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Title: Resolution calling upon the United States Senate to pass S.1700, also known as the Innocence Protection Act of 2003, to allow for post conviction DNA testing in the Federal and State criminal justice systems.

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Res. No. 168

Resolution calling upon the United States Senate to pass S.1700, also known as the Innocence Protection Act of 2003, to allow for post conviction DNA testing in the Federal and State criminal justice systems.

By Council Members Perkins, Barron, Clarke, Comrie, Gerson, Jackson, Jennings, Lopez, Monserrate, Sanders, Seabrook, Stewart, Vann, Brewer, Rivera and Weprin

Whereas, On November 5, 2003, the United States House of Representatives passed the Innocence Protection Act of 2003, H.R. 3214, by an overwhelming vote of 357 to 67;

Whereas, Over the past decade, deoxyribonucleic acid testing, also known as "DNA testing", has emerged as the most reliable forensic technique for identifying criminals when biological material is left at a crime scene; and

Whereas, Because of its scientific precision, DNA testing can, in some cases, conclusively establish the guilt or innocence of a criminal defendant and, even where it does not conclusively establish guilt or innocence,

it possesses significant probative value to a finder of fact; and

Whereas, 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 get 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, in a number of cases convicted inmates have been exonerated by new DNA tests after earlier tests had failed to produce definitive results; and

Whereas, Since DNA testing is often possible 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, can provide 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 men and women; and

Whereas, In more than 80 cases in the United States, DNA evidence has led to the exoneration of innocent men and women who were wrongfully convicted; this number includes at least 10 individuals sentenced to death, some of whom came within days of being executed; and

Whereas, In more than a dozen cases, post-conviction DNA testing that has exonerated an innocent person has also enhanced public safety by providing evidence that led to the identification of the actual perpetrator; and

Whereas, S.1700 / H.R. 3214 amends the Federal judicial code to authorize a person convicted of a federal crime to apply to the appropriate federal court for DNA testing to support the claim that the person did not commit the crime of which the person was convicted, or any other offense that a sentencing authority may have relied upon when it sentenced the person with respect to such crime; and

Whereas, S.1700 / H.R. 3214 establishes guidelines for the court to use in ordering DNA testing and

post-testing procedures and also regarding the preservation of evidence; additionally, it provides criminal penalties for tampering with, destroying or altering DNA evidence, and it sets forth provisions regarding post-conviction DNA testing in State criminal justice systems; and

Whereas, Further, S.1700 / H.R. 3214 prohibits a State from denying an application for DNA testing made by a prisoner in State custody who is under sentence of death if certain conditions apply; it also provides grants to prosecutors for DNA testing programs (withholding funds from States not complying with standards for capital representation), establishes the National Commission on Capital Representation, and increases compensation available in Federal cases and sets forth provisions regarding compensation in state cases, where an individual has been unjustly sentenced to death; and

Whereas, Experience has shown that it is not unduly burdensome to make DNA testing available to inmates; the cost of the testing is relatively modest and has decreased in recent years and moreover, the number of cases in which post-conviction DNA testing is appropriate is small and will decrease as pretrial testing becomes more common; and

Whereas, The National Commission on the Future of DNA Evidence, a federal panel established by the Department of Justice and comprised of law enforcement, judicial and scientific experts, has urged that post-conviction DNA testing be permitted in the relatively small number of cases in which it is appropriate, notwithstanding procedural rules that could be invoked to preclude that testing, and notwithstanding the inability of an inmate to pay for the testing; and

Whereas, Since New York passed the nation's first post-conviction DNA statute in 1994, only a few states have adopted post-conviction DNA testing procedures, and some of these procedures are unduly restrictive; moreover, only a handful of states have passed legislation requiring that biological evidence be adequately preserved; and

Whereas, Congress should continue to provide financial assistance to the States to increase the capacity of state and local laboratories to carry out DNA testing for law enforcement identification purposes; at the same

time, Congress should insist that states which accept financial assistance make DNA testing available to both sides of the adversarial system in order to enhance the reliability and integrity of that system; and

Whereas, If biological material is not subjected to DNA testing in appropriate cases, there is a significant risk that persuasive evidence of innocence will not be detected and, consequently, that innocent persons will be executed; and

Whereas, Given the harm that would result from the execution of an innocent person and the failure of many states to ensure that innocent persons are not sentenced to death, a Federal statute assuring the availability of DNA testing and a chance to present the results of testing in court is an essential measure to prevent constitutional injuries and irredeemable damage to human life; now, therefore, be it

Resolved, That the Council of the City of New York calls upon the United States Senate to pass S.1700, also known as the Innocence Protection Act of 2003, to allow for post conviction DNA testing in the Federal and State criminal justice systems.