

The Congressional Record

THE GROWING CRISIS IN THE ADMINISTRATION OF CAPITAL PUNISHMENT (Senate - February 01, 2000)

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Mr. LEAHY. Mr. President, I wish to call attention to a growing national crisis in the administration of capital punishment. People of good conscience can and will disagree on the morality of the death penalty. But I am confident that we should all be able to agree that a system that may sentence one innocent person to death for every seven it executes has no place in a civilized society, much less in 21st century America. But that is what the American system of capital punishment has done for the last 24 years.

A total of 610 people have been executed since the reinstatement of capital punishment in 1976. During the same time, according to the Death Penalty Information Center, 85 people have been found innocent and were released from death row. These are not reversals of sentences, or even convictions on technical legal grounds; these are people whose convictions have been overturned after years of confinement on death row because it was discovered they were not guilty. Even though in some instances they came within hours of being executed, it was eventually determined that, whoops, we made a mistake; we have the wrong person.

What does this mean? It means that for every seven executions, one person has been wrongly convicted. It means that we could have more than three innocent people sentenced to death each year. The phenomenon is not confined to just a few States; the many exonerations since 1976 span more than 20 different

States. And of those who are found innocent--not released because of a technicality, but actually found innocent--what is the average time they spent on death row, knowing they could be executed at any time? What is the average time they spent on death row before somebody said, we have the wrong person? Seven and a half years.

This would be disturbing enough if the eventual exonerations of these death row inmates were the product of reliable and consistent checks in our legal system, if we could say as Americans, all right, you may spend 7 1/2 years on death row, but at least you have the comfort of knowing that we are going to find out you are innocent before we execute you. It might be comprehensible, though not acceptable, if we as a society lacked effective and relatively inexpensive means to make capital punishment more reliable. But many of the exonerated owe their lives to fortuity and private heroism, having been denied commonsense procedural rights and inexpensive modern scientific testing opportunities--leaving open the very real possibility that there have been a number of innocent people executed over the last few decades who were not so fortunate.

Let me give you a case. Randall Dale Adams. Here is a man who might have been routinely executed had his case not attracted the attention of a filmmaker, Earl Morris. His movie, 'The Thin Blue Line,' shredded the prosecution's case and cast a national spotlight on Adams' innocence.

Consider the case of Anthony Porter. Porter spent 16 years on death row. That is more years than most Members of the Senate have served. He spent 16 years on death row. He came within 48 hours of being executed in 1998, but he was cleared the following year. Was he cleared by the State? No. He was cleared by a class of undergraduate journalism students at Northwestern University, who took on his case as a class project. That got him out. Then the State acknowledged that it had the wrong person, that Porter had been innocent all along. He came within 48 hours of being executed, and he would have been executed had not this journalism class decided to investigate his case instead of doing something else. Now consider the cases of the unknown and the unlucky, about whom we may never hear.

Last year, former Florida Supreme Court Justice Gerald Kogan said he had 'no question' that 'we certainly have, in the past, executed . . . people who either didn't fit the criteria for execution in the State of Florida, or who, in fact, were, factually, not guilty of the crime for which they have been executed.' This is not some pie-in-the-sky theory. Justice Kogan was a homicide detective and a prosecutor before eventually rising to Chief Justice.

This crisis has led the American Bar Association and a growing number of State legislators to call for a moratorium on executions until the death penalty can be administered with less risk to the innocent. This week, the Republican Governor of Illinois, George Ryan, announced he plans to block executions in that State until an inquiry has been conducted into why more death row inmates have been exonerated than executed since 1977 when Illinois reinstated capital punishment. Think of that. More death row inmates exonerated than executed.

Governor Ryan is someone who supports the death penalty. But I agree with him in bringing this halt. He said: 'There is a flaw in the system, without question, and it needs to be studied.' The Governor is absolutely right. I rise to bring to this body the debate over how we as a nation can begin to reduce the risk of killing the innocent.

I hope that nobody of good faith--whether they are for or against the death penalty--will deny the existence of a serious crisis. Sentencing innocent women and men to death anywhere in our country shatters America's image in the international community. At the very least, it undermines our leadership in the struggle for human rights. But, more importantly, the individual and collective conscience of decent Americans is deeply offended and the faith in the working of our criminal justice system is severely damaged. So the question we should debate is, What should be done?

Some will be tempted to rely on the States. The U.S. Supreme Court often defers to 'the laboratory of the States' to figure out how to protect criminal defendants. After 24 years, let's take a look at that lab report.

As I already mentioned, Illinois has now had more inmates released from death row than executed since the death penalty was reinstated. There have been 12 executions, and 13 times they have said: Whoops, sorry. Don't pull the switch. We have the wrong person. This has happened four times in the last year alone.

In Texas, the State that leads the Nation in executions, courts have upheld death sentences in at least three cases in which the defense lawyers slept through substantial portions of the trial. The Texas courts said that the defendants in these cases had adequate counsel. Adequate counsel? Would any one of us if we were in a taxicab say we had an adequate driver who was asleep at the wheel? What we are saying is with a person's life at stake the defense lawyer slept through the trial, and the Texas courts say that is pretty adequate.

Meanwhile, in the past few years, the States have followed the Federal lead in expanding their defective capital punishment systems, curtailing appeal and habeas corpus rights, and slashing funding for indigent defense services. The crisis can only get worse.

The States have had decades to fix their capital punishment systems, yet the best they have managed is a system fraught with arbitrariness and error--a system where innocent people are sentenced to death on a regular basis, and it is left not to the courts, not to the States, not to the Federal Government, but to filmmakers and college undergraduates to correct the mistakes. History shows that we cannot rely on local politics to implement our national conscience on such fundamental points as the execution of the innocent.

What about the Supreme Court? In a 1993 case, it could not even make up its mind whether the execution of an innocent person would be unconstitutional. Do a referendum on that one throughout the Nation. Ask people in this Nation of a quarter billion people whether they think executing an innocent person should be considered constitutional or unconstitutional. Most in this country have no doubt that it would be unconstitutional, but that really does not matter: executing an innocent person is abhorrent--it

is morally wrong. Whether you support the death penalty or not, executing an innocent person is wrong, and we in this body have the moral duty to express and implement America's conscience. We should be the Nation's conscience. The buck should stop in this Chamber where it always stops in times of national crisis.

How do we begin to stem the crisis? I have been posing this question to experts across the country for nearly a year. There is a lot of consensus over what must be done. In the next few weeks, I will introduce legislation that will address some of the most urgent problems in the administration of capital punishment.

Two problems in particular require our immediate attention. First, we need to ensure that defendants in capital cases receive competent legal representation at every stage in their case. Second, we have to guarantee an effective forum for death row inmates who may be able to prove their innocence.

In our adversarial system of justice, effective assistance of counsel is essential to the fair administration of justice. It is the principal bulwark against wrongful conviction.

I know this from my own experience as a prosecutor. It is the best way to reduce the risk that a trial will be infected by constitutional error, resulting in reversal, retrial, cost, delay, and repeated ordeals for the victim's family. Most prosecutors will tell you they would much prefer to have good counsel on the other side because there is less apt to be mistakes, there is less apt to be reversible error, and there is far more of a chance that you end up with the right decision.

Most defendants who face capital charges are represented by court-appointed lawyers. Unfortunately, the manner in which defense lawyers are selected and compensated in death penalty cases frequently fails to protect the defendant's rights. Some States relegate these cases to grossly unqualified lawyers willing to settle for meager fees. While the Federal Government pays defense counsel \$125 an hour for death penalty work, the hourly rate in many States is \$50 or less, and some States place an arbitrary and usually unrealistically low cap on the total amount a court-appointed attorney can bill.

New York recently slashed pay for counsel in capital cases by as much as 50 percent. They might say they are getting their money's worth if they cut out all the money for defense counsel. The conviction rate is probably going to shoot up. Let me tell you what else will go up--the number of innocent people who will be put to death.

Congress has done its part to make a bad situation worse. In 1996, Congress defunded the death penalty resource centers. This has sharply increased the chances that innocent persons will be executed.

You get what you pay for. Those who are on death row have found their lives placed in the hands of lawyers who are drunk during the trial--in some instances, lawyers who never bothered to meet their client before the trial; lawyers who never bothered to read the State death penalty statute; lawyers who were just out of law school and never handled a criminal case; and lawyers who were literally asleep on the job.

Even some of our best lawyers, diligent, experienced litigators, can do little when they lack funds for investigators, experts, or scientific testing that could establish their client's innocence. Attorneys appointed to represent capital defendants often cannot recoup even their out-of-pocket expenses. They are effectively required to work at minimum wage or below while funding their client's defense out of their own pockets.

Although the States are required to provide criminal defendants with qualified legal counsel, those who have been saved from death row and found innocent were often convicted because of attorney error. They might not have had postconviction review because their lawyer failed to meet a filing deadline. An attorney misses a deadline by even 1 day, and his death row client may pay the price with his life.

Let me be clear what I am talking about. I am not suggesting that there is a universal right to Johnnie Cochran's services. The O.J. Simpson case has absolutely nothing to do with the typical capital case, in

which one or possibly two underfunded and underprepared lawyers try to cobble together a defense with little or no scientific or expert evidence and the whole process takes less than a week. These are two extremes. You go from the Simpson case, where the judge let the whole thing get out of control and we had a year-long spectacle, to the typical death penalty case which

is rushed through without preparation in a matter of days. Somewhere there must be a middle ground.

Let me give three examples of some of the worst things that have happened--but not untypical.

Ronald Keith Williamson. In 1997, a Federal appeals court overturned Williamson's conviction on the basis of ineffectiveness of counsel. The court noted that the lawyer, who had been paid a total of \$3,200 for the defense, had failed to investigate and present a fact to the jury. What was that fact? Somebody else confessed to the crime. If I were the defense attorney, I think one of the things that I would want to bring to the jury is the fact that somebody else confessed to the crime; Williamson's lawyer did not bother. Then, two years after the appeals court decision, DNA testing ruled out Williamson as the killer and implicated another man--a convicted kidnapper who had testified against Williamson at trial. Of course, he did. He is the one who committed the crime.

Let's next consider George McFarland. According to the Texas Court of Criminal Appeals, McFarland's lawyer slept through much of his 1992 trial. He objected to hardly anything the prosecution did. Here is how the Houston Chronicle described what happened as McFarland stood on trial for his life. This is not for shoplifting. He is on trial for his life.

Let me quote from the Houston Chronicle:

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Seated beside his client . . . defense attorney John Benn spent much of Thursday afternoon's trial in apparent deep sleep. His mouth kept falling open and his head lolled back on his shoulders, and then he awakened just long enough to catch himself and sit upright. Then it happened again. And again. And again.

Every time he opened his eyes, a different prosecution witness was on the stand describing another aspect of the Nov. 19, 1991, arrest of George McFarland in the robbery-killing of grocer Kenneth Kwan.

When state District Judge Doug Shaver finally called a recess, Benn was asked if he truly had fallen asleep during a capital murder trial. 'It's boring,' the 72-year-old longtime Houston lawyer explained. . . . Court observers said Benn seems to have slept his way through virtually the entire trial.

Unfortunately for McFarland, Texas' highest criminal court, several of whose members were coming up for reelection, concluded that this constituted effective criminal representation.

I guess they felt because the lawyer was in the courtroom, even though sound asleep, that would be effective representation. If you read the decision they probably would have ruled the same way if he had been at home sound asleep, so long as he had been appointed at some time.

McFarland is still on death row for a murder he insists he did not commit, on the basis of evidence widely reported by independent observers to be weak.

Then we have Reginald Powell, a borderline mentally retarded man who was 18 at the time of the crime. Mr. Powell was eventually executed. Why? Because he accepted his lawyer's advice to reject a plea bargain that would have saved his life.

There were a number of attorney errors at the trial. The advice he received seems to be very bad advice. Some may feel this advice, the advice given to this 18-year-old mentally retarded man, was affected by the flagrantly unprofessional conduct of the attorney, a woman twice Powell's age, who conducted a secret jailhouse sexual relationship with him during the trial. Despite this obvious attorney conflict of

interest, Powell's execution went ahead in Missouri a year ago.

I ask each Member of the Senate when you go home tonight, or when you talk to your constituents, and when you consider the bill I will be introducing, to remember these cases and consult your conscience to ask whether these examples represent the best of 21st century American justice.

The judge who presided over McFarland's trial summed up the Texas court's view of the law quite accurately when he reasoned that, while the Constitution requires a defendant to be represented by a lawyer, it 'doesn't say the lawyer has to be awake.' If your conscience says otherwise, maybe we ought to do something.

My proposal rests on a simple premise: States that choose to impose capital punishment must be prepared to foot the bill. They should not be permitted to tip the scales of justice by denying capital defendants competent legal services. We have to do everything we can to ensure the States are meeting their constitutional obligations with respect to capital representation.

Can miscarriages of justice happen when defendants receive adequate representation? Yes, they can still happen. So I think it is critical to ensure that death row inmates have a meaningful opportunity--not a fanciful opportunity but a meaningful opportunity--to raise claims of innocence based on newly discovered evidence, especially if it is evidence that is derived from scientific tests not available at the time of the trial.

Perhaps more than any other development, improvements in DNA testing have exposed the fallibility of the legal system. In the last decades, scores of wrongfully convicted people have been released from prison--including many from death row--after DNA testing proved they could not have committed the crimes for which they were convicted. In some cases the same DNA testing that vindicated the innocent helped catch the guilty.

Most recently, DNA testing exonerated Ronald Jones. He spent close to 8 years on death row for a 1985 rape and murder that he did not commit. Illinois prosecutors dropped the charges against Jones on May 18, 1999, after DNA evidence from the crime scene excluded him as a possible suspect.

It was also DNA testing that eventually saved Ronald Keith Williamson's life, as I discussed earlier. He spent 12 years as an innocent man on Oklahoma's death row.

Can you imagine how any one of us would feel, day after day for 12 years, never knowing if we were just a few hours or a few days from execution, locked up on death row for a crime we did not commit?

Some of the major hurdles to postconviction DNA testing are

laws prohibiting introduction of new evidence--laws that have tightened as death penalty supporters have tried to speed executions by limiting appeals. Only two States, New York and Illinois, require the opportunity for inmates to require DNA testing where it could result in new evidence of innocence. Elsewhere, inmates may try to get DNA evidence for years, only to be shut out by courts and prosecutors.

What possible reason could there be to deny inmates the opportunity to prove their innocence--and perhaps even help identify the real culprits--through new technologies? DNA testing is relatively inexpensive. But no matter what it costs, it is a tiny price to pay to make sure you have the right person.

The National Commission on the Future of DNA Evidence, a Federal panel established by the Justice Department and comprised of law enforcement, judicial, and scientific experts, issued a report last year urging prosecutors to consent to postconviction DNA testing, or retesting, in appropriate cases, especially if the results could exonerate the defendant.

In 1994, we set up a funding program to improve the quality and availability of DNA analysis for law enforcement identification purposes. The Justice Department has handed out tens of millions of dollars

to States under this program. Last year alone, we appropriated another \$30 million for DNA-related grants to States. That is an appropriate use of Federal funds. But we should not pass up the promise of truth and justice for both sides of our adversarial system that DNA evidence holds out. We at least ought to require that both sides have it available.

By reexamining capital punishment in light of recent exonerations, we can reduce the risk that people will be executed for crimes they did not commit and increase the probability that the guilty will be brought to justice. We can also help to make sure the death penalty is not imposed out of ignorance or prejudice.

I learned, first as a defense attorney and then as a prosecutor, that the pursuit of justice obliges us not only to convict the guilty, but also to exonerate the wrongly accused and convicted. That obligation is all the more urgent when the death penalty is involved.

Let's not have the situation where, today in America, it is better to be rich and guilty than poor and innocent. That is not equal justice. That is not what our country stands for.

I was proud to be a defense attorney. I was very proud to be a prosecutor. I have often said it was probably the best job I ever had. But there was one thought I always had every day that I was a prosecutor. I would look at the evidence over and over again and I would ask myself, not can I get a conviction on this charge, but will I be convicting the right person. I had cases where I knew I could get a conviction, but I believed we had the wrong person, and I would not bring the charge. I think most prosecutors feel that way. But sometimes in the passion of a highly publicized, horrendous murder, we can move too fast.

I urge Senators on both sides of the aisle, both those who support the death penalty and those who oppose it, to join in seeking ways to reduce the risk of mistaken executions.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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Mr. SMITH of New Hampshire. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

END

INNOCENCE PROTECTION ACT OF 2000

SECTION-BY-SECTION SUMMARY

OVERVIEW

The Innocence Protection Act of 2000 is a comprehensive package of criminal justice reforms aimed at reducing the risk that innocent persons may be executed. Most urgently, the bill would (1) ensure that convicted offenders are afforded an opportunity to prove their innocence through DNA testing; (2) help States to provide competent legal services at every stage of a death penalty prosecution; (3) enable those who can prove their innocence to recover some measure of compensation for their unjust incarceration; and (4) provide the public with more reliable and detailed information regarding the administration of the nation's capital punishment laws.

TITLE IC EXONERATING THE INNOCENT THROUGH FEDERAL POST-CONVICTION REVIEW

Sec. 101. Findings and purposes. Legislative findings and purposes in support of this title.

Sec. 102. DNA testing in Federal criminal justice system. Establishes rules and procedures governing applications for DNA testing by convicted offenders in the Federal system. An applicant must allege that evidence to be tested (1) is related to the investigation or prosecution that resulted in the applicant's conviction; (2) is in the government's actual or constructive possession; and (3) was not previously subjected to DNA testing, or to the form of DNA testing now requested. The court may, in its discretion, appoint counsel for an indigent applicant.

Because access to DNA testing is of no value unless evidence containing DNA has been preserved, this section also prohibits the government from destroying any biological material in a criminal case while any person remains incarcerated in connection with that case, unless such person is notified of the government's intent to destroy the material, and afforded at least 90 days to request DNA testing under this title.

Sec. 103. DNA testing in State criminal justice system. Conditions receipt of Federal grants for DNA-related programs on an assurance that the State will adopt adequate procedures for preserving biological material and making DNA testing available to its inmates.

Sec. 104. Prohibition pursuant to section 5 of the 14th amendment. Prohibits States from (1) denying requests for DNA testing that could produce new exculpatory evidence, or (2) denying inmates a meaningful opportunity to prove their innocence using the results of DNA testing. Creates an authority to sue for declaratory or injunctive relief to enforce these prohibitions.

Sec. 105. Severability. Provides that if any provision of this title or any amendment made by this title is

held to be unconstitutional, the remainder of the provisions and amendments shall not be affected.

TITLE IICENSURING COMPETENT LEGAL SERVICES IN CAPITAL CASES

Sec. 201. Amendments to Byrne grant programs. Conditions Federal funding under the Byrne grant programs – when such funding equals or exceeds an amount that is \$50 million greater than the amount appropriated for such programs in FY2000 – on certification that the State has established and maintains an Aeffective system@ for providing competent legal services to indigent defendants at every stage of a death penalty prosecution, from pre-trial proceedings through post-conviction review. The Director of the Administrative Office of the United States Courts is charged with specifying the elements of an Aeffective system,@ which must include a centralized and independent authority for appointing attorneys in capital cases, and adequate compensation and reimbursement of such attorneys.

Sec. 202. Effect on procedural default rules. Provides that certain procedural barriers to Federal habeas corpus review shall not apply if the State failed to provide the petitioner with adequate legal services.

Sec. 203. Capital representation grants. Amends the Criminal Justice Act, 18 U.S.C. '3006A, to make more Federal funding available to public agencies and private non-profit organizations for purposes of enhancing the availability and competence of counsel in capital cases, encouraging the continuity of representation in such cases, decreasing the cost of providing qualified death penalty counsel, and increasing the efficiency with which capital cases are resolved.

TITLE IIICCOMPENSATING THE UNJUSTLY CONDEMNED

Sec. 301. Increased compensation in Federal cases. Raises the total amount of damages that may be awarded against the United States in cases of unjust imprisonment from \$5,000 to \$50,000 a year in a non-death penalty case, or \$100,000 a year in a death penalty case. Identifies factors for court to consider in assessing damages.

Sec. 302. Compensation in State death cases. Encourages States to permit any person who was unjustly convicted and sentenced to death to be awarded reasonable damages, upon substantial proof of innocence and formal exoneration, by adding a new condition for Federal funding to assist in construction of correctional facility projects.

TITLE IVC MISCELLANEOUS

Sec. 401. Accommodation of State interests in Federal death-penalty prosecutions. Protects the interests of States (including the District of Columbia and any commonwealth, territory or possession of the United States) by limiting the Federal government=s authority to seek the death penalty in States that do not permit the imposition of such penalty. Department of Justice guidelines provide that in cases of concurrent jurisdiction, Aa Federal indictment for an offense subject to the death penalty will be obtained only when the Federal interest in the prosecution is more substantial than the interests of the State or local

authorities.@ Section 401 builds on that principle by requiring the Attorney General or her designee to certify that (1) the State does not have jurisdiction or refuses to assume jurisdiction over the defendant; (2) the State has requested that the Federal government assume jurisdiction; or (3) the offense charged involves genocide; terrorism; use of chemical weapons or weapons of mass destruction; destruction of aircraft, trains, or other instrumentalities or facilities of interstate commerce; hostage taking; torture; espionage; treason; the killing of certain high public officials; or murder by a Federal prisoner.

Sec. 402. Alternative of life imprisonment without possibility of release. Provides juries in Federal death penalty prosecutions brought under the drug kingpin statute, 21 U.S.C. '848(l), the option of recommending life imprisonment without possibility of release. This amendment brings the drug kingpin statute into conformity with the more recently-enacted death penalty procedures in title 18, which govern most Federal death penalty prosecutions. See 18 U.S.C. '3594.

Sec. 403. Right to an informed jury. Conditions Federal truth-in-sentencing grants upon certification that, in any capital case in which the jury has a role in determining the defendant=s sentence, the defendant has the right to have the jury informed of all statutorily-authorized sentencing options in the particular case, including applicable parole eligibility rules and terms. The purpose is to give full effect to the due process principles underlying the Supreme Court=s decision in *Simmons v. South Carolina*, 512 U.S. 154 (1994), which held that a defendant who has been convicted of a capital offense is entitled to an instruction informing the sentencing jury that he is ineligible for parole under State law.

Sec. 404. Annual reports. Directs the Justice Department to prepare an annual report regarding the administration of the nation=s capital punishment laws. The report must be submitted to Congress, distributed to the press and posted on the Internet.

Sec. 405. Discretionary appellate review. Respects State procedural rules by allowing Federal habeas corpus petitioners to raise claims that State courts discouraged them from raising when seeking discretionary review in the State=s highest court. Responds to the Supreme Court=s decision in *O=Sullivan v. Boerckel*, 119 S. Ct. 1728 (1999), which held that a State prisoner must present his claims to a State supreme court in a petition for discretionary review in order to satisfy the exhaustion requirement of 28 U.S.C. '2254(b)(1), (c).

Sec. 406. Sense of the Senate regarding the execution of juvenile offenders and the mentally retarded. Expresses the sense of the Senate that the death penalty is disproportionate and offends contemporary standards of decency when applied to juvenile offenders and the mentally retarded.

106TH CONGRESS
2D SESSION

S. _____

IN THE SENATE OF THE UNITED STATES

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

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) 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

1 cases, DNA testing may not conclusively establish
2 guilt or innocence, but may have significant pro-
3 bative value to a finder of fact.

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

15 (4) Since DNA testing is often feasible on rel-
16 evant biological material that is decades old, it can,
17 in some circumstances, prove that a conviction that
18 predated the development of DNA testing was based
19 upon incorrect factual findings. Uniquely, DNA evi-
20 dence showing innocence, produced decades after a
21 conviction, provides a more reliable basis for estab-
22 lishing a correct verdict than any evidence proffered
23 at the original trial. DNA testing, therefore, can and
24 has resulted in the post-conviction exoneration of in-
25 nocent men and women.

1 (5) In the past decade, there have been more
2 than 65 post-conviction exonerations in the United
3 States and Canada based upon DNA testing. At
4 least 8 individuals sentenced to death have been ex-
5 onerated through post-conviction DNA testing, some
6 of whom came within days of being executed.

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

11 (7) The advent of DNA testing raises serious
12 concerns regarding the prevalence of wrongful con-
13 victions, especially wrongful convictions arising out
14 of mistaken eyewitness identification testimony. Ac-
15 cording to a 1996 Department of Justice study enti-
16 tled "Convicted by Juries, Exonerated by Science:
17 Case Studies of Post-Conviction DNA Exonera-
18 tions", in approximately 20 to 30 percent of the
19 cases referred for DNA testing, the results excluded
20 the primary suspect. Without DNA testing, many of
21 these individuals might have been wrongfully con-
22 victed.

23 (8) Laws in more than 30 States require that
24 a motion for a new trial based on newly discovered
25 evidence of innocence be filed within 6 months or

1 less. These laws are premised on the belief—inappli-
2 cable to DNA testing—that evidence becomes less
3 reliable over time. Such time limits have been used
4 to deny inmates access to DNA testing, even when
5 guilt or innocence could be conclusively established
6 by such testing. For example, in *Dedge v. Florida*,
7 723 So.2d 322 (Fla. Dist. Ct. App. 1998), the court
8 without opinion affirmed the denial of a motion to
9 release trial evidence for the purpose of DNA test-
10 ing. The trial court denied the motion as proce-
11 durally barred under the 2-year limitation on claims
12 of newly discovered evidence established by the State
13 of Florida, which has since adopted a 6-month limi-
14 tation on such claims.

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

19 (10) The National Commission on the Future
20 of DNA Evidence, a Federal panel established by
21 the Department of Justice and comprised of law en-
22 forcement, judicial, and scientific experts, has issued
23 a report entitled “Recommendations For Handling
24 Post-Conviction DNA Applications” that urges post-
25 conviction DNA testing in 2 carefully defined cat-

1 egories of cases, notwithstanding procedural rules
2 that could be invoked to preclude such testing, and
3 notwithstanding the inability of the inmate to pay
4 for the testing.

5 (11) The number of cases in which post-convic-
6 tion DNA testing is appropriate is relatively small
7 and will decrease as pretrial testing becomes more
8 common and accessible.

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

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

19 (14) Although the Supreme Court has never an-
20 nounced a standard for addressing constitutional
21 claims of innocence, in *Herrera v. Collins*, 506 U.S.
22 390 (1993), a majority of the Court expressed the
23 view that, "a truly persuasive demonstration of 'ac-
24 tual innocence'" made after trial would render im-
25 position of punishment by a State unconstitutional.

1 (15) If biological material is not subjected to
2 DNA testing in appropriate cases, there is a signifi-
3 cant risk that persuasive evidence of innocence will
4 not be detected and, accordingly, that innocent per-
5 sons will be unconstitutionally incarcerated or exe-
6 cuted.

7 (16) To prevent violations of the Constitution
8 of the United States that the Supreme Court antici-
9 pated in *Herrera v. Collins*, it is necessary and prop-
10 er to enact national legislation that ensures that the
11 Federal Government and the States will permit
12 DNA testing in appropriate cases.

13 (17) There is also a compelling need to ensure
14 the preservation of biological material for post-con-
15 viction DNA testing. Since 1992, the Innocence
16 Project at the Benjamin N. Cardozo School of Law
17 has received thousands of letters from inmates who
18 claim that DNA testing could prove them innocent.
19 In over 70 percent of those cases in which DNA
20 testing could have been dispositive of guilt or inno-
21 cence if the biological material were available, the
22 material had been destroyed or lost. In two-thirds of
23 the cases in which the evidence was found, and DNA
24 testing conducted, the results have exonerated the
25 inmate.

1 (18) In at least 14 cases, post-conviction DNA
2 testing that has exonerated a wrongly convicted per-
3 son has also provided evidence leading to the appre-
4 hension of the actual perpetrator, thereby enhancing
5 public safety. This would not have been possible if
6 the biological evidence had been destroyed.

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

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

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

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

1 **SEC. 102. DNA TESTING IN FEDERAL CRIMINAL JUSTICE**
2 **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 biological material.

7 **“§ 2291. DNA testing**

8 “(a) APPLICATION.—Notwithstanding any other pro-
9 vision of law, a person in custody pursuant to the judg-
10 ment of a court established by an Act of Congress may,
11 at any time after conviction, apply to the court that en-
12 tered the judgment for forensic DNA testing of any bio-
13 logical material that—

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

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

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

22 “(b) NOTICE TO GOVERNMENT.—

23 “(1) IN GENERAL.—The court shall notify the
24 Government of an application made under subsection

1 (a) and shall afford the Government an opportunity
2 to respond.

3 “(2) PRESERVATION OF REMAINING BIOLOGI-
4 CAL MATERIAL.—Upon receiving notice of an appli-
5 cation made under subsection (a), the Government
6 shall take such steps as are necessary to ensure that
7 any remaining biological material that was secured
8 in connection with the case is preserved pending the
9 completion of proceedings under this section.

10 “(c) ORDER.—The court shall order DNA testing
11 pursuant to an application made under subsection (a)
12 upon a determination that testing may produce noncumu-
13 lative, exculpatory evidence relevant to the claim of the
14 applicant that the applicant was wrongfully convicted or
15 sentenced.

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

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

23 “(f) POST-TESTING PROCEDURES.—

24 “(1) PROCEDURES FOLLOWING RESULTS UNFA-
25 VORABLE TO APPLICANT.—If the results of DNA

1 testing conducted under this section are unfavorable
2 to the applicant, the court—

3 “(A) shall dismiss the application; and

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

7 “(2) PROCEDURES FOLLOWING RESULTS FA-
8 VORABLE TO APPLICANT.—If the results of DNA
9 testing conducted under this section are favorable to
10 the applicant, the court shall—

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

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

16 “(i) vacating and setting aside the
17 judgment;

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

20 “(iii) resentencing the applicant; or

21 “(iv) granting a new trial.

22 “(g) RULE OF CONSTRUCTION.—Nothing in this sec-
23 tion shall be construed to limit the circumstances under
24 which a person may obtain DNA testing or other post-
25 conviction relief under any other provision of law.

1 **“§ 2292. Preservation of biological material**

2 “(a) IN GENERAL.—Notwithstanding any other pro-
3 vision of law and subject to subsection (b), the Govern-
4 ment shall preserve any biological material secured in con-
5 nection with a criminal case for such period of time as
6 any person remains incarcerated in connection with that
7 case.

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

11 “(1) the Government notifies any person who
12 remains incarcerated in connection with the case,
13 and any counsel of record or public defender organi-
14 zation for the judicial district in which the judgment
15 of conviction for such person was entered, of—

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

18 “(B) the provisions of this chapter;

19 “(2) no person makes an application under sec-
20 tion 2291(a) within 90 days of receiving notice
21 under paragraph (1) of this subsection; and

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

24 (b) TECHNICAL AND CONFORMING AMENDMENT.—
25 The analysis for part VI of title 28, United States Code,

1 is amended by inserting after the item relating to chapter
2 155 the following:

“156. DNA Testing 2291”.

3 **SEC. 103. DNA TESTING IN STATE CRIMINAL JUSTICE SYS-**
4 **TEMS.**

5 (a) DNA IDENTIFICATION GRANT PROGRAM.—Sec-
6 tion 2403 of title I of the Omnibus Crime Control and
7 Safe Streets Act of 1968 (42 U.S.C. 3796kk-2) is
8 amended—

9 (1) in paragraph (2)—

10 (A) in the matter preceding subparagraph

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

12 (B) in subparagraph (C), by striking “is
13 charged” and inserting “was charged or con-
14 victed”; and

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

17 (2) in paragraph (3)—

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

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

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

23 “(4) the State will—

24 “(A) preserve all biological material se-
25 cured in connection with a State criminal case

1 for not less than the period of time that biological
2 cal material is required to be preserved under
3 section 2292 of title 28, United States Code, in
4 the case of a person incarcerated in connection
5 with a Federal criminal case; and

6 “(B) make DNA testing available to any
7 person convicted in State court to the same extent,
8 and under the same conditions, that DNA
9 testing is available under section 2291 of title
10 28, United States Code, to any person convicted
11 in a court established by an Act of Congress.”.

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

16 (1) in subparagraph (B)—

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

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

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

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

24 “(D) the State will—

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

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

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

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

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

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

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

7 “(A) DNA analyses performed at such lab-
8 oratory will satisfy or exceed the current stand-
9 ards for a quality assurance program for DNA
10 analysis, issued by the Director of the Federal
11 Bureau of Investigation under section 210303
12 of the DNA Identification Act of 1994 (42
13 U.S.C. 14131);

14 “(B) DNA samples and analyses obtained
15 and performed by such laboratory will be acces-
16 sible only—

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

19 “(ii) in judicial proceedings, if other-
20 wise admissible under applicable statutes
21 and rules;

22 “(iii) for criminal defense purposes, to
23 a defendant, who shall have access to sam-
24 ples and analyses performed in connection

1 with the case in which the defendant was
2 charged or convicted; or

3 “(iv) if personally identifiable infor-
4 mation is removed, for a population statis-
5 tics database, for identification research
6 and protocol development purposes, or for
7 quality control purposes;

8 “(C) the laboratory and each analyst per-
9 forming DNA analyses at the laboratory will
10 undergo, at regular intervals not exceeding 180
11 days, external proficiency testing by a DNA
12 proficiency testing program that meets the
13 standards issued under section 210303 of the
14 DNA Identification Act of 1994 (42 U.S.C.
15 14131); and

16 “(D) the State will—

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

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

8 **SEC. 104. PROHIBITION PURSUANT TO SECTION 5 OF THE**
9 **14TH AMENDMENT.**

10 (a) REQUEST FOR DNA TESTING.—

11 (1) IN GENERAL.—No State shall deny a re-
12 quest, made by a person in custody resulting from
13 a State court judgment, for DNA testing of biologi-
14 cal material that—

15 (A) is related to the investigation or pros-
16 ecution that resulted in the conviction of the
17 person or the sentence imposed on the person;

18 (B) is in the actual or constructive posses-
19 sion of the State; and

20 (C) was not previously subjected to DNA
21 testing, or can be subjected to retesting with
22 new DNA techniques that provide a reasonable
23 likelihood of more accurate and probative re-
24 sults.

1 (2) EXCEPTION.—A State may deny a request
2 under paragraph (1) upon a judicial determination
3 that testing could not produce noncumulative evi-
4 dence establishing a reasonable probability that the
5 person was wrongfully convicted or sentenced.

6 (b) OPPORTUNITY TO PRESENT RESULTS OF DNA
7 TESTING.—No State shall rely upon a time limit or proce-
8 dural default rule to deny a person an opportunity to
9 present noncumulative, exculpatory DNA results in court,
10 or in an executive or administrative forum in which a deci-
11 sion is made in accordance with procedural due process.

12 (c) REMEDY.—A person may enforce subsections (a)
13 and (b) in a civil action for declaratory or injunctive relief,
14 filed either in a State court of general jurisdiction or in
15 a district court of the United States, naming either the
16 State or an executive or judicial officer of the State as
17 defendant. No State or State executive or judicial officer
18 shall have immunity from actions under this subsection.

19 **TITLE II—ENSURING COM-**
20 **PETENT LEGAL SERVICES IN**
21 **CAPITAL CASES**

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

23 (a) CERTIFICATION REQUIREMENT; FORMULA
24 GRANTS.—Section 503 of title I of the Omnibus Crime

1 Control and Safe Streets Act of 1968 (42 U.S.C. 3753)
2 is amended—

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

5 “(13) If the State prescribes, authorizes, or
6 permits the penalty of death for any offense, a cer-
7 tification that the State has established and main-
8 tains an effective system for providing competent
9 legal services to indigents at every phase of a State
10 criminal prosecution in which a death sentence is
11 sought or has been imposed, up to and including di-
12 rect appellate review and post-conviction review in
13 State court.”; and

14 (2) in subsection (b)—

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

18 “(b) REGULATIONS.—

19 “(1) IN GENERAL.—The”; and

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

21 “(2) CERTIFICATION REGULATIONS.—The Di-
22 rector of the Administrative Office of the United
23 States Courts, after notice and an opportunity for
24 comment, shall promulgate regulations specifying
25 the elements of an effective system within the mean-

1 ing of subsection (a)(13), which elements shall
2 include—

3 “(A) a centralized and independent ap-
4 pointing authority, which shall have authority
5 and responsibility to—

6 “(i) recruit attorneys who are quali-
7 fied to represent indigents in the capital
8 proceedings specified in subsection (a)(13);

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

11 “(iii) draft and annually publish quali-
12 fications and performance standards that
13 attorneys must satisfy to be listed on the
14 roster and procedures by which qualified
15 attorneys are identified;

16 “(iv) periodically review the roster,
17 monitor the performance of all attorneys
18 appointed, provide a mechanism by which
19 members of the Bar may comment on the
20 performance of their peers, and delete the
21 name of any attorney who fails to complete
22 regular training programs on the represen-
23 tation of clients in capital cases, fails to
24 meet performance standards in a case to
25 which the attorney is appointed, or other-

1 wise fails to demonstrate continuing com-
2 petence to represent clients in capital
3 cases;

4 “(v) conduct or sponsor specialized
5 training programs for attorneys rep-
6 resenting clients in capital cases;

7 “(vi) appoint lead counsel and co-
8 counsel from the roster to represent a de-
9 fendant in a capital case promptly upon re-
10 ceiving notice of the need for an appoint-
11 ment from the relevant State court; and

12 “(vii) report the appointment, or the
13 failure of the defendant to accept such ap-
14 pointment, to the court requesting the ap-
15 pointment;

16 “(B) compensation of private attorneys for
17 actual time and service, computed on an hourly
18 basis and at a reasonable hourly rate in light of
19 the qualifications and experience of the attorney
20 and the local market for legal representation in
21 cases reflecting the complexity and responsi-
22 bility of capital cases;

23 “(C) reimbursement of private attorneys
24 and public defender organizations for attorney
25 expenses reasonably incurred in the representa-

1 tion of a client in a capital case, computed on
2 an hourly basis reflecting the local market for
3 such services; and

4 “(D) reimbursement of private attorneys
5 and public defender organizations for the rea-
6 sonable costs of law clerks, paralegals, inves-
7 tigators, experts, scientific tests, and other sup-
8 port services necessary in the representation of
9 a defendant in a capital case, computed on an
10 hourly basis reflecting the local market for such
11 services.”.

12 (b) CERTIFICATION REQUIREMENT; DISCRETIONARY
13 GRANTS.—Section 517(a) of title I of the Omnibus Crime
14 Control and Safe Streets Act of 1968 (42 U.S.C. 3763(a))
15 is amended—

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

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

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

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

23 (c) DIRECTOR’S REPORTS TO CONGRESS.—Section
24 522(b) of title I of the Omnibus Crime Control and Safe
25 Streets Act of 1968 (42 U.S.C. 3766b(b)) is amended—

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

3 (2) by redesignating paragraph (5) as para-
4 graph (6); and

5 (3) by inserting after paragraph (4) the fol-
6 lowing:

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

12 “(A) the qualifications and performance
13 standards established pursuant to section
14 503(b)(2)(A)(iii);

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

17 “(C) the rates of reimbursement paid
18 under subparagraphs (C) and (D) of section
19 503(b)(2); and”.

20 (d) EFFECTIVE DATE.—

21 (1) IN GENERAL.—Subject to paragraph (2),
22 the amendments made by this section shall apply
23 with respect to any application submitted on or after
24 the date that is 1 year after the date of enactment
25 of this Act.

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

8 (e) REGULATIONS.—The Director of the Administra-
9 tive Office of the United States Courts shall issue all regu-
10 lations necessary to carry out the amendments made by
11 this section not later than 180 days before the effective
12 date of those regulations.

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

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

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

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

20 “(3) In a proceeding instituted by an indigent
21 applicant under sentence of death, the court shall
22 neither presume a finding of fact made by a State
23 court to be correct nor decline to consider a claim
24 on the ground that the applicant failed to raise such

1 claim in State court at the time and in the manner
2 prescribed by State law, unless—

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

8 “(B) the legal services the State provided
9 satisfied the regulations promulgated by the Di-
10 rector of the Administrative Office of the
11 United States Courts pursuant to section
12 503(b)(2) of title I of the Omnibus Crime Con-
13 trol and Safe Streets Act of 1968.”.

14 **SEC. 203. CAPITAL REPRESENTATION GRANTS.**

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

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

19 (2) by inserting after subsection (h) the fol-
20 lowing:

21 “(i) CAPITAL REPRESENTATION GRANTS.—

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

23 “(A) the term ‘capital case’—

24 “(i) means any criminal case in which
25 a defendant prosecuted in a State court is

1 subject to a sentence of death or in which
2 a death sentence has been imposed; and

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

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

8 “(i) recruitment of counsel;

9 “(ii) training of counsel;

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

12 “(iv) direct representation of defend-
13 ants, if the availability of other qualified
14 counsel is inadequate to meet the need in
15 the jurisdiction served by the grant recipi-
16 ent; and

17 “(v) investigative, expert, or other
18 services necessary for adequate representa-
19 tion; and

20 “(C) the term ‘Director’ means the Direc-
21 tor of the Administrative Office of the United
22 States Courts.

23 “(2) GRANT AWARD AND CONTRACT AUTHOR-
24 ITY.—Notwithstanding subsection (g), the Director
25 shall award grants to, or enter into contracts with,

1 public agencies or private nonprofit organizations for
2 the purpose of providing defense services in capital
3 cases.

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

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

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

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

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

16 “(4) GUIDELINES.—The Director, in consulta-
17 tion with the Judicial Conference of the United
18 States, shall develop guidelines to ensure that de-
19 fense services provided by recipients of grants and
20 contracts awarded under this subsection are con-
21 sistent with applicable legal and ethical proscriptions
22 governing the duties of counsel in capital cases.

23 “(5) CONSULTATION.—In awarding grants and
24 contracts under this subsection, the Director shall
25 consult with representatives of the highest State

1 court, the organized bar, and the defense bar of the
2 jurisdiction to be served by the recipient of the grant
3 or contract.”.

4 **TITLE III—COMPENSATING THE**
5 **UNJUSTLY CONDEMNED**

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

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

10 “(e) DAMAGES.—

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

18 “(2) FACTORS FOR CONSIDERATION IN ASSESS-
19 ING DAMAGES.—In assessing damages in an action
20 described in subsection (a), the court shall
21 consider—

22 “(A) the circumstances surrounding the
23 unjust conviction of the plaintiff, including any
24 misconduct by officers or employees of the Fed-
25 eral Government;

1 “(B) the length and conditions of the un-
2 just incarceration of the plaintiff; and

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

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

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

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

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

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

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

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

20 “(B)(i) has established and maintains an
21 effective procedure by which any person un-
22 justly convicted of an offense against the State
23 and sentenced to death may be awarded reason-
24 able damages upon substantial proof that the

1 person did not commit any of the acts with
2 which the person was charged; and

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

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

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

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

17 **TITLE IV—MISCELLANEOUS** 18 **PROVISIONS**

19 **SEC. 401. ACCOMMODATION OF STATE INTERESTS IN FED-** 20 **ERAL DEATH PENALTY PROSECUTIONS.**

21 (a) RECOGNITION OF STATE INTERESTS.—Chapter
22 228 of title 18, United States Code, is amended by adding
23 at the end the following:

1 **“§ 3599. Accommodation of State interests; certifi-**
2 **cation requirement**

3 “(a) IN GENERAL.—Notwithstanding any other pro-
4 vision of law, the Government shall not seek the death
5 penalty in any case initially brought before a district court
6 of the United States that sits in a State that does not
7 prescribe, authorize, or permit the imposition of such pen-
8 alty for the alleged conduct, except upon the certification
9 in writing of the Attorney General or the designee of the
10 Attorney General that—

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

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

16 “(3) the offense charged is an offense described
17 in section 32, 229, 351, 794, 1091, 1114, 1118,
18 1203, 1751, 1992, 2340A, or 2381, or chapter
19 113B.

20 “(b) “STATE DEFINED.—In this section, the term
21 ‘State’ means each of the several States of the United
22 States, the District of Columbia, and the territories and
23 possessions of the United States.”.

1 (b) TECHNICAL AND CONFORMING AMENDMENT.—

2 The analysis for chapter 228 of title 18, United States

3 Code, is amended by adding at the end the following:

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

4 **SEC. 402. ALTERNATIVE OF LIFE IMPRISONMENT WITHOUT**
5 **POSSIBILITY OF RELEASE.**

6 Section 408(l) of the Controlled Substances Act (21
7 U.S.C. 848(l)), is amended by striking the first 2 sen-
8 tences and inserting the following: “Upon a recommenda-
9 tion under subsection (k) that the defendant should be
10 sentenced to death or life imprisonment without possibility
11 of release, the court shall sentence the defendant accord-
12 ingly. Otherwise, the court shall impose any lesser sen-
13 tence that is authorized by law.”.

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

15 (a) ADDITIONAL REQUIREMENTS.—Section 20105 of
16 the Violent Crime Control and Law Enforcement Act of
17 1994 (42 U.S.C. 13705) is amended by striking subsection
18 (b) and inserting the following:

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

22 “(1) the State has implemented policies that
23 provide for the recognition of the rights and needs
24 of crime victims; and

1 “(2) in any capital case in which the jury has
2 a role in determining the sentence imposed on the
3 defendant, the court, at the request of the defend-
4 ant, shall inform the jury of all statutorily author-
5 ized sentencing options in the particular case, in-
6 cluding applicable parole eligibility rules and
7 terms.”.

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

15 **SEC. 404. ANNUAL REPORTS.**

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

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

1 1998” (December 1999, NCJ 179012), and the following
2 additional categories of information:

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

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

9 (3) An analysis of the effect of *Witherspoon v.*
10 *Illinois*, 391 U.S. 510 (1968), and its progeny, on
11 the composition of juries in capital cases, including
12 the racial composition of such juries, and on the ex-
13 clusion of otherwise eligible and available jurors
14 from such cases.

15 (4) An analysis of the effect of peremptory
16 challenges, by the prosecution and defense respec-
17 tively, on the composition of juries in capital cases,
18 including the racial composition of such juries, and
19 on the exclusion of otherwise eligible and available
20 jurors from such cases.

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

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

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

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

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

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

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

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

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

1 **SEC. 405. DISCRETIONARY APPELLATE REVIEW.**

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

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

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

6 “(2) For purposes of paragraph (1), if the highest
7 court of a State has discretion to decline appellate review
8 of a case or a claim, a petition asking that court to enter-
9 tain a case or a claim is not an available State court proce-
10 dure.”.

11 **SEC. 406. SENSE OF CONGRESS REGARDING THE EXECU-**
12 **TION OF JUVENILE OFFENDERS AND THE**
13 **MENTALLY RETARDED.**

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



Office of the President

3211 Fourth Street NE Washington, DC 20017-1194 (202) 541-3100 Fax: (202) 541-3166

Most Reverend Joseph A. Fiorenza, D.D.
Bishop of Galveston-Houston
President



July 10, 2000

The Honorable William Jefferson Clinton
President of the United States
The White House
Washington, D.C. 20500

Dear President Clinton:

On behalf of the Catholic bishops of the United States, I write to express appreciation to you for postponing the execution of Mr. Juan Raul Garza and to urge you to take the next step by commuting the sentence of death to one of life in prison. We hope that this action will lead to a further reconsideration of the use of the death penalty in our modern society. In our view, the next appropriate action would be to impose a moratorium on the use of the death penalty at the federal level.

The crimes for which Mr. Garza and others on death row have been convicted are horrible and deserve punishment. As pastors, we understand the human emotion of anger and the desire for revenge. However, as Christians, we believe that we are called to promote life, even the lives of those who have taken life. We believe that it is not necessary to execute those who commit heinous crimes in order to keep society safe. Life-long incarceration can accomplish this. Capital punishment only serves to continue the cycle of violence; we cannot teach that killing is wrong by killing those who kill.

Recent accounts of post-conviction evidence proving innocence and stories of ineffective defense counsel have led many to believe that our capital punishment systems are seriously flawed. This, in turn, has led to a vigorous debate about the administration of the death penalty. Policymakers and citizens are facing the unpleasant reality that the poor and marginalized of our society are more likely to be convicted and sentenced to death than the rich and powerful. Postponing Mr. Garza's execution at this critical moment encourages this important debate without the looming specter of additional executions.

Finally, Mr. President, we urge you once again to impose a moratorium not only because it will spare the lives of the condemned, but because of what it will symbolize to everyone in our nation and beyond--that all human life is of inestimable value. Our commitment to this belief shines brightest when we preserve the lives of even those who have done great harm.

Thank you for your recent action and for considering these arguments as you weigh the important death penalty issues before you.

Sincerely yours,

Most Reverend Joseph A. Fiorenza
Bishop of Galveston-Houston
President



CHIEF OF STAFF TO THE PRESIDENT

TO: Lemme S.

FR: Jm

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President



CHIEF OF STAFF TO THE PRESIDENT

to: Mr. Mike Cole

FR: Gene

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