

106TH CONGRESS
2D SESSION

H. R. 4167

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

IN THE HOUSE OF REPRESENTATIVES

APRIL 4, 2000

Mr. DELAHUNT (for himself, Mr. LAHOOD, Mr. CONYERS, Mr. SCARBOROUGH, Mr. SCOTT, Mr. HOUGHTON, Mr. STUPAK, Mr. BOEHLERT, Ms. SCHAKOWSKY, Mr. BARRETT of Wisconsin, and Mr. HASTINGS of Florida) 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 2000”.

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

Sec. 1. Short title; table of contents.

TITLE I—EXONERATING THE INNOCENT THROUGH DNA TESTING

- Sec. 101. Findings and purposes.
 Sec. 102. DNA testing in Federal criminal justice system.
 Sec. 103. DNA testing in State criminal justice systems.
 Sec. 104. Prohibition pursuant to section 5 of the 14th amendment.

TITLE II—ENSURING COMPETENT LEGAL SERVICES IN CAPITAL
 CASES

- Sec. 201. Amendments to Byrne grant programs.
 Sec. 202. Effect on procedural default rules.
 Sec. 203. Capital representation grants.

TITLE III—COMPENSATING THE UNJUSTLY CONDEMNED

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

TITLE IV—MISCELLANEOUS PROVISIONS

- Sec. 401. Accommodation of State interests in Federal death penalty prosecutions.
 Sec. 402. Alternative of life imprisonment without possibility of release.
 Sec. 403. Right to an informed jury.
 Sec. 404. Annual reports.
 Sec. 405. Discretionary appellate review.
 Sec. 406. Sense of 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) During the past decade, deoxyribonucleic
 8 acid testing (referred to in this section as “DNA
 9 testing”) has emerged as the most reliable forensic
 10 technique for establishing the guilt or innocence of
 11 a criminal defendant.

12 (2) In 1994, Congress authorized funding to
 13 improve the quality and availability of DNA analysis

1 for law enforcement identification purposes. Since
2 then, States have been awarded over \$50,000,000 in
3 DNA-related grants.

4 (3) A 1996 Department of Justice study found
5 that in approximately 20 to 30 percent of the cases
6 referred for DNA testing, the results excluded the
7 primary suspect. This finding strongly suggests that
8 without such testing, many of these individuals
9 might have been wrongfully convicted on the basis of
10 mistaken eyewitness identification testimony or other
11 flawed evidence.

12 (4) In at least 65 cases in the United States
13 and Canada, DNA evidence has lead to the exonera-
14 tion of innocent men and women who were wrong-
15 fully convicted. This number includes at least 8 indi-
16 viduals sentenced to death, some of whom came
17 within days of being executed.

18 (5) In at least 14 cases, postconviction DNA
19 testing that has exonerated an innocent person has
20 also enhanced public safety by providing evidence
21 that led to the apprehension of the actual pepe-
22 trator.

23 (6) Experience has shown that it is not unduly
24 burdensome to make DNA testing available to in-
25 mates. The cost of such testing is relatively modest

1 and has decreased in recent years. Moreover, the
2 number of cases in which post conviction DNA test-
3 ing is appropriate is small and will decrease as pre-
4 trial testing becomes more common.

5 (7) Despite the proven value and cost-effective-
6 ness of DNA testing, access to such testing has
7 sometimes been denied on the basis of laws in more
8 than 30 States that require a motion for a new trial
9 based on newly discovered evidence of innocence to
10 be filed within 6 months or less. The result is that
11 laws intended to prevent the use of evidence that has
12 become less reliable over time have been used to pre-
13 clude the use of DNA evidence that remains highly
14 reliable even decades after trial.

15 (8) In some cases, States have relied on time
16 limits and other procedural barriers to deny release
17 to inmates even when DNA testing has dem-
18 onstrated their actual innocence.

19 (9) The National Commission on the Future of
20 DNA Evidence has urged that postconviction DNA
21 testing be permitted in the relatively small number
22 of cases in which it is appropriate, notwithstanding
23 procedural rules that might be involved to preclude
24 such testing, and notwithstanding the inability of
25 the inmate to pay for the testing.

1 (10) Although the Supreme Court has never an-
2 nounced a standard for addressing constitutional
3 claims of innocence, in *Herrera v. Collins*, 506 U.S.
4 390 (1993), a majority of the Court expressed the
5 view that “a truly persuasive demonstration of ‘ac-
6 tual innocence’” made after trial would render im-
7 position of punishment by a State unconstitutional.

8 (11) If biological material is not preserved and
9 subjected to DNA testing in appropriate cases, there
10 is a significant risk that persuasive evidence of inno-
11 cence will not be detected and, accordingly, that in-
12 nocent persons will be unconstitutionally incarcer-
13 ated or executed.

14 (12) To prevent violations of the Constitution
15 of the United States that the Supreme Court antici-
16 pated in *Herrera v. Collins*, it is necessary and prop-
17 er to enact national legislation that ensures that the
18 Federal Government and the States will take meas-
19 ures to preserve biological material for DNA testing
20 and permit such testing in appropriate cases.

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

22 (1) substantially implement the Recommenda-
23 tions of the National Commission on the Future of
24 DNA Evidence in the Federal criminal justice sys-

1 tered the judgment for forensic DNA testing of any bio-
2 logical material that—

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

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

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

11 “(b) NOTICE TO GOVERNMENT.—

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

16 “(2) PRESERVATION OF REMAINING BIOLOGI-
17 CAL MATERIAL.—Upon receiving notice of an appli-
18 cation made under subsection (a), the Government
19 shall take such steps as are necessary to ensure that
20 any remaining biological material that was secured
21 in connection with the case is preserved pending the
22 completion of proceedings under this section.

23 “(c) ORDER.—The court shall order DNA testing
24 pursuant to an application made under subsection (a)
25 upon a determination that testing may produce noncumu-

1 lative, exculpatory evidence relevant to the claim of the
2 applicant that the applicant was wrongfully convicted or
3 sentenced.

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

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

11 “(f) POST-TESTING PROCEDURES.—

12 “(1) PROCEDURES FOLLOWING RESULTS UNFA-
13 VORABLE TO APPLICANT.—If the results of DNA
14 testing conducted under this section are unfavorable
15 to the applicant, the court—

16 “(A) shall dismiss the application; and

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

20 “(2) PROCEDURES FOLLOWING RESULTS FA-
21 VORABLE TO APPLICANT.—If the results of DNA
22 testing conducted under this section are favorable to
23 the applicant, the court shall—

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

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

6 “(i) vacating and setting aside the
7 judgment;

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

10 “(iii) resentencing the applicant; or

11 “(iv) granting a new trial.

12 “(g) RULE OF CONSTRUCTION.—Nothing in this sec-
13 tion shall be construed to limit the circumstances under
14 which a person may obtain DNA testing or other
15 postconviction relief under any other provision of law.

16 **“§ 2292. Preservation of biological material**

17 “(a) IN GENERAL.—Notwithstanding any other pro-
18 vision of law and subject to subsection (b), the Govern-
19 ment shall preserve any biological material secured in con-
20 nection with a criminal case for such period of time as
21 any person remains incarcerated in connection with that
22 case.

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

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

3 (B) in subparagraph (C), by striking “is
4 charged” and inserting “was charged or con-
5 victed”; and

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

8 (2) in paragraph (3)—

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

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

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

14 “(4) the State will—

15 “(A) preserve all biological material se-
16 cured in connection with a State criminal case
17 for not less than the period of time that biologi-
18 cal material is required to be preserved under
19 section 2292 of title 28, United States Code, in
20 the case of a person incarcerated in connection
21 with a Federal criminal case; and

22 “(B) make DNA testing available to any
23 person convicted in State court to the same ex-
24 tent, and under the same conditions, that DNA
25 testing is available under section 2291 of title

1 28, United States Code, to any person convicted
2 in a court established by an Act of Congress.”.

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

7 (1) in subparagraph (B)—

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

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

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

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

15 “(D) the State will—

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

24 “(ii) make DNA testing available to a
25 person convicted in State court to the

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

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

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

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

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

15 “(12) if any part of funds received from a grant
16 made under this subchapter is to be used to develop
17 or improve a DNA analysis capability in a forensic
18 laboratory, or to obtain or analyze DNA samples for
19 inclusion in the Combined DNA Index System
20 (CODIS), certify that—

21 “(A) DNA analyses performed at such lab-
22 oratory will satisfy or exceed the current stand-
23 ards for a quality assurance program for DNA
24 analysis, issued by the Director of the Federal
25 Bureau of Investigation under section 210303

1 of the DNA Identification Act of 1994 (42
2 U.S.C. 14131);

3 “(B) DNA samples and analyses obtained
4 and performed by such laboratory will be acces-
5 sible only—

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

8 “(ii) in judicial proceedings, if other-
9 wise admissible under applicable statutes
10 and rules;

11 “(iii) for criminal defense purposes, to
12 a defendant, who shall have access to sam-
13 ples and analyses performed in connection
14 with the case in which the defendant was
15 charged or convicted; or

16 “(iv) if personally identifiable infor-
17 mation is removed, for a population statis-
18 tics database, for identification research
19 and protocol development purposes, or for
20 quality control purposes;

21 “(C) the laboratory and each analyst per-
22 forming DNA analyses at the laboratory will
23 undergo, at regular intervals not exceeding 180
24 days, external proficiency testing by a DNA
25 proficiency testing program that meets the

1 standards issued under section 210303 of the
2 DNA Identification Act of 1994 (42 U.S.C.
3 14131); and

4 “(D) the State will—

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

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

20 **SEC. 104. PROHIBITION PURSUANT TO SECTION 5 OF THE**
21 **14TH AMENDMENT.**

22 (a) REQUEST FOR DNA TESTING.—

23 (1) IN GENERAL.—No State shall deny a re-
24 quest, made by a person in custody resulting from

1 a State court judgment, for DNA testing of biological
2 material that—

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

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

8 (C) was not previously subjected to DNA
9 testing, or can be subjected to retesting with
10 new DNA techniques that provide a reasonable
11 likelihood of more accurate and probative results.
12

13 (2) EXCEPTION.—A State may deny a request
14 under paragraph (1) upon a judicial determination
15 that testing could not produce noncumulative evidence
16 establishing a reasonable probability that the
17 person was wrongfully convicted or sentenced.

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

24 (c) REMEDY.—A person may enforce subsections (a)
25 and (b) in a civil action for declaratory or injunctive relief,

1 filed either in a State court of general jurisdiction or in
2 a district court of the United States, naming either the
3 State or an executive or judicial officer of the State as
4 defendant. No State or State executive or judicial officer
5 shall have immunity from actions under this subsection.

6 **TITLE II—ENSURING COM-**
7 **PETENT LEGAL SERVICES IN**
8 **CAPITAL CASES**

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

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

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

16 “(13) If the State prescribes, authorizes, or
17 permits the penalty of death for any offense, a cer-
18 tification that the State has established and main-
19 tains an effective system for providing competent
20 legal services to indigents at every phase of a State
21 criminal prosecution in which a death sentence is
22 sought or has been imposed, up to and including di-
23 rect appellate review and postconviction review in
24 State court.”; and

25 (2) in subsection (b)—

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

4 “(b) REGULATIONS.—

5 “(1) IN GENERAL.—The”; and

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

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

14 “(A) a centralized and independent ap-
15 pointing authority, which shall have authority
16 and responsibility to—

17 “(i) recruit attorneys who are quali-
18 fied to represent indigents in the capital
19 proceedings specified in subsection (a)(13);

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

22 “(iii) draft and annually publish quali-
23 fications and performance standards that
24 attorneys must satisfy to be listed on the

1 roster and procedures by which qualified
2 attorneys are identified;

3 “(iv) periodically review the roster,
4 monitor the performance of all attorneys
5 appointed, provide a mechanism by which
6 members of the Bar may comment on the
7 performance of their peers, and delete the
8 name of any attorney who fails to complete
9 regular training programs on the represen-
10 tation of clients in capital cases, fails to
11 meet performance standards in a case to
12 which the attorney is appointed, or other-
13 wise fails to demonstrate continuing com-
14 petence to represent clients in capital
15 cases;

16 “(v) conduct or sponsor specialized
17 training programs for attorneys rep-
18 resenting clients in capital cases;

19 “(vi) appoint lead counsel and co-
20 counsel from the roster to represent a de-
21 fendant in a capital case promptly upon re-
22 ceiving notice of the need for an appoint-
23 ment from the relevant State court; and

24 “(vii) report the appointment, or the
25 failure of the defendant to accept such ap-

1 pointment, to the court requesting the ap-
2 pointment;

3 “(B) compensation of private attorneys for
4 actual time and service, computed on an hourly
5 basis and at a reasonable hourly rate in light of
6 the qualifications and experience of the attorney
7 and the local market for legal representation in
8 cases reflecting the complexity and responsi-
9 bility of capital cases;

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

16 “(D) reimbursement of private attorneys
17 and public defender organizations for the rea-
18 sonable costs of law clerks, paralegals, inves-
19 tigators, experts, scientific tests, and other sup-
20 port services necessary in the representation of
21 a defendant in a capital case, computed on an
22 hourly basis reflecting the local market for such
23 services.”.

24 (b) CERTIFICATION REQUIREMENT; DISCRETIONARY
25 GRANTS.—Section 517(a) of title I of the Omnibus Crime

1 Control and Safe Streets Act of 1968 (42 U.S.C. 3763(a))
2 is amended—

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

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

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

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

10 (c) DIRECTOR’S REPORTS TO CONGRESS.—Section
11 522(b) of title I of the Omnibus Crime Control and Safe
12 Streets Act of 1968 (42 U.S.C. 3766b(b)) is amended—

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

15 (2) by redesignating paragraph (5) as para-
16 graph (6); and

17 (3) by inserting after paragraph (4) the fol-
18 lowing:

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

1 “(A) the qualifications and performance
2 standards established pursuant to section
3 503(b)(2)(A)(iii);

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

6 “(C) the rates of reimbursement paid
7 under subparagraphs (C) and (D) of section
8 503(b)(2); and”.

9 (d) EFFECTIVE DATE.—

10 (1) IN GENERAL.—Subject to paragraph (2),
11 the amendments made by this section shall apply
12 with respect to any application submitted on or after
13 the date that is 1 year after the date of enactment
14 of this Act.

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

22 (e) REGULATIONS.—The Director of the Administra-
23 tive Office of the United States Courts shall issue all regu-
24 lations necessary to carry out the amendments made by

1 this section not later than 180 days before the effective
2 date of those regulations.

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

4 Section 2254(e) of title 28, United States Code, is
5 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 indigent
11 applicant under sentence of death, the court shall
12 neither presume a finding of fact made by a State
13 court to be correct nor decline to consider a claim
14 on the ground that the applicant failed to raise such
15 claim in State court at the time and in the manner
16 prescribed by State law, unless—

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

22 “(B) the legal services the State provided
23 satisfied the regulations promulgated by the Di-
24 rector of the Administrative Office of the
25 United States Courts pursuant to section

1 503(b)(2) of title I of the Omnibus Crime Con-
2 trol and Safe Streets Act of 1968.”.

3 **SEC. 203. CAPITAL REPRESENTATION GRANTS.**

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

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

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

10 “(i) CAPITAL REPRESENTATION GRANTS.—

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

12 “(A) the term ‘capital case’—

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

17 “(ii) includes all proceedings filed in
18 connection with the case, including trial,
19 appellate, and Federal and State
20 postconviction proceedings;

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

22 “(i) recruitment of counsel;

23 “(ii) training of counsel;

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

1 “(iv) direct representation of defend-
2 ants, if the availability of other qualified
3 counsel is inadequate to meet the need in
4 the jurisdiction served by the grant recipi-
5 ent; and

6 “(v) investigative, expert, or other
7 services necessary for adequate representa-
8 tion; and

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

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

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

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

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

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

3 “(D) 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.”.

18 **TITLE III—COMPENSATING THE**
19 **UNJUSTLY CONDEMNED**

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

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

24 “(e) DAMAGES.—

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

8 “(2) FACTORS FOR CONSIDERATION IN ASSESS-
9 ING DAMAGES.—In assessing damages in an action
10 described in subsection (a), the court shall
11 consider—

12 “(A) the circumstances surrounding the
13 unjust conviction of the plaintiff, including any
14 misconduct by officers or employees of the Fed-
15 eral Government;

16 “(B) the length and conditions of the un-
17 just incarceration of the plaintiff; and

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

20 **SEC. 302. COMPENSATION IN STATE DEATH PENALTY**
21 **CASES.**

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

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

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

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

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

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

10 “(B)(i) has established and maintains an
11 effective procedure by which any person un-
12 justly convicted of an offense against the State
13 and sentenced to death may be awarded reason-
14 able damages upon substantial proof that the
15 person did not commit any of the acts with
16 which the person was charged; and

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

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

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

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

8 **TITLE IV—MISCELLANEOUS**
9 **PROVISIONS**

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

12 (a) RECOGNITION OF STATE INTERESTS.—Chapter
13 228 of title 18, United States Code, is amended by adding
14 at the end the following:

15 **“§ 3599. Accommodation of State interests; certifi-**
16 **cation requirement**

17 “(a) IN GENERAL.—Notwithstanding any other pro-
18 vision of law, the Government shall not seek the death
19 penalty in any case initially brought before a district court
20 of the United States that sits in a State that does not
21 prescribe, authorize, or permit the imposition of such pen-
22 alty for the alleged conduct, except upon the certification
23 in writing of the Attorney General or the designee of the
24 Attorney General that—

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

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

6 “(3) the offense charged is an offense described
7 in section 32, 229, 351, 794, 1091, 1114, 1118,
8 1203, 1751, 1992, 2340A, or 2381, or chapter
9 113B.

10 “(b) “STATE DEFINED.—In this section, the term
11 ‘State’ means each of the several States of the United
12 States, the District of Columbia, and the territories and
13 possessions of the United States.”.

14 (b) TECHNICAL AND CONFORMING AMENDMENT.—
15 The analysis for chapter 228 of title 18, United States
16 Code, is amended by adding at the end the following:

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

17 **SEC. 402. ALTERNATIVE OF LIFE IMPRISONMENT WITHOUT**
18 **POSSIBILITY OF RELEASE.**

19 Section 408(l) of the Controlled Substances Act (21
20 U.S.C. 848(l)), is amended by striking the first 2 sen-
21 tences and inserting the following: “Upon a recommenda-
22 tion under subsection (k) that the defendant should be
23 sentenced to death or life imprisonment without possibility
24 of release, the court shall sentence the defendant accord-

1 ingly. Otherwise, the court shall impose any lesser sen-
2 tence that is authorized by law.”.

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

4 (a) **ADDITIONAL REQUIREMENTS.**—Section 20105 of
5 the Violent Crime Control and Law Enforcement Act of
6 1994 (42 U.S.C. 13705) is amended by striking subsection
7 (b) and inserting the following:

8 “(b) **ADDITIONAL REQUIREMENTS.**—To be eligible to
9 receive a grant under section 20103 or 20104, a State
10 shall provide assurances to the Attorney General that—

11 “(1) the State has implemented policies that
12 provide for the recognition of the rights and needs
13 of crime victims; and

14 “(2) in any capital case in which the jury has
15 a role in determining the sentence imposed on the
16 defendant, the court, at the request of the defend-
17 ant, shall inform the jury of all statutorily author-
18 ized sentencing options in the particular case, in-
19 cluding applicable parole eligibility rules and
20 terms.”.

21 (b) **EFFECTIVE DATE.**—The amendments made by
22 this section shall apply with respect to any application for
23 a grant under section 20103 or 20104 of the Violent
24 Crime Control and Law Enforcement Act of 1994 (42
25 U.S.C. 13703; 13704) that is submitted on or after the

1 date that is 1 year after the date of enactment of this
2 Act.

3 **SEC. 404. ANNUAL REPORTS.**

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

9 (b) REPORT ELEMENTS.—The report required under
10 subsection (a) shall include substantially the same cat-
11 egories of information as are included in the Bureau of
12 Justice Statistics Bulletin entitled “Capital Punishment
13 1998” (December 1999, NCJ 179012), and the following
14 additional categories of information:

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

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

21 (3) An analysis of the effect of *Witherspoon v.*
22 *Illinois*, 391 U.S. 510 (1968), and its progeny, on
23 the composition of juries in capital cases, including
24 the racial composition of such juries, and on the ex-

1 exclusion of otherwise eligible and available jurors
2 from such cases.

3 (4) An analysis of the effect of peremptory
4 challenges, by the prosecution and defense respec-
5 tively, on the composition of juries in capital cases,
6 including the racial composition of such juries, and
7 on the exclusion of otherwise eligible and available
8 jurors from such cases.

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

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

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

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

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

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

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

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

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

13 **SEC. 405. DISCRETIONARY APPELLATE REVIEW.**

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

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

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

18 “(2) For purposes of paragraph (1), if the highest
19 court of a State has discretion to decline appellate review
20 of a case or a claim, a petition asking that court to enter-
21 tain a case or a claim is not an available State court proce-
22 dure.”.

