The Innocence Protection Act of 2001

Senator Patrick Leahy
THE INNOCENCE PROTECTION ACT OF 2001*

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I. SENATOR LEAHY’S REMARKS ON THE INTRODUCTION OF THE INNOCENCE PROTECTION ACT OF 2001

Mr. LEAHY. Mr. President, a little over one year ago, I came to this floor to draw attention to the growing crisis in the administration of capital punishment. I noted the startling number of cases—85—in which death row inmates had been exonerated after long stays in prison. In some of those cases, the inmate had come within days of being executed.

A lot has happened in a year. For one thing, a lot more death row inmates have been exonnerated. The number jumped in a single year from 85 all the way to 95. There are now 95 people in 22 States who have been cleared of the crime that sent them to death row, according to the Death Penalty Information Center. The appalling number of exonnerations, and the fact that they span so many States—a substantial majority of the States that have the death penalty—makes it clearer than ever that the crisis I spoke of last year is real, and that it is national in its scope. This is not an "Illinois problem" or a "Texas problem." Nor, with Earl Washington’s release last month from prison, is it a "Virginia problem." There are death penalty problems across the nation, and as a nation we need to pay attention to what is happening.


It seems like every time you pick up a paper these days, there is another story about another person who was sentenced to death for a crime that he did not commit. The most horrifying miscarriages of justice are becoming commonplace: "Yet Another Innocent Person Cleared By DNA, Walks Off Death Row"—story on page 10. We should never forget that behind each of these headlines is a person whose life was completely shattered and nearly extinguished by a wrongful conviction.

And those were the "lucky" ones. We simply do not know how many innocent people remain on death row, and how many may already have been executed.

People of good conscience can and will disagree on the morality of the death penalty. I have always opposed it. I did when I was a prosecutor, and I do today. But no matter what you believe about the death penalty, no one wants to see innocent people sentenced to death. It is completely unacceptable.

A year ago, along with several of my colleagues, I introduced the Innocence Protection Act of 2000. I hoped this bill would stimulate a national debate and begin work on national reforms on what is, as I said, a national problem. A year later, the national debate is well under way, but the need for real, concrete reforms is more urgent than ever.

Today, my friend GORDON SMITH and I are introducing the Innocence Protection Act of 2001. We are joined by Senators from both sides of the aisle, by some who support capital punishment and by others who oppose it. On the Republican side, I want to thank Senators SUSAN COLLINS and LINCOLN CHAFEE, and my fellow Vermonter JIM JEFFORDS. On the Democratic side, my thanks to Senators LEVIN, FEINGOLD, KENNEDY, AKAKA, MIKULSKI, DODD, LIEBERMAN, TORRICELLI, WELLSTONE, BOXER, and CORZINE. I also want to thank our House sponsors WILLIAM DELAHUNT and RAY LaHOOD, along with their 117 additional cosponsors, both Democratic and Republican.

Over the last year we have turned the corner in showing that the death penalty process is broken. Now we will push forward to our goal of acting on reforms that address these problems.

Here on Capitol Hill it is our job to represent the public. The scores of legislators who have sponsored this legislation clearly do represent the American public, both in their diversity and in their readiness to work together in a bipartisan manner for common-sense solutions.

Too often in this chamber, we find ourselves dividing along party or ideological lines. The Innocence Protection Act is not about that, and it is not about whether, in the abstract, you favor or disfavor the death penalty. It is about what kind of society we want America to be in the 21st Century.

The goal of our bill is simple, but profoundly important: to reduce the risk of mistaken executions. The Innocence Protection Act proposes basic, common-sense reforms to our criminal justice system that are designed to protect the innocent and to ensure that if the death penalty is imposed, it is the result of informed and reasoned deliberation, not politics, luck, bias, or guesswork. We have listened to a lot of good advice and made some refinements to the bill since the last Congress, but it is still structured around two principal reforms: improving the availability of DNA testing, and ensuring reasonable minimum standards and funding for court-appointed counsel.

The need to make DNA testing more available is obvious. DNA is the fingerprint of the 21st Century. Prosecutors across the country use it, and rightly so, to prove guilt. By the same token, it should be used to do what it is equally scientifically reliable to do—prove innocence. Our bill would provide broader access to DNA testing by convicted offenders. It would also prevent the premature destruction of biological evidence that could hold the key to clearing an innocent person or identifying the real culprit.

I am gratified that our bill has served as a catalyst for reforms in the States with respect to post-conviction DNA testing. In just one year, several States have passed some form of DNA legislation. Others have DNA bills under consideration. Much of this legislation is modeled on the DNA provisions proposed in the Innocence Protection Act, and we can be proud about this.

But there are still many States that have not moved on this issue, even though it has been more than six years since New York passed the Nation’s first post-conviction DNA statute. And some of the States that have acted have done so in ways that will leave the vast majority of prisoners without access to DNA testing. Moreover, none of these new laws addresses the larger and more urgent problem of ensuring that people facing the death penalty have adequate legal representation. The Innocence Protection Act does address this problem.

In our adversarial system of justice, effective assistance of counsel is essential to the fair administration of justice. Unfortunately, the manner in which defense lawyers are selected and compensated in death penalty cases too often results in fundamental unfairness and unreliable
verdicts. More than two-thirds of all death sentences are overturned on appeal or after post-conviction review because of errors in the trial; such errors are minimized when the defendant has a competent counsel.

It is a sobering fact that in some areas of the Nation it is often better to be rich and guilty than poor and innocent. All too often, lawyers defending people whose lives are at stake are inexperienced, inept, or just plain incompetent. All too often, they fail to take the time to review the evidence and understand the basic facts of the case before the trial is under way.

The reasons for this inadequacy of representation are well known: lack of standards for choosing defense counsel, and lack of funding for this type of legal service. The Innocence Protection Act addresses these problems head on. It calls for the creation of a temporary Commission on Capital Representation, which would consist of distinguished American legal experts who have experienced the criminal justice system first hand—prosecutors, defense lawyers, and judges. The Commission would be tasked with formulating standards that specify the elements of an effective system for providing adequate representation in capital cases. The bill also authorizes more than $50,000,000 in grants to help put the new standards into effect.

We have consulted a great many legal experts in the course of formulating these provisions. They have all provided valuable insights, but as a former prosecutor myself, I have been particularly pleased with the encouragement and assistance we have received from prosecutors across the nation.

Good prosecutors have two things in common. First, good prosecutors want to convict the right person, not to get a conviction that may be a mistake, and that may leave the real culprit in the clear. Second, good prosecutors want defendants to be represented by good defense lawyers. Lawyers who investigate their clients' cases thoroughly before trial, and represent their clients vigorously in court, are essential in getting at the truth in our adversarial system.

Given some leadership from the people's representatives in Congress, some fair and objective standards, and some funding, America's prosecutors will be ready, willing and able to help fix the system. We owe them, and the American people, that leadership.

On August 3, 1995—more than five years ago—the Conference of Chief Justices urged the judicial leadership in each State in which the death penalty is authorized by law to "establish standards and a process that will assure the timely appointment of competent counsel, with adequate resources, to represent defendants in capital cases at each stage
of such proceedings.” The States’ top jurists, the people who run our justice system, called for reform. But not much came of their initiative. Although a few States have established effective standards and sound administrative systems for the appointment and compensation of counsel in capital cases, most have not. The do-nothing politics of gridlock got in the way of sensible, consensus-based reform.

We have made a commitment to the American people to do better than that. At the end of the last Congress, members on both sides of the aisle joined together to pass the Paul Coverdell National Forensic Sciences Improvement Act\(^2\) and the DNA Analysis Backlog Elimination Act.\(^3\) I strongly supported both bills, which will give States the help they desperately need to reduce the backlogs of untested DNA evidence in their crime labs, and to improve the quality and capacity of these facilities. Both bills passed unanimously in both houses. And in both bills, all of us here in Congress committed ourselves to working with the States to ensure access to post-conviction DNA testing in appropriate cases, and to improve the quality of legal representation in capital cases through the establishment of counsel standards. Congress has already gone on record in recognizing what has to be done. Now it is time to actually do it.

If we had a series of close calls in airline traffic, we would be rushing to fix the problem. These close calls on death row should concentrate our minds, and focus our will, to act.

This new Congress is, as our new President has said, a time for leadership. It is a time for fulfilling the commitments we have made to the American people. And it is a time for action. The Innocence Protection Act is a bipartisan effort to move beyond the politics of gridlock. By passing it, we can work cooperatively with the States to ensure that defendants who are put on trial for their lives have competent legal representation at every stage of their cases. By passing it, we can send a message about the values of fundamental justice that unite all Americans. And by passing it, we can substantially reduce the risk of executing innocent people. We have had a constructive debate, and we have made a noble commitment. It is now time to act.

I ask unanimous consent that the bill and a summary of the bill be included in the RECORD.


II. SUMMARY OVERVIEW OF THE INNOCENCE PROTECTION ACT OF 2001

The Innocence Protection Act of 2001 is a carefully crafted package of criminal justice reforms aimed at reducing the risk that innocent persons may be executed. Most urgently, the bill would afford greater access to DNA testing by convicted offenders, and help States improve the quality of legal representation in capital cases.

A. Title I—Exonerating the Innocent Through DNA Testing

   Legislative findings and purposes in support of this title.

2. Sec. 102. DNA Testing in Federal Criminal Justice System.
   Establishes rules and procedures governing applications for DNA testing by inmates in the Federal system. Courts shall order DNA testing if it has the scientific potential to produce new exculpatory evidence material to the inmate’s claim of innocence. When the test results are exculpatory, courts shall order a hearing and make such further orders as may be appropriate under existing law. Prohibits the destruction of biological evidence in a criminal case while a defendant remains incarcerated, absent prior notification to such defendant of the government’s intent to destroy the evidence.

3. Sec. 103. DNA Testing in State Criminal Justice System.
   Conditions receipt of Federal grants for DNA-related programs on an assurance that the State will adopt adequate procedures for preserving biological material and making DNA testing available to inmates.

4. Sec. 104. Prohibition Pursuant to Section 5 of the 14th Amendment.
   Prohibits States from denying applications for DNA testing by death row inmates, if the proposed testing has the scientific potential to produce new exculpatory evidence material to the inmate’s claim of innocence. Also prohibits States from denying inmates a meaningful opportunity to prove their innocence using the results of DNA testing. Inmates may sue for declaratory or injunctive relief to enforce these prohibitions.
5. Sec. 105. Grants to Prosecutors for DNA Testing Programs.
Permits States to use grants under the Edward Byrne Memorial State and Local Law Enforcement Assistance Programs to fund the growing number of prosecutor-initiated programs that review convictions to identify cases in which DNA testing is appropriate and that offer DNA testing to inmates in such cases.

B. Title II—Ensuring Competent Legal Services in Capital Cases

1. Sec. 201. National Commission on Capital Representation
Establishes a National Commission on Capital Representation to develop standards for providing adequate legal representation for indigents facing a death sentence. The Commission would be composed of nine members and would include experienced prosecutors, defense attorneys, and judges, and would complete its work within one year. Total authorization $1,000,000.

Establishes a grant program, to be administered by the State Justice Institute, to help States implement the Commission’s standards and otherwise improve the quality of representation in capital cases. Authorization is $50,000,000 for the first year, and such sums as may be necessary for the two years that follow.

3. Sec. 203. Amendments to Prison Grant Programs
Directs the Attorney General to withhold a portion of the funds awarded under the prison grant programs from death penalty States that have not established or do not maintain a system for providing legal representation in capital cases that satisfies the Commission’s standards. The Attorney General may waive the withholding requirement for one year under certain circumstances.

4. Sec. 204. Effect on Procedural Default Rules
Provides that certain procedural barriers to Federal habeas corpus review shall not apply if the State did not provide legal representation to the habeas petitioner under a State system for providing representation that satisfied the Commission’s standards. This section does not apply in any case in which the relevant State court proceeding occurred more than 1 year before the formulation of such standards.
5. Sec. 205. Capital Defense Resource Grants
Amends the Criminal Justice Act, 18 U.S.C. § 3006A, to make more Federal funding available for purposes of enhancing the availability, competence, and prompt assignment of counsel in capital cases, encouraging the continuity of representation in such cases, and increasing the efficiency with which capital cases are resolved.

C. Title III—Miscellaneous Provisions

1. Sec. 301. Increased Compensation in Federal Cases
Raises the total amount of damages that may be awarded against the United States in cases of unjust imprisonment from $5,000 to $50,000 a year in a non-death penalty case, or $100,000 a year in a death penalty case.

2. Sec. 302. Compensation in State Death Cases
Encourages states to maintain effective procedures for reasonably compensating persons who were unjustly convicted and sentenced to death, and investigating the causes of such unjust convictions in order to prevent such errors from recurring.

3. Sec. 303. Certification Requirement in Federal Death Penalty Prosecutions
Increases accountability by requiring the Attorney General, when seeking the death penalty in any case, to certify that the federal interest in the prosecution is more substantial than the interests of the state or local authorities. Modeled on the certification requirements in the federal civil rights and juvenile delinquency laws, this section restores and codifies longstanding policy and practice as reflected in the U.S. Attorney’s Manual, § 9-10.070 (bluesheet dated January 27, 1995). This section does not create any rights enforceable at law by any party in any matter civil or criminal.

4. Sec. 304. Alternative of Life Imprisonment Without Possibility of Release
Clarifies that juries in death penalty prosecutions brought under the drug kingpin statute, 21 U.S.C. § 848(l), have the option of recommending life imprisonment without possibility of release. This amendment incorporates into the drug kingpin statute a procedural
protection that federal law already expressly provides to the vast majority of capital defendants.

5. Sec. 305. Right to an Informed Jury
   Encourages states to allow defendants in capital cases to have the jury instructed on all statutorily-authorized sentencing options, including applicable parole eligibility rules and terms.

6. Sec. 306. Annual Reports
   Directs the Justice Department to prepare an annual report regarding the administration of the nation's capital punishment laws. The report must be submitted to Congress, distributed to the press and posted on the Internet.

   Expresses the sense of the Congress that the death penalty is disproportionate and offends contemporary standards of decency when applied to juvenile offenders and the mentally retarded.

III. THE INNOCENCE PROTECTION ACT OF 2001

The full text of the Innocence Protection Act of 2001 is reprinted below:

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, and Mr. CORZINE) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

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

5. These are the original cosponsors of the bill. As of November 1, 2001, this list has grown to twenty-five Senators. The House companion bill, H.R. 912, has 214 sponsors.
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE—This Act may be cited as the ‘Innocence Protection Act of 2001.’

(b) TABLE OF CONTENTS—The table of contents for 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. 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.

TITLE I—EXONERATING THE INNOCENT THROUGH DNA TESTING

SEC. 101. FINDINGS AND PURPOSES.

(a) FINDINGS—Congress makes the following findings:

(1) Over the past decade, deoxyribonucleic acid testing (referred to in this section as ‘DNA testing’) has emerged as the most reliable forensic technique for identifying criminals when biological material is left at a crime scene.

(2) Because of its scientific precision, DNA testing can, in some cases, conclusively establish the guilt or innocence of a criminal defendant. In other cases, DNA testing may not conclusively establish guilt or innocence, but may have significant probative value to a finder of fact.

(3) While DNA testing is increasingly commonplace in pretrial investigations today, it was not widely available in cases tried prior to 1994. Moreover, new forensic DNA testing procedures have made it possible to get results from minute samples that could not previously be tested, and to obtain more informative and accurate results than earlier
forms of forensic DNA testing could produce. Consequently, in some cases convicted inmates have been exonerated by new DNA tests after earlier tests had failed to produce definitive results.

(4) Since DNA testing is often feasible on relevant biological material that is decades old, it can, in some circumstances, prove that a conviction that predated the development of DNA testing was based upon incorrect factual findings. Uniquely, DNA evidence showing innocence, produced decades after a conviction, provides a more reliable basis for establishing a correct verdict than any evidence proffered at the original trial. DNA testing, therefore, can and has resulted in the post-conviction exoneration of innocent men and women.

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

(6) In more than a dozen cases, post-conviction DNA testing that has exonerated an innocent person has also enhanced public safety by providing evidence that led to the identification of the actual perpetrator.

(7) Experience has shown that it is not unduly burdensome to make DNA testing available to inmates. The cost of that testing is relatively modest and has decreased in recent years. Moreover, the number of cases in which post-conviction DNA testing is appropriate is small, and will decrease as pretrial testing becomes more common.

(8) Under current Federal and State law, it is difficult to obtain post-conviction DNA testing because of time limits on introducing newly discovered evidence. Under Federal law, motions for a new trial based on newly discovered evidence must be made within 3 years after conviction. In most States, those motions must be made not later than 2 years after conviction, and sometimes much sooner. The result is that laws intended to prevent the use of evidence that has become less reliable over time have been used to preclude the use of DNA evidence that remains highly reliable even decades after trial.
(9) The National Commission on the Future of DNA Evidence, a Federal panel established by the Department of Justice and comprised of law enforcement, judicial, and scientific experts, has urged that post-conviction DNA testing be permitted in the relatively small number of cases in which it is appropriate, notwithstanding procedural rules that could be invoked to preclude that testing, and notwithstanding the inability of an inmate to pay for the testing.

(10) Since New York passed the Nation’s first post-conviction DNA statute in 1994, only a few States have adopted post-conviction DNA testing procedures, and some of these procedures are unduly restrictive. Moreover, only a handful of States have passed legislation requiring that biological evidence be adequately preserved.

(11) In 1994, Congress passed the DNA Identification Act, which authorized the construction of the Combined DNA Index System, a national database to facilitate law enforcement exchange of DNA identification information, and authorized funding to improve the quality and availability of DNA testing for law enforcement identification purposes. In 2000, Congress passed the DNA Analysis Backlog Elimination Act and the Paul Coverdell Forensic Sciences Improvement Act, which together authorized an additional $908,000,000 over 6 years in DNA-related grants.

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

(13) In *Herrera v. Collins*, 506 U.S. 390 (1993), a majority of the members of the Court suggested that a persuasive showing of innocence made after trial would render the execution of an inmate unconstitutional.
(14) It shocks the conscience and offends social standards of fairness and decency to execute innocent persons or to deny inmates the opportunity to present persuasive evidence of their innocence.

(15) If biological material is not subjected to DNA testing in appropriate cases, there is a significant risk that persuasive evidence of innocence will not be detected and, accordingly, that innocent persons will be unconstitutionally executed.

(16) Given the irremediable constitutional harm that would result from the execution of an innocent person and the failure of many States to ensure that innocent persons are not sentenced to death, a Federal statute assuring the availability of DNA testing and a chance to present the results of testing in court is a congruent and proportional prophylactic measure to prevent constitutional injuries from occurring.

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

(1) substantially implement the Recommendations of the National Commission on the Future of DNA Evidence in the Federal criminal justice system, by authorizing DNA testing in appropriate cases;

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

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

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

(a) IN GENERAL—Part VI of title 28, United States Code, is amended by inserting after chapter 155 the following:
CHAPTER 156—DNA TESTING

Sec. 2291. DNA testing.
Sec. 2292. Preservation of evidence.
Sec. 2291. DNA testing

(a) APPLICATION—Notwithstanding any other provision of law, a person convicted of a Federal crime may apply to the appropriate Federal court for DNA testing to support a claim that the person did not commit—

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

(2) any other offense that a sentencing authority may have relied upon when it sentenced the person with respect to the Federal crime either to death or to an enhanced term of imprisonment as a career offender or armed career criminal.

(b) NOTICE TO GOVERNMENT—The court shall notify the Government of an application made under subsection (a) and shall afford the Government an opportunity to respond.

(c) PRESERVATION ORDER—The court shall order that all evidence secured in relation to the case that could be subjected to DNA testing must be preserved during the pendency of the proceeding. The court may impose appropriate sanctions, including criminal contempt, for the intentional destruction of evidence after such an order.

(d) ORDER—

(1) IN GENERAL—The court shall order DNA testing pursuant to an application made under subsection (a) upon a determination that—

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

(B) the evidence was never previously subjected to DNA testing, or was not subject to the type of DNA testing that is now requested and that may resolve an issue not resolved by previous testing;
(C) the proposed DNA testing uses a scientifically valid technique; and

(D) the proposed DNA testing has the scientific potential to produce new, noncumulative evidence material to the claim of the applicant that the applicant did not commit—

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

(ii) any other offense that a sentencing authority may have relied upon when it sentenced the applicant with respect to the Federal crime either to death or to an enhanced term of imprisonment as a career offender or armed career criminal.

(2) LIMITATION—The court shall not order DNA testing under paragraph (1) if the Government proves by a preponderance of the evidence that the application for testing was made to unreasonably delay the execution of sentence or administration of justice, rather than to support a claim described in paragraph (1)(D).

(3) TESTING PROCEDURES—If the court orders DNA testing under paragraph (1), the court shall impose reasonable conditions on such testing designed to protect the integrity of the evidence and the testing process and the reliability of the test results.

(e) COST—The cost of DNA testing ordered under subsection (c) shall be borne by the Government or the applicant, as the court may order in the interests of justice, except that an applicant shall not be denied testing because of an inability to pay the cost of testing.

(f) COUNSEL—The court may at any time appoint counsel for an indigent applicant under this section pursuant to section 3006A(a)(2)(B) of title 18 ((18 USCA 3006A)).
(g) POST-TESTING PROCEDURES—

(1) INCONCLUSIVE RESULTS—If the results of DNA testing conducted under this section are inconclusive, the court may order such further testing as may be appropriate or dismiss the application.

(2) RESULTS UNFAVORABLE TO APPLICANT—If the results of DNA testing conducted under this section incriminate the applicant, the court shall—

(A) dismiss the application;

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

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

(3) RESULTS FAVORABLE TO APPLICANT—If the results of DNA testing conducted under this section are favorable to the applicant, the court shall order a hearing and thereafter make such further orders as may be appropriate under applicable rules and statutes regarding post-conviction proceedings, notwithstanding any provision of law that would bar such hearing or orders as untimely.

(h) RULES OF CONSTRUCTION—

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

(2) FINALITY RULE UNAFFECTED—An application under this section shall not be considered a motion under section 2255 ((18 USCA 2255)) for purposes of determining whether it or any other motion is a second or successive motion under section 2255.

(i) DEFINITIONS—In this section:

(1) APPROPRIATE FEDERAL COURT—The term 'appropriate Federal court' means—
(A) the United States District Court which imposed the sentence from which the applicant seeks relief; or

(B) in relation to a crime under the Uniform Code of Military Justice, the United States District Court having jurisdiction over the place where the court martial was convened that imposed the sentence from which the applicant seeks relief, or the United States District Court for the District of Columbia, if no United States District Court has jurisdiction over the place where the court martial was convened.

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

Sec. 2292. Preservation of evidence

(a) IN GENERAL—Notwithstanding any other provision of law and subject to subsection (b), the Government shall preserve all evidence that was secured in relation to the investigation or prosecution of a Federal crime (as that term is defined in section 2291(i)), and that could be subjected to DNA testing, for not less than the period of time that any person remains subject to incarceration in connection with the investigation or prosecution.

(b) EXCEPTIONS—The Government may dispose of evidence before the expiration of the period of time described in subsection (a) if—

(1) other than subsection (a), no statute, regulation, court order, or other provision of law requires that the evidence be preserved; and

(2) (A)

(i) the Government notifies any person who remains incarcerated in connection with the investigation or prosecution and any counsel of record for such person (or, if there is no counsel of record, the public defender for the judicial district in
which the conviction for such person was imposed),
of the intention of the Government to dispose of the
evidence and the provisions of this chapter; and

(ii) the Government affords such person not less
than 180 days after such notification to make an
application under section 2291(a) for DNA testing
of the evidence; or

(B)

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

(ii) the Government takes reasonable measures to
remove and preserve portions of the material
evidence sufficient to permit future DNA testing.

(c) REMEDIES FOR NONCOMPLIANCE—

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

(2) CIVIL PENALTY—

(A) IN GENERAL—Notwithstanding paragraph (1),
an individual who knowingly violates a provision of this
section or a regulation prescribed under this section
shall be liable to the United States for a civil penalty in
an amount not to exceed $1,000 for the first violation
and $5,000 for each subsequent violation, except that
the total amount imposed on the individual for all such
violations during a calendar year may not exceed
$25,000.

(B) PROCEDURES—The provisions of section 405 of
the Controlled Substances Act (21 U.S.C. § 844a) (other
than subsections (a) through (d) and subsection (j)) shall
apply to the imposition of a civil penalty under
paragraph (A) in the same manner as such provisions apply to the imposition of a penalty under section 405.

(C) PRIOR CONVICTION—A civil penalty may not be assessed under subparagraph (A) with respect to an act if that act previously resulted in a conviction under chapter 73 of title 18.

(3) REGULATIONS—

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

(B) CONTENTS—The regulations shall include the following:

(i) Disciplinary sanctions, including suspension or termination from employment, for employees of the Department of Justice who knowingly or repeatedly violate a provision of this section.

(ii) An administrative procedure through which parties can file formal complaints with the Department of Justice alleging violations of this section.

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

Sec. 1519. Destruction or altering of DNA evidence

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

(1) impair the integrity of that evidence;

(2) prevent that evidence from being subjected to DNA testing; or
(3) prevent the production or use of that evidence in an official proceeding, shall be fined under this title or imprisoned not more than 5 years, or both.

(c) TECHNICAL AND CONFORMING AMENDMENTS—

(1) The analysis for part VI of title 28, United States Code, is amended by inserting after the item relating to chapter 155 the following: 2291.

(2) The table of contents for Chapter 73 of title 18, United States Code, is amended by inserting after the item relating to section 1518 the following: 1519. Destruction or altering of DNA Evidence.

SEC. 103. POST-CONVICTION DNA TESTING IN STATE CRIMINAL JUSTICE SYSTEMS.

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

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

(2) preserve all evidence that was secured in relation to the investigation or prosecution of a State crime, and that could be subjected to DNA testing, for not less than the period of time that such evidence would be required to be preserved under section 2292 of title 28, United States Code, if the evidence were related to a Federal crime.
(b) PROGRAMS AFFECTED—The certification requirement established by subsection (a) shall apply with respect to grants made under the following programs:

(1) DNA ANALYSIS BACKLOG ELIMINATION GRANTS—Section 2 of the DNA Analysis Backlog Elimination Act of 2000 (Public Law 106-546) (42 USCA 14135).


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

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

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

(1) the offense for which the prisoner was sentenced to death; or
(2) any other offense that a sentencing authority may have relied upon when it sentenced the prisoner to death.

(b) OPPORTUNITY TO PRESENT RESULTS OF DNA TESTING—No State shall rely upon a time limit or procedural default rule to deny a prisoner in State custody who is under sentence of death an opportunity to present in an appropriate State court new, noncumulative DNA results that establish a reasonable probability that the prisoner did not commit an offense described in subsection (a).

(c) REMEDY—A prisoner in State custody who is under sentence of death may enforce subsections (a) and (b) in a civil action for declaratory or injunctive relief, filed either in a State court of general jurisdiction or in a district court of the United States, naming an executive or judicial officer of the State as defendant.

(d) FINALITY RULE UNAFFECTED—An application under this section shall not be considered an application for a writ of habeas corpus under section 2254 of title 28, United States Code, for purposes of determining whether it or any other application is a second or successive application under section 2254.

SEC. 105. GRANTS TO PROSECUTORS FOR DNA TESTING PROGRAMS.

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

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

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

(3) adding at the end the following:

“(27) prosecutor-initiated programs to conduct a systematic review of convictions to identify cases in which DNA testing is appropriate and to offer DNA testing to inmates in such cases.”
TITLE II—ENSURING COMPETENT LEGAL SERVICES IN CAPITAL CASES

SEC. 201. NATIONAL COMMISSION ON CAPITAL REPRESENTATION.

(a) ESTABLISHMENT—There is established the National Commission on Capital Representation (referred to in this section as the ‘Commission’).

(b) DUTIES—The Commission shall—

(1) survey existing and proposed systems for appointing counsel in capital cases, and the amounts actually paid by governmental entities for capital defense services; and

(2) formulate standards specifying the elements of an effective system for providing adequate representation, including counsel and investigative, expert, and other services necessary for adequate representation, to—

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

(B) indigents who have been sentenced to death and who seek appellate or collateral review in State court; and

(C) indigents who have been sentenced to death and who seek certiorari review in the Supreme Court of the United States.

(c) ELEMENTS—The elements of an effective system described in subsection (b)(2) shall include—

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

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

(B) draft and annually publish a roster of qualified attorneys;
(C) draft and annually publish qualifications and performance standards that attorneys must satisfy to be listed on the roster and procedures by which qualified attorneys are identified;

(D) periodically review the roster, monitor the performance of all attorneys appointed, provide a mechanism by which members of the relevant State Bar may comment on the performance of their peers, and delete the name of any attorney who fails to satisfactorily complete regular training programs on the representation of clients in capital cases, fails to meet performance standards in a case to which the attorney is appointed, or otherwise fails to demonstrate continuing competence to represent clients in capital cases;

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

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

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

(2) adequate compensation of private attorneys for actual time and service, computed on an hourly basis and at a reasonable hourly rate in light of the qualifications and experience of the attorney and the local market for legal representation in cases reflecting the complexity and responsibility of capital cases;

(3) reimbursement of private attorneys and public defender organizations for attorney expenses reasonably incurred in the representation of a client in a capital case; and

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

(1) NUMBER AND APPOINTMENT—The Commission shall be composed of 9 members, as follows:

(A) Four members appointed by the President on the basis of their expertise and eminence within the field of criminal justice, 2 of whom have 10 years or more experience in representing defendants in State capital proceedings, including trial, direct appeal, or post-conviction proceedings, and 2 of whom have 10 years or more experience in prosecuting defendants in such proceedings.

(B) Two members appointed by the Conference of Chief Justices, from among the members of the judiciaries of the several States.

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

(D) The Chairman of the Committee on Defender Services of the Judicial Conference of the United States, or a designee of the Chairman.

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

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

(4) GEOGRAPHIC DISTRIBUTION—The appointment of individuals under paragraph (1) shall, to the maximum extent practicable, be made so as to ensure that different geographic areas of the United States are represented in the membership of the Commission.

(5) TERMS—Members of the Commission appointed under subparagraphs (A), (B), and (C) of paragraph (1) shall be appointed for the life of the Commission.
(6) DEADLINE FOR APPOINTMENTS—All appointments to the Commission shall be made not later than 45 days after the date of enactment of this Act.

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

(8) NO COMPENSATION—Members of the Commission shall serve without compensation for their service.

(9) TRAVEL EXPENSES—Members of the Commission shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 ((5 USCA 5702)) and 5703 ((5 USCA 5703)) of title 5, United States Code.

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

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

(12) CHAIRPERSON—At the initial meeting of the Commission, a majority of the members of the Commission present and voting shall elect a Chairperson from among the members of the Commission appointed under paragraph (1).

(e) STAFF—

(1) IN GENERAL—The Commission may appoint and fix the pay of such personnel as the Commission considers appropriate.

(2) EXPERTS AND CONSULTANTS—The Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.
(f) POWERS—

(1) INFORMATION-GATHERING ACTIVITIES—The Commission may, for the purpose of carrying out this section, hold hearings, receive public comment and testimony, initiate surveys, and undertake such other activities to gather information as the Commission may find advisable.

(2) OBTAINING OFFICIAL INFORMATION—The Commission may secure directly from any department or agency of the United States such information as the Commission considers necessary to carry out this section. Upon request of the chairperson of the Commission, the head of that department or agency shall provide such information, except to the extent prohibited by law.

(3) ADMINISTRATIVE SUPPORT SERVICES—Upon the request of the Commission, the Administrator of General Services shall provide to the Commission, on a reimbursable basis, the administrative support services necessary for the Commission to carry out its responsibilities under this section.

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

(g) REPORT—

(1) IN GENERAL—The Commission shall submit a report to the President and the Congress before the end of the 1-year period beginning after the first meeting of all members of the Commission.

(2) CONTENTS—The report submitted under paragraph (1) shall contain—

(A) a comparative analysis of existing and proposed systems for appointing counsel in capital cases, and the amounts actually paid by governmental entities for capital defense services; and
(B) such standards as are formulated by the Commission pursuant to subsection (b)(2), together with such commentary and recommendations as the Commission considers appropriate.

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

(i) EXPENSES OF COMMISSION—There are authorized to be appropriated to pay any expenses of the Commission such sums as may be necessary not to exceed $1,000,000. Any sums appropriated for such purposes are authorized to remain available until expended, or until the termination of the Commission pursuant to subsection (h), whichever occurs first.

SEC. 202. CAPITAL DEFENSE INCENTIVE GRANTS.

The State Justice Institute Act of 1984 (42 U.S.C. § 10701 et seq.) is amended by inserting after section 207 ((42 USCA 10706)) the following:

'SEC. 207A. CAPITAL DEFENSE INCENTIVE GRANTS.

'(a) PROGRAM AUTHORIZED—The State Justice Institute (referred to in this section as the ‘Institute’) may make grants to State agencies and organizations responsible for the administration of standards of legal competence for counsel in capital cases, for the purposes of—

'(1) implementing new mechanisms or supporting existing mechanisms for providing representation in capital cases that comply with the standards promulgated by the National Commission on Capital Representation pursuant to section 201(b) of the Innocence Protection Act of 2001; and

'(2) otherwise improving the quality of legal representation in capital cases.

'(b) USE OF FUNDS—Funds made available under this section may be used for any purpose that the Institute determines is likely to achieve the purposes described in subsection (a), including—
'(1) training and development of training capacity to ensure that attorneys assigned to capital cases meet such standards;

'(2) augmentation of attorney, paralegal, investigator, expert witness, and other staff and services necessary for capital defense; and

'(3) development of new mechanisms for addressing complaints about attorney competence and performance in capital cases.

'(c) APPLICATIONS—

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

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

'(3) CONTENTS—In accordance with the regulations or guidelines established by the Institute, each application for a grant under this section shall—

'(A) include a long-term strategy and detailed implementation program that reflects consultation with the organized bar of the State, the highest court of the State, and the Attorney General of the State, and reflects consideration of a statewide strategy; and

'(B) specify plans for obtaining necessary support and continuing the proposed program following the termination of Federal support.

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

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

'(f) GRANT PERIOD—A grant under this section shall be made for a period not longer than 3 years, but may be renewed on such terms as the Institute may require.

'(g) LIMITATIONS ON USE OF FUNDS—

'(1) NONSUPPLANTING REQUIREMENT—Funds made available under this section shall not be used to supplant State or local funds, but shall be used to supplement the amount of funds that would, in the absence of Federal funds received under this section, be made available from States or local sources.

'(2) FEDERAL SHARE—The Federal share of a grant made under this part may not exceed—

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

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

'(3) ADMINISTRATIVE COSTS—A State agency or organization may not use more than 5 percent of the funds it receives from this section for administrative expenses, including expenses incurred in preparing reports under subsection (h).

'(h) REPORT—Each State agency or organization that receives a grant under this section shall submit to the Institute, at such times and in such format as the Institute may require, a report that contains—

'(1) a summary of the activities carried out under the grant and an assessment of the effectiveness of such activities in achieving ongoing compliance with the standards formulated pursuant to section 201(b) of the Innocence Protection Act of 2001 and improving the quality of representation in capital cases; and
(2) such other information as the Institute may require.

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

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

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

(3) an independent evaluation of the effectiveness of the programs that received funding under this section in achieving ongoing compliance with the standards formulated pursuant to section 201(b) of the Innocence Protection Act of 2001 and improving the quality of representation in capital cases.

(j) DEFINITIONS—In this section—

(1) the term ‘capital case’—

(A) means any criminal case in which a defendant prosecuted in a State court is subject to a sentence of death or in which a death sentence has been imposed; and

(B) includes all proceedings filed in connection with the case, up to and including direct appellate review and post-conviction review in State court; and

(2) the term ‘representation’ includes counsel and investigative, expert, and other services necessary for adequate representation.

(k) AUTHORIZATION OF APPROPRIATIONS—

(1) IN GENERAL—There are authorized to be appropriated to carry out this section, in addition to other amounts authorized by this Act, to remain available until expended, $50,000,000 for fiscal year 2002, and such sums as may be necessary for fiscal years 2003 and 2004.
THE INNOCENCE PROTECTION ACT OF 2001

‘(2) TECHNICAL ASSISTANCE AND TRAINING—Not more than 3 percent of the amount made available under paragraph (1) for a fiscal year shall be available for technical assistance and training activities by the Institute under subsection (e).

‘(3) EVALUATIONS—Up to 5 percent of the amount authorized to be appropriated under paragraph (1) in any fiscal year may be used for administrative expenses, including expenses incurred in preparing reports under subsection (i).’

SEC. 203. AMENDMENTS TO PRISON GRANT PROGRAMS.

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

‘SEC. 20110. STANDARDS FOR CAPITAL REPRESENTATION.

‘(a) WITHHOLDING OF FUNDS FOR NONCOMPLIANCE WITH STANDARDS FOR CAPITAL REPRESENTATION—

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

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

‘(B) has not established or does not maintain an effective system for providing adequate representation for indigent persons in capital cases, in compliance with the standards formulated by the National Commission on Capital Representation pursuant to section 201(b) of the Innocence Protection Act of 2001.'
'(2) WITHHOLDING FORMULA—The amount to be withheld under paragraph (1) shall be, in the first fiscal year that a State is not in compliance, 10 percent of any grant funds awarded under this subtitle to such State and any unit of local government appertaining thereto, and shall increase by 10 percent for each year of noncompliance thereafter, up to a maximum of 60 percent.

'(3) DISPOSITION OF WITHHELD FUNDS—Funds withheld under this subsection from apportionment to any State or unit of local government shall be allotted by the Attorney General and paid to the States and units of local government receiving a grant under this subtitle, other than any State referred to in paragraph (1), and any unit of local government appertaining thereto, in a manner equivalent to the manner in which the allotment under this subtitle was determined.

'(b) WAIVER OF WITHHOLDING REQUIREMENT—

'(1) IN GENERAL—The Attorney General may waive in whole or in part the application of the requirement of subsection (a) for any 1-year period with respect to any State, where immediately preceding such 1-year period the Attorney General finds that such State has made and continues to make a good faith effort to comply with the standards formulated by the National Commission on Capital Representation pursuant to section 201(b) of the Innocence Protection Act of 2001.

'(2) LIMITATION ON WAIVER AUTHORITY—The Attorney General may not grant a waiver under paragraph (1) with respect to any State for 2 consecutive 1-year periods.

'(3) LIMITATION ON USE OF FUNDS—If the Attorney General grants a waiver under paragraph (1), the State shall be required to use the total amount of grant funds awarded to such State or any unit of local government appertaining thereto under this subtitle that would have been withheld under subsection (a) but for the waiver to improve the capability of such State to provide adequate representation in capital cases.
'(c) REPORT TO CONGRESS—Not later than 180 days after the end of each fiscal year for which grants are made under this subtitle, the Attorney General shall submit to Congress a report that includes, with respect to each State that prescribes, authorizes, or permits the penalty of death for any offense—

'(1) a detailed description of such State’s system for providing representation to indigent persons in capital cases;

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

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

(b) TECHNICAL AND CONFORMING AMENDMENT—The table of contents in section 2 of the Violent Crime Control and Law Enforcement Act of 1994 is amended by inserting after the item relating to section 20109 the following:

'Sec. 20110. Standards for capital representation.’.

SEC. 204. EFFECT ON PROCEDURAL DEFAULT RULES.

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

(1) in paragraph (1), by striking ‘In a proceeding’ and inserting ‘Except as provided in paragraph (3), in a proceeding’; and

(2) by adding at the end the following: ‘(3) In a proceeding instituted by an applicant under sentence of death, the court shall neither presume a finding of fact made by a State court to be correct nor decline to consider a claim on the ground that the applicant failed to raise such claim in State court at the time and in the manner prescribed by State law, if—

‘(A) the applicant was financially unable to obtain adequate representation at the stage of the State
proceedings at which the State court made the finding of fact or the applicant failed to raise the claim, and the applicant did not waive representation by counsel; and

‘(B) the State did not provide representation to the applicant under a State system for providing representation that satisfied the standards formulated by the National Commission on Capital Representation pursuant to section 201(b) of the Innocence Protection Act of 2001.’.

(b) NO RETROACTIVE EFFECT—The amendments made by this section shall not apply to any case in which the relevant State court proceeding occurred before the end of the first fiscal year following the formulation of standards by the National Commission on Capital Representation pursuant to section 201(b) of the Innocence Protection Act of 2001.

SEC. 205. CAPITAL DEFENSE RESOURCE GRANTS.

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

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

(2) by inserting after subsection (h) the following:

‘(i) CAPITAL DEFENSE RESOURCE GRANTS—

‘(1) DEFINITIONS—In this subsection—

‘(A) the term ‘capital case’—

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

‘(ii) includes all proceedings filed in connection with the case, including trial, appellate, and Federal and State post-conviction proceedings;
'(B) the term 'defense services' includes—

'(i) recruitment of counsel;

'(ii) training of counsel; and

'(iii) legal and administrative support and assistance to counsel; and

'(C) the term 'Director' means the Director of the Administrative Office of the United States Courts.

'(2) GRANT AWARD AND CONTRACT AUTHORITY—Notwithstanding subsection (g), the Director shall award grants to, or enter into contracts with, public agencies or private nonprofit organizations for the purpose of providing defense services in capital cases.

'(3) PURPOSES—Grants and contracts awarded under this subsection shall be used in connection with capital cases in the jurisdiction of the grant recipient for 1 or more of the following purposes:

'(A) Enhancing the availability, competence, and prompt assignment of counsel.

'(B) Encouraging continuity of representation between Federal and State proceedings.

'(C) Increasing the efficiency with which such cases are resolved.

'(4) GUIDELINES—The Director, in consultation with the Judicial Conference of the United States, shall develop guidelines to ensure that defense services provided by recipients of grants and contracts awarded under this subsection are consistent with applicable legal and ethical proscriptions governing the duties of counsel in capital cases.

'(5) CONSULTATION—In awarding grants and contracts under this subsection, the Director shall consult with representatives of the highest State court, the organized bar,
and the defense bar of the jurisdiction to be served by the recipient of the grant or contract, and shall ensure coordination with grants administered by the State Justice Institute pursuant to section 207A of the State Justice Institute Act of 1984.'.

TITLE III—MISCELLANEOUS PROVISIONS

SEC. 301. INCREASED COMPENSATION IN FEDERAL CASES.

Section 2513(e) of title 28, United States Code, is amended by striking ‘$5,000’ and inserting ‘$50,000 for each 12-month period of incarceration, except that a plaintiff who was unjustly sentenced to death may be awarded not more than $100,000 for each 12-month period of incarceration.’.

SEC. 302. COMPENSATION IN STATE DEATH PENALTY CASES.

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

(1) striking ‘and’ at the end of subparagraph (A);

(2) striking the period at the end of subparagraph (B) and inserting ‘; and’; and

(3) adding at the end the following:

‘(C) provide assurances to the Attorney General that the State, if it prescribes, authorizes, or permits the penalty of death for any offense, has established or will establish not later than 18 months after the enactment of the Innocence Protection Act of 2001, effective procedures for—

‘(i) reasonably compensating persons found to have been unjustly convicted of an offense against the State and sentenced to death; and

http://scholarlycommons.law.hofstra.edu/hlr/vol29/iss4/5
"(ii) investigating the causes of such unjust convictions, publishing the results of such investigations, and taking steps to prevent such errors in future cases."

SEC. 303. CERTIFICATION REQUIREMENT IN FEDERAL DEATH PENALTY PROSECUTIONS.

(a) IN GENERAL—Chapter 228 of title 28, United States Code, is amended by adding at the end the following:

"Sec. 3599. Certification requirement

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

"(b) REQUIREMENTS—A certification under subsection (a) shall state the basis on which the certification was made and the reasons for the certification.

"(c) STATE INTEREST—In States where the imposition of a sentence of death is not authorized by law, the fact that the maximum Federal sentence is death does not constitute a more substantial interest in Federal prosecution.

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

"(e) RULE OF CONSTRUCTION—This section does not create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal.

(b) TECHNICAL AND CONFORMING AMENDMENT—The analysis for chapter 228 of title 28, United States Code, is amended by adding at the end the following:
SEC. 304. ALTERNATIVE OF LIFE IMPRISONMENT WITHOUT POSSIBILITY OF RELEASE.

(a) PURPOSE—The purpose of this section is to clarify that juries in death penalty prosecutions brought under the drug kingpin statute—like juries in all other Federal death penalty prosecutions—have the option of recommending life imprisonment without possibility of release.

(b) CLARIFICATION—Section 408(1) of the Controlled Substances Act (21 U.S.C. § 848(1)), is amended by striking the first 2 sentences and inserting the following: ‘Upon a recommendation under subsection (k) that the defendant should be sentenced to death or life imprisonment without possibility of release, the court shall sentence the defendant accordingly. Otherwise, the court shall impose any lesser sentence that is authorized by law.’

SEC. 305. RIGHT TO AN INFORMED JURY.

Section 20105(b)(1) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. § 13705(b)(1)), as amended by section 302 of this Act, is amended by—

(1) striking ‘and’ at the end of subparagraph (B);

(2) striking the period at the end of subparagraph (C) and inserting ‘; and’; and

(3) adding at the end the following:

‘(D) provide assurances to the Attorney General that in any capital sentencing proceeding occurring after the date of enactment of the Innocence Protection Act of 2001 in which the jury has a role in determining the sentence imposed on the defendant, the court, at the request of the defendant, shall inform the jury of all statutorily authorized sentencing options in the particular case, including applicable parole eligibility rules and terms.’.
SEC. 306. ANNUAL REPORTS.

(a) REPORT—Not later than 2 years after the date of enactment of this Act, and annually thereafter, the Attorney General shall prepare and transmit to Congress a report concerning the administration of capital punishment laws by the Federal Government and the States.

(b) REPORT ELEMENTS—The report required under subsection (a) shall include substantially the same categories of information as are included in the Bureau of Justice Statistics Bulletin entitled ‘Capital Punishment 1999’ (December 2000, NCJ 184795), and shall also include the following additional categories of information, if such information can practicably be obtained:

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

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

(3) The percentage of capital cases in which counsel is retained by the defendant, and the percentage in which counsel is appointed by the court.

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

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

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

(7) The percentage of cases in which a death sentence or a conviction underlying a death sentence is vacated, reversed, or set aside, and a short statement of the reasons therefore.
(c) REQUEST FOR ASSISTANCE—In compiling the information referred to in subsection (b), the Attorney General shall, when necessary, request assistance from State and local prosecutors, defense attorneys, and courts, as appropriate. Requested assistance, whether provided or denied by a State or local official or entity, shall be noted in the reports referred to in subsection (a).

(d) PUBLIC DISCLOSURE—The Attorney General or the Director of the Bureau of Justice Assistance, as appropriate, shall ensure that the reports referred to in subsection (a) are—

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

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

SEC. 307. SENSE OF CONGRESS REGARDING THE EXECUTION OF JUVENILE OFFENDERS AND THE MENTALLY RETARDED.

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