

107TH CONGRESS  
1ST SESSION

# H. R. 912

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

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 7, 2001

Mr. DELAHUNT (for himself, Mr. LAHOOD, Mr. CONYERS, Mr. BASS, Mr. SCOTT, Mr. BOEHLERT, Mr. ABERCROMBIE, Mrs. EMERSON, Mr. ALLEN, Mr. FOLEY, Mr. BALDACCI, Ms. HART, Ms. BALDWIN, Mr. HOUGHTON, Mr. BARRETT of Wisconsin, Mr. KING, Ms. BERKLEY, Mr. MCHUGH, Mr. BERMAN, Mrs. MORELLA, Mr. BLUMENAUER, Mr. PETRI, Mr. BONIOR, Ms. PRYCE of Ohio, Ms. BROWN of Florida, Mr. QUINN, Mr. BROWN of Ohio, Mr. RAMSTAD, Mr. CAPUANO, Mr. SCARBOROUGH, Ms. CARSON of Indiana, Mr. SHAYS, Mrs. CHRISTENSEN, Mr. SMITH of New Jersey, Mr. CLAY, Mr. UPTON, Mr. COYNE, Mr. WALSH, Mr. CROWLEY, Ms. DEGETTE, Ms. DELAURO, Mr. ENGEL, Ms. ESHOO, Mr. EVANS, Mr. FALEOMAVAEGA, Mr. FARR of California, Mr. FATTAH, Mr. FILNER, Mr. FORD, Mr. FRANK, Mr. GONZALEZ, Mr. GUTIERREZ, Mr. HASTINGS of Florida, Mr. HILLIARD, Mr. HINCHEY, Mr. HOEFFEL, Ms. HOOLEY of Oregon, Mr. ISRAEL, Mr. JACKSON of Illinois, Ms. JACKSON-LEE of Texas, Mr. JEFFERSON, Mr. KENNEDY of Rhode Island, Mr. KILDEE, Ms. KILPATRICK, Mr. KIND, Mr. KUCINICH, Mr. LAFALCE, Mr. LAMPSON, Mr. LANTOS, Ms. LEE, Mr. LEWIS of Georgia, Mr. LIPINSKI, Mrs. LOWEY, Mr. LUTHER, Mr. MARKEY, Mrs. MCCARTHY of New York, Ms. MCCARTHY of Missouri, Ms. MCCOLLUM, Mr. MCDERMOTT, Mr. MCGOVERN, Ms. MCKINNEY, Mr. MCNULTY, Mrs. MEEK of Florida, Mr. MEEKS of New York, Mr. GEORGE MILLER of California, Mr. MOAKLEY, Mr. MOORE, Mr. NADLER, Mr. NEAL of Massachusetts, Ms. NORTON, Mr. OLVER, Mr. PASTOR, Mr. PAYNE, Ms. PELOSI, Mr. POMEROY, Mr. PRICE of North Carolina, Ms. RIVERS, Mr. RODRIGUEZ, Mr. ROEMER, Ms. SANCHEZ, Mr. SANDLIN, Mr. SAWYER, Ms. SCHAKOWSKY, Mr. SHERMAN, Ms. SLAUGHTER, Mr. SMITH of Washington, Mr. STARK, Mr. STUPAK, Mr. THOMPSON of Mississippi, Mr. TIERNEY, Mrs. JONES of Ohio, Mr. UDALL of Colorado, Ms. VELÁZQUEZ, Ms. WATERS, Mr. WATT of North Carolina, Mr. WAXMAN, Mr. WEINER, Mr. WEXLER, and Mr. WYNN) introduced the following bill; which was referred to the Committee on the Judiciary

# A BILL

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

1       *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

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

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

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

Sec. 1. Short title; table of contents.

TITLE I—EXONERATING THE INNOCENT THROUGH DNA TESTING

Sec. 101. Findings and purposes.

Sec. 102. 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.

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

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

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

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

12 (2) Because of its scientific precision, DNA  
13 testing can, in some cases, conclusively establish the  
14 guilt or innocence of a criminal defendant. In other  
15 cases, DNA testing may not conclusively establish  
16 guilt or innocence, but may have significant pro-  
17 bative value to a finder of fact.

18 (3) While DNA testing is increasingly common-  
19 place in pretrial investigations today, it was not  
20 widely available in cases tried prior to 1994. More-  
21 over, new forensic DNA testing procedures have  
22 made it possible to get results from minute samples  
23 that could not previously be tested, and to obtain  
24 more informative and accurate results than earlier  
25 forms of forensic DNA testing could produce. Con-

1       sequently, in some cases convicted inmates have  
2       been exonerated by new DNA tests after earlier tests  
3       had failed to produce definitive results.

4               (4) Since DNA testing is often feasible on rel-  
5       evant biological material that is decades old, it can,  
6       in some circumstances, prove that a conviction that  
7       predated the development of DNA testing was based  
8       upon incorrect factual findings. Uniquely, DNA evi-  
9       dence showing innocence, produced decades after a  
10      conviction, provides a more reliable basis for estab-  
11      lishing a correct verdict than any evidence proffered  
12      at the original trial. DNA testing, therefore, can and  
13      has resulted in the post-conviction exoneration of in-  
14      nocent men and women.

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

21              (6) In more than a dozen cases, post-conviction  
22      DNA testing that has exonerated an innocent person  
23      has also enhanced public safety by providing evi-  
24      dence that led to the identification of the actual per-  
25      petrator.

1           (7) Experience has shown that it is not unduly  
2 burdensome to make DNA testing available to in-  
3 mates. The cost of that testing is relatively modest  
4 and has decreased in recent years. Moreover, the  
5 number of cases in which post-conviction DNA test-  
6 ing is appropriate is small, and will decrease as pre-  
7 trial testing becomes more common.

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

20           (9) The National Commission on the Future of  
21 DNA Evidence, a Federal panel established by the  
22 Department of Justice and comprised of law en-  
23 forcement, judicial, and scientific experts, has urged  
24 that post-conviction DNA testing be permitted in the  
25 relatively small number of cases in which it is appro-

1        appropriate, notwithstanding procedural rules that could  
2        be invoked to preclude that testing, and notwith-  
3        standing the inability of an inmate to pay for the  
4        testing.

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

12           (11) In 1994, Congress passed the DNA Identifi-  
13       cation Act, which authorized the construction of  
14       the Combined DNA Index System, a national data-  
15       base to facilitate law enforcement exchange of DNA  
16       identification information, and authorized funding to  
17       improve the quality and availability of DNA testing  
18       for law enforcement identification purposes. In  
19       2000, Congress passed the DNA Analysis Backlog  
20       Elimination Act and the Paul Coverdell Forensic  
21       Sciences Improvement Act, which together author-  
22       ized an additional \$908,000,000 over 6 years in  
23       DNA-related grants.

24           (12) Congress should continue to provide finan-  
25       cial assistance to the States to increase the capacity

1 of State and local laboratories to carry out DNA  
2 testing for law enforcement identification purposes.  
3 At the same time, Congress should insist that States  
4 which accept financial assistance make DNA testing  
5 available to both sides of the adversarial system in  
6 order to enhance the reliability and integrity of that  
7 system.

8 (13) In *Herrera v. Collins*, 506 U.S. 390  
9 (1993), a majority of the members of the Court sug-  
10 gested that a persuasive showing of innocence made  
11 after trial would render the execution of an inmate  
12 unconstitutional.

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

17 (15) If biological material is not subjected to  
18 DNA testing in appropriate cases, there is a signifi-  
19 cant risk that persuasive evidence of innocence will  
20 not be detected and, accordingly, that innocent per-  
21 sons will be unconstitutionally executed.

22 (16) Given the irremediable constitutional harm  
23 that would result from the execution of an innocent  
24 person and the failure of many States to ensure that  
25 innocent persons are not sentenced to death, a Fed-

1 eral statute assuring the availability of DNA testing  
2 and a chance to present the results of testing in  
3 court is a congruent and proportional prophylactic  
4 measure to prevent constitutional injuries from oc-  
5 ccurring.

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

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

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

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

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

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

6 **“CHAPTER 156—DNA TESTING**

“Sec.

“2291. DNA testing.

“2292. Preservation of evidence.

7 **“§ 2291. DNA testing**

8 “(a) APPLICATION.—Notwithstanding any other pro-  
9 vision of law, a person convicted of a Federal crime may  
10 apply to the appropriate Federal court for DNA testing  
11 to support a claim that the person did not commit—

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

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

19 “(b) NOTICE TO GOVERNMENT.—The court shall no-  
20 tify the Government of an application made under sub-  
21 section (a) and shall afford the Government an oppor-  
22 tunity to respond.

23 “(c) PRESERVATION ORDER.—The court shall order  
24 that all evidence secured in relation to the case that could

1 be subjected to DNA testing must be preserved during the  
2 pendency of the proceeding. The court may impose appro-  
3 priate sanctions, including criminal contempt, for the in-  
4 tentional destruction of evidence after such an order.

5 “(d) ORDER.—

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

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

12 “(B) the evidence was never previously  
13 subjected to DNA testing, or was not subject to  
14 the type of DNA testing that is now requested  
15 and that may resolve an issue not resolved by  
16 previous testing;

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

19 “(D) the proposed DNA testing has the  
20 scientific potential to produce new, noncumu-  
21 lative evidence material to the claim of the ap-  
22 plicant that the applicant did not commit—

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

1           “(ii) any other offense that a sen-  
2           tencing authority may have relied upon  
3           when it sentenced the applicant with re-  
4           spect to the Federal crime either to death  
5           or to an enhanced term of imprisonment as  
6           a career offender or armed career criminal.

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

14          “(3) TESTING PROCEDURES.—If the court or-  
15          ders DNA testing under paragraph (1), the court  
16          shall impose reasonable conditions on such testing  
17          designed to protect the integrity of the evidence and  
18          the testing process and the reliability of the test re-  
19          sults.

20          “(e) COST.—The cost of DNA testing ordered under  
21          subsection (c) shall be borne by the Government or the  
22          applicant, as the court may order in the interests of jus-  
23          tice, except that an applicant shall not be denied testing  
24          because of an inability to pay the cost of testing.

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

4       “(g) POST-TESTING PROCEDURES.—

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

9           “(2) RESULTS UNFAVORABLE TO APPLICANT.—  
10 If the results of DNA testing conducted under this  
11 section inculcate the applicant, the court shall—

12                   “(A) dismiss the application;

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

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

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

25       “(h) RULES OF CONSTRUCTION.—

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

6           “(2) FINALITY RULE UNAFFECTED.—An appli-  
7           cation under this section shall not be considered a  
8           motion under section 2255 for purposes of deter-  
9           mining whether it or any other motion is a second  
10          or successive motion under section 2255.

11          “(i) DEFINITIONS.—In this section:

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

14           “(A) the United States District Court  
15          which imposed the sentence from which the ap-  
16          plicant seeks relief; or

17           “(B) in relation to a crime under the Uni-  
18          form Code of Military Justice, the United  
19          States District Court having jurisdiction over  
20          the place where the court martial was convened  
21          that imposed the sentence from which the appli-  
22          cant seeks relief, or the United States District  
23          Court for the District of Columbia, if no United  
24          States District Court has jurisdiction over the  
25          place where the court martial was convened.

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

4   **“§ 2292. Preservation of evidence**

5           “(a) IN GENERAL.—Notwithstanding any other pro-  
6           vision of law and subject to subsection (b), the Govern-  
7           ment shall preserve all evidence that was secured in rela-  
8           tion to the investigation or prosecution of a Federal crime  
9           (as that term is defined in section 2291(i)), and that could  
10          be subjected to DNA testing, for not less than the period  
11          of time that any person remains subject to incarceration  
12          in connection with the investigation or prosecution.

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

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

19                 “(2)(A)(i) the Government notifies any person  
20                 who remains incarcerated in connection with the in-  
21                 vestigation or prosecution and any counsel of record  
22                 for such person (or, if there is no counsel of record,  
23                 the public defender for the judicial district in which  
24                 the conviction for such person was imposed), of the

1 intention of the Government to dispose of the evi-  
2 dence and the provisions of this chapter; and

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

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

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

13 “(c) REMEDIES FOR NONCOMPLIANCE.—

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

20 “(2) CIVIL PENALTY.—

21 “(A) IN GENERAL.—Notwithstanding para-  
22 graph (1), an individual who knowingly violates  
23 a provision of this section or a regulation pre-  
24 scribed under this section shall be liable to the  
25 United States for a civil penalty in an amount

1 not to exceed \$1,000 for the first violation and  
2 \$5,000 for each subsequent violation, except  
3 that the total amount imposed on the individual  
4 for all such violations during a calendar year  
5 may not exceed \$25,000.

6 “(B) PROCEDURES.—The provisions of  
7 section 405 of the Controlled Substances Act  
8 (21 U.S.C. 844a) (other than subsections (a)  
9 through (d) and subsection (j)) shall apply to  
10 the imposition of a civil penalty under subpara-  
11 graph (A) in the same manner as such provi-  
12 sions apply to the imposition of a penalty under  
13 section 405.

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

19 “(3) REGULATIONS.—

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

23 “(B) CONTENTS.—The regulations shall  
24 include the following:

1           “(i) Disciplinary sanctions, including  
2           suspension or termination from employ-  
3           ment, for employees of the Department of  
4           Justice who knowingly or repeatedly violate  
5           a provision of this section.

6           “(ii) An administrative procedure  
7           through which parties can file formal com-  
8           plaints with the Department of Justice al-  
9           leging violations of this section.”.

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

13 **“§ 1519. Destruction or altering of DNA evidence**

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

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

19           “(2) prevent that evidence from being subjected  
20 to DNA testing; or

21           “(3) prevent the production or use of that evi-  
22 dence in an official proceeding,

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

25       (c) TECHNICAL AND CONFORMING AMENDMENTS.—

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

**“156. DNA testing ..... 2291”.**

4           (2) The table of contents for Chapter 73 of title  
 5           18, United States Code, is amended by inserting  
 6           after the item relating to section 1518 the following:

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

7   **SEC. 103. POST-CONVICTION DNA TESTING IN STATE CRIMI-**  
 8                                   **NAL JUSTICE SYSTEMS.**

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

17           (1) make post-conviction DNA testing available  
 18           to any person convicted of a State crime in a man-  
 19           ner consistent with section 2291 of title 28, United  
 20           States Code, and, if the results of such testing are  
 21           favorable to such person, allow such person to apply  
 22           for post-conviction relief, notwithstanding any provi-

1 sion of law that would bar such application as un-  
2 timely; and

3 (2) preserve all evidence that was secured in re-  
4 lation to the investigation or prosecution of a State  
5 crime, and that could be subjected to DNA testing,  
6 for not less than the period of time that such evi-  
7 dence would be required to be preserved under sec-  
8 tion 2292 of title 28, United States Code, if the evi-  
9 dence were related to a Federal crime.

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

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

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

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

23 (4) DRUG CONTROL AND SYSTEM IMPROVE-  
24 MENT GRANTS.—Subpart 1 of part E of title I of

1 the Omnibus Crime Control and Safe Streets Act of  
2 1968 (42 U.S.C. 3751 et seq.).

3 (5) PUBLIC SAFETY AND COMMUNITY POLICING  
4 GRANTS.—Part Q of title I of the Omnibus Crime  
5 Control and Safe Streets Act of 1968 (42 U.S.C.  
6 3796dd et seq.).

7 (c) EFFECTIVE DATE.—This section shall apply with  
8 respect to any grant made on or after the date that is  
9 1 year after the date of enactment of this Act.

10 **SEC. 104. PROHIBITION PURSUANT TO SECTION 5 OF THE**  
11 **14TH AMENDMENT.**

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

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

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

23 (b) OPPORTUNITY TO PRESENT RESULTS OF DNA  
24 TESTING.—No State shall rely upon a time limit or proce-  
25 dural default rule to deny a prisoner in State custody who

1 is under sentence of death an opportunity to present in  
2 an appropriate State court new, noncumulative DNA re-  
3 sults that establish a reasonable probability that the pris-  
4 oner did not commit an offense described in subsection  
5 (a).

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

12 (d) FINALITY RULE UNAFFECTED.—An application  
13 under this section shall not be considered an application  
14 for a writ of habeas corpus under section 2254 of title  
15 28, United States Code, for purposes of determining  
16 whether it or any other application is a second or succes-  
17 sive application under section 2254.

18 **SEC. 105. GRANTS TO PROSECUTORS FOR DNA TESTING**  
19 **PROGRAMS.**

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

23 (1) striking “and” at the end of paragraph  
24 (25);



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

3 (B) indigents who have been sentenced to  
4 death and who seek appellate or collateral re-  
5 view in State court; and

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

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

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

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

16 (B) draft and annually publish a roster of  
17 qualified attorneys;

18 (C) draft and annually publish qualifica-  
19 tions and performance standards that attorneys  
20 must satisfy to be listed on the roster and pro-  
21 cedures by which qualified attorneys are identi-  
22 fied;

23 (D) periodically review the roster, monitor  
24 the performance of all attorneys appointed, pro-  
25 vide a mechanism by which members of the rel-

1           evant State Bar may comment on the perform-  
2           ance of their peers, and delete the name of any  
3           attorney who fails to satisfactorily complete reg-  
4           ular training programs on the representation of  
5           clients in capital cases, fails to meet perform-  
6           ance standards in a case to which the attorney  
7           is appointed, or otherwise fails to demonstrate  
8           continuing competence to represent clients in  
9           capital cases;

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

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

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

21           (2) adequate compensation of private attorneys  
22           for actual time and service, computed on an hourly  
23           basis and at a reasonable hourly rate in light of the  
24           qualifications and experience of the attorney and the  
25           local market for legal representation in cases reflect-

1 ing the complexity and responsibility of capital  
2 cases;

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

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

12 (d) MEMBERSHIP.—

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

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

1           (B) Two members appointed by the Con-  
2           ference of Chief Justices, from among the mem-  
3           bers of the judiciaries of the several States.

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

7           (D) The Chairman of the Committee on  
8           Defender Services of the Judicial Conference of  
9           the United States, or a designee of the Chair-  
10          man.

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

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

18          (4) GEOGRAPHIC DISTRIBUTION.—The appoint-  
19          ment of individuals under paragraph (1) shall, to the  
20          maximum extent practicable, be made so as to en-  
21          sure that different geographic areas of the United  
22          States are represented in the membership of the  
23          Commission.

24          (5) TERMS.—Members of the Commission ap-  
25          pointed under subparagraphs (A), (B), and (C) of

1 paragraph (1) shall be appointed for the life of the  
2 Commission.

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

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

11 (8) NO COMPENSATION.—Members of the Com-  
12 mission shall serve without compensation for their  
13 service.

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

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

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

1           (12) CHAIRPERSON.—At the initial meeting of  
2 the Commission, a majority of the members of the  
3 Commission present and voting shall elect a Chair-  
4 person from among the members of the Commission  
5 appointed under paragraph (1).

6           (e) STAFF.—

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

10          (2) EXPERTS AND CONSULTANTS.—The Com-  
11 mission may procure temporary and intermittent  
12 services under section 3109(b) of title 5, United  
13 States Code.

14          (f) POWERS.—

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

21          (2) OBTAINING OFFICIAL INFORMATION.—The  
22 Commission may secure directly from any depart-  
23 ment or agency of the United States such informa-  
24 tion as the Commission considers necessary to carry  
25 out this section. Upon request of the chairperson of

1 the Commission, the head of that department or  
2 agency shall provide such information, except to the  
3 extent prohibited by law.

4 (3) ADMINISTRATIVE SUPPORT SERVICES.—

5 Upon the request of the Commission, the Adminis-  
6 trator of General Services shall provide to the Com-  
7 mission, on a reimbursable basis, the administrative  
8 support services necessary for the Commission to  
9 carry out its responsibilities under this section.

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

14 (g) REPORT.—

15 (1) IN GENERAL.—The Commission shall sub-  
16 mit a report to the President and the Congress be-  
17 fore the end of the 1-year period beginning after the  
18 first meeting of all members of the Commission.

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

21 (A) a comparative analysis of existing and  
22 proposed systems for appointing counsel in cap-  
23 ital cases, and the amounts actually paid by  
24 governmental entities for capital defense serv-  
25 ices; and

1 (B) such standards as are formulated by  
2 the Commission pursuant to subsection (b)(2),  
3 together with such commentary and rec-  
4 ommendations as the Commission considers ap-  
5 propriate.

6 (h) TERMINATION.—The Commission shall terminate  
7 90 days after submitting the report under subsection (g).

8 (i) EXPENSES OF COMMISSION.—There are author-  
9 ized to be appropriated to pay any expenses of the Com-  
10 mission such sums as may be necessary not to exceed  
11 \$1,000,000. Any sums appropriated for such purposes are  
12 authorized to remain available until expended, or until the  
13 termination of the Commission pursuant to subsection (h),  
14 whichever occurs first.

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

16 The State Justice Institute Act of 1984 (42 U.S.C.  
17 10701 et seq.) is amended by inserting after section 207  
18 the following:

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

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

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

7           “(2) otherwise improving the quality of legal  
8           representation in capital cases.

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

13           “(1) training and development of training ca-  
14           pacity to ensure that attorneys assigned to capital  
15           cases meet such standards;

16           “(2) augmentation of attorney, paralegal, inves-  
17           tigator, expert witness, and other staff and services  
18           necessary for capital defense; and

19           “(3) development of new mechanisms for ad-  
20           dressing complaints about attorney competence and  
21           performance in capital cases.

22          “(c) APPLICATIONS.—

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

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

5           “(3) CONTENTS.—In accordance with the regu-  
6           lations or guidelines established by the Institute,  
7           each application for a grant under this section  
8           shall—

9                   “(A) include a long-term strategy and de-  
10                  tailed implementation program that reflects  
11                  consultation with the organized bar of the  
12                  State, the highest court of the State, and the  
13                  Attorney General of the State, and reflects con-  
14                  sideration of a statewide strategy; and

15                   “(B) specify plans for obtaining necessary  
16                  support and continuing the proposed program  
17                  following the termination of Federal support.

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

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

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

5       “(g) LIMITATIONS ON USE OF FUNDS.—

6           “(1) NONSUPPLANTING REQUIREMENT.—Funds  
7 made available under this section shall not be used  
8 to supplant State or local funds, but shall be used  
9 to supplement the amount of funds that would, in  
10 the absence of Federal funds received under this sec-  
11 tion, be made available from States or local sources.

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

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

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

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

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

5           “(1) a summary of the activities carried out  
6 under the grant and an assessment of the effective-  
7 ness of such activities in achieving ongoing compli-  
8 ance with the standards formulated pursuant to sec-  
9 tion 201(b) of the Innocence Protection Act of 2001  
10 and improving the quality of representation in cap-  
11 ital cases; and

12           “(2) such other information as the Institute  
13 may require.

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

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

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

23           “(3) an independent evaluation of the effective-  
24 ness of the programs that received funding under  
25 this section in achieving ongoing compliance with the

1 standards formulated pursuant to section 201(b) of  
2 the Innocence Protection Act of 2001 and improving  
3 the quality of representation in capital cases.

4 “(j) DEFINITIONS.—In this section—

5 “(1) the term ‘capital case’—

6 “(A) means any criminal case in which a  
7 defendant prosecuted in a State court is subject  
8 to a sentence of death or in which a death sen-  
9 tence has been imposed; and

10 “(B) includes all proceedings filed in con-  
11 nection with the case, up to and including di-  
12 rect appellate review and post-conviction review  
13 in State court; and

14 “(2) the term ‘representation’ includes counsel  
15 and investigative, expert, and other services nec-  
16 essary for adequate representation.

17 “(k) AUTHORIZATION OF APPROPRIATIONS.—

18 “(1) IN GENERAL.—There are authorized to be  
19 appropriated to carry out this section, in addition to  
20 other amounts authorized by this Act, to remain  
21 available until expended, \$50,000,000 for fiscal year  
22 2002, and such sums as may be necessary for fiscal  
23 years 2003 and 2004.

24 “(2) TECHNICAL ASSISTANCE AND TRAINING.—

25 Not more than 3 percent of the amount made avail-

1       able under paragraph (1) for a fiscal year shall be  
2       available for technical assistance and training activi-  
3       ties by the Institute under subsection (e).

4               “(3) EVALUATIONS.—Up to 5 percent of the  
5       amount authorized to be appropriated under para-  
6       graph (1) in any fiscal year may be used for admin-  
7       istrative expenses, including expenses incurred in  
8       preparing reports under subsection (i).”.

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

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

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

15               “(a) WITHHOLDING OF FUNDS FOR NONCOMPLI-  
16       ANCE WITH STANDARDS FOR CAPITAL REPRESENTA-  
17       TION.—

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

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

5           “(B) has not established or does not main-  
6           tain an effective system for providing adequate  
7           representation for indigent persons in capital  
8           cases, in compliance with the standards formu-  
9           lated by the National Commission on Capital  
10          Representation pursuant to section 201(b) of  
11          the Innocence Protection Act of 2001.

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

20          “(3) DISPOSITION OF WITHHELD FUNDS.—  
21          Funds withheld under this subsection from appor-  
22          tionment to any State or unit of local government  
23          shall be allotted by the Attorney General and paid  
24          to the States and units of local government receiving  
25          a grant under this subtitle, other than any State re-

1       ferred to in paragraph (1), and any unit of local  
2       government appertaining thereto, in a manner equiv-  
3       alent to the manner in which the allotment under  
4       this subtitle was determined.

5       “(b) WAIVER OF WITHHOLDING REQUIREMENT.—

6               “(1) IN GENERAL.—The Attorney General may  
7       waive in whole or in part the application of the re-  
8       quirement of subsection (a) for any 1-year period  
9       with respect to any State, where immediately pre-  
10      ceding such 1-year period the Attorney General finds  
11      that such State has made and continues to make a  
12      good faith effort to comply with the standards for-  
13      mulated by the National Commission on Capital  
14      Representation pursuant to section 201(b) of the In-  
15      nocence Protection Act of 2001.

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

20              “(3) LIMITATION ON USE OF FUNDS.—If the  
21      Attorney General grants a waiver under paragraph  
22      (1), the State shall be required to use the total  
23      amount of grant funds awarded to such State or any  
24      unit of local government appertaining thereto under  
25      this subtitle that would have been withheld under

1 subsection (a) but for the waiver to improve the ca-  
2 pability of such State to provide adequate represen-  
3 tation in capital cases.

4 “(c) REPORT TO CONGRESS.—Not later than 180  
5 days after the end of each fiscal year for which grants  
6 are made under this subtitle, the Attorney General shall  
7 submit to Congress a report that includes, with respect  
8 to each State that prescribes, authorizes, or permits the  
9 penalty of death for any offense—

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

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

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

22 (b) TECHNICAL AND CONFORMING AMENDMENT.—  
23 The table of contents in section 2 of the Violent Crime  
24 Control and Law Enforcement Act of 1994 is amended

1 by inserting after the item relating to section 20109 the  
2 following:

“Sec. 110. Standards for capital representation.”.

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

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

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

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

10 “(3) In a proceeding instituted by an applicant  
11 under sentence of death, the court shall neither pre-  
12 sume a finding of fact made by a State court to be  
13 correct nor decline to consider a claim on the ground  
14 that the applicant failed to raise such claim in State  
15 court at the time and in the manner prescribed by  
16 State law, if—

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

23 “(B) the State did not provide representa-  
24 tion to the applicant under a State system for  
25 providing representation that satisfied the

1 standards formulated by the National Commis-  
2 sion on Capital Representation pursuant to sec-  
3 tion 201(b) of the Innocence Protection Act of  
4 2001.”.

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

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

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

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

17 (2) by inserting after subsection (h) the fol-  
18 lowing:

19 “(i) CAPITAL DEFENSE RESOURCE GRANTS.—

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

21 “(A) the term ‘capital case’—

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

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

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

6 “(i) recruitment of counsel;

7 “(ii) training of counsel; and

8 “(iii) legal and administrative support  
9 and assistance to counsel; and

10 “(C) the term ‘Director’ means the Direc-  
11 tor of the Administrative Office of the United  
12 States Courts.

13 “(2) GRANT AWARD AND CONTRACT AUTHOR-  
14 ITY.—Notwithstanding subsection (g), the Director  
15 shall award grants to, or enter into contracts with,  
16 public agencies or private nonprofit organizations for  
17 the purpose of providing defense services in capital  
18 cases.

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

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

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

3           “(C) Increasing the efficiency with which  
4           such cases are resolved.

5           “(4) GUIDELINES.—The Director, in consulta-  
6           tion with the Judicial Conference of the United  
7           States, shall develop guidelines to ensure that de-  
8           fense services provided by recipients of grants and  
9           contracts awarded under this subsection are con-  
10          sistent with applicable legal and ethical proscriptions  
11          governing the duties of counsel in capital cases.

12          “(5) CONSULTATION.—In awarding grants and  
13          contracts under this subsection, the Director shall  
14          consult with representatives of the highest State  
15          court, the organized bar, and the defense bar of the  
16          jurisdiction to be served by the recipient of the grant  
17          or contract, and shall ensure coordination with  
18          grants administered by the State Justice Institute  
19          pursuant to section 207A of the State Justice Insti-  
20          tute Act of 1984.”.

21           **TITLE III—MISCELLANEOUS**  
22           **PROVISIONS**

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

24           Section 2513(e) of title 28, United States Code, is  
25           amended by striking “\$5,000” and inserting “\$50,000 for

1 each 12-month period of incarceration, except that a plain-  
2 tiff who was unjustly sentenced to death may be awarded  
3 not more than \$100,000 for each 12-month period of in-  
4 carceration.”.

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

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

10 (1) striking “and” at the end of subparagraph  
11 (A);

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

14 (3) adding at the end the following:

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

22 “(i) reasonably compensating persons  
23 found to have been unjustly convicted of  
24 an offense against the State and sentenced  
25 to death; and

1                   “(ii) investigating the causes of such  
2                   unjust convictions, publishing the results  
3                   of such investigations, and taking steps to  
4                   prevent such errors in future cases.”.

5 **SEC. 303. CERTIFICATION REQUIREMENT IN FEDERAL**  
6                   **DEATH PENALTY PROSECUTIONS.**

7           (a) IN GENERAL.—Chapter 228 of title 28, United  
8 States Code, is amended by adding at the end the fol-  
9 lowing:

10 **“§ 3599. Certification requirement**

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

18           “(b) REQUIREMENTS.—A certification under sub-  
19 section (a) shall state the basis on which the certification  
20 was made and the reasons for the certification.

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

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

5       “(e) RULE OF CONSTRUCTION.—This section does  
6 not create any rights, substantive or procedural, enforce-  
7 able at law by any party in any matter civil or criminal.”.

8       (b) TECHNICAL AND CONFORMING AMENDMENT.—  
9 The analysis for chapter 228 of title 28, United States  
10 Code, is amended by adding at the end the following:

“3599. Certification requirement.”.

11 **SEC. 304. ALTERNATIVE OF LIFE IMPRISONMENT WITHOUT**  
12 **POSSIBILITY OF RELEASE.**

13       (a) PURPOSE.—The purpose of this section is to clar-  
14 ify that juries in death penalty prosecutions brought under  
15 the drug kingpin statute—like juries in all other Federal  
16 death penalty prosecutions—have the option of recom-  
17 mending life imprisonment without possibility of release.

18       (b) CLARIFICATION.—Section 408(l) of the Con-  
19 trolled Substances Act (21 U.S.C. 848(l)), is amended by  
20 striking the first 2 sentences and inserting the following:  
21 “Upon a recommendation under subsection (k) that the  
22 defendant should be sentenced to death or life imprison-  
23 ment without possibility of release, the court shall sen-  
24 tence the defendant accordingly. Otherwise, the court shall  
25 impose any lesser sentence that is authorized by law.”.

1 **SEC. 305. RIGHT TO AN INFORMED JURY.**

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

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

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

9 (3) adding at the end the following:

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

20 **SEC. 306. ANNUAL REPORTS.**

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

1 (b) REPORT ELEMENTS.—The report required under  
2 subsection (a) shall include substantially the same cat-  
3 egories of information as are included in the Bureau of  
4 Justice Statistics Bulletin entitled “Capital Punishment  
5 1999” (December 2000, NCJ 184795), and shall also in-  
6 clude the following additional categories of information, if  
7 such information can practicably be obtained:

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

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

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

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

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

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

3           (7) The percentage of cases in which a death  
4           sentence or a conviction underlying a death sentence  
5           is vacated, reversed, or set aside, and a short state-  
6           ment of the reasons therefore.

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

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

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

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

1 **SEC. 307. SENSE OF CONGRESS REGARDING THE EXECU-**  
2 **TION OF JUVENILE OFFENDERS AND THE**  
3 **MENTALLY RETARDED.**

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

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