

107TH CONGRESS
1ST SESSION

S. 800

To provide for post-conviction DNA testing, to establish a competent counsel grant program, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 30, 2001

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

A BILL

To provide for post-conviction DNA testing, to establish a competent counsel grant program, 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 **SHORT TITLE.**—This Act may be cited as the
5 “Criminal Justice Integrity and Innocence Protection Act
6 of 2001”.

7 SEC. 2. FINDINGS.

8 Congress makes the following findings:

9 (1) In the last decade, deoxyribonucleic acid
10 testing (referred to in this Act as “DNA testing”)

1 has emerged as the most reliable forensic technique
2 for identifying criminals when biological evidence of
3 the crime is obtained. DNA testing “has been ac-
4 knowledged by the courts as well as the national sci-
5 entific community for its extraordinary degree of ac-
6 curacy in matching cellular material to individuals”.
7 Commonwealth v. Brison, 618 A.2d 420 (S. Ct. Pa.
8 1992).

9 (2) In many cases, DNA testing of biological
10 evidence can reveal relevant evidence of a crime, or
11 even conclusively prove the guilt or innocence of a
12 criminal defendant.

13 (3) While DNA testing is standard in pretrial
14 investigations in every State today, it was not widely
15 available prior to the early 1990’s. In addition, new
16 DNA testing technologies have been developed that
17 can accurately examine minute samples and obtain
18 more discriminating results than earlier forms of
19 DNA testing.

20 (4) DNA testing is possible on biological evi-
21 dence that is more than a decade old. Because bio-
22 logical evidence, such as semen or hair from a rape,
23 is often preserved by authorities years after trial, it
24 has become possible to submit preserved biological
25 evidence to DNA testing. In cases that were tried

1 before DNA technology existed, and in which biological
2 evidence was preserved after conviction, post-conviction
3 testing is feasible.

4 (5) Because DNA testing is standard in pretrial
5 investigations in every State today, the issue of post-conviction
6 DNA testing involves only a narrow class
7 of cases prosecuted before adequate DNA technology
8 existed. In the near future, the need for post-conviction
9 DNA testing should cease because of the availability
10 of pretrial testing with advanced technologies.

11 (6) In the last decade, post-conviction DNA
12 testing has exonerated innocent persons who were
13 wrongly convicted in trials that occurred before adequate
14 DNA testing existed. In some of these cases,
15 the post-conviction DNA testing that exonerated a
16 wrongly convicted person also provided evidence that
17 led to the apprehension of the actual perpetrator.

18 (7) Under current Federal and State law, it is
19 difficult to obtain post-conviction DNA testing because
20 of time limits on introducing newly discovered
21 evidence. In 38 States, motions for a new trial based
22 on newly discovered evidence must be made not later
23 than 2 years after the date of conviction. In some
24 States, such motions must be made not later than
25 30 days after the date of conviction. Under Federal

1 law, such a motion must be made not later than 3
2 years after the date of conviction. These time limits
3 are based on the fact that evidence becomes less reli-
4 able after the passage of time and, as a result, it is
5 difficult to prosecute criminal cases years after the
6 crime occurred.

7 (8) The time limits on introducing newly discov-
8 ered evidence should not bar post-conviction DNA
9 testing in appropriate cases because DNA testing
10 can produce accurate results on biological evidence
11 that is more than a decade old. Unlike other evi-
12 dence, the results of DNA testing are not necessarily
13 less reliable after the passage of time.

14 (9) Once post-conviction DNA testing is per-
15 formed, the results of such testing should be consid-
16 ered as newly discovered evidence by the courts. If
17 post-conviction testing produces exculpatory evi-
18 dence, the defendant should be allowed to move for
19 a new trial based on newly discovered evidence, not-
20 withstanding the time limits on such motions appli-
21 cable to other forms of newly discovered evidence. In
22 addition, courts should weigh motions for a new trial
23 based on post-conviction DNA testing results under
24 the established precedents for motions for a new
25 trial based on newly discovered evidence.

1 **TITLE I—POST-CONVICTION DNA**
2 **TESTING IN FEDERAL COURT**

3 **SEC. 101. POST-CONVICTION DNA TESTING.**

4 (a) **FEDERAL CRIMINAL PROCEDURE.—**

5 (1) **IN GENERAL.**—Part II of title 18, United
6 States Code, is amended by inserting after chapter
7 228 the following:

8 **“CHAPTER 228A—POST-CONVICTION DNA**
9 **TESTING**

“Sec.

“3600. DNA testing.

“3600A. Prohibition on destruction of biological material.

10 **“§ 3600. DNA testing**

11 (a) **MOTION.**—During the 36-month period begin-
12 ning on the date of enactment of this section, an individual
13 serving a term of imprisonment for conviction in a court
14 of the United States of a criminal offense (referred to in
15 this section as the ‘applicant’) may make a written motion
16 to the court that entered the judgment of conviction for
17 the performance of forensic DNA testing on specified evi-
18 dence, if—

19 (1) that evidence was secured in relation to
20 the investigation or prosecution that resulted in the
21 conviction of the applicant; and

22 (2) that evidence was not previously subjected
23 to DNA testing—

1 “(A) because DNA testing was not avail-
2 able or was available, but not technologically ca-
3 pable of providing probative results; or

4 “(B) through no fault of the convicted per-
5 son, for reasons that are of a nature such that
6 the interests of justice require DNA testing; or

7 “(3) although previously subjected to DNA test-
8 ing, that evidence can be subjected to testing with
9 newer testing techniques that provide a reasonable
10 likelihood of results that are more accurate and pro-
11 bative than the results of the previous test.

12 “(b) NOTICE TO THE GOVERNMENT.—Upon receipt
13 of a motion under subsection (a), the court shall notify
14 the Government and shall afford the Government an op-
15 portunity to respond to the motion.

16 “(c) REQUIREMENTS.—In any motion under sub-
17 section (a), the applicant shall—

18 “(1) under penalty of perjury, assert the actual
19 innocence of the applicant of—

20 “(A) the offense for which the applicant
21 was convicted; or

22 “(B) uncharged conduct, if the exoneration
23 of the applicant of such conduct would result in
24 a mandatory reduction in the sentence of the
25 applicant;

1 “(2) identify the specific evidence (that was se-
2 cured in relation to the investigation or prosecution
3 that resulted in the conviction of the applicant) to
4 be tested and a theory of defense, not inconsistent
5 with previously asserted theories, that the requested
6 DNA testing would support; and

7 “(3) present a *prima facie* showing that—

8 “(A) the identity of the perpetrator was at
9 issue in the trial that resulted in the conviction
10 of the applicant; and

11 “(B) DNA testing of the specified evidence
12 would, assuming exculpatory results, establish
13 the actual innocence of the applicant of—

14 “(i) the offense for which the appli-
15 cant was convicted; or

16 “(ii) uncharged conduct, if the exon-
17 eration of the applicant of such conduct
18 would result in a mandatory reduction in
19 the sentence of the applicant.

20 “(d) ORDER.—

21 “(1) IN GENERAL.—Except as provided in para-
22 graph (2), the court shall order the testing requested
23 in a motion under subsection (a) under reasonable
24 conditions designed to protect the interests of the
25 Government in the integrity of the evidence and the

1 testing process, upon a determination, after review
2 of the record of the trial of the applicant, that—

3 “(A) the applicant has met the require-
4 ments of subsection (c);

5 “(B) the evidence to be tested is in the
6 possession of the Government or the court and
7 has been subject to a chain of custody sufficient
8 to establish that it has not been altered in any
9 material respect; and

10 “(C) the motion is made in a timely man-
11 ner and for the purpose of demonstrating the
12 actual innocence of the applicant and not to
13 delay the execution of sentence or administra-
14 tion of justice.

15 “(2) EXCEPTION.—The court shall not order
16 the testing requested in a motion under subsection
17 (a) if, after review of the record of the trial of the
18 applicant, the court determines that there is no rea-
19 sonable possibility that the testing will produce ex-
20 culpatory evidence that would establish the actual
21 innocence of the applicant of—

22 “(A) the offense for which the applicant
23 was convicted; or

24 “(B) uncharged conduct, if the exoneration
25 of the applicant of such conduct would result in

1 a mandatory reduction in the sentence of the
2 applicant.

3 “(3) FINAL ORDER.—An order under this sub-
4 section is a final order for purposes of section 1291
5 of title 28, United States Code.

6 “(e) TESTING PROCEDURES.—

7 “(1) SELECTION OF LABORATORY.—Any DNA
8 testing ordered under this section shall be conducted
9 by—

10 “(A) a laboratory mutually selected by the
11 Government and the applicant; or

12 “(B) if the Government and the applicant
13 are unable to agree on a laboratory, a labora-
14 tory selected by the court that ordered the test-
15 ing.

16 “(2) COSTS.—The costs of any testing ordered
17 under this section shall be paid—

18 “(A) by the applicant; or

19 “(B) in the case of an applicant who is in-
20 digent, by the court.

21 “(f) TIME LIMITATION IN CAPITAL CASES.—In any
22 case in which the applicant is sentenced to death—

23 “(1) any DNA testing ordered under this sec-
24 tion shall be completed not later than 120 days after

1 the date on which the Government responds to the
2 motion under subsection (a); and

3 “(2) the court shall order any post-testing pro-
4 cedures under subsection (g) not later than 30 days
5 after the date on which the DNA testing is com-
6 pleted.

7 “(g) POST-TESTING PROCEDURES.—

8 “(1) RESULTS UNFAVORABLE TO APPLICANT.—

9 If the DNA testing conducted under this section
10 produces inconclusive evidence or evidence that is
11 unfavorable to the applicant—

12 “(A) the court shall—

13 “(i) dismiss the application; and

14 “(ii) forward the results of the testing
15 to the appropriate parole board that would
16 have jurisdiction over a request for parole
17 by the applicant; and

18 “(B) the Government shall compare the
19 evidence to DNA evidence from unsolved crimes
20 in the Combined DNA Index System (CODIS).

21 “(2) RESULTS FAVORABLE TO APPLICANT.—If
22 the DNA testing conducted under this section pro-
23 duces exculpatory evidence—

24 “(A) the applicant may, during the 60-day
25 period beginning on the date on which the ap-

1 plicant is notified of the test results, make a
2 motion to the court that ordered the testing for
3 a new trial based on newly discovered evidence
4 under rule 33 of the Federal Rules of Criminal
5 Procedure, notwithstanding any provision of law
6 that would bar such a motion as untimely; and

7 “(B) upon receipt of a motion under sub-
8 paragraph (A), the court that ordered the test-
9 ing shall consider the motion under rule 33 of
10 the Federal Rules of Criminal Procedure, not-
11 withstanding any provision of law that would
12 bar such consideration as untimely.

13 “(h) APPLICABILITY TO FEDERAL HABEAS COR-
14 PUS.—The denial of post-conviction DNA testing by a
15 Federal or State court shall not be a ground for relief in
16 any proceeding under Federal habeas corpus.

17 “(i) COUNSEL.—The court may appoint counsel for
18 an indigent applicant under this section.”.

19 **“§ 3600A. Prohibition on destruction of biological ma-**
20 **terial**

21 “(a) PROHIBITION.—

22 “(1) IN GENERAL.—Notwithstanding any other
23 provision of law, during the period described in
24 paragraph (2), the Government shall not destroy any
25 biological material preserved if the defendant is serv-

1 ing a term of imprisonment following conviction in
2 that case.

3 “(2) PERIOD DESCRIBED.—The period de-
4 scribed in this paragraph is the period beginning on
5 the date of enactment of this section and ending on
6 the later of—

7 “(A) the expiration of the 36-month period
8 beginning on that date of enactment; or

9 “(B) the date on which any proceedings
10 under section 3600 relating to the case are
11 completed.

12 “(b) SANCTIONS FOR INTENTIONAL VIOLATION.—
13 The court may impose appropriate sanctions, including
14 criminal contempt, for an intentional violation of sub-
15 section (a).”.

16 (2) TECHNICAL AND CONFORMING AMEND-
17 MENT.—The analysis for part II of title 18, United
18 States Code, is amended by inserting after the item
19 relating to section 228 the following:

“**228A. Post-conviction DNA testing 3600**”.

20 (b) APPLICABILITY.—The amendments made by this
21 section shall take effect on the date of enactment of this
22 Act and shall apply with respect to any judgment of con-
23 viction entered before, on, or after that date of enactment.

1 (c) REPEAL.—Effective 36 months after the date of
2 enactment of this Act, this section and the amendments
3 made by this section are repealed.

4 **SEC. 102. DNA BACKLOG ELIMINATION.**

5 Section 2 of the DNA Analysis Backlog Elimination
6 Act of 2000 (42 U.S.C. 14135) is amended in subsection
7 (b)—

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

10 (2) in paragraph (5), by striking the period and
11 inserting “; and”; and

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

13 “(6) provide assurances that the State shall
14 adopt DNA testing guidelines consistent with the
15 Federal guidelines established under chapter 228A
16 of title 18, United States Code.”.

17 **TITLE II—ENSURING COMP-
18 PETENT LEGAL SERVICES IN
19 CAPITAL CASES**

20 **SEC. 201. COMPETENT COUNSEL GRANT PROGRAM.**

21 The State Justice Institute Act of 1984 (42 U.S.C.
22 10701 et seq.) is amended by inserting after section 207
23 the following:

1 **“SEC. 207A. COMPETENT COUNSEL GRANT PROGRAM.**

2 “(a) GRANTS AUTHORIZED.—The Institute is au-
3 thorized to award grants to States to assist in the adop-
4 tion of national minimum standards for competent counsel
5 in non-Federal capital cases.

6 “(b) USE OF FUNDS.—Grants awarded under sub-
7 section (a) may be used—

8 “(1) to fund actual compliance with national
9 minimum standards; and

10 “(2) to provide counsel with legal training in—

11 “(A) capital defense;

12 “(B) the use of forensic evidence;

13 “(C) the efficient and responsible use of
14 the judicial system; and

15 “(D) legal ethics.

16 “(c) NATIONAL MINIMUM STANDARDS.—

17 “(1) IN GENERAL.—The Institute shall estab-
18 lish national minimum standards for competent
19 counsel in non-Federal capital cases.

20 “(2) ESTABLISHMENT OF STANDARDS.—In es-
21 tablishing national minimum standards, the Institute
22 shall—

23 “(A) give strong consideration to existing
24 statutory standards for Federal capital cases,
25 as well as American Bar Association guidelines
26 and other published standards; and

1 “(B) consult a balanced group of Federal
2 and State prosecutors, criminal defense counsel,
3 and Federal and State judges, including the
4 Conference of Chief Justices and the National
5 Association of Attorneys General.

6 “(3) REQUIREMENTS.—National minimum
7 standards established under this subsection shall
8 include—

9 “(A) the appointment of at least 1 defense
10 attorney with experience in capital cases;

11 “(B) a system for approving and monitoring the continuing competence of counsel eligible for appointment in capital cases by the highest appellate court in the State or another designated entity; and

16 “(C) defense access to appropriate investigative and scientific resources.

18 “(4) DEADLINE.—The Institute shall establish
19 the national minimum standards no more than 6
20 months after the date of enactment of this section.

21 “(d) APPLICATION.—

22 “(1) IN GENERAL.—Each eligible State desiring
23 a grant under this section shall submit an application to the Director at such time, in such manner,

1 and accompanied by such information as the Director
2 may reasonably require.

3 “(2) CONSIDERATION.—The Institute may
4 award grants only to States that agree to establish
5 local mechanisms to achieve ongoing compliance with
6 the national minimum standards established by the
7 Institute under this section.

8 “(e) ANNUAL REPORT.—

9 “(1) IN GENERAL.—The Institute shall submit
10 an annual report to the Congress and to the Attorney
11 General detailing the status of capital defense in
12 each State that provides for capital punishment.

13 “(2) CONTENTS.—The annual report submitted
14 under this subsection shall include—

15 “(A) the extent to which certified counsel
16 are used in capital cases;

17 “(B) the extent of frivolous or vexatious
18 litigation by appointed counsel;

19 “(C) the extent of reversal of cases on appeal
20 where certified counsel were appointed and
21 in cases where non-certified counsel were appointed;
22 and

23 “(D) the extent of any disparity in assets
24 available to the prosecution and defense at the
25 trial stage and the appellate stage.”.

1 **SEC. 202. AUTHORIZATION OF APPROPRIATIONS.**

2 There are authorized to be appropriated—

3 (1) \$50,000,000 for fiscal year 2002 to carry
4 out section 207A(a) of the State Justice Institute
5 Act of 1984, as added by this title;6 (2) \$1,000,000 for fiscal year 2002 for the
7 State Justice Institute to establish national min-
8 imum standards for competent counsel under section
9 207A(c) of the State Justice Institute Act of 1984,
10 as added by this title; and11 (3) such sums as are necessary to carry out this
12 title in fiscal years after 2002.

○