily sepa-
15 rated from that employment on account of mis-
16 conduct, or voluntarily separates from that em-
17 ployment, before the end of the period specified
18 in the agreement, the borrower will repay the
19 Secretary the amount of any benefits received by
20 such employee under this section;

21 “(C) if the borrower is required to repay an
22 amount to the Secretary under subparagraph
23 (B) and fails to repay the amount described in
24 subparagraph (B), a sum equal to the amount is
25 recoverable by the Government from the employee

1 *(or such employee's estate, if applicable) by such*
2 *method as is provided by law for the recovery*
3 *of amounts owing to the Government;*

4 “(D) *the Secretary may waive, in whole or*
5 *in part, a right of recovery under this subsection*
6 *if it is shown that recovery would be against eq-*
7 *uity and good conscience or against the public*
8 *interest; and*

9 “(E) *the Secretary shall make student loan*
10 *payments under this section for the period of the*
11 *agreement, subject to the availability of appro-*
12 *priations.*

13 “(2) *REPAYMENTS.—Any amount repaid by, or*
14 *recovered from, an individual (or an estate) under*
15 *this subsection shall be credited to the appropriation*
16 *account from which the amount involved was origi-*
17 *nally paid. Any amount so credited shall be merged*
18 *with other sums in such account and shall be avail-*
19 *able for the same purposes and period, and subject to*
20 *the same limitations (if any), as the sums with which*
21 *the amount was merged.*

22 “(3) *LIMITATIONS.—*

23 “(A) *STUDENT LOAN PAYMENT AMOUNT.—*
24 *Student loan payments made by the Secretary*
25 *under this section shall be made subject to such*

1 *terms, limitations, or conditions as may be mu-*
 2 *tually agreed to by the borrower concerned and*
 3 *the Secretary in the agreement described in this*
 4 *subsection, except that the amount paid by the*
 5 *Secretary under this section may not exceed—*

6 “(i) \$6,000 for any borrower in any
 7 calendar year; or

8 “(ii) a total of \$40,000 in the case of
 9 any borrower.

10 “(B) *BEGINNING OF PAYMENTS.*—*Nothing*
 11 *in this section shall be construed to authorize the*
 12 *Secretary to pay any amount to reimburse a*
 13 *borrower for any repayments made by such bor-*
 14 *rower prior to the date on which the Secretary*
 15 *entered into an agreement with the employee*
 16 *under this subsection.*

17 “(e) *ADDITIONAL AGREEMENTS.*—*On completion of*
 18 *the required period of service under such an agreement, the*
 19 *borrower concerned and the Secretary may enter into an*
 20 *additional agreement described in subsection (d) for a suc-*
 21 *cessive period of service specified in the agreement (which*
 22 *may be less than 3 years).*

23 “(f) *AWARD BASIS; PRIORITY.*—

24 “(1) *AWARD BASIS.*—*The Secretary shall provide*
 25 *repayment benefits under this section on a first-come,*

1 *first-served basis (subject to paragraph (2)) and sub-*
2 *ject to the availability of appropriations.*

3 “(2) *PRIORITY.*—*The Secretary shall give pri-*
4 *ority in providing repayment benefits under this sec-*
5 *tion for a fiscal year to a borrower who—*

6 “(A) *received repayment benefits under this*
7 *section for the preceding fiscal year; and*

8 “(B) *has completed less than 3 years of the*
9 *first required period of service specified for the*
10 *borrower in an agreement entered into under*
11 *subsection (d).*

12 “(g) *REGULATIONS.*—*The Secretary is authorized to*
13 *issue such regulations as may be necessary to carry out the*
14 *provisions of this section.*

15 “(h) *AUTHORIZATION OF APPROPRIATIONS.*—*There*
16 *are authorized to be appropriated such sums as may be nec-*
17 *essary to carry out this section for each fiscal year.”.*

18 (b) *CANCELLATION OF LOANS.*—

19 (1) *AMENDMENT.*—*Section 465(a)(2)(F) of the*
20 *Higher Education Act of 1965 (20 U.S.C.*
21 *1087ee(a)(2)(F)) is amended by inserting “, or as a*
22 *public defender (as defined in section 428L)” after*
23 *“agencies”.*

24 (2) *EFFECTIVE DATE.*—*The amendment made by*
25 *this subsection shall apply to—*

1 (A) eligible loans made before, on, or after
2 the date of enactment of this Act; and

3 (B) service as a public defender that is pro-
4 vided on or after the date of enactment of this
5 Act.

6 (3) CONSTRUCTION.—Nothing in this subsection
7 or the amendment made by this subsection shall be
8 construed to authorize the Secretary to pay any
9 amount to reimburse a borrower for any repayments
10 made by such borrower prior to the date on which the
11 borrower became eligible for cancellation under sec-
12 tion 465(a) of such Act (20 U.S.C. 1087ee(a)).

Calendar No. 731

107TH CONGRESS
2^D SESSION

S. 486

[Report No. 107-315]

A BILL

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

OCTOBER 16, 2002

Reported with an amendment