

107TH CONGRESS
2D SESSION

S. 2441

To provide all prisoners with an opportunity to present exculpatory DNA evidence, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 2, 2002

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

A BILL

To provide all prisoners with an opportunity to present exculpatory DNA evidence, 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.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Post-Conviction DNA Testing Act of 2002”.

6 **SEC. 2. POST-CONVICTION DNA TESTING.**

7 (a) FEDERAL CRIMINAL PROCEDURE.—

8 (1) IN GENERAL.—Part II of title 18, United
9 States Code, is amended by inserting after chapter
10 228 the following:

“CHAPTER 228A—POST-CONVICTION DNA TESTING

“Sec.

“3600. DNA testing.

“3600A. Prohibition on destruction of biological evidence.

1 **“§ 3600. DNA testing**

2 “(a) MOTION.—

3 “(1) IN GENERAL.—An individual imprisoned
 4 because of a conviction of a criminal offense in a
 5 court of the United States (referred to in this sec-
 6 tion as the ‘applicant’) may make a written motion
 7 to the court that entered the judgment of conviction
 8 for the performance of forensic DNA testing on
 9 specified evidence that was secured in relation to the
 10 investigation or prosecution that resulted in the con-
 11 viction.

12 “(2) CONTENTS.—The motion shall—

13 “(A) include an assertion by the applicant,
 14 under penalty of perjury, that the applicant is
 15 actually innocent of the crime for which the ap-
 16 plicant is imprisoned or of uncharged conduct,
 17 if the exoneration of the applicant of such con-
 18 duct would result in a mandatory reduction in
 19 the sentence of the applicant;

20 “(B) identify the specific evidence secured
 21 in relation to the investigation or prosecution
 22 that resulted in the conviction for which testing
 23 is requested;

1 “(C) identify a theory of defense—

2 “(i) the validity of which would estab-
3 lish the actual innocence of the applicant,
4 and explain how the requested DNA test-
5 ing would substantiate that theory; and

6 “(ii) that is not inconsistent with any
7 affirmative defense issued by the applicant
8 in the original prosecution;

9 “(D) make a prima facie showing that the
10 conditions set forth in subsection (c) for
11 issuance of a testing order are satisfied; and

12 “(E) certify that the applicant will provide
13 a DNA sample from the applicant for purposes
14 of comparison.

15 “(3) FILING.—A motion filed under this section
16 is timely if—

17 “(A) it is filed within 60 months of the
18 date of enactment of this section;

19 “(B) the applicant can show that—

20 “(i) the evidence identified pursuant
21 to paragraph (2)(B) is newly discovered;
22 and

23 “(ii)(I) such evidence could not have
24 been discovered through the exercise of due
25 diligence; or

1 “(II) the proximate cause for not hav-
2 ing previously discovered such evidence was
3 the deficient performance of the attorney
4 of the applicant; or

5 “(C) the applicant can show that—

6 “(i)(I) the technology for the re-
7 quested DNA testing was not available at
8 the time of trial;

9 “(II) it was not generally known that
10 such technology was available at the time
11 of trial; or

12 “(III) the failure to request such test-
13 ing using the technology was due to the
14 deficient performance of the attorney of
15 the applicant; and

16 “(ii) if any of the evidence was pre-
17 viously subjected to DNA testing, the test-
18 ing now requested uses a newer technology
19 for DNA testing that is reasonably certain
20 to provide results that are substantially
21 more accurate and probative than any pre-
22 vious DNA testing of the evidence.

23 “(b) NOTICE TO THE GOVERNMENT; PRESERVATION
24 ORDER; APPOINTMENT OF COUNSEL.—

1 “(1) NOTICE TO THE GOVERNMENT.—Upon re-
2 ceipt of a motion under subsection (a), the court
3 shall promptly notify the government of the motion
4 and afford the government an opportunity to re-
5 spond to the motion.

6 “(2) PRESERVATION ORDER.—The court may
7 direct the government to preserve any evidence to
8 which a motion under subsection (a) relates to the
9 extent necessary to carry out proceedings under this
10 section.

11 “(3) APPOINTMENT OF COUNSEL.—The court
12 may appoint counsel for an indigent applicant under
13 this section in accordance with section 3006A of this
14 title.

15 “(c) ORDER FOR DNA TESTING.—The court shall
16 order the DNA testing requested in a motion filed under
17 this section if—

18 “(1) the motion satisfies the requirements of
19 subsection (a);

20 “(2)(A) the identity of the perpetrator was at
21 issue in the trial that resulted in the conviction of
22 the applicant; or

23 “(B) in a case where the applicant pled guilty,
24 the identity of the perpetrator would have been at
25 issue at trial;

1 “(3) the evidence to be tested is in the posses-
2 sion of the government and has been subject to a
3 chain of custody and retained under conditions suffi-
4 cient to ensure that it has not been substituted, con-
5 taminated, tampered with, replaced, or altered in
6 any respect material to the requested DNA testing;

7 “(4)(A)(i) the technology for the requested
8 DNA testing was not available at the time of trial;

9 “(ii) it was not generally known that such tech-
10 nology was available; or

11 “(iii) the applicant can show that the failure to
12 request such testing was due to the deficient per-
13 formance of the attorney of the applicant; and

14 “(B) if any of the evidence was previously sub-
15 jected to DNA testing, the testing now requested
16 uses a newer DNA testing technique which is rea-
17 sonably certain to provide results that are substan-
18 tially more accurate and probative than any previous
19 DNA testing of the evidence;

20 “(5) the proposed DNA testing uses scientif-
21 ically sound methods and is consistent with accepted
22 forensic practice;

23 “(6) the proposed DNA testing is reasonable in
24 scope; and

1 “(7) the court determines, after review of the
2 record of the trial of the applicant and any other rel-
3 evant evidence, that there is a reasonable probability
4 that the results of the proposed DNA testing will en-
5 able the applicant to establish that the applicant is
6 entitled to a new trial under the standard of sub-
7 section (e)(3).

8 “(d) TESTING PROCEDURES; REPORTING OF TEST
9 RESULTS.—

10 “(1) TESTING PROCEDURES.—The court shall
11 direct that any DNA testing ordered under this sec-
12 tion be carried out by—

13 “(A) a laboratory mutually selected by the
14 government and the applicant; or

15 “(B) if the government and the applicant
16 are unable to agree on a laboratory, a labora-
17 tory selected by the court ordering the testing.

18 “(2) LABORATORY APPROVAL.—With respect to
19 DNA testing by a laboratory in accordance with this
20 subsection, other than an FBI laboratory, the court
21 must approve the selection of the laboratory and
22 make all necessary orders to ensure the integrity of
23 the evidence and the testing process and the reli-
24 ability of the test results.

1 “(3) LABORATORY COSTS.—The applicant shall
 2 pay the cost of any testing by a laboratory in ac-
 3 cordance with this subsection, other than an FBI
 4 laboratory, except that the court shall pay, in ac-
 5 cordance with section 3006A of this title, the cost if
 6 the applicant would otherwise be financially incapa-
 7 ble of securing such testing.

8 “(4) DISCLOSURE OF TEST RESULTS.—The re-
 9 sults of any DNA testing ordered under this
 10 section—

11 “(A) shall be disclosed to—

12 “(i) the court;

13 “(ii) the applicant;

14 “(iii) the government; and

15 “(iv) the appropriate agency under
 16 subsection (e)(3)(B)(ii); and

17 “(B) shall be included in the Combined
 18 DNA Index System if the conditions set forth
 19 in subsection (e)(2) are met.

20 “(e) POSTTESTING PROCEDURES.—

21 “(1) INCONCLUSIVE RESULT.—If the DNA test-
 22 ing results are inconclusive, the court may order fur-
 23 ther testing, as appropriate, or may deny the appli-
 24 cant relief.

1 “(2) POSITIVE RESULT.—If DNA testing re-
2 sults obtained under this section show that the ap-
3 plicant was the source of the DNA identified as evi-
4 dence under subsection (a)(2)(B), the court shall—

5 “(A) deny the applicant relief;

6 “(B) submit the DNA testing results to
7 the Department of Justice for inclusion in the
8 Combined DNA Index System; and

9 “(C) on motion of the government, proceed
10 as provided in paragraph (5)(A).

11 “(3) NEGATIVE RESULT.—If DNA testing re-
12 sults obtained under this section show that the ap-
13 plicant was not the source of the DNA identified as
14 evidence under subsection (a)(2)(B)—

15 “(A) the court shall promptly—

16 “(i) order any further DNA testing
17 needed to clarify the import of the test re-
18 sults, including any testing needed to ex-
19 clude persons other than the perpetrator of
20 the crime as potential sources of the DNA
21 evidence; and

22 “(ii) determine whether the applicant
23 is entitled to relief under paragraph (4);
24 and

25 “(B) the Attorney General shall—

1 “(i) compare the DNA evidence col-
2 lected from the applicant with DNA evi-
3 dence in the Combined DNA Index System
4 that has been collected from unsolved
5 crimes;

6 “(ii) if the comparison yields a DNA
7 match with an unsolved crime, notify the
8 appropriate agency and preserve the DNA
9 sample; and

10 “(iii) if the comparison fails to yield a
11 DNA match with an unsolved crime, de-
12 stroy the DNA sample collected from the
13 applicant.

14 “(4) EXCULPATORY EVIDENCE.—If the DNA
15 testing conducted under this section produces excul-
16 patory evidence—

17 “(A) the applicant may, during the 60-day
18 period beginning on the date on which the ap-
19 plicant is notified of the test results, make a
20 motion to the court that ordered the testing for
21 a new trial based on newly discovered evidence
22 under rule 33 of the Federal Rules of Criminal
23 Procedure, notwithstanding any provision of law
24 that would bar such a motion as untimely; and

1 “(B) upon receipt of a motion under sub-
2 paragraph (A), the court that ordered the test-
3 ing shall consider the motion under rule 33 of
4 the Federal Rules of Criminal Procedure, not-
5 withstanding any provision of law that would
6 bar such consideration as untimely.

7 “(5) FAILURE TO OBTAIN RELIEF.—

8 “(A) IN GENERAL.—If the applicant fails
9 to obtain relief under this subsection, the court,
10 on motion by the government, shall make a de-
11 termination whether the assertion of innocence
12 by the applicant was false.

13 “(B) FALSE ASSERTION.—If the court
14 finds that the assertion of innocence by the ap-
15 plicant was false, the court—

16 “(i) may hold the applicant in con-
17 tempt;

18 “(ii) shall assess against the applicant
19 the cost of any DNA testing carried out
20 under this section; and

21 “(iii) shall forward the finding to the
22 Director of the Bureau of Prisons.

23 “(C) BUREAU OF PRISONS.—On receipt of
24 a finding by the court under this paragraph,
25 the Director of the Bureau of Prisons may

1 deny, wholly or in part, the good conduct credit
2 authorized under section 3624 of this title, on
3 the basis of that finding.

4 “(D) PAROLE COMMISSION.—If the appli-
5 cant is subject to the jurisdiction of the United
6 States Parole Commission, the court shall for-
7 ward its finding under this paragraph to the
8 Parole Commission, and the Parole Commission
9 may deny parole on the basis of that finding.

10 “(E) PENALTY.—In any prosecution of an
11 applicant under chapter 79 of this title, for
12 false assertions or other conduct in proceedings
13 under this section, the court, upon conviction of
14 the applicant, shall sentence the applicant to a
15 term of imprisonment of 1 year, which shall run
16 consecutively to any other term of imprison-
17 ment the applicant is serving.

18 “(f) FINAL ORDER.—An order granting or denying
19 DNA testing under subsection (c), or an order granting
20 or denying a new trial under subsection (e), is a final order
21 for purposes of section 1291 of title 28.

22 “(g) TIME LIMITS INAPPLICABLE; OTHER REMEDIES
23 UNAFFECTED.—Notwithstanding any time limit otherwise
24 applicable to motions for new trials based on newly discov-

1 ered evidence, a court may grant relief under subsection
2 (e) to an applicant, at any time.

3 “(h) OTHER REMEDIES UNAFFECTED.—This section
4 does not affect the circumstances under which a person
5 may obtain DNA testing or postconviction relief under any
6 other law or rule.

7 **“§ 3600A. Prohibition on destruction of biological ma-**
8 **terial**

9 “(a) PROHIBITION.—

10 “(1) IN GENERAL.—Notwithstanding any other
11 provision of law, during the period described in
12 paragraph (2), the government shall not destroy any
13 biological material preserved if the defendant is serv-
14 ing a term of imprisonment following conviction in
15 a case.

16 “(2) PERIOD DESCRIBED.—The period de-
17 scribed in this paragraph is the period beginning on
18 the date of enactment of this section and ending on
19 the later of—

20 “(A) the expiration of the 60-month period
21 beginning on that date of enactment; or

22 “(B) the date on which any proceedings
23 under section 3600 relating to the case are
24 completed.

1 “(b) SANCTIONS FOR INTENTIONAL VIOLATION.—

2 The court may impose appropriate sanctions, including
3 criminal contempt, for an intentional violation of sub-
4 section (a).

5 “(c) EXCEPTIONS.—The government may dispose of
6 evidence before the expiration of the period of time de-
7 scribed in subsection (a) if—

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

11 “(2)(A)(i) the government notifies any person
12 who remains incarcerated in connection with the in-
13 vestigation or prosecution and any counsel of record
14 for that person (or, if there is no counsel of record,
15 the public defender for the judicial district in which
16 the conviction for that person was imposed), of the
17 intention of the government to dispose of the evi-
18 dence and the provisions of this chapter; and

19 “(ii) the government affords such person not
20 less than 180 days after such notification to make
21 a motion under section 3600(a) for DNA testing of
22 the evidence; or

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

1 “(ii) the government takes reasonable measures
2 to remove and preserve portions of the material evi-
3 dence sufficient to permit future DNA testing.”.

4 (2) TECHNICAL AND CONFORMING AMEND-
5 MENT.—The analysis for part II of title 18, United
6 States Code, is amended by inserting after the item
7 relating to chapter 228 the following:

“228A. Postconviction DNA Testing 3600”.

8 (b) APPLICABILITY.—The provisions and amend-
9 ments in this section shall take effect on the date of enact-
10 ment of this Act and shall apply with respect to any of-
11 fense committed, and to any judgment of conviction en-
12 tered, before, on, or after that date of enactment.

13 (c) REPORT BY THE ATTORNEY GENERAL.—

14 (1) TRACKING SYSTEM.—

15 (A) IN GENERAL.—The Attorney General
16 shall establish a system for reporting and track-
17 ing motions under section 3600 of title 18,
18 United States Code.

19 (B) REQUESTED ASSISTANCE.—The judi-
20 cial branch shall provide to the Attorney Gen-
21 eral any requested assistance in operating a re-
22 porting and tracking system and in ensuring
23 the accuracy and completeness of information
24 included in that system.

1 (2) INFORMATION.—Not later than 180 days
2 before the expiration of the time period referenced in
3 section 3600(a)(3)(A) of title 18, United States
4 Code, the Attorney General shall submit a report to
5 Congress containing—

6 (A) a summary of the motions filed under
7 section 3600 of title 18, United States Code;

8 (B) information on whether DNA testing
9 was ordered pursuant to such motions;

10 (C) information on whether the applicant
11 obtained relief on the basis of DNA test results;
12 and

13 (D) information on whether further pro-
14 ceedings occurred following a granting of relief
15 and the outcome of those proceedings.

16 (3) ASSESSMENT.—The report submitted under
17 paragraph (2) may also include—

18 (A) any other information that the Attor-
19 ney General believes will be useful in assessing
20 the operation, utility, or costs of section 3600
21 of title 18, United States Code; and

22 (B) any recommendations that the Attor-
23 ney General may have relating to future legisla-
24 tive action concerning section 3600 of title 18,
25 United States Code.

1 **SEC. 3. PROHIBITION PURSUANT TO SECTION 5 OF THE**
2 **14TH AMENDMENT.**

3 (a) APPLICATION FOR DNA TESTING.—No State
4 shall deny an application for DNA testing made by a pris-
5 oner in State custody who would be eligible for such test-
6 ing under the provisions of sections 3600 and 3600A of
7 title 18, United States Code.

8 (b) DNA TESTING PROCEDURES.—The procedures
9 for DNA testing for a prisoner in State custody shall be
10 substantially similar to the DNA testing procedures estab-
11 lished for Federal courts under sections 3600 and 3600A
12 of title 18, United States Code.

13 (c) REMEDY.—A prisoner in State custody may en-
14 force subsections (a) and (b) in a civil action for declara-
15 tory or injunctive relief, filed either in a State court of
16 general jurisdiction or in a district court of the United
17 States, naming an executive or judicial officer of the State
18 as a defendant.

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