

# Death Penalty Reform

## Innocence Protection Act

### SECTION 1. SHORT TITLE

This Act shall be called the "Innocence Protection Act."

### SECTION 2. FINDINGS AND PURPOSE

**(A) FINDINGS** - the legislature finds that:

1. Over the past decade, deoxyribonucleic acid testing (referred to in this section as "DNA testing") has emerged as the most reliable forensic technique for identifying criminals when biological materials are left at a crime scene.
2. Because of its scientific precision, DNA testing can, in some cases, conclusively establish the guilt or innocence of a criminal defendant. In other cases, DNA testing may not conclusively establish guilt or innocence, but may have significant probative value to a judge or jury.
3. While DNA testing is increasingly commonplace in pretrial investigations today, it was not widely available in cases tried prior to 1994. Moreover, new forensic DNA testing procedures have made it possible to obtain results from minute samples that could not previously be tested, and to obtain more informative and accurate results than earlier forms of forensic DNA testing could produce. Consequently, convicted inmates have been exonerated by new DNA tests after earlier tests had failed to produce definitive results.
4. Since DNA testing is often feasible on relevant biological material that is decades old, it can, in some circumstances, prove that a conviction that predated the development of DNA testing was based upon incorrect factual findings. Uniquely, DNA evidence showing innocence, produced decades after a conviction, provides a more reliable basis for establishing a correct verdict than any evidence proffered at the original trial. DNA testing, therefore, can and has resulted in the post-conviction exoneration of innocent Americans.
5. In the past decade, there have been more than 100 post-conviction exonerations in the United States and Canada based upon DNA testing. At least 11 individuals sentenced to death have been exonerated through post-conviction DNA testing, some of whom came within days of being executed.
6. The advent of DNA testing raises serious concerns regarding the prevalence of wrongful convictions, especially wrongful convictions arising out of mistaken eyewitness identification testimony. According to a 1996 Department of Justice study titled "Convicted by Juries, Exonerated by Science: Case Studies of Post-Conviction DNA Exonerations," in approximately 20-30 percent of the cases referred for DNA testing, the results excluded the primary suspect. Without DNA testing, many of these individuals might have been wrongfully convicted.
7. If biological material is not subjected to DNA testing in appropriate cases, a significant risk exists that persuasive evidence of innocence will not be detected and, accordingly, that innocent persons will be unconstitutionally incarcerated or executed.
8. There is also a compelling need to ensure the preservation of biological material for post-conviction DNA testing. Since 1992, the Innocence Project at the Benjamin N. Cardozo School of Law has studied inmates' claims that DNA testing could prove them innocent. In over 70 percent of those cases in which DNA testing could have been dispositive if the biological material were available, the material had been destroyed or lost. In two-thirds of the cases in which the evidence was found, and DNA testing conducted, the results have exonerated the inmate.
9. In at least 14 cases, post-conviction DNA testing that exonerated a wrongly convicted person also provided evidence leading to the apprehension of the actual perpetrator, thereby enhancing public safety. This would not have been possible if the biological evidence had been destroyed.

**(B) PURPOSE** - This law is enacted by the legislature to ensure the availability of DNA testing in appropriate cases and ensure that wrongfully convicted persons have an opportunity to establish their innocence through DNA testing, by requiring the preservation of DNA evidence.

### **SECTION 3. DNA TESTING**

After section XXX, the following new section XXX shall be inserted:

**(A) APPLICATION** - Notwithstanding any other provision of law, a person in custody pursuant to the judgment of a court of this state may, at any time after conviction, apply to the court that entered the judgment for forensic DNA testing of:

1. Biological material related to the investigation or prosecution that resulted in the judgment.
2. Biological material in the actual or constructive possession of the state.
3. Biological material not previously subjected to DNA testing, or which can be subjected to retesting with new DNA techniques that provide a reasonable likelihood of more accurate and probative results.

#### **(B) NOTICE TO GOVERNMENT-**

1. The court shall notify the state of an application made under subsection (A) and shall afford the state an opportunity to respond.
2. Upon receiving notice of an application for DNA testing, the state shall ensure that any remaining biological material secured in connection with the case is preserved pending the completion of proceedings under this section.
3. The court shall order DNA testing upon a determination that an applicant's testing may produce noncumulative, exculpatory evidence relevant to the applicant's claim of wrongful conviction or sentence.

**(C) COST** - The cost of DNA testing ordered under subsection (B)(3) shall be borne by the state or the applicant, as the court may order in the interests of justice, if it is shown that the applicant is not indigent and possesses the means to pay.

**(D) COUNSEL** - The court may at any time appoint counsel for an indigent applicant.

#### **(E) POST-TESTING PROCEDURES -**

1. If the results of DNA testing conducted under this section are unfavorable to the applicant, the court shall:
  - a. Dismiss the application.
  - b. In the case of an applicant who is not indigent, the court may assess the applicant for the cost of such testing.
2. If the results of DNA testing conducted under this section are favorable to the applicant, the court shall:
  - a. Order a hearing, notwithstanding any provision of law that would bar such a hearing.
  - b. Enter any order that serves the interests of justice, including orders vacating and setting aside the judgment, discharging the applicant if the applicant is in custody, resentencing the applicant, or granting a new trial.

**(F) RULE OF CONSTRUCTION** - Nothing in this section shall be construed to limit the circumstances under which a person may obtain DNA testing or other post-conviction relief under any other provision of law.

**(G) PRESERVATION OF BIOLOGICAL MATERIAL** - Notwithstanding any other provision of law, the state shall preserve any biological material secured in connection with a criminal case for such period of time as any person remains incarcerated in connection with that case.

**SECTION 4. EFFECTIVE DATE**—This act shall take effect on July 1, 2003.