S. 2108

At the request of Ms. STABENOW, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of S. 2108, a bill to amend the Agriculture and Consumer Protection Act of 1973 to assist the neediest of senior citizens by modifying the eligibility criteria for supplemental foods provided under the commodity supplemental food program to take into account the extraordinarily high out-of-pocket medical expenses that senior citizens pay, and for other purposes.

S. 2116

At the request of Mr. KERRY, the names of the Senator from Maryland (Mr. SARBANES) and the Senator from Minnesota (Mr. WELLSTONE) were added as cosponsors of S. 2116, a bill to reform the program of block grants to States for temporary assistance for needy families to help States address the importance of adequate, affordable housing in promoting family progress towards self-sufficiency, and for other purposes.

S. 2182

At the request of Mr. WYDEN, the names of the Senator from Virginia (Mr. ALLEN) and the Senator from New York (Mrs. CLINTON) were added as cosponsors of S. 2182, a bill to authorize funding for computer and network security research and development and research fellowship programs, and for other purposes.

S. 2194

At the request of Mr. MCCONNELL, the names of the Senator from Kentucky (Mr. BUNNING) and the Senator from Arkansas (Mr. HUTCHINSON) were added as cosponsors of S. 2194, a bill to hold accountable the Palestine Liberation Organization and the Palestinian Authority, and for other purposes.

S. 2200

At the request of Mr. BAUCUS, the names of the Senator from West Virginia (Mr. ROCKEFELLER) and the Senator from Oregon (Mr. SMITH) were added as cosponsors of S. 2200, a bill to amend the Internal Revenue Code of 1986 to clarify that the parsonage allowance exclusion is limited to the fair rental value of the property.

S. 2213

At the request of Mr. SESSIONS, the name of the Senator from North Carolina (Mr. HELMS) was added as a cosponsor of S. 2213, a bill to amend the Internal Revenue Code of 1986 to exclude from gross income certain overseas pay of members of the Armed Forces of the United States.

S. 2329

At the request of Mr. BREAUX, the name of the Senator from Florida (Mr. GRAHAM) was added as a cosponsor of S. 2329, a bill to improve seaport security.

S. 2428

At the request of Mr. KERRY, the names of the Senator from Hawaii (Mr. AKAKA), the Senator from Mississippi (Mr. COCHRAN), the Senator from Virginia (Mr. WARNER), and the Senator from New Hampshire (Mr. GREGG) were added as cosponsors of S. 2428, a bill to amend the National Sea Grant College Program Act.

S. 2429

At the request of Mr. HUTCHINSON, the name of the Senator from Alabama (Mr. SESSIONS) was added as a cosponsor of S. 2429, a bill to amend the Internal Revenue Code of 1986 to allow an above-the-line deduction from certain expenses in connection with the determination, collection, or refund of any tax.

S. 2431

At the request of Mr. LEAHY, the name of the Senator from Delaware (Mr. BIDEN) was added as a cosponsor of S. 2431, a bill to amend the Omnibus Crime Control and Safe Streets Act of 1968 to ensure that chaplains killed in the line of duty receive public safety officer death benefits.

S. 2439

At the request of Mr. SPECTER, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 2439, a bill to prohibit human cloning while preserving important areas of medical research, including stem sell research.

S.J. RES. 10

At the request of Mr. KENNEDY, the name of the Senator from New Jersey (Mr. TORRICELLI) was added as a cosponsor of S.J. Res. 10, a joint resolution proposing an amendment to the Constitution of the United States relative to equal rights for women and men.

S. RES. 247

At the request of Mr. HUTCHINSON, his name was added as a cosponsor of S. Res. 247, a resolution expressing solidarity with Israel in its fight against terrorism.

At the request of Mr. GRASSLEY, his name was added as a cosponsor of S. Res. 247, supra.

At the request of Mr. SARBANES, his name was added as a cosponsor of S. Res. 247, supra.

At the request of Mr. LIEBERMAN, the names of the Senator from Pennsylvania (Mr. SPECTER), the Senator from Alaska (Mr. STEVENS), the Senator from Missouri (Mr. BOND), and the Senator from Tennessee (Mr. FRIST) were added as cosponsors of S. Res. 247, supra.

At the request of Mr. VOINOVICH, his name was added as a cosponsor of S. Res. 247, supra.

At the request of Mr. BIDEN, his name was added as a cosponsor of S. Res. 247, supra.

At the request of Mr. KERRY, his name was added as a cosponsor of S. Res. 247, supra.

At the request of Mr. CAMPBELL, his name was added as a cosponsor of S. Res. 247, supra.

At the request of Mr. CRAIG, his name was added as a cosponsor of S. Res. 247, supra.

AMENDMENT NO. 3382

At the request of Mrs. DAYTON, the names of the Senator from Wisconsin (Mr. FEINGOLD), the Senator from Idaho (Mr. CRAPO), the Senator from South Dakota (Mr. JOHNSON), the Senator from Wyoming (Mr. ENZI), the Senator from Michigan (Ms. STABENOW), and the Senator from Pennsylvania (Mr. SPECTER) were added as cosponsors of amendment No. 3382 intended to be proposed to H.R. 3009, a bill to extend the Andean Trade Preference Act, to grant additional trade benefits under that Act, and for other purposes.

AMENDMENT NO. 3387

At the request of Mr. DORGAN, the names of the Senator from West Virginia (Mr. BYRD), the Senator from Minnesota (Mrs. DAYTON), and the Senator from Illinois (Mr. DURBIN) were added as cosponsors of amendment No. 3387 proposed to H.R. 3009, a bill to extend the Andean Trade Preference Act, to grant additional trade benefits under that Act, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. KENNEDY (for himself, Mr. BROWNBACK, Mr. HATCH, Mr. HELMS, Mr. EDWARDS, Mrs. FEINSTEIN, Mr. DEWINE, Mr. DURBIN, Mr. HAGEL, Mr. GRAHAM, and Mrs. CLINTON):

S. 2444. A bill to amend the Immigration and Nationality Act to improve the administration and enforcement of the immigration laws, to enhance the security of the United States, and to establish the Office of Children's Services within the Department of Justice, and for other purposes; to the Committee on the Judiciary.

Mr. KENNEDY. Mr. President, I'm honored to join Senator BROWNBACK and my other colleagues in introducing the Immigration Reform, Accountability, and Security Enhancement Act of 2002, which will strengthen our national security by bringing our immigration system into the 21st century. Recently, the Senate took an important step by unanimously passing legislation which strengthens the security of our borders, improves our ability to screen foreign nationals, and improves coordination among the several responsible entities. Restructuring the INS is the next critical step in establishing an agency that can act effectively and fairly to secure our borders and provide better services to immigrants.

There is strong bipartisan agreement that the INS must be reformed. But restructuring must be done correctly. The INS handles the enforcement of our immigration laws and the adjudication of benefits and services. INS's dual missions have long suffered under the current structure.

On the enforcement side, September 11 clearly demonstrated that our immigration laws are being applied inconsistently. Some of the terrorists were residing here legally, others had overstayed their visas, and the status of others is still unknown. Improving the structure of the INS will help ensure

greater accountability and the consistent and effective enforcement of our immigration laws.

The INS service functions have also suffered. Courteous behavior has too often been the exception, rather than the rule. Application fees steadily increase, yet poor service and long delays have persisted. Massive backlogs have forced individuals to languish for years waiting for their naturalization and permanent resident applications to be processed. Files have been lost. Fingerprints have expired.

To address the distinct and at times conflicting responsibilities, successful reform must separate the enforcement functions from the service and adjudication functions. The result will be increased accountability and efficiency, as well as clarity of purpose.

But, meaningful reform must also include a strong central authority to coordinate these dual functions. Our legislation requires that one high-level person take charge of the Nation's immigration laws to ensure uniform policy determinations and implementation, accountability, coordination, and fiscal responsibility. The new agency's director, like the FBI director, will have direct access to high-level officials in the executive branch.

I congratulate the House of Representatives for acting quickly and decisively on restructuring legislation. The House bill abolishes the Immigration and Naturalization Service and establishes separate bureaus for services and enforcement which would operate as parallel structures with limited coordination. An Associate Attorney General would oversee the two bureaus. The goals of the House bill are very similar to our bill, and I look forward to working with my colleagues in the House and the administration to pass effective legislation and put these reforms into law.

The overarching difference between our two bills is the power and authority vested in the agency head and the coordination between the two bureaus. Our bill expands and improves the coordination between the bureaus through strong central leadership.

The Immigration Reform, Accountability, and Security Enhancement Act establishes a Director of Immigration Affairs, a Deputy Director heading the Bureau of Services and Adjudications, and a Deputy Director heading the Bureau of Enforcement and Border Affairs. The Director will serve as the principal advisor to the Attorney General in developing and implementing U.S. immigration law and policy. The Director will be the strong central authority over the two bureaus, and will be able to integrate information systems, policies, and administrative infrastructure.

The coordination and harmonization of policy, services and enforcement will also be enhanced by the establishment of several offices which will assist the two bureaus. The General Counsel, appointed by the Attorney General in consultation with the Agency Director, will serve as the chief legal officer for the Agency, providing specialized advice on all legal matters involving U.S. immigration laws. A Chief Financial Officer will direct, supervise, and coordinate all budgetary duties for the Agency. A Chief of Policy and Strategy will promote a national immigration policy, identify priorities and coordinate policy within the Agency. A Chief of Congressional, Intergovernmental, and Public Affairs will be the central liaison with Congress and other Federal agencies, and the media.

This bill will enhance the accountability of the new Agency and will renew our national commitment to civil rights in the immigration process. This bill establishes an autonomous Office of the Ombudsman to be located within the Department of Justice. The Ombudsman will be appointed by and report directly to the Attorney General. The Ombudsman will identify and report on serious or systematic problems encountered by the public and will assist individuals in resolving problems with the Agency. The Ombudsman also will report annually to Congress on the steps taken to correct the problems and propose changes in the practices of the Agency to correct such problems.

The vital role of statistical information in the modern age is recognized. This bill establishes a Director of Immigration Statistics, appointed by the Attorney General, who will report directly to the Bureau of Justice Statistics of the Department of Justice. Using 21st century technology, the newly established Office of Immigration Statistics will not only record and analyze statistical information, but will also establish standards of reliability and validation and will coordinate with the Service Bureau, the Enforcement Bureau, and the Executive Office for Immigration Review.

This legislation also recognizes the need for alternatives to the detention of asylum seekers. The U.S. asylum program is a bipartisan success story, it provides new hope and new life for the persecuted and oppressed and it advances our foreign policy objectives by protecting human rights and promoting the American dream of opportunity. The United States is a leader in providing asylum to refugees worldwide. Still, we constantly need to strive to improve this very important program. This bill would require the consideration of specific alternatives to detention, including parole with appearance assistance provided by private nonprofit voluntary agencies.

Finally, we are including much needed reform to address the treatment of unaccompanied minors in INS custody. I commend Senator FEINSTEIN's longstanding commitment to this important issue and am honored to include her legislation, the Unaccompanied Alien Child Protection Act, as part of our proposal to restructure the INS. These provisions will address many of the problems facing unaccompanied minors and will help bring U.S. treatment of unaccompanied alien children into line with international standards. The bill establishes a new Office of Children's Services within the Department of Justice to ensure that Federal authorities recognize the special needs and circumstances of unaccompanied alien children when making decisions regarding their custody and repatriation and ensures that unaccompanied alien children have access to appoint counsel and guardians ad litem.

This bill is needed to ensure that our nation is prepared to meet the challenges that are before us. The Immigration Reform, Accountability, and Security Enhancement Act will help remedy many of the problems that currently plague the Immigration and Naturalization Service and will ensure that INS's responsibilities are effectively addressed and coordinated, executed with efficiency and courtesy, and uphold our great tradition of immigration and refugee protection.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2444

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—Titles I through III of this Act may be cited as the ''Immigration Reform, Accountability, and Security Enhancement Act of 2002''.

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

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to improve the administration and enforcement of the immigration laws of the United States and to enhance the security of the United States;

(2) to abolish the Immigration and Naturalization Service and to establish the Immigration Affairs Agency within the Department of Justice; and

(3) to establish the Office of Children's Services within the Department of Justice to coordinate and implement Government actions involving unaccompanied alien children.

SEC. 3. DEFINITIONS.

In this Act:

(1) DIRECTOR.—The term ''Director'' means the Director of Immigration Affairs appointed under section 112 of the Immigration and Nationality Act, as added by section 103 of this Act.

(2) ENFORCEMENT BUREAU.—The term ''Enforcement Bureau'' means the Bureau of Enforcement and Border Affairs established in section 114 of the Immigration and Nationality Act, as added by section 105 of this Act.

(3) FUNCTION.—The term ''function'' includes any duty, obligation, power, authority, responsibility, right, privilege, activity, or program.

(4) IMMIGRATION ENFORCEMENT FUNCTIONS.—The term ''immigration enforcement functions'' has the meaning given the term in section 114(b)(2) of the Immigration and Nationality Act, as added by section 105 of this Act.

(5) IMMIGRATION LAWS OF THE UNITED STATES.—The term ''immigration laws of the United States'' has the meaning given the term in section 111(e) of the Immigration and Nationality Act, as added by section 102 of this Act.

(6) IMMIGRATION POLICY, ADMINISTRATION, AND INSPECTION FUNCTIONS.—The term ''immigration policy, administration, and inspection functions'' has the meaning given the term in section 112(b)(3) of the Immigration and Nationality Act, as added by section 103 of this Act.

(7) IMMIGRATION SERVICE AND ADJUDICATION FUNCTIONS.—The term ''immigration service and adjudication functions'' has the meaning given the term in section 113(b)(2) of the Immigration and Nationality Act, as added by section 104 of this Act.

(8) OFFICE.—The term ''office'' includes any office, administration, agency, bureau, institute, council, unit, organizational entity, or component thereof.

(9) SERVICE BUREAU.—The term ''Service Bureau'' means the Bureau of Immigration Services and Adjudications established in section 113 of the Immigration and Nationality Act, as added by section 104 of this Act.

TITLE I—IMMIGRATION AFFAIRS AGENCY

Subtitle A—Organization

SEC. 101. ABOLITION OF INS.

(a) IN GENERAL.—The Immigration and Naturalization Service is abolished.

(b) REPEAL.—Section 4 of the Act of February 14, 1903, as amended (32 Stat. 826; relating to the establishment of the Immigration and Naturalization Service), is repealed.

SEC. 102. ESTABLISHMENT OF IMMIGRATION AFFAIRS AGENCY.

(a) ESTABLISHMENT.—Title I of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended—

(1) by inserting ''**CHAPTER 1—DEFINITIONS AND GENERAL AUTHORITIES**'' after ''**TITLE I—GENERAL"**; and

(2) by adding at the end the following:

"CHAPTER 2—IMMIGRATION AFFAIRS AGENCY

"SEC. 111. ESTABLISHMENT OF IMMIGRATION AFFAIRS AGENCY.

''(a) ESTABLISHMENT.—There is established within the Department of Justice the Immigration Affairs Agency.

''(b) PRINCIPAL OFFICERS.—The principal officers of the Agency are the following:

''(1) The Director of Immigration Affairs appointed under section 112.

''(2) The Deputy Director of Immigration Services and Adjudications appointed under section 113.

''(3) The Deputy Director of Enforcement and Border Affairs appointed under section 114.

''(c) FUNCTIONS.—Under the authority of the Attorney General, the Agency shall perform the following functions:

''(1) Immigration policy, administration, and inspection functions, as defined in section 112(b).

''(2) Immigration service and adjudication functions, as defined in section 113(b).

''(3) Immigration enforcement functions, as defined in section 114(b).

''(d) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There are authorized to be appropriated to the Department of Justice such sums as may be necessary to carry out—

''(A) the functions of the Agency; and

''(B) such other functions of the Attorney General or the Department of Justice under the immigration laws of the United States as are not covered by subparagraph (A).

''(2) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to paragraph (1) are authorized to remain available until expended.

''(e) IMMIGRATION LAWS OF THE UNITED STATES DEFINED.—In this chapter, the term 'immigration laws of the United States' means the following:

''(1) This Act.

''(2) Such other statutes, Executive orders, regulations, or directives, treaties, or other international agreements to which the United States is a party, insofar as they relate to the admission to, detention in, or removal from the United States of aliens, insofar as they relate to the naturalization of aliens, or insofar as they otherwise relate to the status of aliens.''.

(b) CONFORMING AMENDMENTS.—(1) The Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended—

(1) by striking section 101(a)(34) (8 U.S.C. 1101(a)(34)) and inserting the following:

''(34) The term 'Agency' means the Immigration Affairs Agency established by section 111.'';

(2) in section 101(a)(17) (8 U.S.C. 1101(a)(17)), by striking ''The'' and inserting ''Except as otherwise provided in section 111(e), the; and

(3) by striking ''Immigration and Naturalization Service'', ''Service'', and ''Service's'' each place they appear and inserting ''Immigration Affairs Agency'', ''Agency'', and ''Agency's'', respectively.

(4) Section 6 of the Act entitled ''An Act to authorize certain administrative expenses for the Department of Justice, and for other purposes'', approved July 28, 1950 (64 Stat. 380), is amended—

(A) by striking ''Immigration and Naturalization Service'' and inserting ''Immigration Affairs Agency'';

(B) by striking clause (a); and

(C) by redesignating clauses (b), (c), (d), and (e) as clauses (a), (b), (c), and (d), respectively.

(c) REFERENCES.—Any reference in any statute, reorganization plan, Executive order, regulation, agreement, determination, or other official document or proceeding to the Immigration and Naturalization Service shall be deemed to refer to the Immigration Affairs Agency.

SEC. 103. DIRECTOR OF IMMIGRATION AFFAIRS.

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 102 of this Act, is amended by adding at the end the following:

"SEC. 112. DIRECTOR OF IMMIGRATION AFFAIRS.

''(a) DIRECTOR OF IMMIGRATION AFFAIRS.—The Agency shall be headed by a Director of

Immigration Affairs who shall be appointed in accordance with section 103(c) of the Immigration and Nationality Act.

''(b) RESPONSIBILITIES OF THE DIRECTOR.—

''(1) IN GENERAL.—The Director shall be charged with any and all responsibilities and authority in the administration of the Agency and of this Act which are conferred upon the Attorney General as may be delegated to the Director by the Attorney General or which may be prescribed by the Attorney General.

''(2) DUTIES.—Subject to the authority of the Attorney General under paragraph (1), the Director shall have the following duties:

''(A) IMMIGRATION POLICY.—The Director shall develop and implement policy under the immigration laws of the United States. The Director, shall propose, promulgate, and issue rules, regulations, and statements of policy with respect to any function within the jurisdiction of the Agency.

''(B) ADMINISTRATION.—The Director shall have responsibility for—

''(i) the administration and enforcement of the functions conferred upon the Agency under section 111(c) of this Act; and

''(ii) the administration of the Agency, including the direction, supervision, and coordination of the Bureau of Immigration Services and Adjudications and the Bureau of Enforcement and Border Affairs.

''(C) INSPECTIONS.—The Director shall be directly responsible for the administration and enforcement of the functions of the Attorney General and the Agency under the immigration laws of the United States with respect to the inspection of aliens arriving at ports of entry of the United States.

''(D) OTHER DELEGATED DUTIES AND POWERS.—The Director shall carry out such other duties and exercise such powers as the Attorney General may prescribe.

''(3) ACTIVITIES.—As part of the duties described in paragraph (2), the Director shall do the following:

''(A) RESOURCES AND PERSONNEL MANAGEMENT.—The Director shall manage the resources, personnel, and other support requirements of the Agency.

''(B) INFORMATION RESOURCES MANAGEMENT.—Except as otherwise provided in section 305 of the Omnibus Crime Control and Safe Streets Act of 1968, the Director shall manage the information resources of the Agency, including the maintenance of records and databases and the coordination of records and other information within the Agency, and shall ensure that the Agency obtains and maintains adequate information technology systems to carry out its functions.

''(C) COORDINATION OF RESPONSE TO CIVIL RIGHTS VIOLATIONS.—The Director shall coordinate, with the Assistant Attorney General, the Civil Rights Division, or other officials or components of the Department of Justice, as appropriate, the resolution of immigration issues that involve civil rights violations.

''(3) DEFINITION.—In this chapter, the term ''immigration policy, administration, and inspection functions'' means the duties, activities, and powers described in this subsection.

''(c) GENERAL COUNSEL.—

''(1) IN GENERAL.—There shall be within the Agency a General Counsel, who shall be appointed by the Attorney General, in consultation with the Director.

''(2) FUNCTION.—The General Counsel shall—

''(A) serve as the chief legal officer for the Agency; and

''(B) be responsible for providing specialized legal advice, opinions, determinations, regulations, and any other assistance to the Director with respect to legal matters affecting the Immigration Affairs Agency, and any of its components.

''(d) FINANCIAL OFFICERS FOR THE IMMIGRATION AFFAIRS AGENCY.—

''(1) CHIEF FINANCIAL OFFICER.—

''(A) IN GENERAL.—There shall be within the Agency a Chief Financial Officer for the Immigration Affairs Agency. The position of Chief Financial Officer shall be a career reserved position in the Senior Executive Service and shall have the authorities and functions described in section 902 of title 31, United States Code, in relation to financial activities of the Agency. For purposes of section 902(a)(1) of such title, the Director shall be deemed to be the head of the agency.

''(B) FUNCTIONS.—The Chief Financial Officer shall be responsible for directing, supervising, and coordinating all budget formulas and execution for the Agency.

''(2) DEPUTY CHIEF FINANCIAL OFFICER.—The Agency shall be deemed to be an agency for purposes of section 903 of such title (relating to Deputy Chief Financial Officers).

''(e) CHIEF OF POLICY AND STRATEGY.—

''(1) IN GENERAL.—There shall be within the Agency a Chief of Policy and Strategy. Under the authority of the Director, the Chief of Policy and Strategy shall be responsible for—

''(A) establishing national immigration policy and priorities;

''(B) performing policy research and analysis on issues arising under the immigration laws of the United States; and

''(C) coordinating immigration policy between the Agency, the Service Bureau, and the Enforcement Bureau.

''(2) WITHIN THE SENIOR EXECUTIVE SERVICE.—The position of Chief of Policy and Strategy shall be a Senior Executive Service position under section 5382 of title 5, United States Code.

''(f) CHIEF OF CONGRESSIONAL, INTERGOVERNMENTAL, AND PUBLIC AFFAIRS.—

''(1) IN GENERAL.—There shall be within the Agency a Chief of Congressional, Intergovernmental, and Public Affairs. Under the authority of the Director, the Chief of Congressional, Intergovernmental, and Public Affairs shall be responsible for—

''(A) providing to Congress information relating to issues arising under the immigration laws of the United States, including information on specific cases;

''(B) serving as a liaison with other Federal agencies on immigration issues; and

''(C) responding to inquiries from, and providing information to, the media on immigration issues.

''(2) WITHIN THE SENIOR EXECUTIVE SERVICE.—The position of Chief of Congressional, Intergovernmental, and Public Affairs shall be a Senior Executive Service position under section 5382 of title 5, United States Code.''.

(b) COMPENSATION OF THE DIRECTOR.—Section 5314 of title 5, United States Code, is amended by adding at the end the following:

''Director of Immigration Affairs, Department of Justice.''.

(c) COMPENSATION OF GENERAL COUNSEL AND CHIEF FINANCIAL OFFICER.—Section 5316 of title 5, United States Code, is amended by adding at the end the following:

''General Counsel, Immigration Affairs Agency.

''Chief Financial Officer, Immigration Affairs Agency.''.

(d) REPEALS.—The following provisions of law are repealed:

(1) Section 7 of the Act of March 3, 1891, as amended (26 Stat. 1085; relating to the establishment of the office of the Commissioner of Immigration and Naturalization).

(2) Section 201 of the Act of June 20, 1956 (70 Stat. 307; relating to the compensation of assistant commissioners and district directors).

(3) Section 1 of the Act of March 2, 1895 (28 Stat. 780; relating to special immigrant inspectors).

(e) CONFORMING AMENDMENTS.—(1)(A) Section 101(a)(8) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(8)) is amended to read as follows:

''(8) The term 'Director' means the Director of Immigration Affairs who is appointed under section 103(c).''.

(B) Except as provided in subparagraph (C), the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by striking ''Commissioner of Immigration and Naturalization'' and ''Commissioner'' each place they appear and inserting ''Director of Immigration Affairs'' and ''Director'', respectively.

(C) The amendments made by subparagraph (B) do not apply to references to the ''Commissioner of Social Security'' in section 290(c) of the Immigration and Nationality Act (8 U.S.C. 1360(c)).

(2) Section 103 of the Immigration and Nationality Act (8 U.S.C. 1103) is amended—

(A) in subsection (c), by striking ''Commissioner'' and inserting ''Director'';

(B) in the section heading, by striking ''COMMISSIONER'' and inserting ''DIRECTOR'';

(C) in subsection (d), by striking ''Commissioner'' and inserting ''Director''; and

(D) in subsection (e), by striking ''Commissioner'' and inserting ''Attorney General''.

(3) Sections 104 and 105 of the Immigration and Nationality Act (8 U.S.C. 1104, 1105) are amended by striking ''Director'' each place it appears and inserting ''Assistant Secretary of State for Consular Affairs''.

(4) Section 104(c) of the Immigration and Nationality Act (8 U.S.C. 1104(c)) is amended—

(A) in the first sentence, by striking ''Passport Office, a Visa Office,'' and inserting ''a Passport Services office, a Visa Services office, an Overseas Citizen Services office,''; and

(B) in the second sentence, by striking ''the Passport Office and the Visa Office'' and inserting ''the Passport Services office and the Visa Services office''.

(5) Section 5315 of title 5, United States Code, is amended by striking the following:

''Commissioner of Immigration and Naturalization, Department of Justice.''.

(f) REFERENCES.—Any reference in any statute, reorganization plan, Executive order, regulation, agreement, determination, or other official document or proceeding to the Commissioner of Immigration and Naturalization shall be deemed to refer to the Director of Immigration Affairs.

SEC. 104. BUREAU OF IMMIGRATION SERVICES AND ADJUDICATIONS.

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 102 and amended by section 103, is further amended by adding at the end the following:

''SEC. 113. BUREAU OF IMMIGRATION SERVICES AND ADJUDICATIONS.

''(a) ESTABLISHMENT OF BUREAU.—

''(1) IN GENERAL.—There is established within the Agency a bureau to be known as the Bureau of Immigration Services and Adjudications (in this chapter referred to as the 'Service Bureau').

''(2) DEPUTY DIRECTOR.—The head of the Service Bureau shall be the Deputy Director of Immigration Services and Adjudications (in this chapter referred to as the 'Deputy Director of the Service Bureau'), who—

''(A) shall be appointed by the Attorney General, in consultation with the Director; and

''(B) shall report directly to the Director.

''(b) RESPONSIBILITIES OF THE DEPUTY DIRECTOR.—

''(1) IN GENERAL.—Subject to the authority of the Director, the Deputy Director of the Service Bureau shall administer the immigration service and adjudication functions of the Agency.

''(2) IMMIGRATION SERVICE AND ADJUDICATION FUNCTIONS DEFINED.—In this chapter, the term 'immigration service and adjudication functions' means the following functions under the immigration laws of the United States (as defined in section 111(e)):

''(A) Adjudications of petitions for classification of nonimmigrant and immigrant status.

''(B) Adjudications of applications for adjustment of status and change of status.

''(C) Adjudications of naturalization applications.

''(D) Adjudications of asylum and refugee applications.

''(E) Adjudications performed at Service centers.

''(F) Determinations concerning custody and parole of asylum seekers who do not have prior nonpolitical criminal records and who have been found to have a credible fear of persecution, including determinations under section 236B.

''(G) All other adjudications under the immigration laws of the United States (as defined in section 111(e)).

''(c) CHIEF BUDGET OFFICER OF THE SERVICE BUREAU.—There shall be within the Service Bureau a Chief Budget Officer. Under the authority of the Chief Financial Officer of the Agency, the Chief Budget Officer of the Service Bureau shall be responsible for monitoring and supervising all financial activities of the Service Bureau.

''(d) QUALITY ASSURANCE.—There shall be within the Service Bureau an Office of Quality Assurance that shall develop procedures and conduct audits to—

''(1) ensure that the Agency's policies with respect to the immigration service and adjudication functions of the Agency are properly implemented; and

''(2) ensure that Service Bureau policies or practices result in sound records management and efficient and accurate service.

''(e) OFFICE OF PROFESSIONAL RESPONSIBILITY.—There shall be within the Service Bureau an Office of Professional Responsibility that shall have the responsibility for ensuring the professionalism of the Service Bureau and for receiving and investigating charges of misconduct or ill treatment made by the public.

''(f) TRAINING OF PERSONNEL.—The Deputy Director of the Service Bureau, in consultation with the Director, shall have responsibility for determining the training for all personnel of the Service Bureau.''.

(b) COMPENSATION OF DEPUTY DIRECTOR OF SERVICE BUREAU.—Section 5315 of title 5, United States Code, is amended by adding at the end the following:

''Deputy Director of Immigration Services and Adjudications, Immigration Affairs Agency.''.

(c) SERVICE BUREAU OFFICES.—

(1) IN GENERAL.—The Director, acting through the Deputy Director of the Service Bureau, shall establish Service Bureau offices, including suboffices and satellite offices, in appropriate municipalities and locations in the United States. In the selection of sites for the Service Bureau offices, the Director shall consider the location's proximity and accessibility to the community served, the workload for which that office shall be responsible, whether the location would significantly reduce the backlog of cases in that given geographic area, whether the location will improve customer service, and whether the location is in a geographic area with an increase in the population to be served. The Director shall conduct periodic reviews to assess whether the location and size of the respective Service Bureau offices adequately serve customer service needs.

(2) TRANSITION PROVISION.—In determining the location of Service Bureau offices, including suboffices and satellite offices, the Director shall first consider maintaining and upgrading offices in existing geographic locations that satisfy the provisions of paragraph (1). The Director shall also explore the feasibility and desirability of establishing new Service Bureau offices, including suboffices and satellite offices, in new geographic locations where there is a demonstrated need.

SEC. 105. BUREAU OF ENFORCEMENT AND BORDER AFFAIRS.

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 102 and amended by sections 103 and 104, is further amended by adding at the end the following:

''SEC. 114. BUREAU OF ENFORCEMENT AND BORDER AFFAIRS.

''(a) ESTABLISHMENT OF BUREAU.—

''(1) IN GENERAL.—There is established within the Agency a bureau to be known as the Bureau of Enforcement and Border Affairs (in this chapter referred to as the 'Enforcement Bureau').

''(2) DEPUTY DIRECTOR.—The head of the Enforcement Bureau shall be the Deputy Director of the Bureau of Enforcement and Border Affairs (in this chapter referred to as the 'Deputy Director of the Enforcement Bureau'), who—

''(A) shall be appointed by the Attorney General, in consultation with the Director; and

''(B) shall report directly to the Director.

''(b) RESPONSIBILITIES OF THE DEPUTY DIRECTOR.—

''(1) IN GENERAL.—Subject to the authority of the Director, the Deputy Director of the Enforcement Bureau shall administer the immigration enforcement functions of the Agency.

''(2) IMMIGRATION ENFORCEMENT FUNCTIONS DEFINED.—In this chapter, the term 'immigration enforcement functions' means the following functions under the immigration laws of the United States (as defined in section 111(e)):

''(A) The border patrol function.

''(B) The detention function, except as specified in section 113(b)(2)(F).

''(C) The removal function.

''(D) The intelligence function.

''(E) The investigations function.

''(c) CHIEF BUDGET OFFICER OF THE ENFORCEMENT BUREAU.—There shall be within the Enforcement Bureau a Chief Budget Officer. Under the authority of the Chief Financial Officer of the Agency, the Chief Budget Officer of the Enforcement Bureau shall be responsible for monitoring and supervising all financial activities of the Enforcement Bureau.

''(d) OFFICE OF PROFESSIONAL RESPONSIBILITY.—There shall be within the Enforcement Bureau an Office of Professional Responsibility that shall have the responsibility for ensuring the professionalism of the Enforcement Bureau and receiving charges of misconduct or ill treatment made by the public and investigating the charges.

''(e) OFFICE OF QUALITY ASSURANCE.—There shall be within the Enforcement Bureau an Office of Quality Assurance that shall develop procedures and conduct audits to—

''(1) ensure that the Agency's policies with respect to immigration enforcement functions are properly implemented; and

''(2) ensure that Enforcement Bureau policies or practices result in sound record management and efficient and accurate recordkeeping.

''(f) TRAINING OF PERSONNEL.—The Deputy Director of the Enforcement Bureau, in consultation with the Director, shall have responsibility for determining the training for all personnel of the Enforcement Bureau.''.

(b) COMPENSATION OF DEPUTY DIRECTOR OF ENFORCEMENT BUREAU.—Section 5315 of title 5, United States Code, is amended by adding at the end the following:

''Director of Enforcement and Border Affairs, Immigration Affairs Agency.''.

(c) ENFORCEMENT BUREAU OFFICES.—

(1) IN GENERAL.—The Director, acting through the Deputy Director of the Enforcement Bureau, shall establish Enforcement Bureau offices, including suboffices and satellite offices, in appropriate municipalities and locations in the United States. In the selection of sites for the Enforcement Bureau offices, the Director shall be selected according to trends in unlawful entry and unlawful presence, alien smuggling, national security concerns, the number of Federal prosecutions of immigration-related offenses in a given geographic area, and other enforcement considerations. The Director shall conduct periodic reviews to assess whether the location and size of the respective Enforcement Bureau offices adequately serve enforcement needs.

(2) TRANSITION PROVISION.—In determining the location of Enforcement Bureau offices, including suboffices and satellite offices, the Director shall first consider maintaining and upgrading offices in existing geographic locations that satisfy the provisions of paragraph (1). The Director shall also explore the feasibility and desirability of establishing new Enforcement Bureau offices, including suboffices and satellite offices, in new geographic locations where there is a demonstrated need.

SEC. 106. OFFICE OF THE OMBUDSMAN WITHIN THE DEPARTMENT OF JUSTICE.

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 102 and amended by sections 103, 104 and 105, is further amended by adding at the end the following:

''SEC. 115. OFFICE OF THE OMBUDSMAN WITHIN THE DEPARTMENT OF JUSTICE.

''(a) IN GENERAL.—There is established within the Department of Justice the Office of the Ombudsman, which shall be headed by the Ombudsman.

''(b) OMBUDSMAN.—

''(1) APPOINTMENT.—The Ombudsman shall be appointed by the Attorney General. The Ombudsman shall report directly to the Attorney General.

''(2) COMPENSATION.—The Ombudsman shall be entitled to compensation at the same rate as the highest rate of basic pay established for the Senior Executive Service under section 5382 of title 5, United States Code, or, if the Attorney General so determines, at a rate fixed under section 9503 of such title.

''(c) FUNCTIONS OF OFFICE.—The functions of the Office of the Ombudsman shall include—

''(1) to assist individuals in resolving problems with the Agency or any component thereof;

''(2) to identify systemic problems encountered by the public in dealings with the Agency or any component thereof;

''(3) to propose changes in the administrative practices or regulations of the Agency, or any component thereof, to mitigate problems identified under paragraph (2);

''(4) to identify potential changes in statutory law that may be required to mitigate such problems; and

''(5) to monitor the coverage and geographic distribution of local offices of the Agency.

''(d) PERSONNEL ACTIONS.—The Ombudsman shall have the responsibility and authority to appoint local or regional representatives of the Ombudsman's Office as in the Ombudsman's judgment may be necessary to address and rectify problems.

''(e) ANNUAL REPORT.—Not later than December 31 of each year, the Ombudsman shall submit a report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate on the activities of the Ombudsman during the fiscal year ending in that calendar year. Each report shall contain a full and substantive analysis, in addition to statistical information, and shall contain—

''(1) a description of the initiatives that the Office of the Ombudsman has taken on improving the responsiveness of the Agency;

''(2) a summary of serious or systemic problems encountered by the public, including a description of the nature of such problems;

''(3) an accounting of the items described in paragraphs (1) and (2) for which action has been taken, and the result of such action;

''(4) an accounting of the items described in paragraphs (1) and (2) for which action remains to be completed;

''(5) an accounting of the items described in paragraphs (1) and (2) for which no action has been taken, the reasons for the inaction, and identify any Agency official who is responsible for such inaction;

''(6) recommendations as may be appropriate to resolve problems encountered by the public;

''(7) recommendations as may be appropriate to resolve problems encountered by the public, including problems created by backlogs in the adjudication and processing of petitions and applications;

''(8) recommendations to resolve problems caused by inadequate funding or staffing; and

''(9) such other information as the Ombudsman may deem advisable.

''(f) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There are authorized to be appropriated to the Office of the Ombudsman such sums as may be necessary to carry out its functions.

''(2) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to paragraph (1) are authorized to remain available until expended.''.

SEC. 107. OFFICE OF IMMIGRATION STATISTICS WITHIN THE BUREAU OF JUSTICE STATISTICS.

(a) IN GENERAL.—Part C of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3731 et seq.) is amended by adding at the end the following new section:

''SEC. 305. OFFICE OF IMMIGRATION STATISTICS.

''(a) ESTABLISHMENT.—There is established within the Bureau of Justice Statistics of the Department of Justice an Office of Immigration Statistics (in this section referred to as the 'Office'), which shall be headed by a Director who shall be appointed by the Attorney General and who shall report to the Director of Justice Statistics.

''(b) RESPONSIBILITIES OF DIRECTOR.—The Director of the Office shall be responsible for the following:

''(1) STATISTICAL INFORMATION.—Maintenance of all immigration statistical information of the Immigration Affairs Agency and the Executive Office for Immigration Review.

''(2) STANDARDS OF RELIABILITY AND VALIDITY.—Establishment of standards of reliability and validity for immigration statistics collected by the Bureau of Immigration Services and Adjudications, the Bureau of Enforcement and Border Affairs of the Immigration Affairs Agency, and the Executive Office for Immigration Review.

''(c) RELATION TO THE IMMIGRATION AFFAIRS AGENCY AND THE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW.—

''(1) OTHER AUTHORITIES.—The Immigration Affairs Agency and the Executive Office for Immigration Review shall provide statistical information to the Office from the operational data systems controlled by the Immigration Affairs Agency and the Executive Office for Immigration Review, respectively, as requested by the Office, for the purpose of meeting the responsibilities of the Director of the Office.

''(2) DATABASES.—The Director of the Office, under the direction of the Attorney General, shall ensure the interoperability of the databases of the Immigration Affairs Agency, the Bureau of Immigration Services and Adjudications, the Bureau of Enforcement and Border Affairs, and the Executive Office for Immigration Review to permit the Director of the Office to perform the duties of such office.

(b) TRANSFER OF FUNCTIONS.—There are transferred to the Attorney General, for exercise through the Office of Immigration Statistics established by section 305 of the Omnibus Crime Control and Safe Streets Act of 1968, as added by subsection (a), the functions performed by the Statistics Branch of the Office of Policy and Planning of the Immigration and Naturalization Service, and the statistical functions performed by the Executive Office for Immigration Review, on the day before the effective date of this title.

(c) CONFORMING AMENDMENT.—Section 302(c) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3732(c)) is amended—

(1) by striking ''and'' at the end of paragraph (22);

(2) by striking the period at the end of paragraph (23) and inserting ''; and''; and

(3) by adding at the end the following:

''(24) collect, maintain, compile, analyze, publish, and disseminate information and statistics about immigration in the United States, including information and statistics involving the functions of the Immigration Affairs Agency and the Executive Office for Immigration Review.''.

SEC. 108. CLERICAL AMENDMENTS.

The table of contents of the Immigration and Nationality Act is amended—

(1) by inserting after the item relating to the heading for title I the following:

''CHAPTER 1—DEFINITIONS AND GENERAL AUTHORITIES'';

(2) by striking the item relating to section 103 and inserting the following:

''Sec. 103. Powers and duties of the Attorney General and the Director.'';

and

(3) by inserting after the item relating to section 106 the following:

''CHAPTER 2—IMMIGRATION AFFAIRS AGENCY

''Sec. 111. Establishment of Immigration Affairs Agency.

''Sec. 112. Director of Immigration Affairs.

''Sec. 113. Bureau of Immigration Services and Adjudications.

''Sec. 114. Bureau of Enforcement and Border Affairs.

''Sec. 115. Office of the Ombudsman within the Department of Justice.''.

Subtitle B—Transition Provisions

SEC. 111. TRANSFER OF FUNCTIONS.

(a) IN GENERAL.—All functions under the immigration laws of the United States vested by statute in, or exercised by, the Commissioner of Immigration and Naturalization or the Immigration and Naturalization Service (or any officer, employee, or component thereof), immediately prior to the effective date of this title, are transferred to the Immigration Affairs Agency on such effective date for exercise by the Director in accordance with section 112(b) of the Immigration and Nationality Act, as added by section 103 of this Act.

(b) EXERCISE OF AUTHORITIES.—Except as otherwise provided by law, the Director may, for purposes of performing any function transferred to the Immigration Affairs Agency under subsection (a), exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date of the transfer of the function pursuant to this title.

SEC. 112. TRANSFER OF PERSONNEL AND OTHER RESOURCES.

Subject to section 1531 of title 31, United States Code, upon the effective date of this title, there are transferred to the Director for appropriate allocation in accordance with section 115—

(1) the personnel of the Department of Justice employed in connection with the functions transferred pursuant to this title (and such other functions that the Attorney General determines are properly related to the functions of the Immigration Affairs Agency and that would, if so transferred, further the purposes of the Agency); and

(2) the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to the Immigration and Naturalization Service in connection with the functions transferred pursuant to this title.

SEC. 113. DETERMINATIONS WITH RESPECT TO FUNCTIONS AND RESOURCES.

The Director shall determine, in accordance with the corresponding criteria set forth in sections 112(b), 113(b), and 114(b) of the Immigration and Nationality Act (as added by this Act)—

(1) which of the functions transferred under section 111 are—

(A) immigration policy, administration, and inspection functions;

(B) immigration service and adjudication functions; and

(C) immigration enforcement functions; and

(2) which of the personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds transferred under section 112 were held or used, arose from, were available to, or were made available, in connection with the performance of the respective functions specified in paragraph (1) immediately prior to the effective date of this title.

SEC. 114. DELEGATION AND RESERVATION OF FUNCTIONS.

(a) IN GENERAL.—

(1) DELEGATION TO THE BUREAUS.—Subject to section 112(b)(1) of the Immigration and Nationality Act (as added by section 103 of this Act), the Director shall delegate—

(A) immigration service and adjudication functions to the Deputy Director of the Service Bureau; and

(B) immigration enforcement functions to the Deputy Director of the Enforcement Bureau.

(2) RESERVATION OF FUNCTIONS.—Subject to section 112(b)(1) of the Immigration and Nationality Act (as added by section 103 of this Act), immigration policy, administration, and inspection functions shall be reserved for exercise by the Director.

(b) NONEXCLUSIVE DELEGATIONS AUTHORIZED.—Delegations made under subsection (a)

may be on a nonexclusive basis as the Director may determine may be necessary to ensure the faithful execution of the Director's responsibilities and duties under law.

(c) EFFECT OF DELEGATIONS.—Except as otherwise expressly prohibited by law or otherwise provided in this title, the Director may make delegations under this subsection to such officers and employees of the office of the Director, the Service Bureau, and the Enforcement Bureau, respectively, as the Director may designate, and may authorize successive redelegations of such functions as may be necessary or appropriate. No delegation of functions under this subsection or under any other provision of this title shall relieve the official to whom a function is transferred pursuant to this title of responsibility for the administration of the function.

(d) STATUTORY CONSTRUCTION.—Nothing in this Act may be construed to limit the authority of the Director, acting directly or by delegation under the Attorney General, to establish such offices or positions within the Immigration Affairs Agency, in addition to those specified by this Act, as the Director may determine to be necessary to carry out the functions of the Agency.

SEC. 115. ALLOCATION OF PERSONNEL AND OTHER RESOURCES.

(a) AUTHORITY OF THE DIRECTOR.—

(1) IN GENERAL.—Subject to paragraph (2) and section 114(b), the Director shall make allocations of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with the performance of the respective functions, as determined under section 113, in accordance with the delegation of functions and the reservation of functions made under section 114.

(2) LIMITATION.—Unexpended funds transferred pursuant to section 112 shall be used only for the purposes for which the funds were originally authorized and appropriated.

(b) AUTHORITIES OF ATTORNEY GENERAL.—

(1) INCIDENTAL TRANSFERS.—The Attorney General may make such additional incidental dispositions of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with such functions, as may be necessary to carry out the provisions of this title, and the amendments made by this title. The Attorney General shall provide for such further measures and dispositions as may be necessary to effectuate the purposes of this title and the amendments made by this title.

(2) AUTHORITY TO TERMINATE AFFAIRS OF INS.—The Attorney General shall provide for the termination of the affairs of the Immigration and Naturalization Service and such further measures and dispositions as may be necessary to effectuate the purposes of this Act.

(c) TREATMENT OF SHARED RESOURCES.—The Director is authorized to provide for an appropriate allocation, or coordination, or both, of resources involved in supporting shared support functions for the office of the Director, the Service Bureau, the Enforcement Bureau, and offices within the Department of Justice. The Director shall maintain oversight and control over the shared computer databases and systems and records management.

SEC. 116. SAVINGS PROVISIONS.

(a) LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, grants, loans, contracts, recognition of labor organizations, agreements, including collective bargaining agreements, certificates, licenses, and privileges—

(1) that have been issued, made, granted, or allowed to become effective by the President, the Attorney General, the Commissioner of the Immigration and Naturalization Service, their delegates, or any other Government official, or by a court of competent jurisdiction, in the performance of any function that is transferred pursuant to this title; and

(2) that are in effect on the effective date of such transfer (or become effective after such date pursuant to their terms as in effect on such effective date);

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, any other authorized official, a court of competent jurisdiction, or operation of law, except that any collective bargaining agreement shall remain in effect until the date of termination specified in the agreement.

(b) PROCEEDINGS.—

(1) PENDING.—Sections 111 through 115 of the Immigration and Nationality Act, and section 305 of the Omnibus Crime Control and Safe Streets Act, as added by title I of this Act, shall not affect any proceeding or any application for any benefit, service, license, permit, certificate, or financial assistance pending on the effective date of this title before an office whose functions are transferred pursuant to this title, but such proceedings and applications shall be continued.

(2) ORDERS.—Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted, and orders issued in any such proceeding shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law.

(3) DISCONTINUANCE OR MODIFICATION.—Nothing in this section shall be considered to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this section had not been enacted.

(c) SUITS.—This title, and the amendments made by this title, shall not affect suits commenced before the effective date of this title, and in all such suits, proceeding shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this title, and the amendments made by this title, had not been enacted.

(d) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against the Department of Justice or the Immigration and Naturalization Service, or by or against any individual in the official capacity of such individual as an officer or employee in connection with a function transferred pursuant to this section, shall abate by reason of the enactment of this Act.

(e) CONTINUANCE OF SUIT WITH SUBSTITUTION OF PARTIES.—If any Government officer in the official capacity of such officer is party to a suit with respect to a function of the officer, and pursuant to this title such function is transferred to any other officer or office, then such suit shall be continued with the other officer or the head of such other office, as applicable, substituted or added as a party.

(f) ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW.—Except as otherwise provided by this title, any statutory requirements relating to notice, hearings, action upon the record, or administrative or judicial review that apply to any function transferred pursuant to any provision of this title shall apply to the exercise of such function by the head of the office, and other officers of the office, to which such function is transferred pursuant to such provision.

SEC. 117. INTERIM SERVICE OF THE COMMISSIONER OF IMMIGRATION AND NATURALIZATION.

The individual serving as the Commissioner of Immigration and Naturalization on the day before the effective date of this title may serve as Director until the date on which a Director is appointed under section 112 of the Immigration and Nationality Act, as added by section 103 of this Act.

SEC. 118. EXECUTIVE OFFICE FOR IMMIGRATION REVIEW AND ATTORNEY GENERAL AUTHORITIES NOT AFFECTED.

Nothing in this title, or any amendment made by this title, may be construed to authorize or require the transfer or delegation of any function vested in, or exercised by—

(1) the Executive Office for Immigration Review of the Department of Justice, or any officer, employee, or component thereof, or

(2) the Attorney General with respect to any matter under the immigration laws of the United States, including the institution of any prosecution, or the institution or defense of any action or appeal, in any court of the United States established under Article III of the Constitution,

immediately prior to the effective date of this title.

SEC. 119. OTHER AUTHORITIES NOT AFFECTED.

Nothing in this title, or any amendment made by this title, may be construed to authorize or require the transfer or delegation of any function vested in, or exercised by—

(1) the Secretary of State under the State Department Basic Authorities Act of 1956, or under the immigration laws of the United States, immediately prior to the effective date of this title, with respect to the issuance and use of passports and visas;

(2) the Secretary of Labor or any official of the Department of Labor immediately prior to the effective date of this title, with respect to labor certifications or any other authority under the immigration laws of the United States; or

(3) except as otherwise specifically provided in this Act, any other official of the Federal Government under the immigration laws of the United States immediately prior to the effective date of this title.

SEC. 120. TRANSITION FUNDING.

(a) AUTHORIZATION OF APPROPRIATIONS FOR TRANSITION.—

(1) IN GENERAL.—There are authorized to be appropriated to the Department of Justice such sums as may be necessary—

(A) to effect—

(i) the abolition of the Immigration and Naturalization Service;

(ii) the establishment of the Immigration Affairs Agency and its components, the Bureau of Immigration Services and Adjudications, and the Bureau of Enforcement and Border Affairs; and

(iii) the transfer of functions required to be made under this Act; and

(B) to carry out any other duty that is made necessary by this Act, or any amendment made by this Act.

(2) ACTIVITIES SUPPORTED.—Activities supported under paragraph (1) include—

(A) planning for the transfer of functions from the Immigration and Naturalization Service to the Immigration Affairs Agency, including the preparation of any reports and implementation plans necessary for such transfer;

(B) the division, acquisition, and disposition of—

(i) buildings and facilities;

(ii) support and infrastructure resources; and

(iii) computer hardware, software, and related documentation;

(C) other capital expenditures necessary to effect the transfer of functions described in this paragraph;

(D) revision of forms, stationery, logos, and signage;

(E) expenses incurred in connection with the transfer and training of existing personnel and hiring of new personnel; and

(F) such other expenses necessary to effect the transfers, as determined by the Attorney General.

(b) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to subsection (a) are authorized to remain available until expended.

(c) TRANSITION ACCOUNT.—

(1) ESTABLISHMENT.—There is established in the general fund of the Treasury of the United States a separate account, which shall be known as the ''Immigration Affairs Agency Transition Account'' (in this section referred to as the ''Account'').

(2) USE OF ACCOUNT.—There shall be deposited into the Account all amounts appropriated under subsection (a) and amounts reprogrammed for the purposes described in subsection (a).

(d) REPORT TO CONGRESS ON TRANSITION.—Beginning not later than 90 days after the date of enactment of this Act, and at the end of each fiscal year in which appropriations are made pursuant to subsection (c), the Attorney General shall submit a report to Congress concerning the availability of funds to cover transition costs, including—

(1) any unobligated balances available for such purposes; and

(2) a calculation of the amount of appropriations that would be necessary to fully fund the activities described in subsection (a).

(e) EFFECTIVE DATE.—This section shall take effect on the date of enactment of this Act.

Subtitle C—Effective Date

SEC. 121. EFFECTIVE DATE.

Except as otherwise provided in section 120(e), this title, and the amendments made by this title, shall take effect 18 months after the date of enactment of this Act.

TITLE II—PERSONNEL FLEXIBILITIES

SEC. 201. IMPROVEMENTS IN PERSONNEL FLEXIBILITIES.

(a) IN GENERAL.—Part III of title 5, United States Code, is amended by adding at the end the following new subpart:

''Subpart J—Immigration Affairs Agency Personnel

''CHAPTER 96—PERSONNEL FLEXIBILITIES RELATING TO THE IMMIGRATION AFFAIRS AGENCY

''§ 9601. Immigration Affairs Agency personnel flexibilities

''(a) Any flexibilities provided by sections 9602 through 9604 of this chapter shall be exercised in a manner consistent with—

''(1) chapter 23 (relating to merit system principles and prohibited personnel practices);

''(2) provisions relating to preference eligibles;

''(3) except as otherwise specifically provided, section 5307 (relating to the aggregate limitation on pay);

''(4) except as otherwise specifically provided, chapter 71 (relating to labor-management relations); and

''(5) subject to subsections (b) and (c) of section 1104, as though such authorities were delegated to the Attorney General under section 1104(a)(2).

''(b) The Attorney General shall provide the Office of Personnel Management with any information that Office requires in carrying out its responsibilities under this section.

''§ 9602. Pay authority for critical positions

''(a) When the Attorney General seeks a grant of authority under section 5377 for critical pay for 1 or more positions at the Immigration Affairs Agency, the Office of Management and Budget may fix the rate of basic pay, notwithstanding sections 5377(d)(2) and 5307, at any rate up to the salary set in accordance with section 104 of title 3.

''(b) Notwithstanding section 5307, no allowance, differential, bonus, award, or similar cash payment may be paid to any employee receiving critical pay at a rate fixed under subsection (a), in any calendar year if, or to the extent that, the employee's total annual compensation will exceed the maximum amount of total annual compensation payable at the salary set in accordance with section 104 of title 3.

''§ 9603. Streamlined critical pay authority

''(a) Notwithstanding section 9602, and without regard to the provisions of this title governing appointments in the competitive service or the Senior Executive Service and chapters 51 and 53 (relating to classification and pay rates), the Attorney General may, for a period of 10 years after the effective date of title II of the Immigration Reform, Accountability, and Security Enhancement Act of 2002, establish, fix the compensation of, and appoint individuals to, designated critical administrative, technical, and professional positions needed to carry out the functions of the Immigration Affairs Agency, if—

''(1) the positions—

''(A) require expertise of an extremely high level in an administrative, technical, or professional field; and

''(B) are critical to the Immigration Affairs Agency's successful accomplishment of an important mission;

''(2) exercise of the authority is necessary to recruit or retain an individual exceptionally well qualified for the position;

''(3) the number of such positions does not exceed 40 at any one time;

''(4) designation of such positions are approved by the Attorney General;

''(5) the terms of such appointments are limited to no more than 4 years;

''(6) appointees to such positions were not employees of the Immigration and Naturalization Service prior to the effective date of title II of the Immigration Reform, Accountability, and Security Enhancement Act of 2002;

''(7) total annual compensation for any appointee to such positions does not exceed the highest total annual compensation payable at the rate determined under section 104 of title 3; and

''(8) all such positions are excluded from the collective bargaining unit.

''(b) Individuals appointed under this section shall not be considered to be employees for purposes of subchapter II of chapter 75.

''§ 9604. Recruitment, retention, relocation incentives, and relocation expenses

''(a) For a period of 10 years after the effective date of title II of the Immigration Reform, Accountability, and Security Enhancement Act of 2002, and subject to approval by the Office of Personnel Management, the Attorney General may provide for variations from sections 5753 and 5754 governing payment of recruitment, relocation, and retention incentives with respect to employees of the Immigration Affairs Agency.

''(b) For a period of 10 years after the effective date of title II of the Immigration Reform, Accountability, and Security Enhancement Act of 2002, and subject to approval by the Office of Personnel Management, the Attorney General may pay from appropriations made to the Immigration Affairs Agency allowable relocation expenses under section 5724a for employees transferred or reemployed and allowable travel and transportation expenses under section 5723 for new appointees, for any new appointee appointed to a position for which pay is fixed under section 9602 or 9603 after such effective date.''.

(b) CLERICAL AMENDMENT.—The table of chapters for part III of title 5, United States Code, is amended by adding at the end the following new items:

''SUBPART J—IMMIGRATION AFFAIRS AGENCY PERSONNEL

''96. Personnel flexibilities relating to the Immigration Affairs Agency ... 9601.''.

SEC. 202. VOLUNTARY SEPARATION INCENTIVE PAYMENTS FOR INS EMPLOYEES.

(a) DEFINITION.—In this section, the term ''employee'' means an employee (as defined by section 2105 of title 5, United States Code) who is employed by the Immigration and Naturalization Service serving under an appointment without time limitation, and has been currently employed for a continuous period of at least 3 years, but does not include—

(1) a reemployed annuitant under subchapter III of chapter 83 or chapter 84 of title 5, United States Code, or another retirement system;

(2) an employee having a disability on the basis of which such employee is or would be eligible for disability retirement under the applicable retirement system referred to in paragraph (1);

(3) an employee who is in receipt of a specific notice of involuntary separation for misconduct or unacceptable performance;

(4) an employee who, upon completing an additional period of service as referred to in section 3(b)(2)(B)(ii) of the Federal Workforce Restructuring Act of 1994 (5 U.S.C. 5597 note), would qualify for a voluntary separation incentive payment under section 3 of such Act;

(5) an employee who has previously received any voluntary separation incentive payment by the Federal Government under this section or any other authority and has not repaid such payment;

(6) an employee covered by statutory reemployment rights who is on transfer to another organization; or

(7) any employee who, during the 24-month period preceding the date of separation, has received a recruitment or relocation bonus under section 5753 of title 5, United States Code, or who, within the 12-month period preceding the date of separation, received a retention allowance under section 5754 of title 5, United States Code.

(b) AUTHORITY TO PROVIDE VOLUNTARY SEPARATION INCENTIVE PAYMENTS.—

(1) IN GENERAL.—The Attorney General may pay voluntary separation incentive payments under this section to any employee to the extent necessary to carry out the plan to establish the Immigration Affairs Agency under title I.

(2) AMOUNT AND TREATMENT OF PAYMENTS.—A voluntary separation incentive payment—

(A) shall be paid in a lump sum after the employee's separation;

(B) shall be paid from appropriations or funds available for the payment of the basic pay of the employees;

(C) shall be equal to the lesser of—

(i) an amount equal to the amount the employee would be entitled to receive under section 5595(c) of title 5, United States Code; or

(ii) an amount determined by an agency head not to exceed $25,000;

(D) may not be made except in the case of any qualifying employee who voluntarily separates (whether by retirement or resignation) before January 1, 2006;

(E) shall not be a basis for payment, and shall not be included in the computation, of any other type of Government benefit; and

(F) shall not be taken into account in determining the amount of any severance pay to which the employee may be entitled under section 5595 of title 5, United States Code, based on any other separation.

(c) ADDITIONAL IMMIGRATION AND NATURALIZATION SERVICE CONTRIBUTIONS TO THE RETIREMENT FUND.—

(1) IN GENERAL.—In addition to any other payments which it is required to make under subchapter III of chapter 83 of title 5, United States Code, the Immigration and Naturalization Service shall remit to the Office of Personnel Management for deposit in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund an amount equal to 15 percent of the final basic pay of each employee who is covered under subchapter III of chapter 83 or chapter 84 of title 5, United States Code, to whom a voluntary separation incentive has been paid under this section.

(2) DEFINITION.—In paragraph (1), the term ''final basic pay'', with respect to an employee, means the total amount of basic pay which would be payable for a year of service by such employee, computed using the employee's final rate of basic pay, and, if last serving on other than a full-time basis, with appropriate adjustment therefore.

(d) EFFECT OF SUBSEQUENT EMPLOYMENT WITH THE GOVERNMENT.—An individual who has received a voluntary separation incentive payment under this section and accepts any employment for compensation with the Government of the United States, or who works for any agency of the United States Government through a personal services contract, within 5 years after the date of the separation on which the payment is based, shall be required to pay, prior to the individual's first day of employment, the entire amount of the incentive payment to the Immigration and Naturalization Service or, in the case of employment or work occurring after the effective date of title I, the Immigration Affairs Agency.

(e) USE OF VOLUNTARY SEPARATIONS.—The Immigration and Naturalization Service may redeploy or use the full-time equivalent positions vacated by voluntary separations under this section to make other positions available to more critical locations or more critical occupations.

(f) EFFECTIVE DATE.—This section shall take effect on the date of enactment of this Act.

SEC. 203. VOLUNTARY SEPARATION INCENTIVE PAYMENTS FOR EMPLOYEES OF THE IMMIGRATION AFFAIRS AGENCY.

(a) DEFINITION.—In this section, the term ''employee'' means an employee (as defined by section 2105 of title 5, United States Code) who is employed by the Immigration Affairs Agency serving under an appointment without time limitation, and has been currently employed for a continuous period of at least 3 years, but does not include—

(1) a reemployed annuitant under subchapter III of chapter 83 or chapter 84 of title 5, United States Code, or another retirement system;

(2) an employee having a disability on the basis of which such employee is or would be eligible for disability retirement under the applicable retirement system referred to in paragraph (1);

(3) an employee who is in receipt of a specific notice of involuntary separation for misconduct or unacceptable performance;

(4) an employee who, upon completing an additional period of service as referred to in section 3(b)(2)(B)(ii) of the Federal Workforce Restructuring Act of 1994 (5 U.S.C. 5597 note), would qualify for a voluntary separation incentive payment under section 3 of such Act;

(5) an employee who has previously received any voluntary separation incentive payment by the Federal Government under this section or any other authority and has not repaid such payment;

(6) an employee covered by statutory reemployment rights who is on transfer to another organization; or

(7) any employee who, during the 24-month period preceding the date of separation, has received a recruitment or relocation bonus under section 5753 of title 5, United States Code, or who, within the 12-month period preceding the date of separation, received a retention allowance under section 5754 of title 5, United States Code.

(b) AUTHORITY TO PROVIDE VOLUNTARY SEPARATION INCENTIVE PAYMENTS.—

(1) IN GENERAL.—The Attorney General may pay voluntary separation incentive payments under this section to any employee to the extent necessary to carry out the plan to establish the Immigration Affairs Agency under title I.

(2) AMOUNT AND TREATMENT OF PAYMENTS.—A voluntary separation incentive payment—

(A) shall be paid in a lump sum after the employee's separation;

(B) shall be paid from appropriations or funds available for the payment of the basic pay of the employees;

(C) shall be equal to the lesser of—

(i) an amount equal to the amount the employee would be entitled to receive under section 5595(c) of title 5, United States Code; or

(ii) an amount determined by an agency head not to exceed $25,000;

(D) may not be made except in the case of any qualifying employee who voluntarily separates (whether by retirement or resignation) before January 1, 2006;

(E) shall not be a basis for payment, and shall not be included in the computation, of any other type of Government benefit; and

(F) shall not be taken into account in determining the amount of any severance pay to which the employee may be entitled under section 5595 of title 5, United States Code, based on any other separation.

(c) ADDITIONAL IMMIGRATION AFFAIRS AGENCY CONTRIBUTIONS TO THE RETIREMENT FUND.—

(1) IN GENERAL.—In addition to any other payments which it is required to make under subchapter III of chapter 83 of title 5, United States Code, the Immigration Affairs Agency shall remit to the Office of Personnel Management for deposit in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund an amount equal to 15 percent of the final basic pay of each employee who is covered under subchapter III of chapter 83 or chapter 84 of title 5, United States Code, to whom a voluntary separation incentive has been paid under this section.

(2) DEFINITION.—In paragraph (1), the term ''final basic pay'', with respect to an employee, means the total amount of basic pay which would be payable for a year of service by such employee, computed using the employee's final rate of basic pay, and, if last serving on other than a full-time basis, with appropriate adjustment therefore.

(d) EFFECT OF SUBSEQUENT EMPLOYMENT WITH THE GOVERNMENT.—An individual who has received a voluntary separation incentive payment under this section and accepts any employment for compensation with the Government of the United States, or who works for any agency of the United States Government through a personal services contract, within 5 years after the date of the separation on which the payment is based, shall be required to pay, prior to the individual's first day of employment, the entire amount of the incentive payment to the Immigration Affairs Agency.

(e) USE OF VOLUNTARY SEPARATIONS.—The Immigration Affairs Agency may redeploy or use the full-time equivalent positions vacated by voluntary separations under this section to make other positions available to more critical locations or more critical occupations.

SEC. 204. BASIS FOR EVALUATION OF IMMIGRATION AFFAIRS AGENCY EMPLOYEES.

The Immigration Affairs Agency shall use the fair and equitable treatment of aliens by employees as one of the standards for evaluating employee performance.

SEC. 205. EFFECTIVE DATE.

Except as otherwise provided in section 202(f), this title, and the amendments made by this title, shall take effect 18 months after the date of enactment of this Act.

TITLE III—UNACCOMPANIED ALIEN CHILD PROTECTION

SEC. 301. SHORT TITLE.

This title may be cited as the ''Unaccompanied Alien Child Protection Act of 2002''.

SEC. 302. DEFINITIONS.

(a) IN GENERAL.—In this title:

(1) DIRECTOR.—The term ''Director'' means the Director of the Office.

(2) OFFICE.—The term ''Office'' means the Office of Children's Services established by section 311.

(3) SERVICE.—The term ''Service'' means the Immigration and Naturalization Service (or, upon the effective date of title I, the Immigration Affairs Agency).

(4) UNACCOMPANIED ALIEN CHILD.—The term ''unaccompanied alien child'' means a child who—

(A) has no lawful immigration status in the United States;

(B) has not attained the age of 18; and

(C) with respect to whom—

(i) there is no parent or legal guardian in the United States; or

(ii) no parent or legal guardian in the United States is available to provide care and physical custody.

(5) VOLUNTARY AGENCY.—The term ''voluntary agency'' means a private, nonprofit voluntary agency with expertise in meeting the cultural, developmental, or psychological needs of unaccompanied alien children as licensed by the appropriate State and certified by the Attorney General.

(b) AMENDMENTS TO THE IMMIGRATION AND NATIONALITY ACT.—Section 101(a) (8 U.S.C. 1101(a)) is amended by adding at the end the following new paragraphs:

''(51) The term 'unaccompanied alien child' means a child who—

''(A) has no lawful immigration status in the United States;

''(B) has not attained the age of 18; and

''(C) with respect to whom—

''(i) there is no parent or legal guardian in the United States; or

''(ii) no parent or legal guardian in the United States is able to provide care and physical custody.

''(52) The term 'unaccompanied refugee children' means persons described in paragraph (42) who—

''(A) have not attained the age of 18; and

''(B) with respect to whom there are no parents or legal guardians available to provide care and physical custody.''.

Subtitle A—Structural Changes

SEC. 311. ESTABLISHMENT OF THE OFFICE OF CHILDREN'S SERVICES.

(a) ESTABLISHMENT.—

(1) PROHIBITED WITHIN INS.—There is established within the Department of Justice the Office of Children's Services. The Office shall not be an office within the Immigration and Naturalization Service.

(2) COMPONENTS.—The Office shall include such other components, staff, and resources as the Attorney General may determine necessary to carry out this title.

(b) TRANSFER OF FUNCTIONS.—

(1) IN GENERAL.—All functions with respect to the care and custody of unaccompanied alien children under the immigration laws of the United States vested by statute in, or exercised by, the Commissioner of Immigration and Naturalization (or any officer, employee, or component thereof), immediately prior to the effective date of this subtitle, are transferred to the Office under the general authority of the Attorney General.

(2) RESPONSIBILITIES OF THE OFFICE.—The Office shall be responsible for coordinating and implementing law and policy for unaccompanied alien children who come into the custody of the Department of Justice.

(c) DIRECTOR OF THE OFFICE OF CHILDREN'S SERVICES.—

(1) IN GENERAL.—The Office shall be headed by a Director of Children's Services, who shall be appointed by and report directly to the Attorney General or his designee, if the designee is at a level no lower than Associate Attorney General.

(2) COMPENSATION AT LEVEL IV OF EXECUTIVE SCHEDULE.—Section 5315 of title 5, United States Code, is amended by adding at the end the following:

''Director of the Office of Children's Services, Department of Justice.''.

(3) DUTIES.—The Director shall be responsible for—

(A) ensuring that the best interests of the child are considered in decisions and actions relating to the care and placement of an unaccompanied alien child;

(B) making placement, release, and detention determinations for all unaccompanied alien children in the custody of the Office;

(C) implementing the placement, release, and detention determinations made by the Office;

(D) coordinating and implementing law and policy for unaccompanied alien children who come into the custody of the Department of Justice;

(E) convening, in the absence of the Attorney General, the Interagency Task Force on Unaccompanied Alien Children established in section 312;

(F) identifying a sufficient number of qualified persons, entities, and facilities to house unaccompanied alien children in accordance with sections 322 and 323;

(G) overseeing the persons, entities, and facilities described in sections 322 and 323 to ensure their compliance with such provisions;

(H) compiling, updating, and publishing at least annually a State-by-State list of professionals or other entities qualified to contract with the Office to provide the services described in sections 331 and 332;

(I) maintaining statistical information and other data on unaccompanied alien children in the Office's custody and care, which shall include—

(i) biographical information such as the child's name, gender, date of birth, country of birth, and country of habitual residence;

(ii) the date on which the child came into the custody of—

(I) the Department of Justice (other than as described in subclause (II) or (III);

(II) the Service; or

(III) the Office;

(iii) information relating to the custody, detention, release, and repatriation of unaccompanied alien children who have been in the custody of the Office;

(iv) in any case in which the child is placed in detention, an explanation relating to the detention; and

(v) the disposition of any actions in which the child is the subject;

(J) collecting and compiling statistical information from the Service, including Border Patrol and inspections officers, on the unaccompanied alien children with whom they come into contact; and

(K) conducting investigations and inspections of facilities and other entities in which unaccompanied alien children reside.

(4) DUTIES WITH RESPECT TO FOSTER CARE.—In carrying out the duties described in paragraph (3)(F), the Director shall assess the extent to which the refugee children foster care system utilized pursuant to section 412(d)(2) of the Immigration and Nationality Act can feasibly be expanded for the placement of unaccompanied alien children.

(5) POWERS.—In carrying out the duties specified in paragraph (3), the Director shall have the power to—

(A) contract with service providers to perform the services described in sections 322, 323, 331, and 332; and

(B) compel compliance with the terms and conditions set forth in section 323, including the power to terminate the contracts of providers that are not in compliance with such conditions and reassign any unaccompanied alien child to a similar facility that is in compliance with such section.

(d) NO EFFECT ON INS, EOIR, AND DEPARTMENT OF STATE ADJUDICATORY RESPONSIBILITIES.—Nothing in this title may be construed to transfer the responsibility for adjudicating benefit determinations under the Immigration and Nationality Act from the authority of any official of the Service, the Executive Office of Immigration Review of the Department of Justice, or the Department of State.

SEC. 312. ESTABLISHMENT OF INTERAGENCY TASK FORCE ON UNACCOMPANIED ALIEN CHILDREN.

(a) ESTABLISHMENT.—There is established an Interagency Task Force on Unaccompanied Alien Children.

(b) COMPOSITION.—The Task Force shall consist of the following members:

(1) The Attorney General.

(2) The Commissioner of Immigration and Naturalization.

(3) The Assistant Secretary of State for Population, Refugees, and Migration.

(4) The Director of the Office of Refugee Resettlement of the Department of Health and Human Services.

(5) The Director.

(6) Such other officials in the executive branch of Government as may be designated by the President.

(c) CHAIRMAN.—The Task Force shall be chaired by the Attorney General.

(d) ACTIVITIES OF THE TASK FORCE.—In consultation with nongovernmental organizations, the Task Force shall—

(1) measure and evaluate the progress of the United States in treating unaccompanied alien children in United States custody; and

(2) expand interagency procedures to collect and organize data, including significant research and resource information on the needs and treatment of unaccompanied alien children in the custody of the United States Government.

SEC. 313. EFFECTIVE DATE.

This subtitle shall take effect 180 days after the date of enactment of this Act.

Subtitle B—Custody, Release, Family Reunification, and Detention

SEC. 321. PROCEDURES WHEN ENCOUNTERING UNACCOMPANIED ALIEN CHILDREN.

(a) UNACCOMPANIED CHILDREN FOUND ALONG THE UNITED STATES BORDER OR AT UNITED STATES PORTS OF ENTRY.—

(1) IN GENERAL.—Subject to paragraph (2), if an immigration officer finds an unaccompanied alien child who is described in paragraph (2) at a land border or port of entry of the United States and determines that such child is inadmissible under the Immigration and Nationality Act, the officer shall—

(A) permit such child to withdraw the child's application for admission pursuant to section 235(a)(4) of the Immigration and Nationality Act; and

(B) remove such child from the United States.

(2) SPECIAL RULE FOR CONTIGUOUS COUNTRIES.—

(A) IN GENERAL.—Any child who is a national or habitual resident of a country that is contiguous with the United States and that has an agreement in writing with the United States providing for the safe return and orderly repatriation of unaccompanied alien children who are nationals or habitual residents of such country shall be treated in accordance with paragraph (1), unless a determination is made on a case-by-case basis that—

(i) such child has a fear of returning to the child's country of nationality or country of last habitual residence owing to a fear of persecution;

(ii) the return of such child to the child's country of nationality or country of last habitual residence would endanger the life or safety of such child; or

(iii) the child cannot make an independent decision to withdraw the child's application for admission due to age or other lack of capacity.

(B) RIGHT OF CONSULTATION.—Any child described in subparagraph (A) shall have the right to consult with a consular officer from the child's country of nationality or country of last habitual residence prior to repatriation, as well as consult with the Office, telephonically, and such child shall be informed of that right.

(3) RULE FOR APPREHENSIONS AT THE BORDER.—The custody of unaccompanied alien children not described in paragraph (2) who are apprehended at the border of the United States or at a United States port of entry shall be treated in accordance with the provisions of subsection (b).

(b) CUSTODY OF UNACCOMPANIED ALIEN CHILDREN FOUND IN THE INTERIOR OF THE UNITED STATES.—

(1) ESTABLISHMENT OF JURISDICTION.—

(A) IN GENERAL.—Except as otherwise provided in subsection (a) and subparagraph (B), the custody of all unaccompanied alien children, including responsibility for their detention, where appropriate, shall be under the jurisdiction of the Office.

(B) EXCEPTION FOR CHILDREN WHO HAVE COMMITTED CRIMES.—Notwithstanding subparagraph (A), the Service shall retain or assume the custody and care of any unaccompanied alien child who—

(i) has been charged with any felony, excluding offenses proscribed by the Immigration and Nationality Act, while such charges are pending; or

(ii) has been convicted of any such felony.

(2) NOTIFICATION.—Upon apprehension of an unaccompanied alien child, the Attorney General shall promptly notify the Office.

(3) TRANSFER OF UNACCOMPANIED ALIEN CHILDREN.—

(A) TRANSFER TO THE OFFICE.—Not later than 72 hours after apprehension of an unaccompanied alien child, the care and custody

of such children not described in paragraph (1)(B) shall be transferred to the Office.

(B) TRANSFER OF CHILDREN WHO HAVE COMMITTED CRIMES.—Upon determining that a child in the custody of the Office is described in paragraph (1)(B), the Director shall promptly make arrangements to transfer the care and custody of such child to the Service.

(c) AGE DETERMINATIONS.—In any case in which the age of an alien is in question and the resolution of questions about such alien's age would affect the alien's eligibility for treatment under the provisions of this title, a determination of whether such alien meets the age requirements of this title shall be made in accordance with the provisions of section 325.

SEC. 322. FAMILY REUNIFICATION FOR UNACCOMPANIED ALIEN CHILDREN WITH RELATIVES IN THE UNITED STATES.

(a) PLACEMENT AUTHORITY.—

(1) ORDER OF PREFERENCE.—Subject to the Attorney General's discretion under paragraph (4) and section 323(a)(2), an unaccompanied alien child in the custody of the Office shall be promptly placed with one of the following individuals in the following order of preference:

(A) A parent who seeks to establish custody, as described in paragraph (3)(A).

(B) A legal guardian who seeks to establish custody, as described in paragraph (3)(A).

(C) An adult relative.

(D) An entity designated by the parent or legal guardian that is capable and willing to care for the child's well-being.

(E) A State-licensed juvenile shelter, group home, or foster home willing to accept legal custody of the child.

(F) A qualified adult or entity seeking custody of the child when it appears that there is no other likely alternative to long-term detention and family reunification does not appear to be a reasonable alternative. For purposes of this subparagraph, the qualification of the adult or entity shall be decided by the Office.

(2) HOME STUDY.—Notwithstanding the provisions of paragraph (1), no unaccompanied alien child shall be placed with a person or entity unless a valid home-study conducted by an agency of the State of the child's proposed residence, by an agency authorized by that State to conduct such a study, or by an appropriate voluntary agency contracted with the Office to conduct such studies has found that the person or entity is capable of providing for the child's physical and mental well-being.

(3) RIGHT OF PARENT OR LEGAL GUARDIAN TO CUSTODY OF UNACCOMPANIED ALIEN CHILD.—

(A) PLACEMENT WITH PARENT OR LEGAL GUARDIAN.—If an unaccompanied alien child is placed with any person or entity other than a parent or legal guardian, but subsequent to that placement a parent or legal guardian seeks to establish custody, the Director shall assess the suitability of placing the child with the parent or legal guardian and shall make a written determination on the child's placement within 30 days.

(B) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to—

(i) supersede obligations under any treaty or other international agreement to which the United States is a party, including The Hague Convention on the Civil Aspects of International Child Abduction, the Vienna Declaration and Programme of Action, and the Declaration of the Rights of the Child; or

(ii) limit any right or remedy under such international agreement.

(4) PROTECTION FROM SMUGGLERS AND TRAFFICKERS.—The Director shall take steps to ensure that unaccompanied alien children are protected from smugglers, traffickers, or others seeking to victimize or otherwise engage such children in criminal, harmful, or exploitative activity.

(5) GRANTS AND CONTRACTS.—Subject to the availability of appropriations, the Director is authorized to make grants to, and enter into contracts with, voluntary agencies to carry out the provisions of this section.

(6) REIMBURSEMENT OF STATE EXPENSES.—Subject to the availability of appropriations, the Director is authorized to reimburse States for any expenses they incur in providing assistance to unaccompanied alien children who are served pursuant to this title.

(b) CONFIDENTIALITY.—All information obtained by the Office relating to the immigration status of a person listed in subsection (a) shall remain confidential and may be used only for the purposes of determining such person's qualifications under subsection (a)(1).

SEC. 323. APPROPRIATE CONDITIONS FOR DETENTION OF UNACCOMPANIED ALIEN CHILDREN.

(a) STANDARDS FOR PLACEMENT.—

(1) PROHIBITION OF DETENTION IN CERTAIN FACILITIES.—Except as provided in paragraph (2), an unaccompanied alien child shall not be placed in an adult detention facility or a facility housing delinquent children.

(2) DETENTION IN APPROPRIATE FACILITIES.—An unaccompanied alien child who has exhibited a violent or criminal behavior that endangers others may be detained in conditions appropriate to the behavior in a facility appropriate for delinquent children.

(3) STATE LICENSURE.—In the case of a placement of a child with an entity described in section 322(a)(1)(E), the entity must be licensed by an appropriate State agency to provide residential, group, child welfare, or foster care services for dependent children.

(4) CONDITIONS OF DETENTION.—

(A) IN GENERAL.—At a minimum, the Attorney General shall promulgate regulations incorporating standards for conditions of detention in such placements that provide for—

(i) educational services appropriate to the child;

(ii) medical care;

(iii) mental health care, including treatment of trauma;

(iv) access to telephones;

(v) access to legal services;

(vi) access to interpreters;

(vii) supervision by professionals trained in the care of children, taking into account the special cultural, linguistic, and experiential needs of children in immigration proceedings;

(viii) recreational programs and activities;

(ix) spiritual and religious needs; and

(x) dietary needs.

(B) NOTIFICATION OF CHILDREN.—Such regulations shall provide that all children are notified orally and in writing of such standards.

(b) PROHIBITION OF CERTAIN PRACTICES.—The Director and the Commissioner of Immigration and Naturalization shall develop procedures prohibiting the unreasonable use of—

(1) shackling, handcuffing, or other restraints on children;

(2) solitary confinement; or

(3) pat or strip searches.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to supersede procedures favoring release of children to appropriate adults or entities or placement in the least secure setting possible, as defined in the Stipulated Settlement Agreement under Flores v. Reno.

SEC. 324. REPATRIATED UNACCOMPANIED ALIEN CHILDREN.

(a) COUNTRY CONDITIONS.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that, to the extent consistent with the treaties and other international agreements to which the United States is a party and to the extent practicable, the United States Government should undertake efforts to ensure that it does not repatriate children in its custody into settings that would threaten the life and safety of such children.

(2) ASSESSMENT OF CONDITIONS.—

(A) IN GENERAL.—In carrying out repatriations of unaccompanied alien children, the Office shall conduct assessments of country conditions to determine the extent to which the country to which a child is being repatriated has a child welfare system capable of ensuring the child's well being.

(B) FACTORS FOR ASSESSMENT.—In assessing country conditions, the Office shall, to the maximum extent practicable, examine the conditions specific to the locale of the child's repatriation.

(b) REPORT ON REPATRIATION OF UNACCOMPANIED ALIEN CHILDREN.—Beginning not later than 18 months after the date of enactment of this Act, and annually thereafter, the Director shall submit a report to the Judiciary Committees of the House of Representatives and Senate on the Director's efforts to repatriate unaccompanied alien children. Such report shall include at a minimum the following information:

(1) The number of unaccompanied alien children ordered removed and the number of such children actually removed from the United States.

(2) A description of the type of immigration relief sought and denied to such children.

(3) A statement of the nationalities, ages, and gender of such children.

(4) A description of the procedures used to effect the removal of such children from the United States.

(5) A description of steps taken to ensure that such children were safely and humanely repatriated to their country of origin.

(6) Any information gathered in assessments of country and local conditions pursuant to subsection (a)(2).

SEC. 325. ESTABLISHING THE AGE OF AN UNACCOMPANIED ALIEN CHILD.

The Director shall develop procedures that permit the presentation and consideration of a variety of forms of evidence, including testimony of a child and other persons, to determine an unaccompanied alien child's age for purposes of placement, custody, parole, and detention. Such procedures shall allow the appeal of a determination to an immigration judge. Radiographs shall not be the sole means of determining age.

SEC. 326. EFFECTIVE DATE.

This subtitle shall take effect 180 days after the date of enactment of this Act.

Subtitle C—Access by Unaccompanied Alien Children to Guardians Ad Litem and Counsel

SEC. 331. RIGHT OF UNACCOMPANIED ALIEN CHILDREN TO GUARDIANS AD LITEM.

(a) GUARDIAN AD LITEM.—

(1) APPOINTMENT.—The Director shall appoint a guardian ad litem who meets the qualifications described in paragraph (2) for each unaccompanied alien child in the custody of the Office not later than 72 hours after the Office assumes physical or constructive custody of such child. The Director is encouraged, wherever practicable, to contract with a voluntary agency for the selection of an individual to be appointed as a guardian ad litem under this paragraph.

(2) QUALIFICATIONS OF GUARDIAN AD LITEM.—

(A) IN GENERAL.—No person shall serve as a guardian ad litem who is not—

(i) a child welfare professional or other individual who has received training in child welfare matters; and

(ii) possessing of special training on the nature of problems encountered by unaccompanied alien children.

(B) PROHIBITION.—A guardian ad litem shall not be an employee of the Service.

(3) DUTIES.—The guardian ad litem shall—

(A) conduct interviews with the child in a manner that is appropriate, taking into account the child's age;

(B) investigate the facts and circumstances relevant to such child's presence in the United States, including facts and circumstances arising in the country of the child's nationality or last habitual residence and facts and circumstances arising subsequent to the child's departure from such country;

(C) work with counsel to identify the child's eligibility for relief from removal or voluntary departure by sharing with counsel information collected under subparagraph (B);

(D) develop recommendations on issues relative to the child's custody, detention, release, and repatriation;

(E) ensure that the child's best interests are promoted while the child participates in, or is subject to, proceedings or actions under the Immigration and Nationality Act;

(F) ensure that the child understands such determinations and proceedings; and

(G) report findings and recommendations to the Director and to the Executive Office of Immigration Review.

(4) TERMINATION OF APPOINTMENT.—The guardian ad litem shall carry out the duties described in paragraph (3) until—

(A) those duties are completed,

(B) the child departs the United States,

(C) the child is granted permanent resident status in the United States,

(D) the child attains the age of 18, or

(E) the child is placed in the custody of a parent or legal guardian,

whichever occurs first.

(5) POWERS.—The guardian ad litem—

(A) shall have reasonable access to the child, including access while such child is being held in detention or in the care of a foster family;

(B) shall be permitted to review all records and information relating to such proceedings that are not deemed privileged or classified;

(C) may seek independent evaluations of the child;

(D) shall be notified in advance of all hearings involving the child that are held in connection with proceedings under the Immigration and Nationality Act, and shall be given a reasonable opportunity to be present at such hearings; and

(E) shall be permitted to consult with the child during any hearing or interview involving such child.

(b) TRAINING.—The Director shall provide professional training for all persons serving as guardians ad litem under this section in the circumstances and conditions that unaccompanied alien children face as well as in the various immigration benefits for which such a child might be eligible.

SEC. 332. RIGHT OF UNACCOMPANIED ALIEN CHILDREN TO COUNSEL.

(a) ACCESS TO COUNSEL.—

(1) IN GENERAL.—The Director shall ensure that all unaccompanied alien children in the custody of the Office or in the custody of the Service who are not described in section 321(a)(2) shall have competent counsel to represent them in immigration proceedings or matters.

(2) PRO BONO REPRESENTATION.—To the maximum extent practicable, the Director shall utilize the services of pro bono attorneys who agree to provide representation to such children without charge.

(3) GOVERNMENT FUNDED REPRESENTATION.—

(A) APPOINTMENT OF COMPETENT COUNSEL.—Notwithstanding section 292 of the Immigration and Nationality Act (8 U.S.C. 1362) or any other provision of law, when no competent counsel is available to represent an unaccompanied alien child without charge, the Director shall appoint competent counsel for such child at the expense of the Government.

(B) LIMITATION ON ATTORNEY FEES.—Counsel appointed under subparagraph (A) may not be compensated at a rate in excess of the rate provided under section 3006A of title 18, United States Code.

(C) AVAILABILITY OF FUNDING.—In carrying out this paragraph, the Director may make use of funds derived from—

(i) the premium fee for employment-based petitions and applications authorized by section 286(u) of the Immigration and Nationality Act (8 U.S.C. 1356(u)); or

(ii) any other source designated by the Attorney General from discretionary funds available to the Department of Justice.

(D) ASSUMPTION OF THE COST OF GOVERNMENT-PAID COUNSEL.—In the case of a child for whom counsel is appointed under subparagraph (A) who is subsequently placed in the physical custody of a parent or legal guardian, such parent or legal guardian may elect to retain the same counsel to continue representation of the child, at no expense to the Government, beginning on the date that the parent or legal guardian assumes physical custody of the child.

(4) DEVELOPMENT OF NECESSARY INFRASTRUCTURES AND SYSTEMS.—In ensuring that legal representation is provided to such children, the Director shall develop the necessary mechanisms to identify entities available to provide such legal assistance and representation and to recruit such entities.

(5) CONTRACTING AND GRANT MAKING AUTHORITY.—

(A) IN GENERAL.—Subject to the availability of appropriations, the Director shall enter into contracts with or make grants to national nonprofit agencies with relevant expertise in the delivery of immigration-related legal services to children in order to carry out this subsection.

(B) INELIGIBILITY FOR GRANTS AND CONTRACTS.—In making grants and entering into contracts with such agencies, the Director shall ensure that no such agency is—

(i) a grantee or contractee for services provided under section 322 or 331; and

(ii) simultaneously a grantee or contractee for services provided under subparagraph (A).

(b) REQUIREMENT OF LEGAL REPRESENTATION.—The Director shall ensure that all unaccompanied alien children have legal representation within 7 days of the child coming into the custody of the Department of Justice.

(c) DUTIES.—Counsel shall represent the unaccompanied alien child all proceedings and actions relating to the child's immigration status or other actions involving the Service and appear in person for all individual merits hearings before the Executive Office for Immigration Review and interviews involving the Service.

(d) ACCESS TO CHILD.—

(1) IN GENERAL.—Counsel shall have reasonable access to the unaccompanied alien child, including access while the child is being held in detention, in the care of a foster family, or in any other setting that has been determined by the Office.

(2) RESTRICTION ON TRANSFERS.—Absent compelling and unusual circumstances, no child who is represented by counsel shall be transferred from the child's placement to another placement unless advance notice of at least 24 hours is made to counsel of such transfer.

(e) TERMINATION OF APPOINTMENT.—Counsel shall carry out the duties described in subsection (c) until—

(1) those duties are completed,

(2) the child departs the United States,

(3) the child is granted withholding of removal under section 241(b)(3) of the Immigration and Nationality Act,

(4) the child is granted protection under the Convention Against Torture,

(5) the child is granted asylum in the United States under section 208 of the Immigration and Nationality Act,

(6) the child is granted permanent resident status in the United States, or

(7) the child attains 18 years of age,

whichever occurs first.

(f) NOTICE TO COUNSEL DURING IMMIGRATION PROCEEDINGS.—

(1) IN GENERAL.—Except when otherwise required in an emergency situation involving the physical safety of the child, counsel shall be given prompt and adequate notice of all immigration matters affecting or involving an unaccompanied alien child, including adjudications, proceedings, and processing, before such actions are taken.

(2) OPPORTUNITY TO CONSULT WITH COUNSEL.—An unaccompanied alien child in the custody of the Office may not give consent to any immigration action, including consenting to voluntary departure, unless first afforded an opportunity to consult with counsel.

(g) ACCESS TO RECOMMENDATIONS OF GUARDIAN AD LITEM.—Counsel shall be afforded an opportunity to review the recommendation by the guardian ad litem affecting or involving a client who is an unaccompanied alien child.

SEC. 333. TRANSITIONAL PILOT PROGRAM.

(a) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Attorney General shall establish and begin to carry out a transitional pilot program (in this section referred to as the ''pilot program'') of not more than 90 days in duration to test the implementation of the guardian ad litem provisions in section 331 and the counsel provisions in section 332(a)(3).

(b) PURPOSE.—The purpose of the pilot program is to study and assess the most efficient and cost-effective means of implementing the guardian ad litem provisions in section 331 and the counsel provisions in section 332(a)(3) on a nationwide basis.

(c) SCOPE OF PROGRAM.—

(1) IN GENERAL.—The Attorney General shall select three sites in which to operate the pilot program, including at least one secure facility and at least one shelter care facility.

(2) ELIGIBILITY OF SITES.—To the maximum extent practicable, each such site should have—

(A) at least 25 children held in immigration custody at any given time; and

(B) an existing pro bono legal representation program for such children.

(d) REFERENCES TO DIRECTOR.—For the purpose of operating the pilot program, to the extent that such program is operating prior to the designation of a Director, the Attorney General may designate any officer within the Department of Justice to perform the functions of the Director, if that officer is not an employee of the Immigration and Naturalization Service.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to operate the pilot program.

SEC. 334. EFFECTIVE DATE; APPLICABILITY.

(a) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), this subtitle shall take effect 180 days after the date of enactment of this Act.

(2) EXCEPTIONS.—Sections 331 and 332(a)(3) shall take effect 270 days after the date of enactment of this Act.

(b) APPLICABILITY.—The provisions of this subtitle shall apply to all unaccompanied alien children in the custody of the Department of Justice on, before, or after the date of enactment of this Act.

Subtitle D—Strengthening Policies for Permanent Protection of Alien Children

SEC. 341. SPECIAL IMMIGRANT JUVENILE VISA.

(a) J VISA.—Section 101(a)(27)(J) (8 U.S.C. 1101(a)(27)(J)) is amended to read as follows:

''(J) an immigrant under the age of 18 on the date of application who is present in the United States—

''(i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, a department or agency of a State, or an individual or entity appointed by a State, and who has been deemed eligible by that court for long-term foster care due to abuse, neglect, or abandonment, or a similar basis found under State law;

''(ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and

''(iii) for whom the Office of Children's Services of the Department of Justice has certified to the Commissioner that the classification of an alien as a special immigrant under this subparagraph has not been made solely to provide an immigration benefit to that alien;

except that no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act;''.

(b) ADJUSTMENT OF STATUS.—Section 245(h)(2) (8 U.S.C. 1255(h)(2)) is amended—

(1) by amending subparagraph (A) to read as follows:

''(A) paragraphs (1), (4), (5), (6), and (7)(A) of section 212(a) shall not apply,'';

(2) in subparagraph (B), by striking the period and inserting '', and''; and

(3) by adding at the end the following new subparagraph:

''(C) the Attorney General may waive paragraphs (2)(A) and (2)(B) in the case of an offense which arose as a consequence of the child being unaccompanied.''.

(c) ELIGIBILITY FOR ASSISTANCE.—A child who has been granted relief under section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)), as amended by subsection (a), and who is in the custody of a State shall be eligible for all funds made available under section 412(d) of such Act.

SEC. 342. TRAINING FOR OFFICIALS AND CERTAIN PRIVATE PARTIES WHO COME INTO CONTACT WITH UNACCOMPANIED ALIEN CHILDREN.

(a) TRAINING OF STATE AND LOCAL OFFICIALS AND CERTAIN PRIVATE PARTIES.—The Attorney General, acting jointly with the Secretary of Health and Human Services, shall provide appropriate training to be available to State and county officials, child welfare specialists, teachers, public counsel, and juvenile judges who come into contact with unaccompanied alien children. The training shall provide education on the processes pertaining to unaccompanied alien children with pending immigration status and on the forms of relief potentially available. The Director shall be responsible for establishing a core curriculum that can be incorporated into currently existing education, training, or orientation modules or formats that are currently used by these professionals.

(b) TRAINING OF INS PERSONNEL.—The Attorney General shall provide specialized training to all personnel of the Service who come into contact with unaccompanied alien children. In the case of Border Patrol agents and immigration inspectors, such training shall include specific training on identifying children at the United States border or at United States ports of entry who have been victimized by smugglers or traffickers, and children for whom asylum or special immigrant relief may be appropriate, including children described in section 321(a)(2).

SEC. 343. EFFECTIVE DATES.

The amendment made by section 341 shall apply to all eligible children who were in the United States before, on, or after the date of enactment of this Act.

Subtitle E—Children Refugee and Asylum Seekers

SEC. 351. GUIDELINES FOR CHILDREN'S ASYLUM CLAIMS.

(a) SENSE OF CONGRESS.—Congress commends the Service for its issuance of its ''Guidelines for Children's Asylum Claims'', dated December 1998, and encourages and supports the Service's implementation of such guidelines in an effort to facilitate the handling of children's asylum claims. Congress calls upon the Executive Office for Immigration Review of the Department of Justice to adopt the ''Guidelines for Children's Asylum Claims'' in its handling of children's asylum claims before immigration judges and the Board of Immigration Appeals.

(b) TRAINING.—The Attorney General shall provide periodic comprehensive training under the ''Guidelines for Children's Asylum Claims'' to asylum officers, immigration judges, members of the Board of Immigration Appeals, and immigration officers who have contact with children in order to familiarize and sensitize such officers to the needs of children asylum seekers. Voluntary agencies shall be allowed to assist in such training.

SEC. 352. EXCEPTIONS FOR UNACCOMPANIED ALIEN CHILDREN IN ASYLUM AND REFUGEE-LIKE CIRCUMSTANCES.

(a) EXCEPTION FROM EXPEDITED REMOVAL.—Section 235(b)(1)(F) (8 U.S.C. 1225(b)(1)(F)) is amended by striking ''an alien'' and inserting ''unaccompanied alien child or an alien''.

(b) EXCEPTION FROM TIME LIMIT FOR FILING ASYLUM APPLICATION.—Section 208(a)(2) (8 U.S.C. 1158(a)(2)) is amended by adding at the end the following new subparagraph:

''(E) Subparagraphs (A) and (B) shall not apply to an unaccompanied alien child.''.

SEC. 353. UNACCOMPANIED REFUGEE CHILDREN.

(a) IDENTIFYING UNACCOMPANIED REFUGEE CHILDREN.—Section 207(e) (8 U.S.C. 1157(e)) is amended—

(1) by redesignating paragraphs (3), (4), (5), (6), and (7) as paragraphs (4), (5), (6), (7), and (8), respectively; and

(2) by inserting after paragraph (2) the following new paragraph:

''(3) An analysis of the worldwide situation faced by unaccompanied refugee children, by region. Such analysis shall include an assessment of—

''(A) the number of unaccompanied refugee children, by region;

''(B) the capacity of the Department of State to identify such refugees;

''(C) the capacity of the international community to care for and protect such refugees;

''(D) the capacity of the voluntary agency community to resettle such refugees in the United States;

''(E) the degree to which the United States plans to resettle such refugees in the United States in the coming fiscal year; and

''(F) the fate that will befall such unaccompanied refugee children for whom resettlement in the United States is not possible.''.

(b) TRAINING ON THE NEEDS OF UNACCOMPANIED REFUGEE CHILDREN.—Section 207(f)(2) (8 U.S.C. 1157(f)(2)) is amended by—

(1) striking ''and'' after ''countries,''; and

(2) inserting before the period at the end the following: '', and instruction on the needs of unaccompanied refugee children''.

Subtitle F—Authorization of Appropriations

SEC. 361. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this title.

(b) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to subsection (a) are authorized to remain available until expended.

TITLE IV—MISCELLANEOUS PROVISIONS

SEC. 401. FUNDING ADJUDICATION AND NATURALIZATION SERVICES.

(a) LEVEL OF FEES.—Section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)) is amended by striking ''services, including the costs of similar services provided without charge to asylum applicants or other immigrants'' and inserting ''services''.

(b) USE OF FEES.—

(1) IN GENERAL.—Each fee collected for the provision of an adjudication or naturalization service shall be used only to fund adjudication or naturalization services or, subject to the availability of funds provided pursuant to subsection (c), costs of similar services provided without charge to asylum and refugee applicants.

(2) PROHIBITION.—No fee may be used to fund adjudication- or naturalization-related audits that are not regularly conducted in the normal course of operation.

(c) REFUGEE AND ASYLUM ADJUDICATION SERVICES.—

(1) AUTHORIZATION OF APPROPRIATIONS.—In addition to such sums as may be otherwise available for such purposes, there are authorized to be appropriated such sums as may be necessary to carry out the provisions of sections 207 through 209 of the Immigration and Nationality Act.

(2) AVAILABILITY OF FUNDS.—Funds appropriated pursuant to paragraph (1) are authorized to remain available until expended.

(d) SEPARATION OF FUNDING.—

(1) IN GENERAL.—There shall be established separate accounts in the Treasury of the United States for appropriated funds and other collections available for the Bureau of Immigration Services and Adjudications and the Bureau of Enforcement and Border Affairs.

(2) FEES.—Fees imposed for a particular service, application, or benefit shall be deposited into the account established under paragraph (1) that is for the bureau with jurisdiction over the function to which the fee relates.

(3) FEES NOT TRANSFERABLE.—No fee may be transferred between the Bureau of Immigration Services and Adjudications and the Bureau of Enforcement and Border Affairs for purposes not authorized by section 286 of the Immigration and Nationality Act, as amended by subsection (a).

(e) AUTHORIZATION OF APPROPRIATIONS FOR BACKLOG REDUCTION.—

(1) IN GENERAL.—There are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2003 through 2006 to carry out the Immigration Services and Infrastructure Improvement Act of 2000 (title II of Public Law 106–313).

(2) AVAILABILITY OF FUNDS.—Amounts appropriated under paragraph (1) are authorized to remain available until expended.

(3) INFRASTRUCTURE IMPROVEMENT ACCOUNT.—Amounts appropriated under paragraph (1) shall be deposited into the Immigration Services and Infrastructure Improvements Account established by section 204(a)(2) of title II of Public Law 106–313.

SEC. 402. APPLICATION OF INTERNET-BASED TECHNOLOGIES.

(a) ESTABLISHMENT OF ON-LINE DATABASE.—

(1) IN GENERAL.—Not later than one year after the date of the enactment of this Act, the Director, in consultation with the Technology Advisory Committee, shall establish an Internet-based system that will permit an immigrant, nonimmigrant, employer, or other person who files with the Attorney General any application, petition, or other request for any benefit under the immigration laws of the United States access to on-line information about the processing status of the application, petition, or other request.

(2) PRIVACY CONSIDERATIONS.—The Director shall consider all applicable privacy issues in the establishment of the Internet system described in paragraph (1). No personally identifying information shall be accessible to unauthorized persons.

(3) MEANS OF ACCESS.—The on-line information under the Internet system described in paragraph (1) shall be accessible to other persons described in subsection (a) through a personal identification number (PIN) or other personalized password.

(4) PROHIBITION ON FEES.—The Director shall not charge any immigrant, nonimmigrant, employer, or other person described in subsection (a) a fee for access to the information in the database that pertains to that person.

(b) FEASIBILITY STUDY FOR ON-LINE FILING AND IMPROVED PROCESSING.—

(1) ON-LINE FILING.—

(A) IN GENERAL.—The Director, in consultation with the Technology Advisory Committee, shall conduct a study to determine the feasibility of on-line filing of the documents described in subsection (a).

(B) STUDY ELEMENTS.—The study shall—

(i) include a review of computerization and technology of the Immigration and Naturalization Service (or successor agency) relating to immigration services and the processing of such documents;

(ii) include an estimate of the time-frame and costs of implementing on-line filing of such documents; and

(iii) consider other factors in implementing such a filing system, including the feasibility of the payment of fees on-line.

(2) REPORT.—Not later than one year after the date of the enactment of this Act, the Director shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a report on the findings of the study conducted under this subsection.

(c) TECHNOLOGY ADVISORY COMMITTEE.—

(1) ESTABLISHMENT.—Not later than 60 days after the date of the enactment of this Act, the Director shall establish, after consultation with the Committees on the Judiciary of the Senate and the House of Representatives, an advisory committee (in this section referred to as the ''Technology Advisory Committee'') to assist the Director in—

(A) establishing the tracking system under subsection (a); and

(B) conducting the study under subsection (b).

(2) COMPOSITION.—The Technology Advisory Committee shall be composed of—

(A) experts from the public and private sector capable of establishing and implementing the system in an expeditious manner; and

(B) representatives of persons or entities who may use the tracking system described in subsection (a) and the on-line filing system described in subsection (b)(1).

SEC. 403. DEPARTMENT OF STATE STUDY ON MATTERS RELATING TO THE EMPLOYMENT OF CONSULAR OFFICERS.

(a) FINDINGS.—Congress finds that—

(1) consular officers perform an important role daily, often under difficult conditions, at United States embassies throughout the world; and

(2) many consular officers, who provide the first line of defense against the admission of undesirable persons into the United States, require appropriate training, supervision, and opportunities for promotion while performing this critical work.

(b) STUDY.—The Secretary of State shall conduct a study on matters relating to the employment of consular officers of the Department of State, including training promotion policies, rotation frequency, level of experience and seniority, and level of oversight provided by senior personnel.

(c) REPORT.—Not later than nine months after the date of enactment of this Act, the Secretary shall submit to the Committee on Foreign Relations and the Committee on the Judiciary of the Senate and the Committee on International Relations and the Committee on the Judiciary of the House of Representatives a report containing—

(1) the findings of the study conducted under subsection (b); and

(2) recommendations on how to best retain consular officers with the level of training and expertise in visa issuance appropriate to this important function, especially in sensitive, remote, and hostile locations.

SEC. 404. ALTERNATIVES TO DETENTION OF ASYLUM SEEKERS.

(a) IN GENERAL.—Chapter 4 of title II of the Immigration and Nationality Act (8 U.S.C. 1221 et seq.) is amended by inserting after section 236A the following new section:

''SEC. 236B. ALTERNATIVES TO DETENTION OF ASYLUM SEEKERS.

''(a) DEVELOPMENT OF ALTERNATIVES TO DETENTION.—The Director shall—

''(1) authorize and promote the utilization of alternatives to the detention of asylum seekers who do not have nonpolitical criminal records; and

''(2) establish conditions for the detention of asylum seekers that ensure a safe and humane environment.

''(b) SPECIFIC ALTERNATIVES FOR CONSIDERATION.—The Director shall consider the following specific alternatives to the detention of asylum seekers described in subsection (a):

''(1) Parole from detention.

''(2) For individuals not otherwise qualified for parole under paragraph (1), parole with appearance assistance provided by private nonprofit voluntary agencies with expertise in the legal and social needs of asylum seekers.

''(3) For individuals not otherwise qualified for parole under paragraph (1) or (2), non-secure shelter care or group homes operated by private nonprofit voluntary agencies with expertise in the legal and social needs of asylum seekers.

''(4) Noninstitutional settings for minors such as foster care or group homes operated by private nonprofit voluntary agencies with expertise in the legal and social needs of asylum seekers.

''(c) REGULATIONS.—The Director shall promulgate such regulations as may be necessary to carry out this section.

''(d) DEFINITION.—In this section, the term ''asylum seeker'' means any applicant for asylum under section 208 or any alien who indicates an intention to apply for asylum under that section.''.

(b) CLERICAL AMENDMENT.—The table of contents of the Immigration and Nationality Act is amended by inserting after the item relating to section 236A the following new item:

''Sec. 236B. Alternatives to detention of asylum seekers.''.

Mr. BROWNBACK. Mr. President, the attacks of September 11 exposed the weaknesses in how we protect our borders. Terrorists exploited the shortcomings in our immigration system and the lack of communication between the respective agencies that might have detected and deterred the events of that horrible day.

At the same time, however, September 11 has also brought out the best of this great Nation. As a people and as a government, we have united and stood firm in support of our freedom and our principles.

Significantly, September 11 has reaffirmed our Nation's pride in its immigrant roots. We have not lapsed into xenophobia, nor have we let terrorism cloud our judgment about the value of our immigrant neighbors or our visitors. We can take great pride in the fact that the Border Security bill which this body passed just two weeks ago, was intelligent and balanced. We were true both to our responsibility to protect our great Nation from those that mean us harm and our responsibility to keep our country open to those who mean us well.

We need an agency that is likewise true to both these missions, an agency that can effectively enforce the immigration laws and provide timely and competent immigration services. Sadly, the Immigration and Naturalization Service has failed to perform either mission well, and restructuring INS has long been on the legislative agenda. While I deeply respect the hard work that Commissioner Ziglar has put into reforming that agency, the fact is that the INS requires more fixes than can be done administratively. The fundamental problems with the INS compel legislative intervention.

That is why I am honored to join Senator KENNEDY, Senator HATCH, and my other colleagues in introducing the Immigration Reform, Accountability, and Security Enhancement Act of 2002. I would like to point out that, as with the border security bill, we have a bipartisan, balanced, and intelligent bill that will deal effectively with the challenges that face our Nation. I am proud to be a part of it.

By Mr. KENNEDY (for himself and Mrs. HUTCHISON):

S. 2445. A bill to establish a program to promote child literacy by making books available through early learning, child care, literacy, and nutrition programs, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. KENNEDY. Mr. President, last year we reauthorized the Elementary and Secondary Education Act, one of the most far reaching education reform bills in decades. It was a significant bipartisan achievement, but it isn't enough. We must do more to focus on

the years leading up to school. Today, Senator KAY BAILEY HUTCHISON and I are reintroducing the Book Stamp Act and looking forward to working in a bipartisan manner to improve early learning opportunities for our youngest children.

In her statement before the Senate Health, Education, Labor, and Pensions Committee, First Lady Laura Bush called attention to the problems she saw as a teacher. She described children who were having difficulties learning to read because they had not developed the basic building blocks of language during their preschool years, the building blocks forged through reading, language play, and bedtime stories. In her words, ''a failure to learn to read not only leads to failure in school, but portends failure throughout life.''

It should come as no surprise that the foundation for learning and literacy is laid long before children arrive at our public schools. We can't ignore the facts. Each year, millions of children enter kindergarten unprepared for school. Before the first lessons are taught, they are already behind. Low-income children are particularly at risk of school failure. Children in low-income households are less likely than their peers to enter school with the language skills they need.

According to the Carnegie Foundation report, ''Ready to Learn: a Mandate for the Nation,'' 35 percent of children enter kindergarten unprepared to learn and most lack the language skills that are the prerequisites of literacy acquisition. The research also shows that children who are placed in remedial reading groups early in school, often continue to perform below age expectation. Reading failure in school constitutes a major disability that contributes to school dropout, juvenile delinquency, teen pregnancy, and other societal problems.

In other words, the early childhood years are crucial ones for the development of literacy.

There is widespread consensus that reading aloud by parents is the single most important activity for building the knowledge required for eventual success in reading. There is a long history of research linking reading aloud by parents with verbal language and literacy skills with our children.

Regardless of culture or wealth, one of the most important factors in the development of literacy is access to books. Students from homes with an abundance of books and other language activities are substantially better readers than those with few or no reading materials.

Children living in poverty bear a disproportionate burden of early language delay as well as later reading disability. Children from families with lower incomes, as a group, receive comparatively little stimulation at home. As a group, children from low-income families grow up with fewer books in the home, and are exposed to relatively little reading aloud.

The Book Stamp Act will help remedy this. By providing books to the Child Care Resource and Referral Agencies, pediatricians, WIC clinics, and child care providers in each community, we can get developmentally appropriate books into the hands of low-income families. There are over 825 Resource and Referral Agencies that will provide free books to children enrolled in child care programs that serve low income families. Each child will receive at least one book every 6 months to take home.

However, we can't stop there. It is not enough to just give books to the children. Since young children cannot read to themselves, we must make sure that the adults in their lives understand the importance of reading to children as young as six months. Training the parents and the child's caregiver about the importance of reading is just as critical as getting books into homes. Funds set aside by the Book Stamp Act will also be used to provide such training for parents and caregivers.

Funds will be raised through the sale of a postage stamp similar to the Breast Cancer Stamp. Postal patrons may choose to support this program by purchasing premium stamps which feature as early learning character.

We know what works to combat illiteracy. Through the simple act of getting books into the homes of families who might not otherwise be able to afford them and by providing simple training for parents and caregivers about the best ways to read to children, we can make an enormous difference in a short amount of time. I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2445

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Book Stamp Act''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) Literacy is fundamental to all learning.

(2) Between 40 and 60 percent of the Nation's children do not read at grade level, particularly children in families or school districts that are challenged by significant financial or social instability.

(3) Increased investments in child literacy are needed to improve opportunities for children and the efficacy of the Nation's education investments.

(4) Increasing access to books in the home is an important means of improving child literacy, which can be accomplished nationally at modest cost.

(5) Effective channels for book distribution already exist through child care providers, hospitals, pediatrician's offices, entities carrying out faith-based programs, and entities carrying out early literacy programs.

SEC. 3. DEFINITIONS.

In this Act:

(1) EARLY LEARNING PROGRAM.—The term ''early learning'', used with respect to a program, means a program of activities designed to facilitate development of cognitive, language, motor, and social-emotional skills in children under age 6 as a means of enabling the children to enter school ready to learn, such as a Head Start or Early Head Start program carried out under the Head Start Act (42 U.S.C. 9831 et seq.), or a State pre-kindergarten program.

(2) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

(3) STATE.—The term ''State'' means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the United States Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(4) STATE AGENCY.—The term ''State agency'' means an agency designated under section 658D of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858b).

SEC. 4. GRANTS TO STATE AGENCIES.

(a) ESTABLISHMENT OF PROGRAM.—The Secretary shall establish and carry out a program to promote child literacy and improve children's access to books at home and in early learning, child care, literacy, and nutrition programs, by making books available through early learning programs, child care programs, hospital-based or clinic-based literacy programs, library-based literacy programs, nutrition programs at clinics described in section 6(a)(2)(A)(v), faith-based literacy programs, and other literacy programs.

(b) GRANTS.—

(1) IN GENERAL.—In carrying out the program, the Secretary shall make grants to State agencies from allotments determined under paragraph (2).

(2) ALLOTMENTS.—For each fiscal year, the Secretary shall allot to each State an amount that bears the same ratio to the total of the available funds for the fiscal year as the amount the State receives under section 658O(b) of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858m(b)) for the fiscal year bears to the total amount received by all States under that section for the fiscal year.

(c) APPLICATIONS.—To be eligible to receive an allotment under this section, a State shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

(d) ACCOUNTABILITY.—The provisions of sections 658I(b) and 658K(b) of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858g(b), 9858i(b)) shall apply to State agencies receiving grants under this Act, except that references in those sections—

(1) to a subchapter shall be considered to be references to this Act; and

(2) to a plan or application shall be considered to be references to an application submitted under subsection (c).

(e) DEFINITION.—In this section, the term ''available funds'', used with respect to a fiscal year, means the total of—

(1) the funds made available under section 417(c)(1) of title 39, United States Code, for the fiscal year; and

(2) the amounts appropriated under section 9 for the fiscal year.

SEC. 5. CONTRACTS TO CHILD CARE RESOURCE AND REFERRAL AGENCIES.

A State agency that receives a grant under section 4 shall use funds made available through the grant to enter into contracts with local child care resource and referral agencies to carry out the activities described in section 6. The State agency may reserve not more than 3 percent of the funds made available through the grant to support a public awareness campaign relating to the activities.

SEC. 6. USE OF FUNDS.

(a) ACTIVITIES.—

(1) BOOK PAYMENTS FOR ELIGIBLE PROVIDERS.—A child care resource and referral agency that receives a contract under section 5 shall use the funds made available through the grant to provide payments for eligible providers, on the basis of local needs, to enable the providers to make books available to promote child literacy and improve children's access to books at home and in early learning, child care, literacy, and nutrition programs.

(2) ELIGIBLE PROVIDERS.—To be eligible to receive a payment under paragraph (1), a provider shall—

(A)(i) be a center-based child care provider, a group home child care provider, or a family child care provider, described in section 658P(5)(A) of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858n(5)(A));

(ii) be a Head Start agency designated under section 641 of the Head Start Act (42 U.S.C. 9836), an entity that receives assistance under section 645A of such Act (42 U.S.C. 9840a) to carry out an Early Head Start program, or another provider of an early learning program;

(iii) be an entity that carries out a hospital-based or clinic-based literacy program;

(iv) be an entity that carries out a library-based literacy program serving children under age 6;

(v) be an entity that carries out a nutrition program at a clinic (as defined in part 246.2 of title 7, Code of Federal Regulations (or any corresponding similar regulation or ruling)) under section 17(b)(6) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)(6));

(vi) be an entity that carries out a faith-based literacy program serving children under age 6; or

(vii) be another entity carrying out a literacy program serving children under age 6; and

(B) provide services in an area where children face high risks of literacy difficulties, as defined by the Secretary.

(b) RESPONSIBILITIES.—A child care resource and referral agency that receives a contract under section 5 to provide payments to eligible providers shall—

(1) consult with local individuals and organizations concerned with early literacy (including parents, teachers, pediatricians, directors of the special supplemental nutrition program for women, infants, and children established by section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786), literacy coalitions, and organizations carrying out the Reach Out and Read, First Book, and Reading Is Fundamental programs) regarding local book distribution needs;

(2) make reasonable efforts to learn public demographic and other information about local families and child literacy programs carried out by the eligible providers, as needed to inform the agency's decisions as the agency carries out the contract;

(3) coordinate local orders of the books made available under this Act;

(4) distribute, to each eligible provider that receives a payment under this Act, not fewer than 1 book every 6 months for each child served by the provider for more than 3 of the preceding 6 months;

(5) use not more than 5 percent of the funds made available through the contract to provide training and technical assistance to the eligible providers on the effective use of books with young children at different stages of development; and

(6) be a training resource for eligible providers that want to offer parent workshops on developing reading readiness.

(c) DISCOUNTS.—

(1) IN GENERAL.—Federal funds made available under this Act for the purchase of books may only be used to purchase books on the same terms as are customarily available in the book industry to entities carrying out nonprofit bulk book purchase and distribution programs.

(2) TERMS.—An entity offering books for purchase under this Act shall be present to have met the requirements of paragraph (1), absent contrary evidence, if the terms include a discount of 43 percent off the catalogue price of the books, with no additional charge for shipping and handling of the books.

(d) ADMINISTRATION.—The child care resource and referral agency may not use more than 6 percent of the funds made available through the contract for administrative costs.

SEC. 7. REPORT TO CONGRESS.

Not later than 2 years after the date of enactment of this Act, the Secretary shall prepare and submit to Congress a report on the implementation of the activities carried out under this Act.

SEC. 8. SPECIAL POSTAGE STAMPS FOR CHILD LITERACY.

Chapter 4 of title 39, United States Code is amended by adding at the end the following:

"§ 417. Special postage stamps for child literacy

''(a) In order to afford the public a convenient way to contribute to funding for child literacy, the Postal Service shall establish a special rate of postage for first-class mail under this section. The stamps that bear the special rate of postage shall promote childhood literacy and shall, to the extent practicable, contain an image relating to a character in a children's book or cartoon.

''(b)(1) The rate of postage established under this section—

''(A) shall be equal to the regular first-class rate of postage, plus a differential of not to exceed 25 percent;

''(B) shall be set by the Governors in accordance with such procedures as the Governors shall by regulation prescribe (in lieu of the procedures described in chapter 36); and

''(C) shall be offered as an alternative to the regular first-class rate of postage.

''(2) The use of the special rate of postage established under this section shall be voluntary on the part of postal patrons.

''(c)(1) Of the amounts becoming available for child literacy pursuant to this section, the Postal Service shall pay 100 percent to the Department of Health and Human Services.

''(2) Payments made under this subsection to the Department shall be made under such arrangements as the Postal Service shall by mutual agreement with such Department establish in order to carry out the objectives of this section, except that, under those arrangements, payments to such agency shall be made at least twice a year.

''(3) In this section, the term 'amounts becoming available for child literacy pursuant to this section' means—

''(A) the total amounts received by the Postal Service that the Postal Service would not have received but for the enactment of this section; reduced by

''(B) an amount sufficient to cover reasonable costs incurred by the Postal Service in carrying out this section, including costs attributable to the printing, sale, and distribution of stamps under this section,

as determined by the Postal Service under regulations that the Postal Service shall prescribe.

''(d) It is the sense of Congress that nothing in this section should—

''(1) directly or indirectly cause a net decrease in total funds received by the Department of Health and Human Services, or any other agency of the Government (or any component or program of the Government), below the level that would otherwise have been received but for the enactment of this section; or

''(2) affect regular first-class rates of postage or any other regular rates of postage.

''(e) Special postage stamps made available under this section shall be made available to the public beginning on such date as the Postal Service shall by regulation prescribe, but in no event later than 12 months after the date of enactment of this section.

''(f) The Postmaster General shall include in each report provided under section 2402, with respect to any period during any portion of which this section is in effect, information concerning the operation of this section, except that, at a minimum, each report shall include information on—

''(1) the total amounts described in subsection (c)(3)(A) that were received by the Postal Service during the period covered by such report; and

''(2) of the amounts described in paragraph (1), how much (in the aggregate and by category) was required for the purposes described in subsection (c)(3)(B).

''(g) This section shall cease to be effective at the end of the 2-year period beginning on the date on which special postage stamps made available under this section are first made available to the public.''.

SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this Act $50,000,000 for each of fiscal years 2003 through 2007.

By Mr. SPECTER (for himself, Mr. BIDEN, Mr. DURBIN, and Ms. COLLINS):

S. 2446.A bill to ensure that the death penalty defendants have a true opportunity to have their cases considered by the courts, to provide all prisoners with an opportunity to present exculpatory DNA evidence, and for other purposes; to the Committee on the Judiciary.

By Mr. SPECTER:

S. 2441. A bill to provide all prisoners with an opportunity to present exculpatory DNA evidence, and for other purposes; to the Committee on the Judiciary.

By Mr. SPECTER:

S. 2442. A bill to ensure that indigent death penalty defendants in State courts receive adequate legal representation, and for other purposes; to the Committee on the Judiciary.

By Mr. SPECTER:

S. 2443. A bill to ensure that death penalty defendants have a true opportunity to have their cases considered by the courts, and for other purposes; to the Committee on the Judiciary.

Mr. SPECTER. Mr. President, I have sought recognition to introduce legislation which is designed to have societal rights check law enforcement and to protect defendants' rights to fundamental fairness.

We are seeing an evolution of a number of problems in the criminal courts, especially applicable to capital cases involving the death penalty where I believe we are in danger of losing the death penalty in the United States if

we do not act to see to it that there is fairness.

For example, there is one case specifically where the Supreme Court of the United States had four votes to grant certiorari where the defendant was under the death penalty, and that individual was executed without the Supreme Court hearing the case because there was not a fifth vote to stay the execution.

In the past several years, there has been growing evidence that DNA materials would have exonerated many individuals who have been in jail, and among those quite a number of individuals who have been under the death penalty.

And we have also seen very significant problems with the adequacy of defense counsel in capital cases.

The legislation I am introducing today will address these issues.

During my tenure as district attorney of Philadelphia—from 1966 to 1974—I became convinced that the death penalty is an effective deterrent. I had come to that conclusion earlier when I was an assistant district attorney for 4 years preceding my tenure as Philadelphia's district attorney.

I have seen many cases where individuals will decline to carry weapons on robberies or burglaries because of fear that a killing might occur, and that would be murder in the first degree under the felony murder rule and therefore carry the death penalty.

One case is illustrative of many I have seen. There was a case in the late 1950s in Philadelphia with three defendants, Cater, Rivers, and Williams. Those young men were 17, 18, and 19 years old, respectively. They had IQs of less than 100. They set out to rob a merchant in North Philadelphia, and Williams had a gun. Cater and Rivers said: We are not going to go along on this robbery if you take the gun. They took that position because they were apprehensive that a killing might result and they could face the death penalty under the felony murder rule. That is a rule which says anyone committing one of five enumerated felonies, including robbery, would be subject to murder in the first degree and the death penalty if there was a killing in the course of that robbery.

Williams put the gun in the drawer, slammed it shut, and, as the three of them walked out, unbeknownst to Cater and Rivers, Williams took the gun with him. They robbed the store. In the course of the melee, the merchant was killed. The three of them faced murder in the first degree charges and the death penalty.

In the course of the investigation, the confessions disclosed the essential facts which I have related, and all three got the death penalty. Williams, the gunman, was subsequently executed, in the early 1960s, one of the last people executed in Pennsylvania before ''Furman v. Georgia'' set aside all of the death penalty cases.

Cater's and Rivers's cases came up later. I was an assistant DA at the time and argued that case in the Supreme Court of Pennsylvania.

Later, when I was district attorney, Cater and Rivers argued for commutation. Representing the Commonwealth, I agreed that they should not face the death penalty but should face life imprisonment because they had tried to dissuade Williams from carrying the gun. Although in the eyes of the law their culpability was the same as a coconspirator, it seemed to me that as a matter of fairness they ought not to have the death penalty.

That case is illustrative of many cases which have convinced me that the death penalty is a deterrent. But if we are to retain the deterrent, we have to be very careful how we use the death penalty.

When I was district attorney of Philadelphia, we had some 500 homicides a year. I would not permit any of my 160 assistants to ask for the death penalty without my personal review. We asked for the death penalty in a very limited number of cases—four, or five, or six a year—really heinous and outrageous cases where it was the conclusion that only the death penalty would suffice.

There has recently been a commission in Illinois which has been very critical of the application of the death penalty.

The Governor of Illinois has declared a moratorium on the death penalty. And with the growing number of DNA cases which are arising, it is my view, that unless some action is taken to see to it that there are not executions of people whose innocence might be established through DNA evidence, that we will soon lose the death penalty.

So it is a matter of protecting society's interest to maintain the death penalty that this legislation is being introduced, and, at the same time, with equal force, it is in order to provide fundamental fairness to defendants. Where DNA evidence is available, it ought to be examined. And we know it has the capacity, in many, many cases, to rule out the defendant.

The science of DNA has progressed to the point where tangible evidence may specifically exclude a defendant. We have seen many cases where incarcerated people, including those awaiting the death penalty, have been released when the DNA evidence has established their innocence.

There is legislation pending, but none reaches what I consider to be the fundamental question—I ask unanimous consent that I may proceed for an additional 3 minutes.

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

Mr. SPECTER. The pending legislation does not reach the critical issue; and that is, to establish a right to DNA evidence as a constitutional right.

Congress, under section V of the 14th amendment, has the authority to legislate in furtherance of the due process clause. Congress has been very inert on establishing constitutional rights under our legislative authority under section V. We have seen the wave of Supreme Court decisions in the constitutional area—''Mapp v. Ohio,'' where the Supreme Court of the United States said it was a constitutional right not be subjected to unreasonable searches and seizures, incorporating the search and seizure provisions of the 4th amendment into the due process clause of the 14th amendment.

The Supreme Court, ''Miranda v. Arizona,'' required warnings for those suspects who are in custodial interrogation. And there have been many cases where it has been up to the Court to establish the constitutional right.

In the obvious landmark case, perhaps the most important case in American constitutional history, ''Brown v. Board of Education of Topeka,'' it was up to the Supreme Court to establish desegregation as a constitutional right. Action should have been taken long before by the Congress, long before by the executive branch, and long before by the State legislatures; but it was up to the Court to establish that constitutional right.

There has been one case in the Eastern District of Pennsylvania, the ''Godschalk'' case, where Judge Weiner established a constitutional right for the defendant to see DNA evidence. And there is a Fourth Circuit opinion which addresses the issue but leaves it up to the Congress to act. And that is a matter that is taken up in this legislation.

On two other items, the bill will first provide for a true opportunity for defendants to have their cases considered by the courts. For example, there was a case where the Supreme Court of the United States had four justices willing to vote to grant certiorari and the defendant was executed because there was not a fifth justice voting for a stay of execution—and I ask unanimous consent that the case be included in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

ALEXZENE HAMILTON, AS NATURAL MOTHER AND NEXT FRIEND TO JAMES EDWARD SMITH v. TEXAS, NO. 89–7838, SUPREME COURT OF THE UNITED STATES, 498 U.S. 908; 111 S. CT. 281; 112 L. ED. 2D 236; OCTOBER 9, 1990

PRIOR HISTORY:

On petition for writ of certiorari to The Court of Criminal Appeals of Texas.

JUDGES:

Rehnquist, White, Marshall, Blackmun, Stevens, O'Connor, Scalia, Kennedy. Justice Marshall, with whom Justice Blackmun joins, concurring. Justice Stevens, with whom Justice Blackmun joins, concurring. Justice Souter took no part in the consideration or decision of this motion and this petition.

OPINION:

[*908] [***236] [**281] The motion of Chris Lonchar Kellogg for leave to intervene is denied. The petition for a writ of certiorari is denied.

CONCURBY:

MARSHALL; Stevens

CONCUR:

Justice Marshall, with whom Justice Blackmun joins, concurring.

I agree with Justice Stevens that the issue raised in this petition is important and merits resolution by this Court. I write to express my frustration with the Court's failure to avail itself of the ordinary procedural mechanisms that would have permitted us to resolve that issue in this case.

It is already a matter of public record that four Members of this Court voted to grant certiorari before petitioner was executed. [*909] See *Hamilton* v. *Texas*, 497 U.S. (1990) (Brennan, J., dissenting from denial of application for stay). According to established practice, this fact should have triggered a fifth vote to grant petitioner's application for a stay of [**282] execution. * Indeed, this result flows naturally from the standard by which we evaluate stay applications, a central component of which is ''whether four Justices are likely to vote to grant certiorari.'' *Coleman* v. *Paccar*, 424 U.S. 1301, 1302 (1976) (Rehnquist, J., in chambers) (emphasis added); see also *Maggio* v. *Williams*, 464 U.S. 46, 48 (1983) (*per curiam*) (same).

*See *Autry* v. *Estelle*, 464 U.S. 1, 2 (1983) (*per curiam*) (''Had applicant convinced four Members of the Court that certiorari would be granted on any of his claims, a stay would issue''); *Darden* v. *Wainwright*, 473 U.S. 928, 928–929 (1985) (Powell, J., concurring in granting of stay); *Straight* v. *Wainwright*, 476 U.S. 1132, 1333, n. 2 (1986) (Powell J., concurring in denial of stay, joined by Burger, C. J., Rehnquist, and O'Connor, JJ.) (noting that ''the Court has ordinarily stayed executions when four Members have voted to grant certiorari''); *id.*, at 1134–1135 (Brennan, J., dissenting from denial of stay, joined by Marshall and Blackmun, JJ.) (''When four vote to grant certiorari in a capital case, but there is not a fifth vote to stay the scheduled execution, one of the five Justices, who does not believe the case worthy of granting certiorari will nonetheless vote to stay; this is so that the 'Rule of Four' will not be rendered meaningless by an execution that occurs before the Court considers the case on the merits'').

In my view, the Court's willingness in this case to dispense with the procedures that it ordinarily employs to preserve its jurisdiction only continues the distressing rollback of the legal safeguards traditionally afforded. Compare *Boyde* v. *California*, 494 U.S., (1990) (Marshall, J., dissenting) (criticizing diminution in standard used to assess unconstitutional jury instructions in capital cases); *Barefoot* v. *Estelle*, 463 U.S. 880, 912–914 (1983) (Marshall, J. dissenting) (criticizing Court's endorsement of summary appellate procedures in capital cases); *Autry* v. *McKaskle*, 465 U.S. 1085, 1085–1086 (1984) (Marshall, J., dissenting from denial of certiorari) [***237] (criticizing expedited consideration of petitions for certiorari in capital cases).

Justice Stevens, with whom Justice Blackmun joins, concurring

This petition for a writ of certiorari raises important, recurring questions of law that should be decided by this Court. These questions concern the standards that the Due Process Clause of [*910] the Fourteenth Amendment mandates in a hearing to determine whether a death row inmate is competent to waive his constitutional right to challenge his conviction and sentence and whether he has made a knowing and intelligent waiver of this right.

James Edward Smith was convicted of murder and sentenced to death in Harris County, Texas, in 1984. Smith had a substantial history of mental illness, and his mental difficulties prompted a finding by the Texas trial court that he was not competent to represent himself on appeal. Pet. for Cert., Exh. 2, p. 13, Exhs. 4–8, 10–12. After his conviction, Smith vacillated between forceful insistence on prosecuting his own appeal and equally forceful insistence on abandoning any challenge to this conviction or his sentence. Pet. for Cert., Exh. 2, pp. 10–11, p. 2.

Petitioner is Smith's natural mother. Proceeding as Smith's ''next friend,'' she attempted to establish her standing to litigate on her son's behalf and to have his execution stayed until his competence was established after a full adversarial hearing. She was unsuccessful. On May 23, 1990, without notice to petitioner, the Texas trial court held a nonadversarial hearing, made a finding that Smith was competent to make a decision regarding his execution, and set his execution for 12:01 A. M. on June 26, 1990. Pet. for Cert., Exh. 3.

[**283] On June 22, over the dissent of Justice Teague, n1 the Texas Court of Criminal Appeals for Stay of Execution and Objections to Trial Court's Prior Proceedings.'' Ex Parte Hamilton. No. 18,380–02 (Tex. Crim. App., June 22, 1990) (en banc) (per curiam) (order denying application for stay). On June 24, petitioner filed in this Court her petition for a writ of certiorari and her application for a stay of [*911] Smith's execution. Four Members of the Court voted to grant certiorari, n2 and to stay the execution. Nevertheless, the stay application was denied, and Smith was executed on schedule.

n1 ''Teague, J., notwithstanding that such might, but probably only will cause a slight delay in carrying out applicant's obvious desire to carry into effect his long held death wish, as well as his strong belief that he will be reincarnated after he is killed, but believing that this Court, at least implicitly, has ruled that in a case such as this one, where the reasonable probability that the defendant is not competent to request that he be put to a premature death, or, to put it another way, to commit legal suicide through the hands of others, has been raised, it is necessary for the trial court to conduct a 'full adversarial hearing' should now be conducted in this cause. See Ex parte Jordan, 758 S. W. 2d 250 (Tex. Cr. App. 1988). Also see Ford v. Wainwright, 477 U.S. 399, 106 S. Ct. 2595, 92 L. Ed. 2d 335 (1986).'' Ex Parte Hamilton, No. 18, 380–02 (Tex. Crim. App., June 22, 1990) (Teague, J., dissenting from order denying application for stay).

n2 See Hamilton v. Texas, 497 U.S. (1990) (Brennan, J., dissenting from denial of application for stay).

[***238] Smith's execution obviously mooted this case. The Court has therefore properly denied the petition for a writ of certiorari. This denial, however, does not evidence any lack of merit in the petition; n3 instead, the reason for the denial emphasizes the importance of confronting on the merits the substantial questions that were raised in this case.

n3 See Singleton v. Commissioner, 439 U.S. 940, 942 (1978) (opinion of Stevens, J., respecting denial of petition for writ of certiorari).

Mr. SPECTER. The legislation further addresses the issue of adequacy of counsel.

I will now describe the specific provisions of the bill I am offering today, and the cases and history that shows the manifest need for such legislation.

The bill contains three titles. The first Title will ensure that defendants facing the death penalty will not be executed while the Supreme Court considers their petitions for certiorari or their cases on the merits. The second Title will ensure that both federal and state defendants have a meaningful opportunity to present DNA evidence in their defense. Finally, the third Title will establish minimal standards for defense counsel representing defendants in death penalty cases in state court. I am additionally introducing these three Titles as three separate bills, as I will explain later. The first is ''Title I: Right to Review of the Death Penalty While a Case is Pending Before the Supreme Court.''

There have been death penalty cases where, despite the fact that the Supreme Court was either considering to grant certiorari or had actually granted certiorari and the case was pending, the Court did not issue a stay of execution in the interim. In the 1990 case of ''(*Alexzene*) *Hamilton* v. *Texas*,'' 497 U.S. 1016, the Supreme Court failed to issue a stay of execution while considering a cert. petition, and the defendant was executed before the Court ruled on the petition. James Smith was convicted in 1984 of committing murder while perpetrating a robbery in 1983. He was sentenced to death. Smith appealed his conviction to the Texas Court of Criminal Appeals, citing seven points of errors, ranging from insufficiency of evidence to sustain a death sentence to challenges to the jury selection process in the trial. ''*Smith* v. *State*,'' 744 S.W.2d 86, Tex. Crim. App. 1987. In 1987, that court affirmed his conviction and sentence. In April, 1988, Smith waived any further appellate review of his case. His mother, Alexzene Hamilton, then entered the case, and filed a state habeas corpus petition in the Court of Criminal Appeals, claiming that her son was incompetent. The state responded to the mother's petition, and the Texas court denied relief. Ms. Hamilton then brought a petition for certiorari in the Supreme Court. The Supreme Court granted a stay of execution pending disposition of the cert. petition. ''*Hamilton* v. *Texas*,'' 485 U.S. 1042, 1988. The Court entered an order stating that the ''stay of execution of sentence of death . . . is granted pending the disposition by [the] Court of petition for writ of certiorari. Should the petition for a writ of certiorari be denied, this stay terminates automatically. In the event the petition . . . is granted, this stay shall continue pending the issuance of the mandate of [the] Court.'' Id. On April 3, 1990, the cert. petition was denied. ''*Hamilton* v. *Texas*,'' 496 U.S. 913, 1990. In May, 1990, the state trial court conducted a hearing and found that Smith still wanted to waive his appellate rights and that he was still competent. The trial court scheduled his execution for June 26, 1990. Ms. Hamilton again brought a writ of habeas corpus in the state courts on June 20, 1990, challenging the court's finding that Smith was competent. On June 22, 1990, the state courts denied this petition.

Ms. Hamilton then filed a habeas petition in federal district court on June 23, 1990, which the court denied on June 24th. However, Dr. Brown, one of the several doctors that had previously

opined that Smith was competent, stated that he now had some doubts of Smith's competency due to his review of some medical records he had not previously seen. The federal district court found that this new opinion did not affect its findings, and denied Ms. Hamilton's request for reconsideration. On June 25th, the state trial court had Dr. Brown re-examine Smith, and Dr. Brown then returned to his original opinion that Smith was competent. On the same day, the trial court then denied Ms. Hamilton's habeas corpus petition. The Texas Court of Criminal Appeals also dismissed Ms. Hamilton's motion for reconsideration on the same day. Additionally, on the same day, the United States Court of Appeals for the Fifth Circuit affirmed the federal district court's dismissal of the habeas petition and denied her motion for a stay of execution. ''*Hamilton* v. *Collins*,'' 905 F.2d 825, 5th Cir. 1990. Ms. Hamilton then filed petitions for certiorari, asking the Supreme Court to review both the state and federal court decisions and for a stay of execution. On June 26, 1990, the originally scheduled execution date, four Supreme Court Justices voted to grant certiorari, but for some unknown procedural reason, the Court did not formally act on the petition. The Court also did not vote to grant a stay of execution. Smith was subsequently executed before the Supreme Court decided on his cert. petition. The Supreme Court then denied Smith's petitions of certiorari. ''*Hamilton* v. *Collins*,'' 498 U.S. 895, 1990; ''*Hamilton* v. *Texas*,'' 498 U.S. 908, 1990. In denying the petition from the state court decision, the Court noted that it was dismissing the petition as ''moot.'' 498 U.S. 908, Stevens, J., concurring in the dismissal of the petition.

In the 1992 case of ''*Herrera* v. *Collins*,'' 502 U.S. 1085, the Court actually granted certiorari but failed to issue the stay. Herrera had been convicted of the 1981 murder of two police officers. Herrera then pursued two lines of appeals through the Texas state system—direct appeal and then collateral proceedings. Herrera then pursued two sequential federal habeas corpus proceedings. During these proceedings, certiorari had been denied three times, but on the second federal habeas proceeding, certiorari was granted. Herrera's claim was that he was actually innocent in this proceeding. After granting certiorari, the Supreme Court failed to grant a stay of execution. However, in that case, the Texas Court of Criminal Appeals granted a stay while the case was pending before the Supreme Court. Herrera's claim was ultimately denied by the Supreme Court and he was executed.

The reason for this sequence is a procedural twist. By Supreme Court practice, it takes only four votes to grant certiorari. Although certiorari is recognized by statute as the procedure for getting a case before the Court, the statute does not state how many votes are needed. The four vote standard is the practice of the Court. However, to grant a stay, there must be a majority—five votes—and the standard the Court applies is different from that for granting certiorari. There may be good reasons why the standard is different, and in almost all other cases, the failure to grant a stay when certiorari has been granted or while the Court is still considering whether to grant certiorari does not have the dispositive effect that it does in a capital punishment case. However, in a capital case, the failure to grant a stay while the Court considers whether to even hear the case sends the signal that the Court is, in effect, affirming the decision of a lower court before it even decides that the lower court's decision is worthy of affirmation. In a case where the Court has actually granted certiorari and failed to issue a stay the Court, in effect, tells the world that a case is important enough to be heard, but not important enough to postpone an execution.

Until relatively recently, the Supreme Court had an ''informal'' practice where a fifth Justice would vote to grant a stay when four justices had voted to grant certiorari. The late Justice Brennan articulated the rationale for this rule:

A minority of the Justices has the power to grant a petition for certiorari over the objection of five Justices. The reason for this ''antimajoritarianism'' is evident: in the context of a preliminary 5–4 vote to deny, 5 give the 4 an opportunity to change at least one mind. Accordingly, when four vote to grant certiorari in a capital case, but there is not a fifth vote to stay the scheduled execution, one of the five Justices who does not believe the case worthy of granting certiorari will nonetheless vote to stay; this is so that the ''Rule of Four'' will not be rendered meaningless by an execution that occurs before the Court considers the case on the merits. ''Straight v. Wainwright,'' 476 U.S. 1132, 1134–35, 1986, Brennan, J., dissenting. Justice Brennan's argument requires no further elaboration.

Justice Brennan's opinion involved a ''hold'' case, where he was arguing that a stay should have been granted. The ''hold'' is an informal practice whereby at least three Justices of the Supreme Court can ''hold'' the Court from acting on a petition for certiorari so that the Court does not deny the petition. A ''hold'' is placed on a case when the Court has another case pending before the Court, the disposition of which may have an affect on the first case.

In addition to Justice Brennan's argument, there are other reasons why a stay should be granted. In my experience as District Attorney in Philadelphia, and conducting oversight of the Justice Department while serving in the Senate, one theme is constant concerning our system of criminal justice: It rests on a bedrock that all Americans see the system as being fair to all. When the average American questions the fundamental fairness of any aspect of the criminal justice system, then it is in trouble. To the average American, when the Supreme Court has not yet decided whether it should consider a case or, has in fact, decided to consider a case by granting certiorari, but then fails to act to ensure that it can in actuality hear the case, that raises fundamental questions about fairness, regardless of the procedural nuances that legally allow for such a result. If we are to maintain confidence in our criminal justice system, then it has to be seen as fair to all.

When the Supreme Court takes action like this, in my judgment, it denies the defendant his constitutional right of ''due process'' of law which, in these circumstances, is colloquially referred to as ''procedural due process.'' When the government takes action against an individual, the essential core of procedural due process is notice and an opportunity to be heard. In the instant case, we are not concerned with the notice aspect because the defendant knows why he was convicted. But when the Supreme Court has a case pending before it-that is a motion to stay execution or a petition for certiorari has been filed or the Court has issued a writ of certiorari-and then fails to grant a stay so that it can actually consider the petition or hear the case, it denies the defendant due process of law because the defendant is deprived of his right to be heard. A motion for a stay of execution should be treated as a petition for certiorari in these circumstances because, in effect, the motion is a preliminary petition for certiorari.

As I noted earlier, the writ of certiorari is codified in Title 28 of the U.S. Code. No defendant has a constitutional right to have his or her case heard by the Supreme Court. But once the defendant files a petition, then the defendant has a statutory right to have, at the very least, his petition considered by the court and, if the petition is granted, then the right to have his case considered by the Court. This is the method that Congress has created for the consideration of these cases, which does not allow a right of direct appeal. As Congress has created this two step procedural mechanism, Congress has the authority to ensure that it is effective. The Court does not have to grant a petition, but it must, at the very least, not allow a petition to become moot before it even makes this very basic decision. The same logic applies if the Court grants the petition.

The Court cannot consider the petition or the case if the defendant is executed before the Court acts. When a defendant is executed in these circumstances, he is being denied his right to be heard on his petition or his case and is therefore denied his basic right to ''procedural due process.''

The legislation I propose addresses this issue both at the federal and state level. With respect to federal cases, my

proposed bill would prohibit the Bureau of Prisons or the military from executing a death row inmate when a defendant has filed a petition for certiorari and when the Supreme Court has granted certiorari. Congress created the federal death penalty, and Congress can establish the conditions when it can or cannot be carried out. With respect to state cases, my bill would address this issue in two different ways.

First, just as with federal cases, my bill would prohibit the executive officer of a state from executing a defendant when a cert. petition is pending or has been granted. Congress's authority to legislate in this arena is derived from Section V of the 14th Amendment which reads that ''[t]he Congress shall have power to enforce, by appropriate legislation, the provisions of this article.'' Section 1 of that Amendment reads in pertinent part that no ''State [shall] deprive any person of life . . . without due process of law. . . .'' As noted above, when a person is executed before the Supreme Court has granted or denied certiorari or acted on a case once cert. is granted, that person is deprived of his or her life without due process of law. My bill would also require the Court to treat a motion for a stay of execution as a petition for certiorari.

Furthermore, this bill would also require all federal judges, to include Supreme Court justices, to issue a stay whenever a habeas corpus case is pending before the judge or judges and the habeas petitioner defendant has been sentenced to death. A case is considered to be pending if a defendant has filed a notice of appeal, filed a motion for a stay of execution, filed a petition for certiorari, or when certiorari has been granted. Most death penalty cases, both federal and state cases, have their final hearings through federal habeas corpus review. Congress has broad authority in the area of habeas corpus legislation. Indeed, Congress enacted a similar provision as part of the Antiterrorism and Effective Death Penalty Act of 1996. 28 U.S. Code Section 2262 requires a federal court to issue a stay of execution in those circumstances where a defense counsel has been appointed to an indigent defendant and a state is seeking to fall within the streamlined habeas corpus procedures contained in the Act.

Additionally, my bill would require a lower court to issue a stay if a higher court did not in these circumstances.

Finally, my bill would require that if four Justices vote to grant certiorari in a death penalty case, then certiorari will be granted. When a person petitions the Supreme Court to hear his or her case, that person expects to have the case heard if four Justices believe it should be heard. This is the expectation of all those seeking Supreme Court review, an expectation resulting from the practices of the Court. The Court already has great discretion not to hear almost all cases it does not wish to consider. Congress has given the Court this discretion by eliminating almost all avenues of appeal by right to the Court and instead giving the Court the power to pick the cases it wants to hear through the certiorari process. Accordingly, Congress should have the power to require the Court to review those cases where four Justices vote to hear the case. The procedures for obtaining access to our courts should be as transparent as possible, and it simply defies logic and makes a mockery of the phrase ''equal justice'' when four votes in one set of circumstances can result in Supreme Court review of a case, but not in other circumstances.

The second title is ''TITLE II: DNA Testing.''

My bill also addresses the issue of DNA testing for prisoners who claim that such testing would exonerate them. This bill would establish the procedures for federal prisoners who seek such review. It would also mandate that states adopt similar procedures. My bill would establish federal procedures that set a middle ground between the two DNA bills that are currently pending before the Senate.

My bill requires that a person seeking DNA testing not take a position inconsistent with any affirmative defense he may have raised at trial. An affirmative defense is one such as self-defense, where a defendant is not denying that he committed one or more of the acts constituting the charged offense, but the defendant is denying criminal responsibility. One of the other pending bills does not have any similar provision, and another bill requires that the defendant's current theory of defense not be inconsistent with a prior theory of defense. However, my bill would allow a defendant who pled guilty to request DNA testing. Unfortunately, there are instances where due to inadequate representation or lack of sophistication on a defendant's part, or for a variety of other reasons, a defendant will plead guilty to a crime that he did not commit. My bill would allow such a defendant to seek DNA testing.

Another difference is that my bill has a five year limitation on its application, with one exception regarding newly discovered evidence. One of the other pending bills has no time limitation, and the other has a three year time limitation. The thrust of all the pending DNA bills is to allow a prisoner to seek potentially exculpatory DNA testing, even though such a request would otherwise be barred on procedural grounds, such as timeliness requirements.

My bill would benefit those defendants currently incarcerated who did not have access to DNA testing at the time of their trials. My bill defines lack of access rather broadly. If 1, the technology was actually not available, or 2, it was not generally known that such testing was available at the time of trial, or 3, if the technology was available and the testing was not requested and the applicant shows that the failure to have requested testing is attributable to deficient performance on his counsel's part, then the applicant is deemed not to have had access to the testing. The bill would allow a prisoner to seek testing for up to five years after the enactment of the bill, with the exceptions I noted above. Five years would give all defendants currently incarcerated enough time to bring their claims.

I do not propose that there be no time limitation, because I do not want to create an exception that could conceivably swallow the time limitations currently existing in federal law.

However, that concern may be misplaced. A track record of five years can tell us if this bill is ripe for abuse. If not, then the bill can be reenacted with no time limit. If, however, there is evidence that is being abused by prisoners, then the law would expire. Based on my experience as a prosecutor, I am concerned that the three year limitation is not long enough to develop a good track record on the use of this testing.

There would be an exception for this five year limitation. If a prisoner can show that there is newly discovered evidence in his case, and such evidence could not have been discovered through due diligence, or the failure to discover the evidence is attributable to deficient performance on his counsel's part, then he could bring a claim beyond the five year limit. This exception is consistent with the laws currently in force concerning newly discovered evidence.

Some may question the need for these DNA testing procedures in federal cases, as the level of practice and standard of representation is considered to be of the highest caliber. Even at that level there can be problems. Even though it did not involve DNA testing, we had the case of Timothy McVeigh when only days before his scheduled execution the FBI announced that it had discovered documents it had failed to provide the defense before trial. This highlights that even at the federal level mistakes can be made. This bill would provide one safeguard against such mistakes.

My bill would also mandate that states provide similar procedures to state prisoners in all cases. One of the pending bills has such a requirement, but only in capital cases. DNA evidence is such a powerful tool that can exonerate the unjustly convicted that I believe Congress has the authority pursuant to Section V of the 14th Amendment to impose post-conviction DNA testing requirements on the states.

In 1963, the United States Supreme Court decided the seminal case of ''Brady v. Maryland,'' 373 U.S. 83, where the Court held that ''suppression by the prosecution of evidence favorable to an accused . . . violates due process where the evidence is material either to guilt or punishment . . . .'' The Court also noted that ''[s]ociety wins not only when the guilty are convicted but when criminal trials are

fair; our system of the administration of justice suffers when any accused is treated unfairly.'' Congress has the authority to enact legislation to enforce the protections of the ''due process'' clause through Section V of the 14th Amendment.

DNA evidence is the most powerful evidence that can be ''favorable to an accused,'' because it can prove that the accused did not commit the crime. But when DNA evidence remains in the hands of the state untested, we do not know if it is favorable or unfavorable to the accused. It really is not ''evidence'' until it is tested, because its relevancy to guilt or innocence cannot be determined without testing. When a state does not provide a defendant with the opportunity to determine whether evidence may exculpate him, the state is, in effect, ''suppressing . . . favorable evidence'' by not allowing a defendant to determine whether it is favorable or not.

DNA evidence has proven to be extremely valuable to the criminal justice system. It has aided prosecutions and freed unjustly convicted persons. Since 1973, over 100 people have been freed from Death Row, at least 10 due to DNA testing. Additionally, over a total of 100 people have been freed after having been exonerated in both capital cases and non-capital cases due to DNA testing. The FBI has found that since 1989, DNA testing has cleared about 25% of sexual assault suspects whose samples are sent to the FBI for testing. Indeed, DNA evidence can be a stronger indicator of innocence than guilt. If the defendant's DNA does not match the DNA evidence, that is conclusive evidence. However, when a match results, in actuality, it is only a probability, albeit a very high probability, that the defendant was the source of the DNA.

In questioning whether the death penalty was being fairly administered in the United States, Supreme Court Justice Sandra O'Connor noted the number of Death Row inmates freed due to being exonerated, to include by DNA testing. Indeed, she commented that ''[i]f statistics are any indication, the system may well be allowing some innocent defendants to be executed.'' This concern was made manifest when the Governor of Illinois ordered a moratorium on the death penalty after 13 Death Row inmates were exonerated. Justice O'Connor also noted that the availability of DNA testing in the various states varied widely, with some states affording this post-conviction DNA testing and others not providing any at all. Even in those states that offer such testing, there is a wide variation in procedures. My bill would require the states to adopt procedures similar to the federal standards and thereby promote consistency among the states.

Indeed, the recent groundswell of opinion questioning the death penalty has been based on doubts about its accuracy. Providing Death Row defendants with the opportunity for DNA testing would do much to allay those concerns.

But the death penalty is not the only reason for enacting this bill. Many federal and state prisoners are currently incarcerated for long sentences due to mandatory minimums and Sentencing Guidelines. Indeed, the prisoner most recently freed due to DNA testing had served 21 years of an 80 year sentence for rape. Additionally, DNA evidence is relevant in many types of cases, beyond the classic sex assault cases and violent crimes where there is blood evidence. For example, in a bank robbery case, the FBI was able to connect a suspected robber to the case by recovering some hairs from a woolen cap the robber used as a mask. Obviously, such evidence could also be used to exonerate a defendant.

However, in order for this DNA testing to be of any use, there must be evidence to test. That is why this bill requires the preservation of biological evidence for the five year period after the enactment of this bill or, if someone requests testing pursuant to this bill, while those proceedings are underway.

This bill does more than provide justice to wrongfully convicted defendants. It also protects the public. When a person is wrongfully convicted of murder or rape, that allows the real perpetrator to remain at large. And based on my experience as District Attorney, sexual predators, especially those who prey on children, have the highest levels of recidivism.

As noted above, the authority for enacting this provision is Section V of the 14th Amendment to the Constitution. When a state fails to provide DNA testing that might bear on the guilt or innocence of a defendant, then the state is depriving the defendant of his life or liberty without due process of law. The state's interest in the finality of a conviction is strong. However, when balancing that interest against a prisoner's interest in not being wrongfully executed, justice cries out for access to DNA testing.

The need for Congress to address this issue was highlighted by two recent federal court decisions that addressed giving state prisoners access to DNA testing. In the 2001 case of ''Godschalk v. Montgomery County District Attorney's Office,'' 177 F.Supp.2d 366, Judge Charles R. Weiner of the United States District Court for the Eastern District of Pennsylvania ruled that a prisoner who sought DNA testing had a right to such testing pursuant to the Due Process clause of the 14th Amendment because such evidence could be exculpatory evidence as defined by ''Brady v. Maryland'' and its progeny. In 1987, Godschalk had been convicted of two rapes committed in 1986. At the time of trial, DNA testing was not available. At the trial, the prosecution introduced an audiotaped confession by Godschalk that contained details of the crimes not known to the public. Godschalk's state appeals of his convictions were denied, as well as his petitions for DNA testing. Godschalk then brought an action pursuant to 42 U.S. Code Section 1983 seeking DNA testing. The evidence from only one of the rapes was still in a condition so that it could be tested, but there was no dispute that the same person committed both rapes. The court ordered the DNA testing, noting that ''[w]hile [Godschalk's] detailed confessions to the rapes are powerful inculpatory evidence, so to any DNA testing that would exclude [Godschalk] as the source of the genetic material taken from the victims would be powerful exculpatory evidence. . . . Given the well-known powerful exculpatory effect of DNA testing, confidence in the jury's finding of [Godschalk's] guilt at his past trial, where such evidence was not considered, would be undermined.'' 177 F.Supp.2d at 370. The evidence was tested, and it did not match Godschalks's DNA, and he was subsequently freed.

The United States Court of Appeals for the Fourth Circuit reached a different result in the 2002 case of ''Harvey v. Horan,'' 278 F.3d at 370. In that case, Harvey had been convicted of rape and forcible sodomy. Harvey brought a Section 1983 action to have the evidence in that case tested with a new DNA technology that had not been available at the time of his trial. The district court granted his request, but on appeal the Fourth Circuit found his request to be procedurally barred. The court found that Section 1983 was not the proper path for such a request and that Harvey's request was, in effect, a petition for habeas corpus, which was statutorily barred as a successive petition. The court specifically noted that Harvey's path of redress was either through the state courts and legislature or Congress, stating that ''[f]ederal and state legislatures and state courts are free in ways that [the federal court is] not to set the ground rules by which further collateral attacks on state convictions such as Harvey's may be entertained.'' 278 F.3d at 380. The purpose of my bill is to establish those ''ground rules.''

The third title is ''Title III: Counsel Standards.''

Finally, my bill would establish minimal standards for defense counsel in state court cases where the defendant is facing the death penalty. In 1991, when my distinguished colleague and friend Senator BIDEN chaired the Judiciary Committee, he asked Professor James Liebman of Columbia Law School to calculate the frequency of relief in capital habeas corpus cases. This ultimately led Professor Liebman to conduct a study of the error rates in capital cases. His study found that one of the two most common errors prompting a majority of reversals at the state post-conviction stage was ''egregiously incompetent defense lawyers who didn't even look for and demonstrably missed important evidence

that the defendant was innocent or did not deserve to die . . . .'' In a more recent study released this year, Professor Liebman again cited the poor quality of defense counsel as a contributing factor to erroneous results in capital cases. And we all have heard the stories of defense counsel sleeping during the course of a capital trial.

My bill would establish minimal standards for defense counsel in capital cases who represent indigent defendants. The standards I propose are the same that are required in federal courts and establish an absolute floor for competence of counsel, both at the trial level and the appellate level. Unlike the other two pending bills, my bill would establish and mandate actual standards. If these standards are good enough for the federal courts, they should be good enough for state courts. They are specific enough to ensure that a defendant receives competent representation but also general enough so that they could be applied throughout the United States. Among other requirements, the bill would require that any counsel have several years of felony experience, and that a defendant would have a right to two defense counsel at trial.

One of the requirements is that defense counsel be ''learned in the law applicable to capital cases.'' Concededly, this is a rather general requirement which we can develop and explore at hearings on this bill and bring more definition to through legislative history or amending the bill. However, such generic language would allow flexibility between the different states, where the number of capital cases vary widely. For example, there may be a very experienced felony defense counsel who has never actually tried a capital case, but has attended several training sessions put on by the ABA or an equivalent organization. Why should not such a person be deemed competent to serve as defense counsel in a capital case even though he or she may have never defended such a case before? And this ''generic'' requirement will have a strict enforcement mechanism described below that will ensure it has ''teeth.''

In the seminal 1963 case of ''Gideon v. Wainwright,'' 372 U.S. 335, the Supreme Court recognized that indigent defendants have a constitutional right to be represented by counsel in criminal cases. In the 1984 case of ''Strickland v. Washington,'' 466 U.S. 668, the Supreme Court held that a defendant has a constitutional right to effective assistance of counsel guaranteed by the 6th Amendment to the Constitution, and that this requirement applied to the states through the due process clause of the 14th Amendment. Interestingly, ''Strickland'' was a death penalty case.

As these rights are guaranteed by the Constitution and apply to the states through the ''due process'' clause of the 14th Amendment, Congress has the authority to enforce these rights through Section V of that Amendment. There is no doubt that there is state action in these circumstances, as the state is responsible for appointing and compensating the counsel representing indigent defendants.

My bill, however, also contains an additional enforcement mechanism. ''Strickland'' identified a two-part analysis in determining whether there was a constitutional violation due to ineffective assistance of counsel. The first prong of that analysis is a determination whether ''counsel's performance was deficient,'' that is, whether the ''counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment.'' ''Strickland,'' 466 U.S. at 687. The second prong requires a determination as to whether the ''counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.'' Id. A defendant must establish both prongs to make a successful challenge. My bill would, in effect, eliminate the first prong of the analysis in a habeas corpus proceeding. If a defendant's counsel did not meet the standards established by my bill, then the first prong of ''deficient performance'' would be deemed to have been met. The defendant would then only have to satisfy the requirements of the second prong, thus allowing him to challenge the decisions his counsel made that influenced the outcome of the trial, without having to fear that the habeas court would deem such decisions to be ''tactical'' decisions that were within the realm of reasonable practice. However, if a state adopted the standards contained in my bill, a defendant would have to make both showings, as required by current law. A habeas court's review as to whether these standards were met will be ''de novo'' and the State would have the burden of proving that the standards had been met.

This overall enforcement provision is analogous to the provision I referred to earlier in the 1996 antiterrorism act, that provided for expedited habeas review if a state adopted certain procedures for indigent defendants.

The provisions of my bill are all aimed at achieving one goal—securing for all defendants throughout the criminal justice process all the protections guaranteed by the ''due process'' clause and thereby ensuring that they receive fair treatment throughout the process, regardless of their income level.

Mr. President, I ask unanimous consent that the bill containing these three provisions be printed in the RECORD.

Additionally, in order to facilitate hearings or perhaps legislative enactment of these bills, I am introducing the three separately: a separate bill on DNA evidence; a separate bill on staying execution, where the Supreme Court has granted certiorari; and a separate bill on adequacy of counsel, so that, in total, four bills are being introduced, and I ask that these bills also be printed in the RECORD.

There being no objection, the bills were ordered to be printed in the RECORD, as follows:

S. 2446

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Confidence in Criminal Justice Act of 2002''.

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

TITLE I—RIGHT TO REVIEW OF THE DEATH PENALTY UPON THE GRANT OF CERTIORARI

SEC. 101. PROTECTING THE RIGHTS OF DEATH ROW INMATES TO REVIEW OF CASES GRANTED CERTIORARI.

Section 2101 of title 28, United States Code, is amended by adding at the end the following:

''(h) Upon notice by a party that has filed a motion for a stay of execution or filed for certiorari with, or has been granted certiorari by, the United States Supreme Court in an appeal from a case in which the sentence is death, the Governor of the State in which the death sentence is to be carried out, in a State case, or the Director of the Bureau of Prisons, the Secretary of a military branch, or any other Federal official with authority to carry out the death sentence, in a Federal case, shall suspend the execution of the sentence of death until the United States Supreme Court enters a stay of execution or until certiorari is acted upon and the case is disposed of by the United States Supreme Court.

''(i) For purposes of this section, the United States Supreme Court shall treat a motion for a stay of execution as a petition for certiorari.

''(j) In an appeal from a case in which the sentence is death, a writ of certiorari shall be issued by the United States Supreme Court upon the vote of at least 4 qualified justices.''.

SEC. 102. HABEAS CORPUS.

(a) STATE COURT PROCEEDINGS.—Section 2251 of title 28, United States Code, is amended—

(1) by inserting ''(a)'' at the beginning of the text;

(2) by inserting ''(b)'' before the second sentence; and

(3) by adding at the end the following:

''(c)(1) Notwithstanding any other provision of law, a justice or judge of the United States before whom a habeas corpus proceeding that involves the death sentence is

pending shall stay the execution of the death sentence until the proceeding is completed. If the issuance of such a stay requires more than 1 judge to concur or vote on the stay, the court before which the proceeding is pending shall grant the stay.

''(2) For purposes of this subsection, a case is pending before a court in the Circuit Court of Appeals if a notice of appeal has been filed and is pending before the United States Supreme Court, if a petition for certiorari has been filed, or if a motion to stay execution has been filed.

''(3) A case described in paragraph (2) remains pending before the court until the petition for certiorari is denied. If the petition is granted, the case remains pending.

''(4) If a higher court is unable or fails to issue a stay pursuant to this subsection, a lower court before which the case had been pending shall issue the stay of execution.

''(d) For purposes of this section, a motion to stay execution shall be treated as a petition for certiorari.''.

(b) FEDERAL COURT PROCEEDINGS.—Section 2255 of title 28, United States Code, is amended by adding at the end the following:

''Notwithstanding any other provision of law, a justice or judge of the United States, before whom a habeas corpus proceeding that involves a Federal death sentence is pending, shall stay the execution of the death sentence until the proceeding is completed. If the issuance of such a stay requires more than 1 judge to concur or vote on the stay, the court before which the proceeding is pending shall grant the stay.

''If a higher court is unable or fails to issue a stay pursuant to the preceding paragraph, a lower court before which the case had been pending shall issue the stay of execution. For purposes of this section, a motion to stay execution shall be treated as a petition for certiorari. A case described in the preceding paragraph—

''(1) is pending before a court in the Circuit Court of Appeals if a notice of appeal has been filed; and

''(2) is pending before the United States Supreme Court if—

''(A) a petition for certiorari has been filed and has not been denied; or

''(B) a motion to stay execution has been filed.''.

TITLE II—POST-CONVICTION DNA TESTING

SEC. 201. POST-CONVICTION DNA TESTING.

(a) FEDERAL CRIMINAL PROCEDURE.—

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

''CHAPTER 228A—POST-CONVICTION DNA TESTING

''§ 3600. DNA testing

''(a) MOTION.—

''(1) IN GENERAL.—An individual imprisoned because of a conviction of a criminal offense in a court of the United States (referred to in this section as the 'applicant') may make a written motion to the court that entered the judgment of conviction for the performance of forensic DNA testing on specified evidence that was secured in relation to the investigation or prosecution that resulted in the conviction.

''(2) CONTENTS.—The motion shall—

''(A) include an assertion by the applicant, under penalty of perjury, that the applicant is actually innocent of the crime for which the applicant is imprisoned or of uncharged conduct, if the exoneration of the applicant of such conduct would result in a mandatory reduction in the sentence of the applicant;

''(B) identify the specific evidence secured in relation to the investigation or prosecution that resulted in the conviction for which testing is requested;

''(C) identify a theory of defense—

''(i) the validity of which would establish the actual innocence of the applicant, and explain how the requested DNA testing would substantiate that theory; and

''(ii) that is not inconsistent with any affirmative defense issued by the applicant in the original prosecution;

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

''(E) certify that the applicant will provide a DNA sample from the applicant for purposes of comparison.

''(3) FILING.—A motion filed under this section is timely if—

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

''(B) the applicant can show that—

''(i) the evidence identified pursuant to paragraph (2)(B) is newly discovered; and

''(ii)(I) such evidence could not have been discovered through the exercise of due diligence; or

''(II) the proximate cause for not having previously discovered such evidence was the deficient performance of the attorney of the applicant; or

''(C) the applicant can show that—

''(i)(I) the technology for the requested DNA testing was not available at the time of trial;

''(II) it was not generally known that such technology was available at the time of trial; or

''(III) the failure to request such testing using the technology was due to the deficient performance of the attorney of the applicant; and

''(ii) if any of the evidence was previously subjected to DNA testing, the testing now requested uses a newer technology for DNA testing that is reasonably certain to provide results that are substantially more accurate and probative than any previous DNA testing of the evidence.

''(b) NOTICE TO THE GOVERNMENT; PRESERVATION ORDER; APPOINTMENT OF COUNSEL.—

''(1) NOTICE TO THE GOVERNMENT.—Upon receipt of a motion under subsection (a), the court shall promptly notify the government of the motion and afford the government an opportunity to respond to the motion.

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

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

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

''(1) the motion satisfies the requirements of subsection (a);

''(2)(A) the identity of the perpetrator was at issue in the trial that resulted in the conviction of the applicant; or

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

''(3) the evidence to be tested is in the possession of the government and has been subject to a chain of custody and retained under conditions sufficient to ensure that it has not been substituted, contaminated, tampered with, replaced, or altered in any respect material to the requested DNA testing;

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

''(ii) it was not generally known that such technology was available; or

''(iii) the applicant can show that the failure to request such testing was due to the deficient performance of the attorney of the applicant; and

''(B) if any of the evidence was previously subjected to DNA testing, the testing now requested uses a newer DNA testing technique which is reasonably certain to provide results that are substantially more accurate and probative than any previous DNA testing of the evidence;

''(5) the proposed DNA testing uses scientifically sound methods and is consistent with accepted forensic practice;

''(6) the proposed DNA testing is reasonable in scope; and

''(7) the court determines, after review of the record of the trial of the applicant and any other relevant evidence, that there is a reasonable probability that the results of the proposed DNA testing will enable the applicant to establish that the applicant is entitled to a new trial under the standard of subsection (e)(3).

''(d) TESTING PROCEDURES; REPORTING OF TEST RESULTS.—

''(1) TESTING PROCEDURES.—The court shall direct that any DNA testing ordered under this section be carried out by—

''(A) a laboratory mutually selected by the government and the applicant; or

''(B) if the government and the applicant are unable to agree on a laboratory, a laboratory selected by the court ordering the testing.

''(2) LABORATORY APPROVAL.—With respect to DNA testing by a laboratory in accordance with this subsection, other than an FBI laboratory, the court must approve the selection of the laboratory and make all necessary orders to ensure the integrity of the evidence and the testing process and the reliability of the test results.

''(3) LABORATORY COSTS.—The applicant shall pay the cost of any testing by a laboratory in accordance with this subsection, other than an FBI laboratory, except that the court shall pay, in accordance with section 3006A of this title, the cost if the applicant would otherwise be financially incapable of securing such testing.

''(4) DISCLOSURE OF TEST RESULTS.—The results of any DNA testing ordered under this section—

''(A) shall be disclosed to—

''(i) the court;

''(ii) the applicant;

''(iii) the government; and

''(iv) the appropriate agency under subsection (e)(3)(B)(ii); and

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

''(e) POSTTESTING PROCEDURES.—

''(1) INCONCLUSIVE RESULT.—If the DNA testing results are inconclusive, the court may order further testing, as appropriate, or may deny the applicant relief.

''(2) POSITIVE RESULT.—If DNA testing results obtained under this section show that the applicant was the source of the DNA identified as evidence under subsection (a)(2)(B), the court shall—

''(A) deny the applicant relief;

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

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

''(3) NEGATIVE RESULT.—If DNA testing results obtained under this section show that the applicant was not the source of the DNA identified as evidence under subsection (a)(2)(B)—

''(A) the court shall promptly—

''(i) order any further DNA testing needed to clarify the import of the test results, including any testing needed to exclude persons other than the perpetrator of the crime as potential sources of the DNA evidence; and

''(ii) determine whether the applicant is entitled to relief under paragraph (4); and

''(B) the Attorney General shall—

''(i) compare the DNA evidence collected from the applicant with DNA evidence in the Combined DNA Index System that has been collected from unsolved crimes;

''(ii) if the comparison yields a DNA match with an unsolved crime, notify the appropriate agency and preserve the DNA sample; and

''(iii) if the comparison fails to yield a DNA match with an unsolved crime, destroy the DNA sample collected from the applicant.

''(4) EXCULPATORY EVIDENCE.—If the DNA testing conducted under this section produces exculpatory evidence—

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

''(B) upon receipt of a motion under subparagraph (A), the court that ordered the testing shall consider the motion under rule 33 of the Federal Rules of Criminal Procedure, notwithstanding any provision of law that would bar such consideration as untimely.

''(5) FAILURE TO OBTAIN RELIEF.—

''(A) IN GENERAL.—If the applicant fails to obtain relief under this subsection, the court, on motion by the government, shall make a determination whether the assertion of innocence by the applicant was false.

''(B) FALSE ASSERTION.—If the court finds that the assertion of innocence by the applicant was false, the court—

''(i) may hold the applicant in contempt;

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

''(iii) shall forward the finding to the Director of the Bureau of Prisons.

''(C) BUREAU OF PRISONS.—On receipt of a finding by the court under this paragraph, the Director of the Bureau of Prisons may deny, wholly or in part, the good conduct credit authorized under section 3624 of this title, on the basis of that finding.

''(D) PAROLE COMMISSION.—If the applicant is subject to the jurisdiction of the United States Parole Commission, the court shall forward its finding under this paragraph to the Parole Commission, and the Parole Commission may deny parole on the basis of that finding.

''(E) PENALTY.—In any prosecution of an applicant under chapter 79 of this title, for false assertions or other conduct in proceedings under this section, the court, upon conviction of the applicant, shall sentence the applicant to a term of imprisonment of 1 year, which shall run consecutively to any other term of imprisonment the applicant is serving.

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

''(g) TIME LIMITS INAPPLICABLE; OTHER REMEDIES UNAFFECTED.—Notwithstanding any time limit otherwise applicable to motions for new trials based on newly discovered evidence, a court may grant relief under subsection (e) to an applicant, at any time.

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

''§ 3600A. Prohibition on destruction of biological material

''(a) PROHIBITION.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, during the period described in paragraph (2), the government shall not destroy any biological material preserved if the defendant is serving a term of imprisonment following conviction in a case.

''(2) PERIOD DESCRIBED.—The period described in this paragraph is the period beginning on the date of enactment of this section and ending on the later of—

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

''(B) the date on which any proceedings under section 3600 relating to the case are completed.

''(b) SANCTIONS FOR INTENTIONAL VIOLATION.—The court may impose appropriate sanctions, including criminal contempt, for an intentional violation of subsection (a).

''(c) EXCEPTIONS.—The government may dispose of evidence before the expiration of the period of time described in subsection (a) if—

''(1) other than subsection (a), no statute, regulation, court order, or other provision of law requires that the evidence be preserved; and

''(2)(A)(i) the government notifies any person who remains incarcerated in connection with the investigation or prosecution and any counsel of record for that person (or, if there is no counsel of record, the public defender for the judicial district in which the conviction for that person was imposed), of the intention of the government to dispose of the evidence and the provisions of this chapter; and

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

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

''(ii) the government takes reasonable measures to remove and preserve portions of the material evidence sufficient to permit future DNA testing.''.

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

''228A. Postconviction DNA Testing .. 3600''.

(b) APPLICABILITY.—The provisions and amendments in this section shall take effect on the date of enactment of this Act and shall apply with respect to any offense committed, and to any judgment of conviction entered, before, on, or after that date of enactment.

(c) REPORT BY THE ATTORNEY GENERAL.—

(1) TRACKING SYSTEM.—

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

(B) REQUESTED ASSISTANCE.—The judicial branch shall provide to the Attorney General any requested assistance in operating a reporting and tracking system and in ensuring the accuracy and completeness of information included in that system.

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

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

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

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

(D) information on whether further proceedings occurred following a granting of relief and the outcome of those proceedings.

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

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

(B) any recommendations that the Attorney General may have relating to future legislative action concerning section 3600 of title 18, United States Code.

SEC. 202. PROHIBITION PURSUANT TO SECTION 5 OF THE 14TH AMENDMENT.

(a) APPLICATION FOR DNA TESTING.—No State shall deny an application for DNA testing made by a prisoner in State custody who would be eligible for such testing under the provisions of sections 3600 and 3600A of title 18, United States Code.

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

(c) REMEDY.—A prisoner in State custody may enforce subsections (a) and (b) in a civil action for declaratory or injunctive relief, filed either in a State court of general jurisdiction or in a district court of the United States, naming an executive or judicial officer of the State as a defendant.

TITLE III—MANDATORY MINIMAL DEFENSE COUNSEL STANDARDS IN STATE COURTS FOR CAPITAL CASES

SEC. 301. RIGHT TO LEGAL REPRESENTATION FOR INDIGENT DEFENDANTS.

(a) PRECONVICTION REPRESENTATION.—Notwithstanding any other provision of law, a defendant in a criminal action in a State court, which may result in punishment by death, who is or becomes financially unable to obtain adequate representation or investigative, expert, or other reasonably necessary services at any time—

(1) before judgment; or

(2) after the entry of a judgment imposing a sentence of death, but before the execution of that judgment;

shall be entitled to the appointment of 1 or more attorneys and the furnishing of such other services in accordance with the provisions of this title.

(b) POSTCONVICTION REPRESENTATION.—In a postconviction proceeding in which a defendant seeks to vacate or set aside a death sentence, a defendant who is or becomes financially unable to obtain adequate representation or investigative, expert, or other reasonably necessary services shall be entitled to the appointment of 1 or more attorneys and the furnishing of such other services in accordance with the provisions of this title.

SEC. 302. MINIMUM EXPERIENCE REQUIRED FOR DEFENSE COUNSEL.

(a) PREJUDGMENT APPOINTMENT.—

(1) IN GENERAL.—If the appointment of legal counsel under this title is made before judgment, at least 1 attorney so appointed—

(A) must have been admitted to practice for not less than 5 years in the court in which the prosecution is to be tried; and

(B) must have not less than 3 years experience in the actual trial of felony prosecutions in that court.

(2) JUDICIAL APPOINTMENT.—The court before which the defendant is to be tried, or a

judge thereof, shall promptly, upon the request of the defendant, assign 2 attorneys to the case.

(3) EXPERTISE; ACCESSIBILITY.—At least 1 of the attorneys assigned under paragraph (2)—

(A) shall be learned in the law applicable to capital cases; and

(B) shall have free access to the accused at all reasonable hours.

(4) RECOMMENDATION.—In assigning counsel under this section, the court shall consider—

(A) the recommendation of the State public defender organization, community defender organization, or equivalent organization; or

(B) if no such organization exists in the relevant jurisdiction, the administrative office of the local court or any governmental entity, bar association, or organization with knowledge regarding the skills and qualifications of local defense counsel.

(5) WITNESSES.—The court shall allow a defendant, under this title, to produce lawful witnesses to testify in support of the defendant, and shall compel such witnesses to appear at trial in the same manner that witnesses are compelled to appear on behalf of the prosecution.

(b) POSTJUDGMENT APPOINTMENT.—If the appointment is made after judgment, at least 1 attorney appointed shall—

(1) have been admitted to practice for not less than 5 years in the appropriate State appellate court;

(2) have not less than 3 years experience in the handling of felony appeals in that court; and

(3) be learned in the law applicable to capital cases.

(c) LEARNED STANDARD.—In determining whether an attorney is learned in the law of capital cases under this section, the State court shall apply the standard used in the courts of the United States.

SEC. 303. ADEQUATE REPRESENTATION.

(a) APPOINTMENT OF SUBSTITUTE COUNSEL.—With respect to this section, the court, for good cause, may appoint another attorney whose background, knowledge, or experience would otherwise enable the attorney to properly represent the defendant, with due consideration to the seriousness of the possible penalty and to the unique and complex nature of the litigation.

(b) SCOPE OF LEGAL REPRESENTATION.—Unless replaced by similarly qualified counsel upon the motion of the attorney or the defendant, each attorney appointed under this title shall represent the defendant throughout every stage of available judicial proceedings, including—

(1) pretrial motions and procedures;

(2) competency proceedings;

(3) trial;

(4) sentencing;

(5) executive and other clemency proceedings;

(6) motions for new trial;

(7) appeals;

(8) applications for stays of execution; and

(9) applications for writ of certiorari to the Supreme Court of the United States.

(c) ADDITIONAL SERVICES.—

(1) IN GENERAL.—Upon a finding that investigative, expert, or other services are reasonably necessary for the representation of the defendant, whether in connection with issues relating to guilt or the sentence, the court may authorize the attorneys for the defendant to obtain such services on behalf of the defendant and, if so authorized, shall order the payment of fees and expenses for such services pursuant to section 304.

(2) EX PARTE COMMUNICATIONS.—No ex parte proceeding, communication, or request may be considered pursuant to this section unless a proper showing is made concerning the need for confidentiality. Any such proceeding, communication, or request shall be transcribed and made a part of the record available for appellate review.

SEC. 304. ATTORNEY FEES AND COSTS.

(a) ATTORNEY FEES.—Compensation shall be paid to attorneys appointed under this title at a rate equivalent to that of attorneys representing defendants in Federal capital cases pursuant to section 408(q)(10)(A) of the Controlled Substances Act (21 U.S.C. 848(q)(10)(A)).

(b) ADDITIONAL EXPENSES.—Fees and expenses paid for investigative, expert, and other reasonably necessary services authorized under this section shall be equivalent to fees paid in Federal capital cases pursuant to section 408(q)(10)(B) of the Controlled Substances Act (21 U.S.C. 848(q)(10)(B)).

(c) PUBLIC DISCLOSURE.—The amounts paid for services under this section shall be disclosed to the public, after the disposition of the petition.

SEC. 305. IRREBUTTABLE PRESUMPTION OF DEFICIENT PERFORMANCE.

(a) IN GENERAL.—In a proceeding in Federal court pursuant to section 2254 of title 28, United States Code, the failure to comply with the procedures of this title shall create an irrebuttable presumption that the performance of the counsel for the petitioner was deficient.

(b) ENTITLEMENT TO RELIEF; BURDEN OF PROOF; STANDARD OF REVIEW.—A petitioner is not entitled to relief unless the petitioner shows that the result of the proceeding would have been different if the performance of the counsel for the petitioner had not been deficient. The party opposing the petition has the burden of establishing that the standards in this section have been met. The court shall conduct a de novo review to settle this issue.

(c) OTHER REMEDIES.—The provisions of this section are not intended to limit any other Federal or State court from enforcing this section by any other appropriate remedy.

S. 2441

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

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

SEC. 2. POST-CONVICTION DNA TESTING.

(a) FEDERAL CRIMINAL PROCEDURE.—

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

''CHAPTER 228A—POST-CONVICTION DNA TESTING

''§ 3600. DNA testing

''(a) MOTION.—

''(1) IN GENERAL.—An individual imprisoned because of a conviction of a criminal offense in a court of the United States (referred to in this section as the 'applicant') may make a written motion to the court that entered the judgment of conviction for the performance of forensic DNA testing on specified evidence that was secured in relation to the investigation or prosecution that resulted in the conviction.

''(2) CONTENTS.—The motion shall—

''(A) include an assertion by the applicant, under penalty of perjury, that the applicant is actually innocent of the crime for which the applicant is imprisoned or of uncharged conduct, if the exoneration of the applicant of such conduct would result in a mandatory reduction in the sentence of the applicant;

''(B) identify the specific evidence secured in relation to the investigation or prosecution that resulted in the conviction for which testing is requested;

''(C) identify a theory of defense—

''(i) the validity of which would establish the actual innocence of the applicant, and explain how the requested DNA testing would substantiate that theory; and

''(ii) that is not inconsistent with any affirmative defense issued by the applicant in the original prosecution;

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

''(E) certify that the applicant will provide a DNA sample from the applicant for purposes of comparison.

''(3) FILING.—A motion filed under this section is timely if—

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

''(B) the applicant can show that—

''(i) the evidence identified pursuant to paragraph (2)(B) is newly discovered; and

''(ii)(I) such evidence could not have been discovered through the exercise of due diligence; or

''(II) the proximate cause for not having previously discovered such evidence was the deficient performance of the attorney of the applicant; or

''(C) the applicant can show that—

''(i)(I) the technology for the requested DNA testing was not available at the time of trial;

''(II) it was not generally known that such technology was available at the time of trial; or

''(III) the failure to request such testing using the technology was due to the deficient performance of the attorney of the applicant; and

''(ii) if any of the evidence was previously subjected to DNA testing, the testing now requested uses a newer technology for DNA testing that is reasonably certain to provide results that are substantially more accurate and probative than any previous DNA testing of the evidence.

''(b) NOTICE TO THE GOVERNMENT; PRESERVATION ORDER; APPOINTMENT OF COUNSEL.—

''(1) NOTICE TO THE GOVERNMENT.—Upon receipt of a motion under subsection (a), the court shall promptly notify the government of the motion and afford the government an opportunity to respond to the motion.

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

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

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

''(1) the motion satisfies the requirements of subsection (a);

''(2)(A) the identity of the perpetrator was at issue in the trial that resulted in the conviction of the applicant; or

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

''(3) the evidence to be tested is in the possession of the government and has been subject to a chain of custody and retained under conditions sufficient to ensure that it has not been substituted, contaminated, tampered with, replaced, or altered in any respect material to the requested DNA testing;

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

''(ii) it was not generally known that such technology was available; or

''(iii) the applicant can show that the failure to request such testing was due to the deficient performance of the attorney of the applicant; and

''(B) if any of the evidence was previously subjected to DNA testing, the testing now requested uses a newer DNA testing technique which is reasonably certain to provide results that are substantially more accurate and probative than any previous DNA testing of the evidence;

''(5) the proposed DNA testing uses scientifically sound methods and is consistent with accepted forensic practice;

''(6) the proposed DNA testing is reasonable in scope; and

''(7) the court determines, after review of the record of the trial of the applicant and any other relevant evidence, that there is a reasonable probability that the results of the proposed DNA testing will enable the applicant to establish that the applicant is entitled to a new trial under the standard of subsection (e)(3).

''(d) TESTING PROCEDURES; REPORTING OF TEST RESULTS.—

''(1) TESTING PROCEDURES.—The court shall direct that any DNA testing ordered under this section be carried out by—

''(A) a laboratory mutually selected by the government and the applicant; or

''(B) if the government and the applicant are unable to agree on a laboratory, a laboratory selected by the court ordering the testing.

''(2) LABORATORY APPROVAL.—With respect to DNA testing by a laboratory in accordance with this subsection, other than an FBI laboratory, the court must approve the selection of the laboratory and make all necessary orders to ensure the integrity of the evidence and the testing process and the reliability of the test results.

''(3) LABORATORY COSTS.—The applicant shall pay the cost of any testing by a laboratory in accordance with this subsection, other than an FBI laboratory, except that the court shall pay, in accordance with section 3006A of this title, the cost if the applicant would otherwise be financially incapable of securing such testing.

''(4) DISCLOSURE OF TEST RESULTS.—The results of any DNA testing ordered under this section—

''(A) shall be disclosed to—

''(i) the court;

''(ii) the applicant;

''(iii) the government; and

''(iv) the appropriate agency under subsection (e)(3)(B)(ii); and

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

''(e) POSTTESTING PROCEDURES.—

''(1) INCONCLUSIVE RESULT.—If the DNA testing results are inconclusive, the court may order further testing, as appropriate, or may deny the applicant relief.

''(2) POSITIVE RESULT.—If DNA testing results obtained under this section show that the applicant was the source of the DNA identified as evidence under subsection (a)(2)(B), the court shall—

''(A) deny the applicant relief;

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

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

''(3) NEGATIVE RESULT.—If DNA testing results obtained under this section show that the applicant was not the source of the DNA identified as evidence under subsection (a)(2)(B)—

''(A) the court shall promptly—

''(i) order any further DNA testing needed to clarify the import of the test results, including any testing needed to exclude persons other than the perpetrator of the crime as potential sources of the DNA evidence; and

''(ii) determine whether the applicant is entitled to relief under paragraph (4); and

''(B) the Attorney General shall—

''(i) compare the DNA evidence collected from the applicant with DNA evidence in the Combined DNA Index System that has been collected from unsolved crimes;

''(ii) if the comparison yields a DNA match with an unsolved crime, notify the appropriate agency and preserve the DNA sample; and

''(iii) if the comparison fails to yield a DNA match with an unsolved crime, destroy the DNA sample collected from the applicant.

''(4) EXCULPATORY EVIDENCE.—If the DNA testing conducted under this section produces exculpatory evidence—

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

''(B) upon receipt of a motion under subparagraph (A), the court that ordered the testing shall consider the motion under rule 33 of the Federal Rules of Criminal Procedure, notwithstanding any provision of law that would bar such consideration as untimely.

''(5) FAILURE TO OBTAIN RELIEF.—

''(A) IN GENERAL.—If the applicant fails to obtain relief under this subsection, the court, on motion by the government, shall make a determination whether the assertion of innocence by the applicant was false.

''(B) FALSE ASSERTION.—If the court finds that the assertion of innocence by the applicant was false, the court—

''(i) may hold the applicant in contempt;

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

''(iii) shall forward the finding to the Director of the Bureau of Prisons.

''(C) BUREAU OF PRISONS.—On receipt of a finding by the court under this paragraph, the Director of the Bureau of Prisons may deny, wholly or in part, the good conduct credit authorized under section 3624 of this title, on the basis of that finding.

''(D) PAROLE COMMISSION.—If the applicant is subject to the jurisdiction of the United States Parole Commission, the court shall forward its finding under this paragraph to the Parole Commission, and the Parole Commission may deny parole on the basis of that finding.

''(E) PENALTY.—In any prosecution of an applicant under chapter 79 of this title, for false assertions or other conduct in proceedings under this section, the court, upon conviction of the applicant, shall sentence the applicant to a term of imprisonment of 1 year, which shall run consecutively to any other term of imprisonment the applicant is serving.

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

''(g) TIME LIMITS INAPPLICABLE; OTHER REMEDIES UNAFFECTED.—Notwithstanding any time limit otherwise applicable to motions for new trials based on newly discovered evidence, a court may grant relief under subsection (e) to an applicant, at any time.

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

''§ 3600A. Prohibition on destruction of biological material

''(a) PROHIBITION.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, during the period described in paragraph (2), the government shall not destroy any biological material preserved if the defendant is serving a term of imprisonment following conviction in a case.

''(2) PERIOD DESCRIBED.—The period described in this paragraph is the period beginning on the date of enactment of this section and ending on the later of—

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

''(B) the date on which any proceedings under section 3600 relating to the case are completed.

''(b) SANCTIONS FOR INTENTIONAL VIOLATION.—The court may impose appropriate sanctions, including criminal contempt, for an intentional violation of subsection (a).

''(c) EXCEPTIONS.—The government may dispose of evidence before the expiration of the period of time described in subsection (a) if—

''(1) other than subsection (a), no statute, regulation, court order, or other provision of law requires that the evidence be preserved; and

''(2)(A)(i) the government notifies any person who remains incarcerated in connection with the investigation or prosecution and any counsel of record for that person (or, if there is no counsel of record, the public defender for the judicial district in which the conviction for that person was imposed), of the intention of the government to dispose of the evidence and the provisions of this chapter; and

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

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

''(ii) the government takes reasonable measures to remove and preserve portions of the material evidence sufficient to permit future DNA testing.''.

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

''228A. Postconviction DNA Testing .. 3600''.

(b) APPLICABILITY.—The provisions and amendments in this section shall take effect on the date of enactment of this Act and shall apply with respect to any offense committed, and to any judgment of conviction entered, before, on, or after that date of enactment.

(c) REPORT BY THE ATTORNEY GENERAL.—

(1) TRACKING SYSTEM.—

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

(B) REQUESTED ASSISTANCE.—The judicial branch shall provide to the Attorney General any requested assistance in operating a reporting and tracking system and in ensuring the accuracy and completeness of information included in that system.

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

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

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

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

(D) information on whether further proceedings occurred following a granting of relief and the outcome of those proceedings.

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

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

(B) any recommendations that the Attorney General may have relating to future legislative action concerning section 3600 of title 18, United States Code.

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

(a) APPLICATION FOR DNA TESTING.—No State shall deny an application for DNA testing made by a prisoner in State custody who would be eligible for such testing under the provisions of sections 3600 and 3600A of title 18, United States Code.

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

(c) REMEDY.—A prisoner in State custody may enforce subsections (a) and (b) in a civil action for declaratory or injunctive relief, filed either in a State court of general jurisdiction or in a district court of the United States, naming an executive or judicial officer of the State as a defendant.

S. 2442

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

(a) SHORT TITLE.—This Act may be cited as the ''Capital Defense Counsel Standards Act of 2002''.

SEC. 2. RIGHT TO LEGAL REPRESENTATION FOR INDIGENT DEFENDANTS.

(a) PRECONVICTION REPRESENTATION.—Notwithstanding any other provision of law, a defendant in a criminal action in a State court, which may result in punishment by death, who is or becomes financially unable to obtain adequate representation or investigative, expert, or other reasonably necessary services at any time—

(1) before judgment; or

(2) after the entry of a judgment imposing a sentence of death, but before the execution of that judgment;

shall be entitled to the appointment of 1 or more attorneys and the furnishing of such other services in accordance with the provisions of this Act.

(b) POSTCONVICTION REPRESENTATION.—In a postconviction proceeding in which a defendant seeks to vacate or set aside a death sentence, a defendant who is or becomes financially unable to obtain adequate representation or investigative, expert, or other reasonably necessary services shall be entitled to the appointment of 1 or more attorneys and the furnishing of such other services in accordance with the provisions of this Act.

SEC. 3. MINIMUM EXPERIENCE REQUIRED FOR DEFENSE COUNSEL.

(a) PREJUDGMENT APPOINTMENT.—

(1) IN GENERAL.—If the appointment of legal counsel under this Act is made before judgment, at least 1 attorney so appointed—

(A) must have been admitted to practice for not less than 5 years in the court in which the prosecution is to be tried; and

(B) must have not less than 3 years experience in the actual trial of felony prosecutions in that court.

(2) JUDICIAL APPOINTMENT.—The court before which the defendant is to be tried, or a judge thereof, shall promptly, upon the request of the defendant, assign 2 attorneys to the case.

(3) EXPERTISE; ACCESSIBILITY.—At least 1 of the attorneys assigned under paragraph (2)—

(A) shall be learned in the law applicable to capital cases; and

(B) shall have free access to the accused at all reasonable hours.

(4) RECOMMENDATION.—In assigning counsel under this section, the court shall consider—

(A) the recommendation of the State public defender organization, community defender organization, or equivalent organization; or

(B) if no such organization exists in the relevant jurisdiction, the administrative office of the local court or any governmental entity, bar association, or organization with knowledge regarding the skills and qualifications of local defense counsel.

(5) WITNESSES.—The court shall allow a defendant, under this Act, to produce lawful witnesses to testify in support of the defendant, and shall compel such witnesses to appear at trial in the same manner that witnesses are compelled to appear on behalf of the prosecution.

(b) POSTJUDGMENT APPOINTMENT.—If the appointment is made after judgment, at least 1 attorney appointed shall—

(1) have been admitted to practice for not less than 5 years in the appropriate State appellate court;

(2) have not less than 3 years experience in the handling of felony appeals in that court; and

(3) be learned in the law applicable to capital cases.

(c) LEARNED STANDARD.—In determining whether an attorney is learned in the law of capital cases under this section, the State court shall apply the standard used in the courts of the United States.

SEC. 4. ADEQUATE REPRESENTATION.

(a) APPOINTMENT OF SUBSTITUTE COUNSEL.—With respect to this section, the court, for good cause, may appoint another attorney whose background, knowledge, or experience would otherwise enable the attorney to properly represent the defendant, with due consideration to the seriousness of the possible penalty and to the unique and complex nature of the litigation.

(b) SCOPE OF LEGAL REPRESENTATION.—Unless replaced by similarly qualified counsel upon the motion of the attorney or the defendant, each attorney appointed under this Act shall represent the defendant throughout every stage of available judicial proceedings, including—

(1) pretrial motions and procedures;

(2) competency proceedings;

(3) trial;

(4) sentencing;

(5) executive and other clemency proceedings;

(6) motions for new trial;

(7) appeals;

(8) applications for stays of execution; and

(9) applications for writ of certiorari to the Supreme Court of the United States.

(c) ADDITIONAL SERVICES.—

(1) IN GENERAL.—Upon a finding that investigative, expert, or other services are reasonably necessary for the representation of the defendant, whether in connection with issues relating to guilt or the sentence, the court may authorize the attorneys for the defendant to obtain such services on behalf of the defendant and, if so authorized, shall order the payment of fees and expenses for such services pursuant to section 5.

(2) EX PARTE COMMUNICATIONS.—No ex parte proceeding, communication, or request may be considered under this section unless a proper showing is made concerning the need for confidentiality. Any such proceeding, communication, or request shall be transcribed and made a part of the record available for appellate review.

SEC. 5. ATTORNEY FEES AND COSTS.

(a) ATTORNEY FEES.—Compensation shall be paid to attorneys appointed under this Act at a rate equivalent to that of attorneys representing defendants in Federal capital cases under section 408(q)(10)(A) of the Controlled Substances Act (21 U.S.C. 848(q)(10)(A)).

(b) ADDITIONAL EXPENSES.—Fees and expenses paid for investigative, expert, and other reasonably necessary services authorized under this section shall be equivalent to fees paid in Federal capital cases under section 408(q)(10)(B) of the Controlled Substances Act (21 U.S.C. 848(q)(10)(B)).

(c) PUBLIC DISCLOSURE.—The amounts paid for services under this section shall be disclosed to the public, after the disposition of the petition.

SEC. 6. IRREBUTTABLE PRESUMPTION OF DEFICIENT PERFORMANCE.

(a) IN GENERAL.—In a proceeding in Federal court under section 2254 of title 28, United States Code, the failure to comply with the procedures of this Act shall create an irrebuttable presumption that the performance of the counsel for the petitioner was deficient.

(b) ENTITLEMENT TO RELIEF; BURDEN OF PROOF; STANDARD OF REVIEW.—A petitioner is not entitled to relief unless the petitioner shows that the result of the proceeding would have been different if the performance of the counsel for the petitioner had not been deficient. The party opposing the petition has the burden of establishing that the standards in this section have been met. The court shall conduct a de novo review to settle this issue.

(c) OTHER REMEDIES.—The provisions of this section are not intended to limit any other Federal or State court from enforcing this section by any other appropriate remedy.

S. 2443

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Death Penalty Review Act of 2002''.

SEC. 2. PROTECTING THE RIGHTS OF DEATH ROW INMATES TO REVIEW OF CASES GRANTED CERTIORARI.

Section 2101 of title 28, United States Code, is amended by adding at the end the following:

''(h) Upon notice by a party that has filed a motion for a stay of execution or filed for certiorari with, or has been granted certiorari by, the United States Supreme Court in an appeal from a case in which the sentence is death, the Governor of the State in which the death sentence is to be carried out, in a State case, or the Director of the Bureau of Prisons, the Secretary of a military branch, or any other Federal official with authority to carry out the death sentence, in a Federal case, shall suspend the execution of the sentence of death until the United States Supreme Court enters a stay of execution or

until certiorari is acted upon and the case is disposed of by the United States Supreme Court.

''(i) For purposes of this section, the United States Supreme Court shall treat a motion for a stay of execution as a petition for certiorari.

''(j) In an appeal from a case in which the sentence is death, a writ of certiorari shall be issued by the United States Supreme Court upon the vote of at least 4 qualified justices.''.

SEC. 3. HABEAS CORPUS.

(a) STATE COURT PROCEEDINGS.—Section 2251 of title 28, United States Code, is amended—

(1) by inserting ''(a)'' at the beginning of the text;

(2) by designating the second sentence as subsection (b); and

(3) by adding at the end the following:

''(c)(1) Notwithstanding any other provision of law, a justice or judge of the United States before whom a habeas corpus proceeding that involves the death sentence is pending shall stay the execution of the death sentence until the proceeding is completed. If the issuance of such a stay requires more than 1 judge to concur or vote on the stay, the court before which the proceeding is pending shall grant the stay.

''(2) For purposes of this subsection, a case is pending before—

''(A) a court in the Circuit Court of Appeals, if a notice of appeal has been filed; and

''(B) the United States Supreme Court, if a petition for certiorari has been filed, or if a motion to stay execution has been filed.

''(3) A case described in paragraph (2) remains pending before the court until the petition for certiorari is denied. If the petition is granted, the case remains pending.

''(4) If a higher court is unable or fails to issue a stay pursuant to this subsection, a lower court before which the case had been pending shall issue the stay of execution.

''(d) For purposes of this section, a motion to stay execution shall be treated as a petition for certiorari.''.

(b) FEDERAL COURT PROCEEDINGS.—Section 2255 of title 28, United States Code, is amended by adding at the end the following:

''Notwithstanding any other provision of law, a justice or judge of the United States, before whom a habeas corpus proceeding that involves a Federal death sentence is pending, shall stay the execution of the death sentence until the proceeding is completed. If the issuance of such a stay requires more than 1 judge to concur or vote on the stay, the court before which the proceeding is pending shall grant the stay.

''If a higher court is unable or fails to issue a stay pursuant to the preceding paragraph, a lower court before which the case had been pending shall issue the stay of execution. For purposes of this section, a motion to stay execution shall be treated as a petition for certiorari. A case described in the preceding paragraph—

''(1) is pending before a court in the Circuit Court of Appeals if a notice of appeal has been filed; and

''(2) is pending before the United States Supreme Court if—

''(A) a petition for certiorari has been filed and has not been denied; or

''(B) a motion to stay execution has been filed.''.

By Mr. HOLLINGS (for himself, Mrs. CLINTON, Mr. STEVENS, Mr. INOUYE, Mr. ROCKEFELLER, and Mr. DORGAN):

S. 2448. A bill to improve nationwide access to broadband services; to the Committee on Commerce, Science, and Transportation.

Mr. HOLLINGS. Mr. President, I rise today to introduce the Broadband Telecommunications Act of 2002. This legislation is designed to promote the deployment of broadband technology in rural and under-served areas of the market.

The Internet has unquestionably revolutionized our society, making it possible to transmit data and engage in commerce in a manner not previously experienced. However, notwithstanding its enormous benefits, the Internet is still in its building stage, with its greatest capacity yet to be reached. An important element in enhancing the Internet's capability is the technology known as ''broadband.'' This refers to the technologies and facilities that enhance the speed and efficiency by which voice, video, data communications are transmitted.

Many, in fact, believe that broadband is the key to securing the Internet as the central medium of interstate and global commerce. Once extensively and fully deployed and accepted by consumers and the marketplace, broadband will undoubtedly produce marvelous advantages: permitting physicians to consult with each other and share information instantaneously, thus enriching the learning process; allowing consumers to access entertainment including music and movies, as well as other products at any given time; and offering workers greater options, as it will facilitate the ability of workers to access from home, electronic files as well as communicate with coworkers by voice and video.

Before this great vision can be realized, however, several key issues will have to be addressed. These include ensuring that broadband is deployed to all Americans and promoting consumer confidence in the Internet, while simultaneously preserving competition in the telecommunications and Internet markets.

With respect to broadband deployment, telephone and cable companies have been upgrading their networks, in order to provide broadband service. As it stands today, broadband availability for residential Internet users is approximately 85 percent. However, even though this number is admirable, there are still specific areas where broadband capability has yet to take hold. This predicament mostly involves rural, as well as some inner city areas. Ensuring the availability of broadband in these markets is the public policy challenge we face today. Clearly, Congress' main responsibility is ensuring that the right policy is pursued and implemented to accomplish this goal.

Reports indicate that small telephone companies, have been diligently rolling out broadband service in rural areas. Nevertheless, to achieve the goal of broadband deployment in all rural and underserved areas, the government will need to provide some assistance. In recognition of this need, Senators ROCKEFELLER and DORGAN both members of the Commerce Committee, have sponsored bills to support such deployments with options such as low interest loans and tax credits.

The approach taken by Senators ROCKEFELLER and DORGAN represent a constructive approach to achieving greater broadband deployment. Financial assistance, through measures such as loans, grants, and tax incentives, is necessary to help defray the cost of these additional deployments. By providing loans and grants, the bill I introduce today takes a similar approach to achieving broadband deployment.

In addition to deployment of broadband facilities, there also is an issue concerning broadband speeds. Currently, the broadband facilities that are being deployed to residential consumers provide speeds of up to 1.5 megabits per second. However, groups such as TechNet, maintain that in order to realize the real potential of broadband—telemedicine, distance learning, teleworking, and entertainment over the Internet, telecommunications facilities must be able to provide speeds of 50 to 100 megabits. If this is correct, as policy makers we must, at a minimum, determine what is necessary both technologically and financially to accomplish this goal. Such findings will provide the basis to determine the policies Congress will be compelled to pursue if a determination is made that speeds of 50 to 100 megabits per second are necessary.

Even as we discuss broadband speeds of 50–100 megabits, we must acknowledge that consumers do not seem seduced by the available broadband speeds of 1.5 megabits. In fact, reports show, that about 10 percent actually subscribe to broadband, leading many to believe that low demand is the problem, not slow deployment. If achieving a broadband environment is a priority, in addition to spurring deployment, we must eliminate the impediments that block consumers from obtaining the content, services, and applications necessary to make broadband service a useful and productive tool.

Another essential issue concerning the promotion of broadband involves the issue of privacy. Consumers use of the Internet is a fundamental first step to promoting interest in broadband. This will not be possible, however, unless consumers are confident that their privacy and personal information are protected and secured. To accomplish this goal, sufficient precautions will have to be taken to ensure that highly sensitive personal data—including financial, medical, social security numbers—cannot be stolen or misused. The Commerce Committee has established a substantial record on the issue of Internet privacy. That record demonstrates that consumers will use the Internet for more personal purposes only when they are confident that their information is secure. I have introduced separate legislation on this matter.

The broadband bill entitled the Broadband Telecommunications Act of

2002, that I introduce today represents a step towards fostering the deployment and adoption of broadband services. It uses monies from the telephone excise tax to fund a number of loan and grant programs. It stimulates broadband deployment in rural and underserved areas by providing low interest loans to upgrade facilities including remote terminals and fiber between a remote terminal and central office. It authorizes NIST to study how we can facilitate broadband deployment in rural and under-served areas. It promotes competition by establishing pilot projects for wireless and other non-wireline broadband technologies in rural and underserved areas. The bill begins to help us understand what is necessary to accomplish broadband with speeds of 50 to 100 megabits per second by providing grants to NTIA's Lab, NIST Labs, National Science Board and to universities for research. In order to address the demand issue, we provide grants to digitize library and museum collections as well as grants to Universities to conduct technical research to develop Internet applications useful to consumers. The bill also provides grants to connect underrepresented colleges and communities to the Internet.

Ultimately, if we decide as a nation that a broadband world must be achieved, we must move beyond the rhetoric of parity and regulation versus deregulation. We must move forward and begin to deal with the real issues that impact broadband deployment and use. These include stimulating deployment in unserved and under-served areas, promoting competition to existing monopolies, ensuring the availability of content and other Internet applications, preserving the privacy of consumers as they use the Internet, safeguarding cyber security, in addition to advancing policies such as e-government, teleworking, telemedicine, and distance learning. I ask my colleagues to join me in an open and forthright debate on these issues.

By Mr. BINGAMAN (for himself, Mr. MCCAIN, Mr. TORRICELLI, and Mr. CORZINE):

S. 2449. A bill to amend title XIX of the Social Security Act to allow Federal payments to be made to States under the medicaid program for providing pregnancy-related services or services for the testing or treatment for communicable diseases to aliens who are not lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law, and for other purposes; to the Committee on Finance.

Mr. BINGAMAN. Mr. President, the legislation I am introducing today with Senators MCCAIN, TORRICELLI, and CORZINE entitled the ''Federal Responsibility for Immigrant Health Act of 2002'' is designed to address the hardship caused by Federal limitations on Medicaid reimbursement to health care providers and states for health services provided to immigrants. Despite the fact that immigration is a Federal responsibility, medical providers, who have a legal and ethical responsibility to save lives regardless of immigration status, and State and local governments bear most of the costs for services provided to immigrants.

The bill expressly allows States and health care providers to receive Medicaid reimbursement for dialysis and chemotherapy services, prenatal care, and the testing and treatment of communicable diseases provided to immigrants; reauthorizes funding, which was provided between fiscal years 1998 and 2001 but expired this year, in the increased amount of $50 million annually for fiscal years 2003 to 2007 for unreimbursed emergency health services provided to immigrants; and clarifies that the federal government should not limit the ability of state or local governments to use their own funding to address the health care needs of immigrants within their communities.

The Constitution of the United States establishes sole authority in the Federal Government to control immigration to this country. Despite that fact, the Federal Government often fails to take financial responsibility for the costs of immigration. Numerous studies also indicate that immigrants pay more to the Federal Government in the form of taxes than they receive in services, but State government and local communities and providers bear most of the costs of services provided to them.

In Luna County, NM, for example, the Columbus Volunteer Fire Department and Ambulance Service has a contract with the county to provide emergency medical services to the people in Luna County. Luna County is one of the poorest counties in the Nation with almost one-third of its citizens below poverty and with a per capita income at just 49 percent of the national average. Luna County has an extremely difficult time addressing the needs of its own citizens due to a high level of need and limited resources.

And yet, with respect to emergency medical services, Luna County, the Columbus Volunteer Fire Department and Ambulance Service, and Mimbres Memorial Hospital must also respond to the numerous calls from federal officials at the port-of-entry near Columbus, NM, to treat or transport an injured or ill immigrants. The Columbus Volunteer Fire Department and Ambulance Service is located just three miles from the Columbus port-of-entry and is 32 miles from Mimbres Memorial Hospital in Deming, NM.

Moreover, the ambulance service is also called in when individuals are apprehended after crossing illegally if injury or illness results, often while in the custody of the Federal Immigration and Naturalization Service, INS. Once treated, the Luna County Sheriff's Office is called to take them back from Deming to the Columbus port-of-entry where they are returned across the border to their homes in Mexico.

According to data collected by the United States/Mexico Border Counties Coalition through a grant from the Department of Justice, in 1999, the Columbus Volunteer Fire Department and Ambulance Service responded to 264 calls, of which 56 percent were at the port-of-entry and 52 percent were for patients residing outside of the United States. Of services billed, 59 percent were for treatment of non-U.S. resident patients and the vast majority of those bills went unpaid. In fact, for both the EMS system and the hospital, a large majority of billings sent to patients residing outside of the United States are returned as either unclaimed or undeliverable much less paid.

To help the County and ambulance service, I secured $200,000 last year through the Labor-HHS Appropriations bill for the costs of emergency medical services delivered to immigrants in this fiscal year. The funding, however, is just a temporary band-aid to a system that is poorly funded and cannot survive without the federal government living up to its responsibility to help pay the costs of health services delivered to immigrants. This bill helps address that responsibility.

As Ronald Reagan, then Governor of the State of California, testified before the Senate Finance Committee in 1972, ''the support of citizens of other countries shall be a fiscal obligation of the federal government.'' He added, ''States should not be required to support citizens of another country, when the state and county governments have no effective voice in determining admission standards.''

In response to such concerns, the Federal Government has taken two important steps over the years, providing for federal reimbursement for emergency care to low-income immigrants in 1986 and providing additional funding to states for unreimbursed costs delivered to immigrants in emergency situations in 1997. The first needs a technical change and the second, unfortunately, expired in 2001 and needs to be reauthorized.

The first step that was taken occurred through the leadership of Senator Lloyd Bentsen and Representative HENRY WAXMAN in 1986 and was signed into law by President Reagan. It provides for federal reimbursement through the Medicaid program to health providers for emergency care services provided to low-income immigrants. Services delivered to immigrants who are residents in the country may have the cost of their emergency care reimbursed through Medicaid—a joint federal and state program serving low-income and disabled people. However, in the case of Luna County, the majority of its cases are to immigrants who reside outside of the country, and therefore, do not qualify. This legislation clarifies that States may waive the residency requirement for an immigrant who either comes

across the border under a temporary visa or is paroled into the country by INS.

The bill also clarifies that, since dialysis and chemotherapy are life-threatening conditions, these services qualify as emergency care and are eligible for reimbursement by Medicaid. Unfortunately, the Centers for Medicare and Medicaid Services, CMS, recently denied payment to the State of Arizona for such services and have forced the State to pay for such treatment with 100 percent state funding. This is, once again, a case of the federal government not fulfilling its responsibility and our bill corrects this problem.

The ''Federal Responsibility for Immigrant Health Act of 2002'' would also provide states the option to reimburse providers for the costs of prenatal care and the testing and treatment of communicable diseases to low-income immigrants. A January 2000 study in the American Journal of Obstetrics and Gynecology found that undocumented women with no prenatal care were four times more likely to deliver low birthweight American citizen infants and seven times more likely to deliver premature infants than undocumented women with prenatal care. Moreover, a child born in the United States of undocumented parents is a United States citizen.

Simply stated, if a pregnant women is denied access to prenatal care due to immigration status, it is her child who is denied the opportunity to be ''well-born'' and the financial costs associated with poor outcomes are high.

In addition, States and local governments often seek to ensure that all of their residents, including immigrants, are tested and treated for certain communicable diseases. It is in the interest of all citizens to ensure that everybody residing in this country is treated for communicable diseases. As Dr. Richard Brown, Director of UCLA's Center for Health Policy Research says, ''Tuberculosis and other communicable diseases do not respect distinctions between citizens and non-citizens . . . The key to controlling an outbreak of tuberculosis, hepatitis, sexually transmitted diseases, or other communicable diseases is early identification of the source of infection and immediate intervention to treat all infected persons.'' Again, to address these problems, the bill would allow states to reimburse providers for the costs of prenatal care and the testing and treatment of communicable diseases to low-income immigrants through the Medicaid program.

Another area where the Federal Government did take an important step to assume its responsibility for the costs of emergency health services delivered to immigrants was through $25 million in payments to States between fiscal year 1998 through 2001. The following 12 States were eligible for this additional funding over the four-year period, which expired at the end of last year: California, $11.3 million, Texas, $4.0 million, New York, $3.1 million, Florida, $2.0 million, Illinois, $1.6 million, New Jersey, $765,000, Arizona, $652,000, Massachusetts, $482,000, Virginia, $312,000, Washington, $295,000, Colorado, $255,000, and Maryland, $249,000. Unfortunately, that provision in law expired in 2001 and needs to be reauthorized.

The ''Federal Responsibility for Immigrant Health Act of 2002'' reauthorizes the program at $50 million between fiscal years 2003 and 2007, extends the number of qualifying States to 15, and requires that States pass those payments on to health care providers who are providing this care. This helps cover the costs associated with care to immigrants needing emergency care that do not qualify for Medicaid, such as men who do not meet the categorical requirements for Medicaid coverage. In addition, the bill clarifies that the 15 qualifying States are those that have the highest percentage of immigrants rather than the highest numbers, which assures States such as New Mexico are not inappropriately left out of the funding in the future.

And finally, the bill clarifies that the Federal Government should not limit State or local governments from using their own funding to provide health services to immigrants in their communities. The 10th Amendment prevents the Federal Government from interfering in the authority by State and local governments to spend their own revenue as they see fit.

Unfortunately, a provision in the Personal Responsibility and Work Opportunity Reconciliation Act, PRWORA, in 1996 has been interpreted by Texas Attorney General John Cornyn and some in the State of New Mexico, including the University of New Mexico Hospital, to preclude state and local governments from providing non-emergency care services, with the exceptions of immunizations and the testing and treatment of communicable diseases, unless the State decides to override the law by passing its own legislation specifically authorizing such services.

Others have disagreed. El Paso County Attorney Jose Rodriquez disagreed with the opinion of the Texas Attorney General in a August 14, 2001, letter by saying, ''There is nothing in the PRWORA that expressly prohibits providing health care to undocumented aliens . . . There are no enforcement mechanisms in the PRWORA, and there are no penalties directed at state or local governments.'' As a result, the public hospitals in El Paso, TX, and elsewhere in Texas have largely ignored the Texas Attorney General's opinion.

However, in New Mexico, the University of New Mexico Hospital has chosen to tighten eligibility requirements for its health care services. They argue they are complying with the ambiguous law.

An article that appears in an Internet-based publication entitled Borderlines entitled ''Debate Over Immigrant Health Care Heats Up in New Mexico'' in November 2001 notes, ''Critics say the move to deny health care to some U.S. residents, regardless of the reasons, is dangerous, impractical, and inhumane. It is dangerous, they argue, because anyone with a communicable disease, illegal immigrant or not, can spread that disease if not treated. The policy is impractical, they add, because an untreated health problem will likely worsen and require more expensive treatments later, often in emergency rooms. And denying non-emergency health care to people with serious, chronic diseases like diabetes, asthma, or cancer means they must endure more pain and suffering, often as their conditions deteriorate.''

As Dr. Catherine Torres of First Step Women's Health Center in Las Cruces, NM, and a member of the U.S.-Mexico Border Health Commission notes, ''When do you treat a child with asthma? When [the child] can't breathe?''

This provision has also led to the unfortunate situation of imposing additional liability or malpractice exposure on health providers that work for state or local governmental health programs for denying needed health services to an individual. Health providers should not have to violate medical ethics of purposely denying needed health services to anyone and nor should they be exposed to additional liability because of a convoluted provision in federal law.

As Dan Reyna, director of New Mexico's Border Health Office in Las Cruces, NM, adds, ''First, we're near an international border, we're not going to change that. Second, health care providers, both public and private, are not immigration officers for the Federal Government. And third, it's to the benefit of every state to protect community health and the quality of life of every resident. If you accept these primary premises, you have to provide preventative care services to everyone who needs it.''

I urge the passage of this legislation. Although it may not be popular, the federal government should help assume its responsibility for immigration and the costs associated with health services. We talk a great deal about personal responsibility when talking about welfare reform. It is time for the federal government to take on its responsibility as well. State and local governments and health providers, already stressed by the fact that our country has around 40 million uninsured residents, cannot take on these additional costs.

I would like to thank Senators MCCAIN, TORRICELLI, and CORZINE for their support and help on this legislation. I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2449

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Federal Responsibility for Immigrant Health Act of 2002''.

SEC. 2. FEDERAL PAYMENTS UNDER MEDICAID FOR EMERGENCY MEDICAL CONDITIONS OF CERTAIN ALIENS.

(a) IN GENERAL.—Section 1903(v)(2)(A) of the Social Security Act (42 U.S.C. 1396b(v)(2)(A)) of the Social Security Act is amended to read as follows:

''(A) such care and services are—

''(i) necessary for the treatment of an emergency medical condition of the alien or necessary for the prevention of an emergency medical condition (including dialysis and chemotherapy services),

''(ii) services related to pregnancy (including prenatal, delivery, postpartum, and family planning services) and to other conditions that may complicate pregnancy, or

''(iii) services for the testing or treatment for communicable diseases,''.

(b) STATE OPTION TO ELIMINATE RESIDENCY REQUIREMENT FOR CERTAIN ALIENS.—Section 1903(v)(2)(B) of the Social Security Act (42 U.S.C. 1396b(v)(2)(B)) is amended by inserting '', or, at State option, in the case of an alien granted parole under section 212(d)(5) of the Immigration and Nationality Act or an alien admitted into the United States as a nonimmigrant alien under section 101(a)(15) of such Act, any residency requirement imposed under the State plan'' after ''payment''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to medical assistance provided on or after the date of enactment of this Act.

SEC. 3. FUNDING FOR EMERGENCY HEALTH SERVICES FURNISHED TO UNDOCUMENTED ALIENS.

(a) FUNDING.—Section 4723(a) of the Balanced Budget Act of 1997 (8 U.S.C. 1611 note) is amended to read as follows:

''(a) TOTAL AMOUNT AVAILABLE FOR ALLOTMENTS.—There are available for allotments for payments to certain States under this section—

''(1) for each of fiscal years 1998 through 2001, $25,000,000; and

''(2) for each of fiscal years 2003 through 2007, $50,000,000.''.

(b) DETERMINATION OF STATE ALLOTMENTS.—Section 4723(b) of the Balanced Budget Act of 1997 (8 U.S.C. 1611 note) is amended—

(1) in paragraph (1), in the first sentence, by striking ''The Secretary'' and inserting ''Subject to paragraph (3), the Secretary''; and

(2) by adding at the end the following new paragraph:

''(3) FISCAL YEARS 2003 THROUGH 2007 ALLOTMENTS.—

''(A) IN GENERAL.—Notwithstanding paragraph (1), the Secretary of Health and Human Services shall compute an allotment for each of fiscal years 2003 through 2007 for each of the 15 States with the highest percentage of undocumented aliens. The amount of such allotment for each such State for a fiscal year shall bear the same ratio to the total amount available for allotments under subsection (a) for the fiscal year as the ratio of the percentage of undocumented aliens in the State in the fiscal year bears to the total of such percentages for all such States for such fiscal year. The amount of allotment to a State provided under this paragraph for a fiscal year that is not paid out under subsection (c) shall be available for payment during the subsequent fiscal year.

''(B) DETERMINATION.—For purposes of subparagraph (A), the percentage of undocumented aliens in a State under this section shall be determined based on the most recent available estimates of the resident illegal alien population residing in each State prepared by the Statistics Division of the Immigration and Naturalization Service.''.

(c) REQUIRING USE OF FUNDS TO ASSIST HOSPITALS AND RELATED PROVIDERS OF EMERGENCY HEALTH SERVICES TO UNDOCUMENTED ALIENS.—Section 4723(c) of the Balanced Budget Act of 1997 (8 U.S.C. 1611 note) is amended to read as follows:

''(c) USE OF FUNDS.—

''(1) IN GENERAL.—From the allotments made under subsection (b), the Secretary shall pay to each State amounts described in a State plan, submitted to the Secretary, under which the amounts so allotted will be paid—

''(A) to hospitals and related providers of emergency health services to undocumented aliens that are located in areas that the Secretary or a State determines to be substantially impacted by health costs related to undocumented aliens; and

''(B) on the basis of—

''(i) each eligible hospital's or related provider's payments under the State plan approved under title XIX of the Social Security Act for emergency medical services described in section 1903(v)(2)(A) of such Act (42 U.S.C. 1396b(v)(2)(A)); or

''(ii) an appropriate alternative proxy for measuring the volume of emergency health services provided to undocumented aliens by eligible hospitals and related providers.

''(2) DEFINITIONS; SPECIAL RULES.—For purposes of this subsection:

''(A) The term 'hospital' has the meaning given such term in section 1861(e) of the Social Security Act (42 U.S.C. 1395x(e)).

''(B) The term 'provider' includes a physician, another health care professional, and an entity that furnishes emergency ambulance services.

''(C) A provider shall be considered to be 'related' to a hospital to the extent that the provider furnishes emergency health services to an individual for whom the hospital also furnishes emergency health services.

''(D) Amounts paid under this subsection shall not—

''(i) be substituted for Federal payments made under title XIX of the Social Security Act to reimburse a State for expenditures for the provision of emergency medical services described in section 1903(v)(2)(A) of such Act; or

''(ii) be used by a State for the State share of expenditures for such services under title XIX of such Act.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply beginning with fiscal year 2003.

SEC. 4. PERMITTING STATES AND LOCALITIES TO PROVIDE HEALTH CARE TO ALL INDIVIDUALS.

(a) IN GENERAL.—Section 411 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1621) is amended—

(1) in subsection (b)—

(A) by striking paragraphs (1) and (3); and

(B) by redesignating paragraphs (2) and (4) as paragraphs (1) and (2), respectively; and

(2) in subsection (c)—

(A) in paragraph (1)—

(i) in the matter preceding subparagraph (A), by striking ''(2) and (3)'' and inserting ''(2), (3), and (4)''; and

(ii) in subparagraph (B), by striking ''health,''; and

(B) by adding at the end the following new paragraph

''(4) Such term does not include any health benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of a State or local government or by appropriated funds of a State or local government.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to health care furnished before, on, or after the date of the enactment of this Act.

By Mr. LIEBERMAN (for himself, Mr. SPECTER, and Mr. GRAHAM):

S. 2452. A bill to establish the Department of National Homeland Security and the National Office for Combating Terrorism; to the Committee on Governmental Affairs.

Mr. LIEBERMAN. Mr. President, today I am pleased to introduce, with Senators SPECTER and GRAHAM, the National Homeland Security and Combating Terrorism Act of 2002. This legislation seeks to strengthen the Federal Government's ability to confront terrorism and other threats to our homeland security.

Specifically, this legislation would create a new Department of National Homeland Security to focus an array of agencies and programs that are vital to securing our borders and critical infrastructure, and to preparing for and responding to homeland threats. It also would create a White House terrorism director to forge an effective strategy to combat terrorism across the entire Federal Government. In addition to the bill we introduce here, I am pleased to note that companion legislation is being introduced today by Representatives THORNBERRY, HARMAN, TAUSCHER and GIBBONS.

The events of September 11 brought home to us the very real threat of terrorism not only on foreign shores, but also here at home. Though the pain of that day will stay in our hearts and minds forever, we now have an opportunity to step back from that single most horrid event in our modern history and take action to prevent something like it from ever happening again.

It seems that nearly every day, the media or government investigators expose a new crack in America's homeland defense foundation, at our borders, our ports, or within our cyberspace. The fact is, without a government that is permanently reoriented to meet unexpected challenges here at home, new vulnerabilities will emerge. That's why we must mobilize government so that it can quickly and effectively prevent terrorist threats here at home and respond should the worst occur.

Our approach, combining a homeland security department with a White House office for combating terrorism, addresses the need to permanently restructure critical homeland security functions under a cabinet-level secretary with real operational authority and the ability to personally direct a homeland security plan. At the same time, we would allow for the highest

level of coordination with other Federal agencies—Health and Human Services, the Defense Department, the Energy Department, for example, and real budget certification authority.

Our proposal stems from a series of hearings I convened last fall as chairman of the Governmental Affairs Committee. We held about a dozen different sessions looking into various aspects of homeland security, ranging from protection of our critical infrastructure to the state and local role in protecting Americans at home. Those hearings confirmed what experts and commissions had already warned us: that our government is poorly prepared to deal with the threat of terrorism. Although the government has an array of programs related to terrorism and other homeland threats, these efforts are poorly coordinated and lack overall strategic leadership. We need focused, accountable leadership to forge these efforts into a cohesive homeland security program.

Among the witnesses we heard from were former Senators Warren Rudman and Gary Hart, who co-chaired the so-called Hart-Rudman Commission on National Security/21st Century. Guided by recommendations of that Commission, Senator SPECTER and I introduced legislation to create a Homeland Security Department. After negotiations through the winter with Senator GRAHAM, we combined our proposal with his idea of conferring statutory authority on a White House terrorism office.

As our bill is written, the department will be led by a Cabinet official with real line and budget authority over critical homeland security programs. The new department will bring together under one roof our key border security agencies, Coast Guard, Customs, INS law enforcement, as well as the Federal Emergency Management Agency, which is the cornerstone of our emergency preparation and response efforts. The department will also include programs to protect our critical infrastructure, and an office to promote research and development of technologies vital to our homeland security. The new department will provide state and local authorities with a clear resource and point of contact to forge a truly national response to this problem.

Yet we recognize that, no matter how robust a department we create, it can not include every agency that plays a role in homeland security, which is why our legislation incorporates Senator GRAHAM's proposal to confer statutory authority on a White House office. That office—the National Office for Combating Terrorism—would coordinate a national anti-terrorism strategy. The office would be led by a presidentially-appointed, Senate-confirmed director charged with coordinating a comprehensive assessment of terrorist threats and, along with the department secretary, developing a strategy and a budget to fight terrorism here at home. The director would coordinate execution of the strategy by relevant federal agencies—particularly those concerned with intelligence and law enforcement.

Naturally, our new formation would require a major restructuring of the Federal Government's public safety-related responsibilities. I know this will not be easy. Machiavelli trenchantly observed ''there is nothing more difficult to plan, more doubtful of success nor more dangerous to manage than the creation of a new system.'' Within the agencies, and within Congress as well, as Governor Ridge has already discovered, there are powerful reflexes to protect administrative turf. Bureaucracies are slow to change. Change is disruptive. It creates uncertainty and it distorts existing balances of power.

But we must look at September 11 as an urgent reason to create something better. A restructuring of the kind we envision is not unprecedented. We have undertaken bold organizational change in periods of crisis before. Consider General Marshall's transformation of the army which helped win World War II or the National Security Act of 1947 that created the CIA and Department of Defense in the midst of the Cold War. More recently, the Goldwater-Nichols Act of 1986, in streamlining the military command, helped us to prosecute the Persian Gulf War.

The bottom line is if statutory and budget authority are not conferred upon the director of homeland security, the homeland defense of this nation will be less than what it should be. In the one area where compromise can be catastrophic, this is an unacceptable compromise.

Let's be motivated by the words of Winston Churchill, who in 1941 said to the Axis powers, ''You do your worst and we will do our best.'' We can tinker around the edges of change. Or, we can understand that September 11 confirmed our worst fears: warfare has changed and we are no longer safe at home. We are in a terrible, new era and we urgently need a government that is invigorated and effectively organized to meet the challenge.

I thank my colleagues and ask unanimous consent that the text of our legislation be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2452

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''National Homeland Security and Combating Terrorism Act of 2002''.

(b) TABLE OF CONTENTS.—The table of contents is as follows:

SEC. 2. DEFINITIONS.

In this Act:

(1) DIRECTOR.—Except as provided under section 104, the term ''Director'' means the Director of the National Office for Combating Terrorism.

(2) DEPARTMENT.—The term ''Department'' means the Department of National Homeland Security established under title I.

(3) FEDERAL TERRORISM PREVENTION AND RESPONSE AGENCY.—The term ''Federal terrorism prevention and response agency'' means any Federal department or agency charged under the Strategy with responsibilities for carrying out the Strategy.

(4) OFFICE.—The term ''Office'' means the National Office for Combating Terrorism established under title II.

(5) SECRETARY.—The term ''Secretary'' means the Secretary of National Homeland Security.

(6) STRATEGY.—The term ''Strategy'' means the National Strategy for Combating Terrorism and the Homeland Security Response developed under this Act.

TITLE I—DEPARTMENT OF NATIONAL HOMELAND SECURITY

SEC. 101. ESTABLISHMENT OF THE DEPARTMENT OF NATIONAL HOMELAND SECURITY.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—There is established the Department of National Homeland Security.

(2) EXECUTIVE DEPARTMENT.—Section 101 of title 5, United States Code, is amended by adding at the end the following:

''The Department of National Homeland Security.''.

(b) SECRETARY OF NATIONAL HOMELAND SECURITY.—

(1) IN GENERAL.—The Secretary of National Homeland Security shall be the head of the Department. The Secretary shall be appointed by the President, by and with the advice and consent of the Senate.

(2) RESPONSIBILITIES.—The responsibilities of the Secretary shall be the following:

(A) To develop policies, goals, objectives, priorities, and plans for the United States for the promotion of homeland security.

(B) To develop, with the Director, a comprehensive strategy in accordance with title III.

(C) Develop processes to integrate the elements and goals of the Strategy into the strategies and plans of Federal, State, and local departments and agencies, including interagency and intergovernmental shared policies.

(D) To evaluate the programs of the Federal Government relating to homeland security that involve activities of State and local governments as part of the Strategy.

(E) To advise the Director on the development of a comprehensive annual budget for the programs and activities under the Strategy, and have the responsibility for budget recommendations relating to border security, critical infrastructure protection, emergency preparation and response, and State and local activities.

(F) To plan, coordinate, and integrate those United States Government activities relating to border security, critical infrastructure protection and emergency preparedness, and to act as the focal point regarding natural and manmade crises and emergency planning and response.

(G) To work and coordinate with State and local governments and executive agencies in providing United States homeland security, and to communicate with and support State and local officials through the use of regional offices around the Nation.

(H) To provide overall operational planning guidance to executive agencies regarding United States homeland security.

(I) To conduct exercise and training programs for employees of the Department and other involved agencies, and establish effective command and control procedures for the full range of potential contingencies regarding United States homeland security, including contingencies that require the substantial support of military assets.

(J) To annually develop a Federal response plan for homeland security and emergency preparedness with regard to terrorism and other manmade and natural disasters.

(K) To identify and promote technological innovation that will enhance homeland security.

(L)(i) To develop and implement within the Department a coordinating center with representatives from other Federal departments or agencies with homeland security responsibilities.

(ii) To designate departments and agencies to provide a representative under clause (i) and require those departments and agencies to furnish a representative on a permanent, part-time, or as needed basis, as determined by the Secretary.

(iii) To request additional personnel from appropriate departments and agencies as may be necessary and coordinate with those departments and agencies.

(iv) To request State and local authorities to provide representatives to the coordination center.

(3) EXECUTIVE SCHEDULE LEVEL I POSITION.—Section 5312 of title 5, United States Code, is amended by adding at the end the following:

''Secretary of National Homeland Security.''.

(4) MEMBERSHIP ON THE NATIONAL SECURITY COUNCIL.—Section 101(a) of the National Security Act of 1947 (50 U.S.C. 402(a)) is amended in the fourth sentence by striking paragraphs (5), (6), and (7) and inserting the following:

''(5) the Secretary of National Homeland Security; and

''(6) each Secretary or Under Secretary of such other executive department, or of a military department, as the President shall designate.''.

(c) DEPUTY SECRETARY OF NATIONAL HOMELAND SECURITY.—

(1) IN GENERAL.—There shall be in the Department a Deputy Secretary of National Homeland Security, who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) RESPONSIBILITIES.—The Deputy Secretary of National Homeland Security shall—

(A) assist the Secretary in the administration and operations of the Department;

(B) perform such responsibilities as the Secretary shall prescribe; and

(C) act as the Secretary during the absence or disability of the Secretary or in the event of a vacancy in the office of the Secretary.

(3) EXECUTIVE SCHEDULE LEVEL II POSITION.—Section 5313 of title 5, United States Code, is amended by adding at the end the following:

''Deputy Secretary of National Homeland Security.''.

(d) INSPECTOR GENERAL.—

(1) IN GENERAL.—There shall be in the Department an Inspector General for the Department. The Inspector General and the Office of Inspector General shall be subject to the Inspector General Act of 1978 (5 U.S.C. App.).

(2) ESTABLISHMENT.—Section 11 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(A) in paragraph (1), by inserting ''National Homeland Security,'' after ''Labor,''; and

(B) in paragraph (2), by inserting ''National Homeland Security,'' after ''Labor,''.

(e) DIRECTOR OF THE COORDINATING CENTER.—

(1) IN GENERAL.—There shall be in the Department a Director of the Coordinating Center who shall report directly to the Deputy Secretary. The Coordinating Center shall be developed and implemented in accordance with subsection (b)(2)(L).

(2) RESPONSIBILITIES.—The Director of the Coordinating Center shall be responsible for—

(A) ensuring that the law enforcement, immigration, and intelligence databases information systems containing information relevant to homeland security are compatible; and

(B) with respect to the functions under this paragraph, ensuring compliance with Federal laws relating to privacy and intelligence information.

SEC. 102. TRANSFER OF AUTHORITIES, FUNCTIONS, PERSONNEL, AND ASSETS TO THE DEPARTMENT.

The authorities, functions, personnel, and assets of the following entities are transferred to the Department:

(1) The Federal Emergency Management Agency, the 10 regional offices of which shall be maintained and strengthened by the Department.

(2) The United States Customs Service, which shall be maintained as a distinct entity within the Department.

(3) The law enforcement components of the Immigration and Naturalization Service relating to Border Patrol, Inspections, Investigations (interior enforcement), Intelligence, Detention and Removal, and International Affairs.

(4) The United States Coast Guard, which shall be maintained as a distinct entity within the Department.

(5) The Critical Infrastructure Assurance Office of the Department of Commerce.

(6) The National Infrastructure Protection Center and the National Domestic Preparedness Office of the Federal Bureau of Investigation.

(7) The Animal and Plant Health Inspection Service of the Department of Agriculture, that portion of which administers laws relating to agricultural quarantine inspections at points of entry.

SEC. 103. ESTABLISHMENT OF DIRECTORATES AND OFFICE.

(a) ESTABLISHMENT OF DIRECTORATES.—The following staff directorates are established within the Department:

(1) DIRECTORATE OF BORDER AND TRANSPORTATION PROTECTION.—The Directorate of Border and Transportation Protection, which shall be responsible for the following:

(A) Overseeing and coordinating all United States border security activities.

(B) Developing border and maritime security policy for the United States.

(C) Developing and implementing international standards for enhanced security in transportation nodes.

(D) Performing such other duties assigned by the Secretary.

(2) DIRECTORATE OF CRITICAL INFRASTRUCTURE PROTECTION.—The Directorate of Critical Infrastructure Protection, which shall be responsible for the following:

(A) Acting as the Critical Information Technology, Assurance, and Security Officer of the Department to coordinate efforts to address the vulnerability of the United States to electronic or physical attacks on critical infrastructure of the United States, including utilities, transportation nodes, and energy resources.

(B) Overseeing the protection of such infrastructure and the physical assets and information networks that make up such infrastructure.

(C) Ensuring the maintenance of a nucleus of cyber security experts within the United States Government.

(D) Enhancing sharing of information regarding cyber security and physical security of the United States, tracking vulnerabilities and proposing improved risk management policies, and delineating the roles of various government agencies in preventing, defending, and recovering from attacks.

(E) Coordinating with the Federal Communications Commission in helping to establish cyber security policy, standards, and enforcement mechanisms, and working closely with the Federal Communications Commission on cyber security issues with respect to international bodies.

(F) Coordinating the activities of Information Sharing and Analysis Centers to share information on threats, vulnerabilities, individual incidents, and privacy issues regarding United States homeland security.

(G) Assuming the responsibilities carried out by the Critical Infrastructure Assurance Office before the effective date of this Act.

(H) Assuming the responsibilities carried out by the National Infrastructure Protection Center before the effective date of this Act.

(I) Performing such other duties assigned by the Secretary.

(3) DIRECTORATE FOR EMERGENCY PREPAREDNESS AND RESPONSE.—The Directorate for Emergency Preparedness and Response, which shall be responsible for the following:

(A) Carrying out all emergency preparedness and response activities carried out by the Federal Emergency Management Agency before the effective date of this Act.

(B) Assuming the responsibilities carried out by the National Domestic Preparedness Office before the effective date of this Act.

(C) Organizing and training local entities to respond to emergencies and providing State and local authorities with equipment for detection, protection, and decontamination in an emergency involving weapons of mass destruction.

(D) Overseeing Federal, State, and local emergency preparedness training and exercise programs in keeping with current intelligence estimates and providing a single staff for Federal assistance for any emergency (including emergencies caused by flood, earthquake, hurricane, disease, or terrorist bomb).

(E) Creating a National Crisis Action Center to act as the focal point for monitoring emergencies and for coordinating Federal support for State and local governments and the private sector in crises.

(F) Establishing training and equipment standards, providing resource grants, and encouraging intelligence and information sharing among the Department of Defense, the Federal Bureau of Investigation, the Central Intelligence Agency, State emergency management officials, and local first responders.

(G) Coordinating and integrating operational activities of the Department of Defense, the National Guard, and other Federal agencies into a Federal response plan.

(H) Coordinating activities among private sector entities, including entities within the medical community, with respect to recovery, consequence management, and planning for continuity of services.

(I) Developing and managing a single response system for national incidents in coordination with the Department of Justice, the Federal Bureau of Investigation, the Department of Health and Human Services, the Centers for Disease Control, and other appropriate Federal departments and agencies.

(J) Maintaining Federal asset databases and supporting up-to-date State and local databases.

(K) Performing such other duties as assigned by the Secretary.

(b) ESTABLISHMENT OF OFFICE OF SCIENCE AND TECHNOLOGY.—

(1) IN GENERAL.—There is established in the Department an Office of Science and Technology.

(2) PURPOSE.—The Office of Science and Technology shall advise the Secretary regarding research and development efforts and priorities for the directorates established in subsection (a).

SEC. 104. STEERING GROUP; COORDINATION COMMITTEE; AND ACCELERATION FUND.

(a) DEFINITIONS.—In this section:

(1) COORDINATION COMMITTEE.—The term ''Coordination Committee'' means the Homeland Security Science and Technology Coordination Committee established under this section.

(2) DIRECTOR.—The term ''Director'' means the Director of the Office of Science and Technology.

(3) FUND.—The term ''Fund'' means the Acceleration Fund for Research and Development of Homeland Security Technologies established under this section.

(4) HOMELAND SECURITY RESEARCH AND DEVELOPMENT.—The term ''homeland security research and development'' means research and development of technologies that are applicable in the detection of, prevention of, protection against, response to, and recovery from homeland security threats, particularly acts of terrorism.

(5) STEERING GROUP.—The term ''Steering Group'' means the Homeland Security Science and Technology Senior Steering Group established under this section.

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

(1) establish a fund to leverage existing research and development and accelerate the deployment of technology that will serve to enhance homeland defense;

(2) establish a committee and steering group to coordinate and advise on issues relating to homeland security research and development and administer the Fund; and

(3) establish the responsibilities of the Director of the Office of Science and Technology relating to homeland security research and development.

(c) FUND.—

(1) ESTABLISHMENT.—There is established the Acceleration Fund for Research and Development of Homeland Security Technologies.

(2) USE OF FUND.—The Fund may be used to—

(A) accelerate research, development, testing, and evaluation of critical homeland security technologies; and

(B) support homeland security research and development.

(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $200,000,000 to the Fund for fiscal year 2003.

(d) STEERING GROUP.—

(1) ESTABLISHMENT.—There is established the Homeland Security Science and Technology Senior Steering Group within the Office of Science and Technology. The Director shall chair the Steering Group.

(2) RESPONSIBILITIES.—The Steering Group shall—

(A) provide recommendations and priorities to the Director; and

(B) assist the Director in establishing priorities and forwarding recommendations on homeland security technology to the Secretary.

(3) COMPOSITION.—The Steering Group shall be composed, as named by the Director, of senior research and development officials representing all appropriate Federal departments and agencies that conduct research and development relevant for homeland security and combating terrorism.

(4) QUALIFICATIONS.—Each representative shall—

(A) possess extensive experience in managing research and development projects; and

(B) be appointed by the head of the respective department or agency.

(5) SUBGROUPS.—

(A) IN GENERAL.—At the discretion of the Director, the Steering Group may be composed of subgroups with expertise in specific homeland security areas.

(B) SUBGROUP AREAS.—The Director may establish subgroups in areas including—

(i) information technology infrastructure;

(ii) critical infrastructure;

(iii) interoperability issues in communications technology;

(iv) bioterrorism;

(v) chemical, biological, radiological defense; and

(vi) any other area as determined necessary.

(e) COORDINATION COMMITTEE.—

(1) ESTABLISHMENT.—There is established a Homeland Security Science and Technology Coordination Committee within the Office of Science and Technology. The Director shall chair the Coordination Committee.

(2) COMPOSITION.—The Coordination Committee shall be a working level group composed of representatives managing relevant agency research and development portfolios, appointed by the head of each department or agency described under subsection (d)(2).

(3) SUBGROUPS.—

(A) IN GENERAL.—At the discretion of the Director, the Coordination Committee may be composed of subgroups with relevant expertise in specific homeland security areas.

(B) SUBGROUP AREAS.—The Director may establish subgroups in areas, including—

(i) information technology infrastructure;

(ii) critical infrastructure;

(iii) interoperability issues in Communications Technology;

(iv) bioterrorism;

(v) chemical, biological, radiological defense; and

(vi) any other area as determined necessary.

(4) RESPONSIBILITIES.—The Coordination Committee shall have the following responsibilities:

(A) To facilitate effective communication among departments, agencies, and other entities of the Federal Government, with respect to the conduct of research and development related to homeland security.

(B) To identify, by consensus and on a yearly basis, specific technology areas for which the Fund shall be used to rapidly transition homeland security research and development into deployed technology and reduce identified homeland security vulnerabilities. The identified technology areas shall, as determined by the Coordination Committee, be areas in which there exist research and development projects that address identified homeland security vulnerabilities and, assuming single-year funding, can be accelerated to the stage of prototyping, evaluating, transitioning, or deploying.

(C) To administer the Fund, including—

(i) issuing an annual multiagency program announcement soliciting proposals from governmental entities, industry, and academia;

(ii) competitively selecting, on the basis of a merit-based review, proposals that advance the state of deployed technologies in the areas identified for that year;

(iii) at the discretion of the Coordination Committee, assigning 1 or more program managers from any department or agency represented on the Coordination Committee to oversee, administer, and execute a Fund project as the agent of the Coordination Committee; and

(iv) providing methods of funding administration, including grant, cooperative agreement, or any other transaction.

(f) OFFICE OF SCIENCE AND TECHNOLOGY RESPONSIBILITIES.—The Director shall—

(1) assist the Secretary, the Directorates, and cooperating agencies in—

(A) assessing and testing homeland security vulnerabilities and possible threats;

(B) evaluating and advising on maintaining talent resources in key technology and skill areas required for homeland security, including information security experts;

(C) developing a system for sharing key homeland security research and technology developments and opportunities with appropriate Federal, State, local, and private sector entities; and

(D) proposing risk management strategies based on technology developments;

(2) assist the Directorate of Critical Infrastructure Protection in the responsibilities of that Directorate;

(3) with respect to expenditures from the Fund, exercise acquisition authority consistent with the authority described under section 2371 of title 10, United States Code, relating to authorizing cooperative agreements and other transactions;

(4) in hiring personnel to assist in the administration of the Office of Science and Technology, have the authority to exercise the personnel hiring and management authorities described in section 1101 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (5 U.S.C. 3104 note; Public Law 105–261); and

(5) develop and oversee the implementation of periodic homeland security technology demonstrations, held at least annually, for the purpose of improving contact between technology developers, vendors, and acquisition personnel associated with related industries.

SEC. 105. REPORTING REQUIREMENTS.

(a) BIENNIAL REPORTS.—Every 2 years the Secretary shall submit to Congress—

(1) a report assessing the resources and requirements of executive agencies relating to border security and emergency preparedness issues; and

(2) a report certifying the preparedness of the United States to prevent, protect against, and respond to natural disasters, cyber attacks, and incidents involving weapons of mass destruction.

(b) ADDITIONAL REPORT.—Not later than 1 year after the effective date of this Act, the

Secretary shall submit to Congress a report—

(1) assessing the progress of the Department in—

(A) implementing this title; and

(B) ensuring the core functions of each entity transferred to the Department are maintained and strengthened; and

(2) recommending any conforming changes in law necessary as a result of the enactment and implementation of this title.

SEC. 106. PLANNING, PROGRAMMING, AND BUDGETING PROCESS.

The Secretary shall establish procedures to ensure that the planning, programming, budgeting, and financial activities of the Department comport with sound financial and fiscal management principles. At a minimum, those procedures shall provide for the planning, programming, and budgeting of activities of the Department using funds that are available for obligation for a limited number of years.

SEC. 107. ENVIRONMENTAL PROTECTION, SAFETY, AND HEALTH REQUIREMENTS.

The Secretary shall—

(1) ensure that the Department complies with all applicable environmental, safety, and health statutes and substantive requirements; and

(2) develop procedures for meeting such requirements.

SEC. 108. SAVINGS PROVISIONS.

(a) CONTINUING EFFECT OF LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, agreements, grants, contracts, recognitions of labor organizations, collective bargaining agreements, certificates, licenses, registrations, privileges, and other administrative actions—

(1) which have been issued, made, granted, or allowed to become effective by the President, any Federal agency or official thereof, or by a court of competent jurisdiction, in the performance of functions which are transferred under this title; and

(2) which are in effect at the time this Act takes effect, or were final before the effective date of this Act and are to become effective on or after the effective date of this Act,

shall, to the extent related to such functions, continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, the Secretary of National Homeland Security or other authorized official, a court of competent jurisdiction, or by operation of law.

(b) PROCEEDINGS NOT AFFECTED.—The provisions of this title shall not affect any proceedings, including notices of proposed rulemaking, or any application for any license, permit, certificate, or financial assistance pending before an agency at the time this title takes effect, with respect to functions transferred by this title but such proceedings and applications shall continue. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this title had not been enacted, and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this title had not been enacted.

(c) SUITS NOT AFFECTED.—The provisions of this title shall not affect suits commenced before the effective date of this Act, and in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this title had not been enacted.

(d) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against an agency, or by or against any individual in the official capacity of such individual as an officer of an agency, shall abate by reason of the enactment of this title.

(e) ADMINISTRATIVE ACTIONS RELATING TO PROMULGATION OF REGULATIONS.—Any administrative action relating to the preparation or promulgation of a regulation by an agency relating to a function transferred under this title may be continued by the Department of National Homeland Security with the same effect as if this title had not been enacted.

(f) EMPLOYMENT AND PERSONNEL.—

(1) INTERIM AUTHORITY FOR APPOINTMENT AND COMPENSATION.—Funds available to any official or component of any entity the functions of which are transferred to the Department, may with the approval of the Director of the Office of Management and Budget, be used to pay the compensation and expenses of any officer or employee under this title until such time as funds for that purpose are otherwise available.

(2) EMPLOYEE RIGHTS.—

(A) IN GENERAL.—The Department or a subdivision within the Department shall not be excluded under section 7103(b)(1) of title 5, United States Code, from coverage under chapter 71 of that title unless the President determines that a majority of employees within the Department or applicable subdivision have, as their primary job duty, intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

(B) NATIONAL SECURITY POSITIONS.—Employees transferred under this title shall not be considered to perform work which directly affects national security within the meaning of section 7112(b)(6) of title 5, United States Code, unless their primary job duty involves intelligence, counterintelligence, or investigative duties directly related to terrorism investigation. All employees transferred under this title who are not in the counterterrorism positions described in the preceding sentence shall continue to be afforded the full rights and protections under chapter 71 of title 5, United States Code.

(g) NO AFFECT ON INTELLIGENCE AUTHORITIES.—The transfer of authorities, functions, personnel, and assets of elements of the United States Government under this title, or the assumption of authorities and functions, by the Department of Homeland Security under this title, shall not be construed, in cases where such authorities, functions, personnel, and assets, are engaged in intelligence activities as defined in the National Security Act of 1947, as affecting the authorities of the Director of Central Intelligence, the Secretary of Defense, or the heads of departments and agencies within the intelligence community.

(h) REFERENCES.—Any reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to a department, agency, or office from which a function is transferred by this title—

(1) to the head of such department, agency, or office is deemed to refer to the Secretary of National Homeland Security; or

(2) to such department, agency, or office is deemed to refer to the Department of National Homeland Security.

TITLE II—NATIONAL OFFICE FOR COMBATING TERRORISM

SEC. 201. NATIONAL OFFICE FOR COMBATING TERRORISM.

(a) ESTABLISHMENT.—There is established within the Executive Office of the President the National Office for Combating Terrorism.

(b) OFFICERS.—

(1) DIRECTOR.—The head of the Office shall be the Director of the National Office for Combating Terrorism, who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) EXECUTIVE SCHEDULE LEVEL I POSITION.—Section 5312 of title 5, United States Code, is amended by adding at the end the following:

''Director of the National Office for Combating Terrorism.''.

(3) OTHER OFFICERS.—The President shall assign to the Office such other officers as the President, in consultation with the Director, considers appropriate to discharge the responsibilities of the Office.

(c) RESPONSIBILITIES.—Subject to the direction and control of the President, the responsibilities of the Office shall include the following:

(1) To develop national objectives and policies for combating terrorism.

(2) To direct and review the development of a comprehensive national assessment of terrorist threats and vulnerabilities to those threats, which shall be—

(A) conducted by the heads of relevant Federal agencies; and

(B) used in preparation of the Strategy.

(3) To develop with the Secretary of National Homeland Security, the Strategy under title III.

(4) To coordinate, oversee, and evaluate the implementation and execution of the Strategy by agencies of the Federal Government with responsibilities for combating terrorism under the Strategy, particularly those involving military, intelligence, law enforcement, and diplomatic assets.

(5)(A) To coordinate, with the advice of the Secretary of National Homeland Security, the development of a comprehensive annual budget for the programs and activities under the Strategy, including the budgets of the military departments and agencies within the National Foreign Intelligence Program relating to international terrorism, but excluding military programs, projects, or activities relating to force protection.

(B) To have the lead responsibility for budget recommendations relating to military, intelligence, law enforcement, and diplomatic assets in support of the Strategy.

(6) To exercise funding authority for Federal terrorism prevention and response agencies in accordance with section 202.

(7) To serve as an advisor to the National Security Council.

(d) RESOURCES.—In consultation with the Director, the President shall assign or allocate to the Office such resources, including funds, personnel, and other resources, as the President considers appropriate in order to facilitate the discharge of the responsibilities of the Office.

(e) OVERSIGHT BY CONGRESS.—The establishment of the Office within the Executive Office of the President shall not be construed as affecting access by Congress, or any committee of Congress, to—

(1) any information, document, record, or paper in the possession of the Office or any study conducted by or at the direction of the Director; or

(2) any personnel of the Office.

SEC. 202. FUNDING FOR STRATEGY PROGRAMS AND ACTIVITIES.

(a) BUDGET REVIEW.—In consultation with the Director of the Office of Management and Budget, the Secretary of National Homeland Security, and the heads of other executive departments and agencies, the Director shall—

(1) identify programs that contribute to the Strategy; and

(2) in the development of the budget submitted by the President to Congress under section 1105 of title 31, United States Code, review and provide advice to the heads of executive departments and agencies on the amount and use of funding for programs identified under paragraph (1).

(b) SUBMITTAL OF PROPOSED BUDGETS TO THE DIRECTOR.—

(1) IN GENERAL.—The head of each Federal terrorism prevention and response agency shall submit to the Director each year the proposed budget of that agency for the fiscal year beginning in that year for programs and activities of that agency under the Strategy during that fiscal year.

(2) DATE FOR SUBMISSION.—The proposed budget of an agency for a fiscal year under paragraph (1) shall be submitted to the Director—

(A) not later than the date on which the agency completes the collection of information for purposes of the submission by the President of a budget to Congress for that fiscal year under section 1105 of title 31, United States Code; and

(B) before that information is submitted to the Director of the Office of Management and Budget for such purposes.

(3) FORMAT.—In consultation with the Director of the Office of Management and Budget, the Director shall specify the format for the submittal of proposed budgets under paragraph (1).

(c) REVIEW OF PROPOSED BUDGETS.—

(1) IN GENERAL.—The Director shall review each proposed budget submitted to the Director under subsection (b).

(2) INADEQUATE FUNDING DETERMINATION.—If the Director determines under paragraph (1) that the proposed budget of an agency for a fiscal year under subsection (b) is inadequate, in whole or in part, to permit the implementation by the agency during the fiscal year of the goals of the Strategy applicable to the agency during the fiscal year, the Director shall submit to the head of the agency—

(A) a notice in writing of the determination; and

(B) a statement of the proposed funding, and any specific initiatives, that would (as determined by the Director) permit the implementation by the agency during the fiscal year of the goals of the Strategy applicable to the agency during the fiscal year.

(3) ADEQUATE FUNDING DETERMINATION.—If the Director determines under paragraph (1) that the proposed budget of an agency for a fiscal year under subsection (b) is adequate to permit the implementation by the agency during the fiscal year of the goals of the Strategy applicable to the agency during the fiscal year, the Director shall submit to the head of the agency a notice in writing of that determination.

(4) MAINTENANCE OF RECORDS.—The Director shall maintain a record of—

(A) each notice submitted under paragraph (2), including any statement accompanying such notice; and

(B) each notice submitted under paragraph (3).

(d) AGENCY RESPONSE TO REVIEW OF PROPOSED BUDGETS.—

(1) INCORPORATION OF PROPOSED FUNDING.—The head of a Federal terrorism prevention and response agency that receives a notice under subsection (c)(2) with respect to the proposed budget of the agency for a fiscal year shall incorporate the proposed funding, and any initiatives, set forth in the statement accompanying the notice into the information submitted to the Office of Management and Budget in support of the proposed budget for the agency for the fiscal year under section 1105 of title 31, United States Code.

(2) ADDITIONAL INFORMATION.—The head of each agency described under paragraph (1) for a fiscal year shall include as an appendix to the information submitted to the Office of Management and Budget under that paragraph for the fiscal year the following:

(A) A summary of any modifications in the proposed budget of such agency for the fiscal year under that paragraph.

(B) An assessment of the effect of such modifications on the capacity of such agency to perform its responsibilities during the fiscal year other than its responsibilities under the Strategy.

(3) SUBMISSION TO CONGRESS.—

(A) IN GENERAL.—Subject to subparagraph (B), the head of each agency described under paragraph (1) for a fiscal year shall submit to Congress a copy of the appendix submitted to the Office of Management and Budget for the fiscal year under paragraph (2) at the same time the budget of the President for the fiscal year is submitted to Congress under section 1105 of title 31, United States Code.

(B) ELEMENTS WITHIN INTELLIGENCE PROGRAMS.—In the submission of the copy of the appendix to Congress under subparagraph (A), those elements of the appendix which are within the National Foreign Intelligence Program shall be submitted to—

(i) the Select Committee on Intelligence of the Senate; and

(ii) the Permanent Select Committee on Intelligence of the House of Representatives.

(e) SUBMITTAL OF REVISED PROPOSED BUDGETS.—

(1) IN GENERAL.—At the same time the head of a Federal terrorism prevention and response agency submits its proposed budget for a fiscal year to the Office of Management and Budget for purposes of the submission by the President of a budget to Congress for the fiscal year under section 1105 of title 31, United States Code, the head of the agency shall submit a copy of the proposed budget to the Director.

(2) REVIEW AND DECERTIFICATION AUTHORITY.—The Director of the National Office for Combating Terrorism—

(A) shall review each proposed budget submitted under paragraph (1); and

(B) in the case of a proposed budget for a fiscal year to which subsection (c)(2) applies in the fiscal year, if the Director determines as a result of the review that the proposed budget does not include the proposed funding, and any initiatives, set forth in the notice under that subsection with respect to the proposed budget—

(i) may decertify the proposed budget; and

(ii) with respect to any proposed budget so decertified, shall submit to Congress—

(I) a notice of the decertification;

(II) a copy of the notice submitted to the agency concerned for the fiscal year under subsection (c)(2)(B); and

(III) the budget recommendations made under this section.

(f) NATIONAL TERRORISM PREVENTION AND RESPONSE PROGRAM BUDGET.—

(1) IN GENERAL.—For each fiscal year, following the submittal of proposed budgets to the Director under subsection (b), the Director shall, in consultation with the Secretary of National Homeland Security and the head of each Federal terrorism prevention and response agency concerned—

(A) develop a consolidated proposed budget for such fiscal year for all programs and activities under the Strategy for such fiscal year; and

(B) subject to paragraph (2), submit the consolidated proposed budget to the President and to Congress.

(2) ELEMENTS WITHIN INTELLIGENCE PROGRAMS.—In the submission of the consolidated proposed budget to Congress under paragraph (1)(B), those elements of the budget which are within the National Foreign Intelligence Program shall be submitted to—

(A) the Select Committee on Intelligence of the Senate; and

(B) the Permanent Select Committee on Intelligence of the House of Representatives.

(3) DESIGNATION OF CONSOLIDATED PROPOSED BUDGET.—The consolidated proposed budget for a fiscal year under this subsection shall be known as the National Terrorism Prevention and Response Program Budget for the fiscal year.

(g) REPROGRAMMING AND TRANSFER REQUESTS.—

(1) APPROVAL BY THE DIRECTOR.—The head of a Federal terrorism prevention and response agency may not submit to Congress a request for the reprogramming or transfer of any funds specified in the National Terrorism Prevention and Response Program Budget for programs or activities of the agency under the Strategy for a fiscal year in excess of $5,000,000 without the approval of the Director.

(2) APPROVAL BY THE PRESIDENT.—The President may, upon the request of the head of the agency concerned, permit the submittal to Congress of a request previously disapproved by the Director under paragraph (1) if the President determines that the submittal of the request to Congress will further the purposes of the Strategy.

TITLE III—NATIONAL STRATEGY FOR COMBATING TERRORISM AND THE HOMELAND SECURITY RESPONSE

SEC. 301. STRATEGY.

(a) DEVELOPMENT.—The Secretary and the Director shall develop the National Strategy for Combating Terrorism and Homeland Security Response for detection, prevention, protection, response, and recovery to counter terrorist threats, including the plans, policies, training, exercises, evaluation, and interagency cooperation that address each such action relating to such threats.

(b) RESPONSIBILITIES.—

(1) RESPONSIBILITIES OF THE SECRETARY.—The Secretary shall have responsibility for portions of the Strategy addressing border security, critical infrastructure protection, emergency preparation and response, and integrating State and local efforts with activities of the Federal Government.

(2) RESPONSIBILITIES OF THE DIRECTOR.—The Director shall have overall responsibility for development of the Strategy, and particularly for those portions of the Strategy addressing intelligence, military assets, law enforcement, and diplomacy.

(c) CONTENTS.—The contents of the Strategy shall include—

(1) policies and procedures to maximize the collection, translation, analysis, exploitation, and dissemination of information relating to combating terrorism and the homeland security response throughout the Federal Government and with State and local authorities;

(2) plans for countering chemical, biological, radiological, nuclear and explosives, and cyber threats;

(3) plans for improving the resources of, coordination among, and effectiveness of health and medical sectors for detecting and responding to terrorist attacks on the homeland;

(4) specific measures to enhance cooperative efforts between the public and private sectors in protecting against terrorist attacks;

(5) a review of measures needed to enhance transportation security with respect to potential terrorist attacks; and

(6) other critical areas.

(d) COOPERATION.—At the request of the Secretary or Director, departments and

agencies shall provide necessary information or planning documents relating to the Strategy.

(e) INTERAGENCY COUNCIL.—

(1) ESTABLISHMENT.—There is established the National Combating Terrorism and Homeland Security Response Council to assist with preparation and implementation of the Strategy.

(2) MEMBERSHIP.—The members of the Council shall be the heads of the Federal terrorism prevention and response agencies or their designees. The Secretary and Director shall designate such agencies.

(3) CO-CHAIRS AND MEETINGS.—The Secretary and Director shall co-chair the Council, which shall meet at their direction.

(f) SUBMISSION TO CONGRESS.—Not later than December 1, 2003, and each year thereafter in which a President is inaugurated, the Secretary and the Director shall submit the Strategy to Congress.

(g) UPDATING.—Not later than December 1, 2005, and on December 1, of every 2 years thereafter, the Secretary and the Director shall submit to Congress an updated version of the Strategy.

(h) PROGRESS REPORTS.—Not later than December 1, 2004, and on December 1, of each year thereafter, the Secretary and the Director may submit to Congress a report that—

(1) describes the progress on implementation of the Strategy; and

(2) provides recommendations for improvement of the Strategy and the implementation of the Strategy.

SEC. 302. NATIONAL COMBATING TERRORISM STRATEGY PANEL.

(a) ESTABLISHMENT.—The Secretary and the Director shall establish a nonpartisan, independent panel to be known as the National Combating Terrorism Strategy Panel (in this section referred to as the ''Panel'').

(b) MEMBERSHIP.—

(1) APPOINTMENT.—The Panel shall be composed of a chairperson and 8 other individuals appointed by the Secretary and the Director, in consultation with the chairman and ranking member of the Committee on Governmental Affairs of the Senate and the chairman and ranking member of the Committee on Government Reform of the House of Representatives, from among individuals in the private sector who are recognized experts in matters relating to the homeland security of the United States.

(2) TERMS.—

(A) IN GENERAL.—An individual shall be appointed to the Panel for an 18-month term.

(B) TERM PERIODS.—Terms on the Panel shall not be continuous. All terms shall be for the 18-month period which begins 12 months before each date a report is required to be submitted under subsection (l)(2)(A).

(C) MULTIPLE TERMS.—An individual may serve more than 1 term.

(c) DUTIES.—The Panel shall—

(1) conduct and submit to the Secretary the assessment of the Strategy; and

(2) conduct the independent, alternative assessment of homeland security measures required under this section.

(d) ALTERNATIVE ASSESSMENT.—The Panel shall submit to the Secretary an independent assessment of the optimal policies and programs to combat terrorism, including homeland security measures. As part of the assessment, the Panel shall, to the extent practicable, estimate the funding required by fiscal year to achieve these optimal approaches.

(e) INFORMATION FROM FEDERAL AGENCIES.—

(1) IN GENERAL.—Subject to paragraph (2), the Panel may secure directly from any Federal department or agency such information as the Panel considers necessary to carry out this section. Upon request of the Chairperson, the head of such department or agency shall furnish such information to the Panel.

(2) INTELLIGENCE INFORMATION.—The provision of information under this paragraph related to intelligence shall be provided in accordance with procedures established by the Director of Central Intelligence and in accordance with section 103(d)(3) of the National Security Act of 1947 (50 U.S.C. 403–3(d)(3)).

(f) COMPENSATION OF MEMBERS.—Each member of the Panel shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Panel.

(g) TRAVEL EXPENSES.—The members of the Panel shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Panel.

(h) STAFF.—

(1) IN GENERAL.—The Chairperson of the Panel may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Panel to perform its duties. The employment of an executive director shall be subject to confirmation by the Panel.

(2) COMPENSATION.—The Chairperson of the Panel may fix the compensation of the executive director and other personnel without regard to chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(3) PERSONNEL AS FEDERAL EMPLOYEES.—

(A) IN GENERAL.—The executive director and any personnel of the Panel who are employees shall be employees under section 2105 of title 5, United States Code, for purposes of chapters 63, 81, 83, 84, 85, 87, 89, and 90 of that title.

(B) MEMBERS OF PANEL.—Subparagraph (A) shall not be construed to apply to members of the Panel.

(4) REDUCTION OF STAFF.—During periods that members are not serving terms on the Panel, the executive director shall reduce the number and hours of employees to the minimum necessary to—

(A) provide effective continuity of the Panel; and

(B) minimize personnel costs of the Panel.

(i) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Panel without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(j) ADMINISTRATIVE PROVISIONS.—

(1) USE OF MAIL AND PRINTING.—The Panel may use the United States mails and obtain printing and binding services in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(2) SUPPORT SERVICES.—The Secretary shall furnish the Panel any administrative and support services requested by the Panel.

(3) GIFTS.—The Panel may accept, use, and dispose of gifts or donations of services or property.

(k) PAYMENT OF PANEL EXPENSES.—The compensation, travel expenses, and per diem allowances of members and employees of the Panel shall be paid out of funds available to the Department for the payment of compensation, travel allowances, and per diem allowances, respectively, of civilian employees of the Department. The other expenses of the Panel shall be paid out of funds available to the Department for the payment of similar expenses incurred by the Department.

(l) REPORTS.—

(1) PRELIMINARY REPORT.—

(A) REPORT TO SECRETARY.—Not later than July 1, 2004, the Panel shall submit to the Secretary and the Director a preliminary report setting forth the activities and the findings and recommendations of the Panel under subsection (d), including any recommendations for legislation that the Panel considers appropriate.

(B) REPORT TO CONGRESS.—Not later than 30 days after the submission of the report under subparagraph (A), the Secretary and the Director shall submit to the committees referred to under subsection (b) a copy of that report with the comments of the Secretary on the report.

(2) QUADRENNIAL REPORTS.—

(A) REPORTS TO SECRETARY.—Not later than December 1, 2004, and not later than December 1 every 4 years thereafter, the Panel shall submit to the Secretary and the Director a report setting forth the activities and the findings and recommendations of the Panel under subsection (d), including any recommendations for legislation that the Panel considers appropriate.

(B) REPORTS TO CONGRESS.—Not later than 60 days after each report is submitted under subparagraph (A), the Secretary shall submit to the committees referred to under subsection (b) a copy of the report with the comments of the Secretary and the Director on the report.

TITLE IV—EFFECTIVE DATE

SEC. 401. EFFECTIVE DATE.

This Act shall take effect 180 days after the date of enactment of this Act.

By Mr. THURMOND (for himself and Mr. ALLARD):

S. 2453. A bill to provide for the disposition of weapons-usable plutonium at the Savannah River Site South Carolina; to the Committee on Energy and Natural Resources.

Mr. THURMOND. Mr. President, I rise today to introduce legislation that will provide for the disposition of weapons usable plutonium at the Savannah River Site, South Carolina. This bill will ensure the State of South Carolina will have an enforceable agreement on the construction and operation of a mixed-oxide, MOX, fuel fabrication facility at the Savannah River Site. The bill also provides for clear pathway to remove any weapons-usable plutonium from our State if the MOX facility is delayed or fails to operate as planned.

The Plutonium Disposition program is an important element of our National Security. Under agreements made by the United States and the Russian Federation, each Nation agreed to dispose of designated amounts of weapons-grade plutonium. This agreement is a significant step toward safeguarding nuclear materials and preventing their diversion to rogue states. In addition, it has been widely acknowledged that Russian criminal

groups are attempting to steal weapons-usable plutonium from poorly secured sites for known terrorist organizations, and therefore most certainly this is a matter of extreme National Security.

The MOX facility will be an important economic factor in my State. As a result of this bill, Department of Energy officials will also know that SRS, the largest industrial employer in my State, will be ready and eager to accept new missions and create jobs. Helping the Savannah River Site SRS, grow and remain the ''Crown Jewel'' among Department of Energy facilities has been one of my proudest achievements of public service as a Senator and Governor of my State. South Carolina and the Department of Energy have had an outstanding working relationship to bring jobs to SRS while helping to defend our National Security.

I deeply regretted the recent dispute over the mixed oxide (MOX) fuel fabrication facility and the Federal lawsuit that was recently filed. I have called for reasoned and mature thinking to prevail in this matter. This legislation is intended to provide the assurances to both parties and restore the elements of trust and cooperation, while protecting the interests of the State and the health, safety and economy of its citizens. Interested parties must not fail to view this matter without taking all the factors into consideration. The health and security of South Carolinians must always be protected. current and future jobs in South Carolina must be protected. The National Security of the United States must be protected. The legislation I am introducing today will accomplish all of these objectives.

This initiative is good government and I encourage its support by my colleagues. I yield the floor.

STATEMENTS ON SUBMITTED RESOLUTIONS

SENATE RESOLUTION 260—DESIGNATING MAY 1, 2002, AS ''NATIONAL CHILD CARE WORTHY WAGE DAY''

Mr. CORZINE (for himself, Mr. DURBIN, Mr. CLELAND, Mr. DODD, Mr. KERRY, Mr. KENNEDY, Mr. FEINGOLD, Mrs. CARNAHAN, and Mrs. MURRAY) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 260

Whereas approximately 14,000,000 children are in out-of-home care during part or all of the day so that their parents may work;

Whereas the average salary of early childhood educators is $16,000 per year, and only ⅓ have health insurance and even fewer have a pension plan;

Whereas the quality of child care and other early childhood education programs is directly linked to the quality of early childhood educators, and low wages make it difficult to attract qualified individuals to the profession;

Whereas the turnover rate of early childhood educators is approximately 30 percent per year because of low wages and lack of benefits, making it difficult to retain high quality educators, and research has demonstrated that young children require caring relationships to have a consistent presence in their lives for their positive development;

Whereas the compensation of early childhood educators must be commensurate with the importance of the job of helping the young children of the United States develop their social, emotional, physical, and intellectual skills to be ready for school;

Whereas the cost of adequate compensation cannot be funded by further burdening parents with higher child care fees but requires public as well as private resources so that quality care and education is accessible for all families; and

Whereas the Center for the Child Care Workforce and other early childhood education organizations recognize May 1st as National Child Care Worthy Wage Day: Now, therefore, be it

Resolved, That the Senate—

(1) designates May 1, 2002, as ''National Child Care Worthy Wage Day''; and

(2) requests that the President issue a proclamation calling on the people of the United States to observe ''National Child Care Worthy Wage Day'' by—

(A) honoring early childhood educators and programs in their communities; and

(B) working together to resolve the early childhood educator compensation crisis.

Mr. CORZINE. Mr. President, I rise today to submit a resolution designating May 1, 2002 as National Child Care Worthy Wage Day. On May 1 each year, child care providers and other early childhood professionals nationwide conduct public awareness and education efforts highlighting the importance of early childhood education. I hope these efforts will bring attention to early childhood education and the importance of attracting and retaining qualified child care workers.

Every day, approximately 14 million children are cared for outside the home so that their parents can work. This figure includes six million of our Nation's infants and toddlers. Children begin to learn at birth, and the quality of care they receive will affect them for the rest of their lives. Early child care affects language development, math skills, social behavior, and general readiness for school. Experienced child care workers can identify children who have development or emotional problems and provide the care they need to take on life's challenges. Through the creative use of play, structured activities and individual attention, child care workers help their charges learn about the world around them and how to interact with others.

The dedicated individuals who nurture and teach our Nation's young children are undervalued despite the importance of their work. The average salary of a child care worker is approximately $16,000 annually. According to the Department of Labor, in 1998, the middle 50 percent of child care workers and pre-school teachers earned between $5.82 and $8.13 an hour. The lowest 10 percent of child care workers were paid an hourly wage of $5.49 or less. Only one third of our Nation's child care workers have health insurance and even fewer have pension plans. This grossly inadequate level of wages and benefits for child care staff has led to difficulties in attracting and retaining high quality caretakers and educators. As a result, the turnover rate for child care providers is 30 percent a year. This high turnover rate interrupts consistent and stable relationships that children need to have with their caregivers.

To address this issue, Senator DODD and I have introduced the ''Focus On Committed and Underpaid Staff for Children's Sake Act,'' a bill that would establish a grant and scholarship program for child care providers.

I encourage my colleagues to join me in recognizing the importance of the service that child care workers provide and the need to increase their compensation accordingly. The Nation's child care workforce, the families who depend on them, and the next generation of children that they care for deserve our support.

SENATE CONCURRENT RESOLUTION 104—RECOGNIZING THE AMERICAN SOCIETY OF CIVIL ENGINEERS ON THE OCCASION OF THE 150TH ANNIVERSARY OF ITS FOUNDING AND FOR THE MANY VITAL CONTRIBUTIONS OF CIVIL ENGINEERS TO THE QUALITY OF LIFE OF THE PEOPLE OF THE UNITED STATES, INCLUDING THE RESEARCH AND DEVELOPMENT PROJECTS THAT HAVE LED TO THE PHYSICAL INFRASTRUCTURE OF MODERN AMERICA

Mr. JEFFORDS (for himself and Mr. SMITH of New Hampshire) submitted the following concurrent resolution; which was referred to the Committee on the Judiciary:

S. CON. RES. 104

Whereas, founded in 1852, the American Society of Civil Engineers is the oldest national engineering society in the United States;

Whereas civil engineers work to constantly improve buildings, water systems, and other civil engineering works through research, demonstration projects, and the technical codes and standards developed by the American Society of Civil Engineers;

Whereas the American Society of Civil Engineers incorporates educational, scientific, and charitable efforts to advance the science of engineering, improve engineering education, maintain the highest standards of excellence in the practice of civil engineering, and protect the public health, safety, and welfare;

Whereas the American Society of Civil Engineers represents the profession primarily responsible for the design, construction, and maintenance of the roads, bridges, airports, railroads, public buildings, mass transit systems, resource recovery systems, water systems, waste disposal and treatment facilities, dams, ports, waterways, and other public facilities that are the foundation on which the economy of the United States stands and grows; and

Whereas the civil engineers of the United States, through innovation and the highest