

Resolution 34

DNA Testing and Competent Counsel

WHEREAS, there is both concern that innocent individuals have been wrongfully convicted of crimes or sentenced to death in capital cases as a result of inadequate legal representation, and recognition that DNA testing and the provision of competent legal counsel may enhance the ability to establish the guilt or innocence of a criminal defendant; and

WHEREAS, the provision of competent legal representation and the use of scientific evidence in state courts are first and foremost a state responsibility, and particular provisions included in legislative proposals such as S.486 (the Innocence Protection Act of 2002) recently adopted by the Senate Judiciary Committee raise substantial federalism concerns and intrude upon the responsibilities of state courts and the independence of the judiciary; and

WHEREAS, in order to assure competent legal representation in capital cases it is necessary that adequate funding be provided;

NOW, THEREFORE, BE IT RESOLVED that:

1. The Conference reaffirms its interest in working cooperatively with the federal government to develop and implement informed procedures for the collection, storage and use of DNA and other scientific testing in all appropriate criminal proceedings; and
2. The Conference also reaffirms its interest in working cooperatively with the federal government to adequately fund defender programs in capital cases but opposes any attempt by Congress to impose on state courts standards related to the competence of counsel, or the conduct of state court proceedings, in addition to those required by the Constitution; and
3. The Conference urges that any legislative proposals regarding the provision of legal services or DNA testing avoid contravening principles of federalism and inappropriate federal involvement in state court proceedings; and that to the extent Congress conditions the receipt of federal funds on a state's provision of legal services (or its certification that it will provide DNA testing), such conditions relate directly to improving that state's legal services (or its DNA analysis capability); and
4. The Conference opposes provisions creating any new federal cause of action that would compromise the independence of the state judiciary, or displace the requirements of exhaustion of state remedies, state time limits and procedural default rules; and
5. The Conference urges the National Center for State Courts to continue to develop and disseminate information concerning effective use of DNA testing in criminal cases and adequate procedures for the appointment and compensation of counsel in capital cases; and

BE IT FURTHER RESOLVED that the Conference urges that any grant program authorized by Congress to support the establishment and implementation of competency standards for counsel in state capital cases incorporate the process authorized in the highly effective, federally-funded Court Improvement Program (42 USC Sec. 670 note).

Adopted as proposed by the Professionalism and Competence of the Bar Committee of the Conference of Chief Justices in Rockport, Maine at its 54th Annual Meeting on August 1, 2002.

