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

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IN THE SENATE OF THE UNITED STATES

JUNE 7 (legislative day, JUNE 6), 2000

Mr. LEAHY (for himself, Mr. SMITH of Oregon, Ms. COLLINS, Mr. LEVIN, Mr. JEFFORDS, Mr. FEINGOLD, Mr. MOYNIHAN, Mr. AKAKA, Mr. KERREY, and Mr. WELLSTONE) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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A BILL

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

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 2000”.

(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. DNA testing in Federal criminal justice system.
Sec. 103. DNA testing in State criminal justice systems.
Sec. 104. Prohibition pursuant to section 5 of the 14th amendment.

TITLE II—ENSURING COMPETENT LEGAL SERVICES IN CAPITAL CASES

Sec. 201. Amendments to Byrne grant programs.
Sec. 203. Capital representation grants.

TITLE III—COMPENSATING THE UNJUSTLY CONDEMNED

Sec. 301. Increased compensation in Federal cases.
Sec. 302. Compensation in State death penalty cases.

TITLE IV—MISCELLANEOUS PROVISIONS

Sec. 401. Accommodation of State interests in Federal death penalty prosecutions.
Sec. 402. Alternative of life imprisonment without possibility of release.
Sec. 403. Right to an informed jury.
Sec. 404. Annual reports.
Sec. 405. Discretionary appellate review.
Sec. 406. Sense of Congress regarding the execution of juvenile offenders and the mentally retarded.

1 TITLE I—EXONERATING THE INNOCENT THROUGH DNA TESTING

2 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 pro-
bative value to a finder of fact.

(3) While DNA testing is increasingly common-
place in pretrial investigations today, it was not
widely available in cases tried prior to 1994. More-
over, 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. Con-
sequently, 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 rel-
evant 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 evi-
dence showing innocence, produced decades after a
conviction, provides a more reliable basis for estab-
lishing a correct verdict than any evidence proffered
at the original trial. DNA testing, therefore, can and
has resulted in the post-conviction exoneration of in-
ocent men and women.
(5) In the past decade, there have been more than 65 post-conviction exonerations in the United States and Canada based upon DNA testing. At least 8 individuals sentenced to death have been exonerated through post-conviction DNA testing, some of whom came within days of being executed.

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

(7) The advent of DNA testing raises serious concerns regarding the prevalence of wrongful convictions, especially wrongful convictions arising out of mistaken eyewitness identification testimony. According to a 1996 Department of Justice study entitled “Convicted by Juries, Exonerated by Science: Case Studies of Post-Conviction DNA Exonerations”, in approximately 20 to 30 percent of the cases referred for DNA testing, the results excluded the primary suspect. Without DNA testing, many of these individuals might have been wrongfully convicted.

(8) Laws in more than 30 States require that a motion for a new trial based on newly discovered evidence of innocence be filed within 6 months or
less. These laws are premised on the belief—inapplicable to DNA testing—that evidence becomes less reliable over time. Such time limits have been used to deny inmates access to DNA testing, even when guilt or innocence could be conclusively established by such testing. For example, in Dedge v. Florida, 723 So.2d 322 (Fla. Dist. Ct. App. 1998), the court without opinion affirmed the denial of a motion to release trial evidence for the purpose of DNA testing. The trial court denied the motion as procedurally barred under the 2-year limitation on claims of newly discovered evidence established by the State of Florida, which has since adopted a 6-month limitation on such claims.

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

(10) 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 issued a report entitled “Recommendations For Handling Post-Conviction DNA Applications” that urges post-conviction DNA testing in 2 carefully defined cat-
egories of cases, notwithstanding procedural rules that could be invoked to preclude such testing, and notwithstanding the inability of the inmate to pay for the testing.

(11) The number of cases in which post-conviction DNA testing is appropriate is relatively small and will decrease as pretrial testing becomes more common and accessible.

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

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

(14) Although the Supreme Court has never announced a standard for addressing constitutional claims of innocence, in Herrera v. Collins, 506 U.S. 390 (1993), a majority of the Court expressed the view that, “a truly persuasive demonstration of ‘actual innocence’” made after trial would render imposition of punishment by a State unconstitutional.
(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 incarcerated or executed.

(16) To prevent violations of the Constitution of the United States that the Supreme Court anticipated in Herrera v. Collins, it is necessary and proper to enact national legislation that ensures that the Federal Government and the States will permit DNA testing in appropriate cases.

(17) There is also a compelling need to ensure the preservation of biological material for post-conviction DNA testing. Since 1992, the Innocence Project at the Benjamin N. Cardozo School of Law has received thousands of letters from inmates who claim that DNA testing could prove them innocent. In over 70 percent of those cases in which DNA testing could have been dispositive of guilt or innocence if the biological material were available, the material had been destroyed or lost. In two-thirds of the cases in which the evidence was found, and DNA testing conducted, the results have exonerated the inmate.
(18) In at least 14 cases, post-conviction DNA testing that has exonerated a wrongly convicted person has also provided evidence leading to the apprehension of the actual perpetrator, thereby enhancing public safety. This would not have been possible if the biological evidence had been destroyed.

(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 ensuring the availability of 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. 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

§ 2291. DNA testing

“(a) APPLICATION.—Notwithstanding any other provision of law, a person in custody pursuant to the judgment of a court established by an Act of Congress may, at any time after conviction, apply to the court that entered the judgment for forensic DNA testing of any biological material that—

“(1) is related to the investigation or prosecution that resulted in the judgment;

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

“(3) was not previously subjected to DNA testing, or can be subjected to retesting with new DNA techniques that provide a reasonable likelihood of more accurate and probative results.

“(b) NOTICE TO GOVERNMENT.—

“(1) IN GENERAL.—The court shall notify the Government of an application made under subsection
(a) and shall afford the Government an opportunity to respond.

“(2) Preservation of remaining biological material.—Upon receiving notice of an application made under subsection (a), the Government shall take such steps as are necessary to ensure that any remaining biological material that was secured in connection with the case is preserved pending the completion of proceedings under this section.

“(c) Order.—The court shall order DNA testing pursuant to an application made under subsection (a) upon a determination that testing may produce noncumulative, exculpatory evidence relevant to the claim of the applicant that the applicant was wrongfully convicted or sentenced.

“(d) 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, if it is shown that the applicant is not indigent and possesses the means to pay.

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

“(f) Post-Testing Procedures.—

“(1) Procedures following results unfavorable to applicant.—If the results of DNA
testing conducted under this section are unfavorable
to the applicant, the court—

“(A) shall dismiss the application; and

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

“(2) Procedures following results fa-
vor able to applicant.—If the results of DNA
testing conducted under this section are favorable to
the applicant, the court shall—

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

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

“(i) vacating and setting aside the
judgment;

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

“(iii) resentenc ing the applicant; or

“(iv) granting a new trial.

“(g) Rule of Construction.—Nothing in this sec-
tion 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.
'§ 2292. Preservation of biological material

(a) In General.—Notwithstanding any other provision of law and subject to subsection (b), the Government shall preserve any biological material secured in connection with a criminal case for such period of time as any person remains incarcerated in connection with that case.

(b) Exception.—The Government may destroy biological material before the expiration of the period of time described in subsection (a) if—

(1) the Government notifies any person who remains incarcerated in connection with the case, and any counsel of record or public defender organization for the judicial district in which the judgment of conviction for such person was entered, of—

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

(B) the provisions of this chapter;

(2) no person makes an application under section 2291(a) within 90 days of receiving notice under paragraph (1) of this subsection; and

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

(b) Technical and Conforming Amendment.—

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

“156. DNA Testing .............................................................................. 2291”.

SEC. 103. DNA TESTING IN STATE CRIMINAL JUSTICE SYSTEMS.

(a) DNA IDENTIFICATION GRANT PROGRAM.—Section 2403 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796kk–2) is amended—

(1) in paragraph (2)—

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

(B) in subparagraph (C), by striking “is charged” and inserting “was charged or convicted”; and

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

(2) in paragraph (3)—

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

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

(3) by adding at the end the following:

“(4) the State will—

“(A) preserve all biological material secured in connection with a State criminal case
for not less than the period of time that biological material is required to be preserved under section 2292 of title 28, United States Code, in the case of a person incarcerated in connection with a Federal criminal case; and

“(B) make DNA testing available to any person convicted in State court to the same extent, and under the same conditions, that DNA testing is available under section 2291 of title 28, United States Code, to any person convicted in a court established by an Act of Congress.”.

(b) Drug Control and System Improvement Grant Program.—Section 503(a)(12) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3753(a)(12)) is amended—

(1) in subparagraph (B)—

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

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

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

(3) by adding at the end the following:

“(D) the State will—
“(i) preserve all biological material secured in connection with a State criminal case for not less than the period of time that biological material is required to be preserved under section 2292 of title 28, United States Code, in the case of a person incarcerated in connection with a Federal criminal case; and

“(ii) make DNA testing available to a person convicted in State court to the same extent, and under the same conditions, that DNA testing is available under section 2291 of title 28, United States Code, to a person convicted in a court established by an Act of Congress.”.

(e) PUBLIC SAFETY AND COMMUNITY POLICING GRANT PROGRAM.—Section 1702(c) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796dd–1(c)) is amended—

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

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

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

“(A) DNA analyses performed at such laboratory will satisfy or exceed the current standards for a quality assurance program for DNA analysis, issued by the Director of the Federal Bureau of Investigation under section 210303 of the DNA Identification Act of 1994 (42 U.S.C. 14131);

“(B) DNA samples and analyses obtained and performed by such laboratory will be accessible only—

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

“(ii) in judicial proceedings, if otherwise admissible under applicable statutes and rules;

“(iii) for criminal defense purposes, to a defendant, who shall have access to samples and analyses performed in connection
with the case in which the defendant was charged or convicted; or

“(iv) if personally identifiable information is removed, for a population statistics database, for identification research and protocol development purposes, or for quality control purposes;

“(C) the laboratory and each analyst performing DNA analyses at the laboratory will undergo, at regular intervals not exceeding 180 days, external proficiency testing by a DNA proficiency testing program that meets the standards issued under section 210303 of the DNA Identification Act of 1994 (42 U.S.C. 14131); and

“(D) the State will—

“(i) preserve all biological material secured in connection with a State criminal case for not less than the period of time that biological material is required to be preserved under section 2292 of title 28, United States Code, in the case of a person incarcerated in connection with a Federal criminal case; and
“(ii) make DNA testing available to any person convicted in State court to the same extent, and under the same conditions, that DNA testing is available under section 2291 of title 28, United States Code, to a person convicted in a court established by an Act of Congress.”.

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

(a) REQUEST FOR DNA TESTING.—

(1) IN GENERAL.—No State shall deny a request, made by a person in custody resulting from a State court judgment, for DNA testing of biological material that—

(A) is related to the investigation or prosecution that resulted in the conviction of the person or the sentence imposed on the person;

(B) is in the actual or constructive possession of the State; and

(C) was not previously subjected to DNA testing, or can be subjected to retesting with new DNA techniques that provide a reasonable likelihood of more accurate and probative results.
(2) EXCEPTION.—A State may deny a request under paragraph (1) upon a judicial determination that testing could not produce noncumulative evidence establishing a reasonable probability that the person was wrongfully convicted or sentenced.

(b) OPPORTUNITY TO PRESENT RESULTS OF DNA TESTING.—No State shall rely upon a time limit or procedural default rule to deny a person an opportunity to present noncumulative, exculpatory DNA results in court, or in an executive or administrative forum in which a decision is made in accordance with procedural due process.

(c) REMEDY.—A person 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 either the State or an executive or judicial officer of the State as defendant. No State or State executive or judicial officer shall have immunity from actions under this subsection.

TITLE II—ENSURING COMPETENT LEGAL SERVICES IN CAPITAL CASES

SEC. 201. AMENDMENTS TO BYRNE GRANT PROGRAMS.

(a) CERTIFICATION REQUIREMENT; FORMULA GRANTS.—Section 503 of title I of the Omnibus Crime
Control and Safe Streets Act of 1968 (42 U.S.C. 3753) is amended—

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

“(13) If the State prescribes, authorizes, or permits the penalty of death for any offense, a certification that the State has established and maintains an effective system for providing competent legal services to indigents at every phase of a State criminal prosecution in which a death sentence is sought or has been imposed, up to and including direct appellate review and post-conviction review in State court.”; and

(2) in subsection (b)—

(A) by striking“(b) Within 30 days after the date of enactment of this part, the” and inserting the following:

“(b) REGULATIONS.—

“(1) IN GENERAL.—The”; and

(B) by adding at the end the following:

“(2) CERTIFICATION REGULATIONS.—The Director of the Administrative Office of the United States Courts, after notice and an opportunity for comment, shall promulgate regulations specifying the elements of an effective system within the mean-
ing of subsection (a)(13), which elements shall include—

“(A) a centralized and independent appointing authority, which shall have authority and responsibility to—

“(i) recruit attorneys who are qualified to represent indigents in the capital proceedings specified in subsection (a)(13);

“(ii) draft and annually publish a roster of qualified attorneys;

“(iii) 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;

“(iv) periodically review the roster, monitor the performance of all attorneys appointed, provide a mechanism by which members of the Bar may comment on the performance of their peers, and delete the name of any attorney who fails to 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 other-
wise fails to demonstrate continuing competence to represent clients in capital cases;

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

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

“(vii) report the appointment, or the failure of the defendant to accept such appointment, to the court requesting the appointment;

“(B) 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;

“(C) reimbursement of private attorneys and public defender organizations for attorney expenses reasonably incurred in the representa-
tion of a client in a capital case, computed on an hourly basis reflecting the local market for such services; and

“(D) 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 defendant in a capital case, computed on an hourly basis reflecting the local market for such services.”.

(b) Certification Requirement; Discretionary Grants.—Section 517(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3763(a)) is amended—

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

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

(3) by adding at the end the following:

“(5) satisfies the certification requirement established by section 503(a)(13).”.

(c) Director’s Reports to Congress.—Section 522(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3766b(b)) is amended—
(1) in paragraph (4), by striking “and” at the end;

(2) by redesignating paragraph (5) as paragraph (6); and

(3) by inserting after paragraph (4) the following:

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

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

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

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

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Subject to paragraph (2), the amendments made by this section shall apply with respect to any application submitted on or after the date that is 1 year after the date of enactment of this Act.
(2) EXCEPTION.—The amendments made by this section shall not take effect until the amount made available for a fiscal year to carry out part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 equals or exceeds an amount that is $50,000,000 greater than the amount made available to carry out that part for fiscal year 2000.

(e) REGULATIONS.—The Director of the Administrative Office of the United States Courts shall issue all regulations necessary to carry out the amendments made by this section not later than 180 days before the effective date of those regulations.

SEC. 202. EFFECT ON PROCEDURAL DEFAULT RULES.

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 indigent 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, unless—

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

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

SEC. 203. CAPITAL REPRESENTATION 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 fol-
lowing:

“(i) CAPITAL REPRESENTATION 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;

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

“(iv) direct representation of defendants, if the availability of other qualified counsel is inadequate to meet the need in the jurisdiction served by the grant recipient; and

“(v) investigative, expert, or other services necessary for adequate representation; 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 award-
ed under this subsection shall be used in connection
with capital cases in the jurisdiction of the grant re-
cipient for 1 or more of the following purposes:

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

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

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

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

“(4) GUIDELINES.—The Director, in consulta-
tion with the Judicial Conference of the United
States, shall develop guidelines to ensure that de-
fense services provided by recipients of grants and
contracts awarded under this subsection are con-
sistent 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.”.

### TITLE III—COMPENSATING THE UNJUSTLY CONDEMNED

#### SEC. 301. INCREASED COMPENSATION IN FEDERAL CASES.

Section 2513 of title 28, United States Code, is amended by striking subsection (e) and inserting the following:

“(e) DAMAGES.—

“(1) IN GENERAL.—The amount of damages awarded in an action described in subsection (a) shall not exceed $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.

“(2) FACTORS FOR CONSIDERATION IN ASSESSING DAMAGES.—In assessing damages in an action described in subsection (a), the court shall consider—

“(A) the circumstances surrounding the unjust conviction of the plaintiff, including any misconduct by officers or employees of the Federal Government;
“(B) the length and conditions of the unjust incarceration of the plaintiff; and
“(C) the family circumstances, loss of wages, and pain and suffering of the plaintiff.”.

SEC. 302. COMPENSATION IN STATE DEATH PENALTY CASES.

(a) CRIMINAL JUSTICE FACILITY CONSTRUCTION GRANT PROGRAM.—Section 603(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3769b(a)) is amended—

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

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

(3) by adding at the end the following:

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

“(A) does not prescribe, authorize, or permit the penalty of death for any offense; or

“(B)(i) has established and maintains an effective procedure by which any person unjustly convicted of an offense against the State and sentenced to death may be awarded reasonable damages upon substantial proof that the
person did not commit any of the acts with
which the person was charged; and

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

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

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

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

TITLE IV—MISCELLANEOUS
PROVISIONS

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

(a) RECOGNITION OF STATE INTERESTS.—Chapter
228 of title 18, United States Code, is amended by adding
at the end the following:
§ 3599. Accommodation of State interests; certification requirement

(a) IN GENERAL.—Notwithstanding any other provision of law, the Government shall not seek the death penalty in any case initially brought before a district court of the United States that sits in a State that does not prescribe, authorize, or permit the imposition of such penalty for the alleged conduct, except upon the certification in writing of the Attorney General or the designee of the Attorney General that—

“(1) the State does not have jurisdiction or refuses to assume jurisdiction over the defendant with respect to the alleged conduct;

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

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

(b) STATE DEFINED.—In this section, the term ‘State’ means each of the several States of the United States, the District of Columbia, and the territories and possessions of the United States.”.
(b) Technical and Conforming Amendment.—

The analysis for chapter 228 of title 18, United States Code, is amended by adding at the end the following:

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

SEC. 402. ALTERNATIVE OF LIFE IMPRISONMENT WITHOUT POSSIBILITY OF RELEASE.

Section 408(l) of the Controlled Substances Act (21 U.S.C. 848(l)), 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. 403. RIGHT TO AN INFORMED JURY.

(a) Additional Requirements.—Section 20105 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13705) is amended by striking subsection (b) and inserting the following:

“(b) Additional Requirements.—To be eligible to receive a grant under section 20103 or 20104, a State shall provide assurances to the Attorney General that—

“(1) the State has implemented policies that provide for the recognition of the rights and needs of crime victims; and
“(2) in any capital case in which the jury has
a role in determining the sentence imposed on the
defendant, the court, at the request of the defend-
ant, shall inform the jury of all statutorily author-
ized sentencing options in the particular case, in-
cluding applicable parole eligibility rules and
terms.”.

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

**SEC. 404. ANNUAL REPORTS.**

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

(b) **Report Elements.**—The report required under
subsection (a) shall include substantially the same cat-
egories of information as are included in the Bureau of
Justice Statistics Bulletin entitled “Capital Punishment
1998” (December 1999, NCJ 179012), and the following additional categories of information:

(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) An analysis of the effect of Witherspoon v. Illinois, 391 U.S. 510 (1968), and its progeny, on the composition of juries in capital cases, including the racial composition of such juries, and on the exclusion of otherwise eligible and available jurors from such cases.

(4) An analysis of the effect of peremptory challenges, by the prosecution and defense respectively, on the composition of juries in capital cases, including the racial composition of such juries, and on the exclusion of otherwise eligible and available jurors from such cases.

(5) 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.
(6) 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.

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

(8) A comparative analysis of systems for appointing counsel in capital cases in different States.

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

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

(c) 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. 405. DISCRETIONARY APPELLATE REVIEW.

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

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

(2) by adding at the end the following:

“(2) For purposes of paragraph (1), if the highest court of a State has discretion to decline appellate review of a case or a claim, a petition asking that court to entertain a case or a claim is not an available State court procedure.”.

SEC. 406. 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.