AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

HOUSE BILLS ON SEXUAL CRIMES AGAINST CHILDREN

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

ON

H.R. 764, H.R. 95, H.R. 1355, H.R. 1505, H.R. 2423, H.R. 244, H.R. 2796, and H.R. 2797

JUNE 9, 2005

Serial No. 109–30

Printed for the use of the Committee on the Judiciary

Available via the World Wide Web: http://judiciary.house.gov

U.S. GOVERNMENT PRINTING OFFICE

21–657 PDF WASHINGTON : 2005

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2250 Mail: Stop SSOP, Washington, DC 20402–0001

COMMITTEE ON THE JUDICIARY

F. JAMES SENSENBRENNER, JR., Wisconsin, *Chairman*

HENRY J. HYDE, Illinois
HOWARD COBLE, North Carolina
LAMAR SMITH, Texas
ELTON GALLEGLY, California
BOB GOODLATTE, Virginia
STEVE CHABOT, Ohio
DANIEL E. LUNGREN, California
WILLIAM L. JENKINS, Tennessee
CHRIS CANNON, Utah
SPENCER BACHUS, Alabama
BOB INGLIS, South Carolina
JOHN N. HOSTETTLER, Indiana
MARK GREEN, Wisconsin
RIC KELLER, Florida
DARRELL ISSA, California
JEFF FLAKE, Arizona
MIKE PENCE, Indiana
J. RANDY FORBES, Virginia
STEVE KING, Iowa
TOM FEENEY, Florida
TRENT FRANKS, Arizona
LOUIE GOHMERT, Texas

JOHN CONYERS, JR., Michigan
HOWARD L. BERMAN, California
RICK BOUCHER, Virginia
JERROLD NADLER, New York
ROBERT C. SCOTT, Virginia
MELVIN L. WATT, North Carolina
ZOE LOFGREN, California
SHEILA JACKSON LEE, Texas
MAXINE WATERS, California
MARTIN T. MEEHAN, Massachusetts
WILLIAM D. DELAHUNT, Massachusetts
ROBERT WEXLER, Florida
ANTHONY D. WEINER, New York
ADAM B. SCHIFF, California
LINDA T. SÁNCHEZ, California
CHRIS VAN HOLLEN, Maryland
DEBBIE WASSERMAN SCHULTZ, Florida

PHILIP G. KIKO, *General Counsel-Chief of Staff*
PERRY H. APELBAUM, *Minority Chief Counsel*

SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

HOWARD COBLE, North Carolina, *Chairman*

DANIEL E. LUNGREN, California
MARK GREEN, Wisconsin
TOM FEENEY, Florida
STEVE CHABOT, Ohio
RIC KELLER, Florida
JEFF FLAKE, Arizona
MIKE PENCE, Indiana
J. RANDY FORBES, Virginia
LOUIE GOHMERT, Texas

ROBERT C. SCOTT, Virginia
SHEILA JACKSON LEE, Texas
MAXINE WATERS, California
MARTIN T. MEEHAN, Massachusetts
WILLIAM D. DELAHUNT, Massachusetts
ANTHONY D. WEINER, New York

JAY APPERSON, *Chief Counsel*
ELIZABETH SOKUL, *Special Counsel for Intelligence and Homeland Security*
MICHAEL VOLKOV, *Deputy Chief Counsel*
JASON CERVENAK, *Full Committee Counsel*
BOBBY VASSAR, *Minority Counsel*

CONTENTS

JUNE 9, 2005

OPENING STATEMENT

	Page
The Honorable Howard Coble, a Representative in Congress from the State of North Carolina, and Chairman, Subcommittee on Crime, Terrorism, and Homeland Security	1
The Honorable Robert C. Scott, a Representative in Congress from the State of Virginia, and Ranking Member, Subcommittee on Crime, Terrorism, and Homeland Security	3
The Honorable Sheila Jackson Lee, a Representative in Congress from the State of Texas, and Member, Subcommittee on Crime, Terrorism, and Homeland Security	4

WITNESSES

The Honorable Mark Foley, a Representative in Congress From the State of Florida	
Oral Testimony	6
Prepared Statement	7
The Honorable Ted Poe, a Representative in Congress From the State of Texas	
Oral Testimony	9
Prepared Statement	10
The Honorable Ginny Brown-Waite, a Representative in Congress From the State of Florida	
Oral Testimony	11
Prepared Statement	12
The Honorable Earl Pomeroy, a Representative in Congress From the State of North Dakota	
Oral Testimony	13
Prepared Statement	15

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

Prepared Statement of the Honorable Robert C. Scott, a Representative in Congress from the State of Virginia, and Ranking Member, Subcommittee on Crime, Terrorism, and Homeland Security	35
Prepared Statement of the Honorable Sheila Jackson Lee, a Representative in Congress from the State of Texas, and Member, Subcommittee on Crime, Terrorism, and Homeland Security	35
Document entitled "Case Study of Serial Killers and Rapists: 60 Violent Crimes Could Have Been Prevented Including 53 Murders and Rapes"	37
Document entitled "Highlights of the Foley Sex Offender Registration and Notification Act"	57
List of Individuals and Organizations Supporting H.R. 2423, the "Sex Offender Registration and Notification Act"	59
Letter from the Honorable William Moschella, Assistant Attorney General, Office of Legislative Affairs, U.S. Department of Justice, to the Honorable Orrin G. Hatch	60
Map of Registered Sex Offenders in the United States	82
Document entitled "Preventable Crimes In Chicago"	83

Page

Document entitled "The DNA Fingerprint Act of 2005," Introduced by Senator Jon Kyl 85

HOUSE BILLS ON SEXUAL CRIMES AGAINST CHILDREN

THURSDAY, JUNE 9, 2005

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME, TERRORISM,
AND HOMELAND SECURITY
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:06 p.m., in Room 2141, Rayburn House Office Building, the Honorable Howard Coble (Chair of the Subcommittee) presiding.

Mr. COBLE. Good afternoon, ladies and gentlemen. I want to—we're one witness shy, but I am told that Mr. Pomeroy is en route, so we will commence and await his arrival.

I want to welcome everyone to the second of three hearings this week before this Subcommittee to examine the problem of violent and sexual crimes against our Nation's children.

I want to first extend my thanks to my friend and colleague from Wisconsin, Representative Mark Green, who chaired the Subcommittee's first hearing on June the 7th, and who has agreed to chair the hearing following this one at 4 today.

We've all been shocked, I am sure, by the tremendous tragedies that have recently occurred involving brutal sexual and violent attacks against our young children. As citizens, parents, and legislators, our first duty is to protect our children, because they represent the future of our country. Now Congress has an important role to play in this area. We must quickly and responsibly—strike that. We must act quickly and responsibly when necessary to ensure the safety of the children.

This hearing will examine recent proposals made by Members of the Judiciary Committee and other proposed bills introduced by several non-Judiciary Committee Members. Most of these proposals focus on reforms knitted to the Jacob Wetterling Act or the sex offender registries.

The proposals are all aimed at ensuring that sexual offenders comply with registry requirements; adequate efforts are made to apprise the public of the presence of sexual offenders in their neighborhoods; and to ensure the accuracy of the information in the registries; and furthermore, to make State and national registries more user-friendly and accessible to the public.

In addition, we are examining related proposals that address collection and use of DNA evidence, a tool which is critical to solving sex crimes and other violent crimes.

The problems with sex offender registries were underscored by the recent rash of attacks by convicted sex offenders resulting in the killings of Jessica Lunsford, Sarah Lunde, Jetseta Gage, and other children. Since 1994, when Congress first passed the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Act, States have been required to maintain sex offender registries. After the tragic murder of 7-year-old Megan Kanka by a released sex offender living on her street, Congress passed Megan's Law, mandating community notification programs.

All 50 States have sexual offender registries, and all 50 States have some form of community notification requirements. However, States are given broad discretion in creating their own policies governing registry requirements and public notification efforts.

The challenge we face today is monumental, when you consider these facts. There are currently nearly 550,000 registered sex offenders in the United States. Most are not in prison, and most are unknown to the people in these various communities.

Sex offender laws do not cover certain classes of offenders, such as juvenile sex offenders or other types of offenders who commit crimes against minors, which reflect a risk of possible harm to our children.

The State criminal justice supervision and registry systems are currently overwhelmed. Probation, parole, and community supervision resources are strained. It is conservatively estimated that there are approximately 100,000 lost—that is "lost"—sex offenders; those that have failed to comply with State registration requirements.

There is a wide disparity in the requirements of each State, and there is little to no infrastructure needed to ensure registration when sex offenders move from one State to another or when a sex offender enters another State to go to work or to enroll in a school. There's a strong need for more consistency and uniformity among State programs.

We should be committed to developing a more comprehensive system for Internet availability of such information. We should, furthermore, consider the use of new technologies for tracking sex offenders and for protecting our children from possible attack. Of course, we also need to examine what additional funding may be needed to accomplish these broad goals.

I want to commend my colleagues who have put forth comprehensive and well thought-out proposals to address these problems and others. I look forward to hearing from them today and reviewing these proposals by Members who are not here today before the Subcommittee.

Our children are our most precious resource—you've heard it said dozens of times, but I say it again—that we have in our country. And our hearts go out to the families of those innocent and beautiful children who've been killed, sexually assaulted, or tortured. Too many times, we've had to read gruesome news accounts about these attacks, watch disturbing news reports, or listen to the anguish of the parents of these children.

I'm anxious to hear from our distinguished panel of witnesses. And now I am pleased to recognize the distinguished gentleman

from Virginia, Mr. Bobby Scott, the Ranking Member of this Subcommittee.

Mr. SCOTT. Thank you, Mr. Chairman, for holding this hearing on the various bills regarding sex and other violent crimes against children.

A host of bills have been filed by Members on both sides of the aisle in the wake of several horrific sex crimes and murders against children in recent years. These types of crimes are especially abhorrent, and the public demands actions to address them and to prevent similar crimes, to the extent possible.

I know all of the bills before us are developed with these objectives in mind. However, as policymakers, we know that these types of tragedies will occur from time to time; so it is incumbent upon us not to simply do something, but to do something that will actually reduce the incidences of these crimes.

We know that many more children die as a result of child abuse that is reflected by tragic cases of child sexual abuse and murder than we have seen in the news. And we know that the vast majority of child abusers, including child sex offenders, were abused themselves as children.

We also know that the vast majority of abusers are relatives and other individuals well known to the child and family—90 to 95 percent, according to Be a Child's Hero Network—and that most cases of abuse are never reported to authorities, or even dealt with in an official manner.

It would be nice to think that we can legislate away the possibility of such horrific crimes, but it is not realistic to believe that we can. And we should certainly seek to avoid enacting legislation that extends scarce resources in a manner that is not cost-effective or that actually makes the problem worse.

While it is clear that having police and supervision authorities aware of all location and identification information about convicted child sex offenders, it is not clear that making that information indiscriminately available to the public, with no guidance or restriction on what they can do with or in response to such information, is helpful or harmful to children.

There have been incidences of vigilante and other activities which have driven offenders underground. And again, the vast majority of offenders are family members or associates well known to the victim. In one recent case, a teacher was reading the names of offenders to a grade school class, in which the name of the father of one of the students, the victim, was in the class.

Some of the elaborate procedures and requirements of the bills before us will cost a lot of money. And we should assure that such cost/benefit analysis of what would be the most productive use of such money should take place; rather than simply impose the requirements, without any reference to effectiveness or cost/benefit.

Some States have already enacted initiatives, such as those we'll hear today. Hopefully, we'll hear what effect those initiatives have had on crimes against children, so we can consider Federal legislation which will be the most cost-effective.

So, Mr. Chairman, in hearing the testimony today we'll be listening for anything that reflects research and reliable evidence regard-

ing to what might actually protect children and reduce incidences of child sexual and other abuse.

I know we all mean well, but we also must assure that what we do will be actually productive, rather than something that just sounds good but might actually be counterproductive. Thank you, Mr. Chairman.

Mr. COBLE. I thank you, Mr. Scott.

It's the custom of this Subcommittee to limit opening statements to the Chairman and the Ranking Member, and the Ranking Member of the full Committee and the Chairman of the full Committee, if they happen to be in attendance. Today, however, Mr. Green, the distinguished gentleman from Wisconsin, and Ms. Sheila Jackson Lee, the distinguished gentlelady from Texas, each of those have bills. And I, at this point, would recognize each one of those for a brief statement about their bill. Mr. Green?

Mr. GREEN. Mr. Chairman, I actually will waive that. I know the hour is late, and a lot of folks have a lot of things to do. So I'll pass on my right to opening statement.

Mr. COBLE. I thank the gentleman.

The gentlelady from Texas?

Ms. JACKSON LEE. I thank the Chairman for his indulgence, and I appreciate very much the Member witnesses that are before us, and so I will summarize very quickly. And I thank the Ranking Member, as well.

As we look at this question of child sexual predators, it is important to look comprehensively at this issue. I simply offer that I'm very pleased that over the last two sessions I've introduced H.R.—in this session—244, but I've introduced it over the last two sessions, the act called the "Save Our Children, Stop the Violent Predators Against Children DNA Act of 2005." It's based on the premise that only 22 State sex offender registries collect and maintain DNA samples as a part of registration.

The single age with the greatest proportion of sexual assault victims reported to law enforcement was age 14. There were more victims of sexual assault between ages 3 and 17 than in any individual age group over age 17, and more victims age 2 than in any age group over 40.

Children like 5-year-old Samantha Runyon of California, who was abducted, sexually violated, and murdered, are most likely to be victims of sexual assault; with over one-third of all sexual assaults involving a victim who is under the age of 12. Just a few days ago, law enforcement officers in Texas, my Houston Police Department, buried a little "Doe," a little young lady by the name of "Angel Doe," whose face was eaten away as she was thrown into a watery ditch.

It is clear that we need to address this question very directly. And I would hope, as we look comprehensively at this legislation, we'll look at ways and means of attacking the problem head-on.

I close, Mr. Chairman, to say that this legislation would ask the Attorney General to establish and maintain, separate from any other DNA database, a database solely for the purpose of collecting the DNA information with respect to violent predators against children.

It would also provide incentive grants for the Attorney General to make grants to each State that has in effect one or more programs that decrease the rate of recidivism among violent predators against children.

We can only do this together, and we can only do this comprehensively. And so I look forward to the full hearing and the presentation by Members, and the consideration of all of our legislative initiatives. I thank you, Mr. Chairman.

Mr. COBLE. I thank the gentlelady.

Mr. Pomeroy, we knew that you were en route, so we started ahead of time. But we knew you would be with us. Good to have you with us.

Ladies and gentlemen, we have four distinguished witnesses with us today. Our first witness is the Honorable Mark Foley. Representative Foley serves the 16th Congressional District in the State of Florida, and was first elected to Congress in 1994. He is currently the Co-Chairman of the Missing and Exploited Children's Caucus. Prior to serving in Congress, Representative Foley was a member of the Florida State Senate and the House of Representatives.

Our second witness is the Honorable Ted Poe. Representative Poe serves the Second Congressional District in the State of Texas, and was recently elected to Congress this year. For 20 years, he served as a felony court judge in Houston, Texas. Judge Poe has devoted himself to many issues related to children, including child abuse, neglect, and violence. He currently serves on the board of the National Children's Alliance.

Our third witness is the Honorable Ginny Brown-Waite. Representative Brown-Waite serves the Fifth Congressional District in the State of Florida, and was first elected to Congress in 2003. She is currently a member of the Congressional Coalition on Adoption Institute and works with Angels in Adoption to recognize families who reach out to children. Prior to serving in Congress, Representative Brown-Waite was commissioner of Hernando County, from 1990 to 1992, and served in the Florida State Senate for 10 years.

Our final witness today is the Honorable Earl Pomeroy. Representative Pomeroy serves the At-Large—how many are there now, Earl?

Mr. POMEROY. Seven.

Mr. COBLE. Seven States who have At-Large Members of the House. And Mr. Pomeroy serves At-Large for the State of North Dakota, and was first elected to the Congress in 1993. Presently, he's served as a member of the—strike that. Previously, he served as a member of the North Dakota State House of Representatives and as a North Dakota insurance commissioner.

Folks, it's good to have you all with us. I will say to you that our Subcommittee operates under the 5-minute rule. We apply that 5-minute imposition against you, as well as against ourselves. So when you see the red light illuminate in your eye in that panel in front of you, Mr. Scott and I will be breaking out the buggy whip if you don't wrap up before too long.

But if you can stay with the 5-minute time rule, we'd appreciate it for a couple of reasons. Number one, time is of the essence. And

number two, we have a second hearing on this subject matter immediately following this one.

Mr. Foley, why don't you kick us off.

TESTIMONY OF THE HONORABLE MARK FOLEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. FOLEY. Thank you, Chairman Coble and Ranking Member Scott. On behalf of Congressman Bud Cramer and myself and the Congressional Missing and Exploited Children's Caucus, I want to thank you for holding this important hearing today, for giving me the opportunity to testify on H.R. 2423, the "Sex Offender Registration and Notification Act."

Mr. Chairman, we've all heard the names in the news—Jessica Lunsford, Jetseta Gage, Sarah Lunde, Megan Kanka, Jacob Wetterling, just to name a few—all beautiful children, carrying with them the hopes and dreams of every young child in this country; all taken away from their parents and their futures; killed by sex offenders.

The numbers are shocking. There are 500,000 registered sex offenders in the United States, with 24,000 of them living in North Carolina and Virginia alone and 34,000 in Florida. Of that, according to the National Center for Missing and Exploited Children, we're missing 100,000 to 150,000 of these people.

What may be even more surprising to you is that there is a 200,000-person difference between all of the State registries and the Federal National Sex Offender Registry. There are many reasons we have not been able to keep track of these dangerous predators, but let me highlight a few.

First, uniform registration information is not being collected. While most States have some form of registry, they are not usually the ones collecting the registration information. Instead, that responsibility falls on local communities, who use their own specialized criteria and then pass along the info to the States; which results in a registry with inaccurate and conflicting information.

Second, current law does not take into account the increasing transient nature of these predators, or the development of newer technologies that can be used to track them.

Third is that most States are not completely complying with the law because the carrot-and-stick approach we developed in the original law does not apply. In practice, States are supposed to be eligible for funds for any costs associated with implementing the law. However, we in Congress never funded the program. In addition, the penalty assigned to States for not complying, a 10 percent reduction in JAG funding, no longer applies, because of the way we changed that formula last year.

The Sex Offender Registration Notification Act was designed to address these and a dozen other problems facing the current system. This bill is a thoughtful, pragmatic approach modeled on current law. This is not a knee-jerk reaction to recent events in my State. We have spent over 8 months working on this comprehensive bill with the National Center for Missing and Exploited Children, the U.S. Department of Justice, the FBI, and other Federal agencies.

This legislation has been introduced in the Senate by Senators Orrin Hatch and Joseph Biden. It builds on the assumption that everyone—the Federal Government, the States, an average citizen—has a role to play in keeping track of sex offenders.

First thing we did when we began to draft H.R. 2423 was to clean up the Wetterling Act. We examined what the law was designed to do; kept its intent; tightened up the language; and then placed it into neater categories.

Under current law, this bill clearly lays out what the Federal Government, the States, and sex offenders must do after conviction triggering registration. We then went through and added 25 common-sense provisions that would further strengthen the way we track these pedophiles.

Some of these provisions include requiring the States, not localities, to collect sex offender registration information; requiring sex offenders to register before they leave custody; incorporating tribal lands under the law; requiring sex offenders to update their registration more quickly than is now required; requiring States to have multi-field, searchable databases and requiring States to make this information available to other States; requiring at least semi-annual registration; requiring annual updates of the offender photos and fingerprints; and increasing registration duration period.

Sex offenders are not petty criminals. They prey on our children like animals, and they will continue to do so unless we stop them. We need to change the way we track these pedophiles.

Mr. Chairman, it has been noted that a society can be judged on how it best treats its children. We have a moral responsibility to do everything in our power to protect our kids from these animals. This bill will turn the tables, and make prey out of these predators. Failing to act on this measure is just playing Russian roulette with our children.

I want to thank John Walsh, particularly, who has led the fight on this effort, and quote him, "I believe that in our State of Florida, who really does a pretty good job of trying to track these low-lifes, that Sarah Lunde and Jessica Lunsford might be alive today if this bill was passed a year ago."

Mr. Chairman, I look forward to working with you. I thank Chairman Sensenbrenner as well, and all of the Committee Members, for giving us a chance, for all partnering on this very, very important societal problem, and working together to find some common ground and common solutions.

[The prepared statement of Mr. Foley follows:]

PREPARED STATEMENT OF THE HONORABLE MARK FOLEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Chairman Coble,

On behalf of Congressman Bud Cramer and the Congressional Missing and Exploited Children's Caucus, I want to thank you for holding this important hearing today and for giving me the opportunity to testify on H.R. 2423, the Sex Offender Registration and Notification Act.

Mr. Chairman, we have all heard their names. Jessica Lunsford, Jetseta Gage, Sarah Lunde, Megan Kanka, Jacob Wetterling, just to name a few. All beautiful children carrying with them the hopes and dreams of every young child in this country. All taken away from their parents and their futures—killed—by sex offenders.

The numbers are shocking. There are currently over 500,000 registered sex offenders in the United States—with 24,000 of them living in North Carolina and Virginia alone. Of that, according to the National Center for Missing and Exploited Children, we are missing between 100,000 to 150,000 of these predators.

What may be even more surprising to you is that there is a 200,000 person difference between all of the state registries and the federal National Sex Offender Registry (NSOR).

There are many reasons we have not been able to keep track of these dangerous predators, but I will just highlight what I believe are the top three for you today.

First, uniform registration information is not being collected. While most states have some form of registry, they are not usually the ones collecting the registration information. Instead, that responsibility falls on local communities who use their own, specialized criteria and then pass along that info to the states. What results is a registry with inaccurate or conflicting information.

Second, is that current law does not take into account the increasingly transient nature of these predators or the development of newer technologies that can be used to track them.

Third, is that most states are not completely complying with the law because the "carrot and stick" approach we developed in the original law does not apply. In practice, states are supposed to be eligible for funds for any costs associated with implementing the law. However, we never funded the program. In addition, the penalty assigned to states for not complying—a 10% reduction in JAG funding—no longer applies because of the way we changed the formula last year.

The Sex Offender Registration and Notification Act was designed to address these and dozen other problems facing the current system. This bill is a thoughtful, pragmatic approach modeled on current law. This is not a knee-jerk reaction to recent events. We have spent over eight months working on this comprehensive bill with the National Center Missing and Exploited Children, the Justice Department and other federal agencies.

The legislation, which has been introduced in the Senate by senators Hatch and Biden, builds on the assumption that everyone—the federal government, the states and the average citizen—has a role to play in keeping track of sex offenders.

The first thing we did when we began to draft H.R. 2423 was to "clean up" Wetterling. We examined what the law was designed to do, kept its intent, tightened up the language and then placed it into neater categories. Unlike current law, this bill clearly lays out what the federal government, the states and sex offenders must do after a conviction triggering registration.

We then went through and added 25 common sense provisions that would further strengthen the way we track these pedophiles. Some of those provisions include: requiring the states, not localities, to collect sex offender registration information; requiring sex offenders to register before they leave custody; incorporating tribal lands under the law; requiring sex offenders to update their registrations more quickly than is now required; requiring states to have multi-field, searchable database and require states to make that information available to other states; requiring at least semi-annual registrations; requiring annual updates of the offenders photos and fingerprints; and increasing the registration duration period.

Sex offenders are not petty criminals. They prey on our children like animals and will continue to do it unless stopped. We need to change the way we track these pedophiles.

Mr. Chairman, it has often been noted that a society can be judged on how it best treats it children. We have a moral responsibility to do everything in our power to protect our kids from these animals. This bill will turn the tables and make prey out of these predators. Failing to act on this measure is just playing Russian roulette with our children's lives.

I think John Walsh said it best when he said: "I truly believe that in our state of Florida—who really does a pretty good job of trying to track these lowlifes—that Sarah Lundy and Jessica Lunsford might be alive today if this bill was passed a year ago."

I look forward to working with you and Chairman Sensenbrenner on moving this bill as quickly as possible. I look forward to answering any of your questions.

Thank you.

Mr. COBLE. Mr. Foley, you have just applied pressure to your three colleagues, because you did comply with the 5-minute rule. I commend you for that.

Mr. FOLEY. May be a first in my life. Thank you.

Mr. COBLE. Mr. Poe, good to have you with us.

TESTIMONY OF THE HONORABLE TED POE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. POE. Thank you, Mr. Chairman, Ranking Member Mr. Scott. I appreciate the chance to be here, and you holding this hearing.

Media stories about sex crimes against children are presently being reported at an alarming rate in the United States. These crimes are also some of the most under-reported of criminal activity.

One of the victims' grandmothers of one of these recent crimes said that, "People have the right to know where sex offenders are living. The police should know, and they should notify the public." We know the number-one thing that child predators desire is to remain anonymous. Those days are over. No longer can ex-convicts for child sexual assault move in and out of our neighborhoods without us knowing who they are.

While some States have registration laws for convicted child predators, many still manage to slip through the system.

We know that the recidivism rate of convicted child molesters is extremely high. When many leave the penitentiary, they continue their ways against our greatest resource, children.

On March 15th of this year, I introduced the very first bill in Congress that I've introduced, House Resolution 1355, the "Child Predator Act of 2005," to hold criminals accountable; impose tougher sentences for child predators who repeat. The Act closes loopholes in the present law, and places tools in the hands of parents who want to safeguard their children from these predators. This legislation amends the Wetterling Act of 1994 in six ways.

First, the Child Predator Act defines the term of a "child predator" as a person who has been convicted of a sexual crime against a victim who is a minor, if the offense is sexual in nature and the minor is of the age of 13 years or younger.

Second, child predators must report change of residence within 10 days of a move.

Third, the Child Predator Act requires community notification. Child predators would have to notify, at a minimum, schools, public housing, and at least two media outlets such as newspapers and television stations, radio stations, that are covering the community.

Fourth, the Predator Act would classify non-compliance as a Federal felony, rather than a misdemeanor. Rather than getting a slap on the wrist, these predators who knowingly fail to register would be charged with a felony in our Federal courts.

Fifth, the Child Predator Act would mandate a national database. This would be available on a free access of Internet website.

And finally, this Act would require prominent flagging of all the records in the national database of child predators.

The National Center for Missing and Exploited Children confirms that sexual victimization of children is overwhelming in magnitude; yet largely unrecognized, and it is under-reported. Statistics cited by the center reveal that one in five girls and one in ten boys are sexually exploited before they reach adulthood. However, less than 35 percent of child sexual assaults are reported to authorities.

Even though previous legislation has addressed this social ill, this criminal conduct, we must stay the course. We must remain

ever-vigilant, and not stop the fight. Child predators are innovative. They stalk neighborhoods, playgrounds, Cub Scout dens, our houses of worship and, as of late, they exploit the Internet to target youngsters.

Mr. Chairman, we must put child predators on notice and let them know once and for all that we will not tolerate victimization of children.

Mr. Chairman, Congress must make a statement to the American public that, while we are concerned about victims in other nations, we cannot overlook victims at home.

The first duty of government is to protect its citizens. We as a people are not judged by the way we treat the rich, the famous, the influential, the powerful; but by the way we treat the weak, the innocent—our children.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Poe follows:]

PREPARED STATEMENT OF THE HONORABLE TED POE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

- Mr. Chairman, media stories about sex crimes against children are presently being reported at an alarming rate. These crimes are also some of the most underreported of criminal acts.
- One of these victim's grandmothers said: "People have the right to know where sex offenders are living. The police should know . . . and they should notify the public." We know the number one thing child predators desire is to remain anonymous. Those days are over. No longer can ex-cons for child sexual assault move in and out of our neighborhoods without us knowing who they are. While some states have registration laws for convicted child predators, many still manage to slip through the system.
- We know that the recidivism rate of convicted child molesters is extremely high. When many leave the penitentiary, they continue their evil ways against our greatest natural resource—children.
- On March 15th of this Year, I introduced my first bill—the Child Predator Act of 2005—to hold criminals accountable and impose tougher sentences for child predators who repeat. The Act closes loopholes in the present law and places tools in the hands of parents who want to safeguard their children from child predators. This legislation amends the Wetterling Act of 1994 in six key ways.
- First, the Child Predator Act defines the term child predator as a person who has been convicted of a sexual offense against a victim who is a minor—if the offense is sexual in nature and the minor is age 13 years old or younger.
- Second, child predators must report change of residence within 10 days of a move.
- Third, the Child Predator Act requires community notification. Child predators would have to notify—at a minimum—schools, public housing, and at least 2 media outlets such as newspapers, television stations, or radio stations covering that community.
- Fourth, the Child Predator Act would classify noncompliance as a federal felony. Rather than getting a slap on the wrist, child predators who knowingly fail to register would be charged with a felony.
- Fifth, the Child Predator Act would mandate a national database. This would be available on a free access internet website.
- And finally, the Child Predator Act would require prominent flagging of all the records in the national database for all child predators.
- The National Center for Missing and Exploited Children confirms that, "The sexual victimization of children is overwhelming in magnitude yet largely unrecognized and underreported." Statistics cited by the Center reveal that 1 in 5 girls and 1 in 10 boys are sexually exploited before they reach adulthood; however, less than 35% of those child sexual assaults are reported to authorities. Even still, according to the Crimes Against Children Research Center, in 2000 alone, 89,000 cases of child sexual abuse were substantiated.
- Even though previous legislation has addressed this terrible societal ill, we must stay the course. We must remain ever vigilant and not deescalate the fight. Child predators are innovative. They stalk our neighborhood playgrounds,

our Cub Scout dens, our houses of worship, and as of late they exploit the internet to target our youngsters.

- Mr. Chairman, we must put child predators on notice and let them know—once and for all—that we will not tolerate the victimization of children
- The first duty of government is to protect its citizens. We as a people are not judged by the way we treat the rich, famous, influential, powerful, but by the way we treat the weak, the innocent—the children.

Mr. COBLE. Thank you, Mr. Poe.

Ms. Brown-Waite.

TESTIMONY OF THE HONORABLE GINNY BROWN-WAITE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Ms. BROWN-WAITE. I want to thank you, Mr. Chairman, for holding this hearing, and certainly the Ranking Member and the other Members who are here today, on this very important issue.

Mr. COBLE. Ms. Brown-Waite, if you could suspend just a moment, I failed to recognize we've been joined by the distinguished gentleman from California, Mr. Lungren.

Good to have you with us.

Go ahead, Ms. Brown-Waite.

Ms. BROWN-WAITE. Thank you. Nine-year-old Jessica Lunsford was stolen from us on February 24, and our community has not stopped mourning for her since. As a mother and a grandmother, my heart goes out to the Lunsford family in their terrible time of grieving.

I personally experienced the anxiety and fear throughout the Citrus County area, when residents searched for Jessica for days, and then weeks. I live in Citrus County, about 8 miles away from the Lunsford family. When sexual offender John Couey was arrested, we learned that little Jessica had not only been kidnapped, but had been sexually assaulted and buried alive. I saw the pain in Jessica's father's eyes when he spoke of how she was taken from him. She was his best friend, and his future. I still cannot get out of my head what that little girl must have gone through those days hidden in Couey's closet in the trailer, and being sexually abused, and eventually buried alive in a plastic trash bag.

Almost daily, we hear tragic stories of young children whose lives were robbed from them, and parents who cannot escape from these tragedies. Frankly, like many Members of Congress, I am fed up with these stories, because in most cases, such as Jessica's, they could have been prevented.

Her killer, John Couey, was a registered sex offender in the State of Florida. A man already convicted of molesting a child, he was not living at the address on file with law enforcement. In addition, this monster had a criminal record of 24 arrests, including DUIs and drug charges.

If harsher penalties and more frequent checks had been in place for failing to report a change of address, Couey would have never been on the streets and able to prey on this innocent child. Additionally, Couey's probation officer has stated if he had known of Couey's sex offender status, he would have kept a closer eye on his whereabouts.

Moreover, Florida is not the only State to suffer from these tragedies. Taken as a whole, many States cannot account for up to 24 percent of the sex offenders who are supposed to be there.

Congress has a duty to act and protect our children. That's one of the reasons why I introduced H.R. 1505—the bill is known as the "Jessica Lunsford Act"—which would make needed reforms to our sex offender laws. Electronic monitoring of sex offenders must be one of those reforms. Today, these monsters are free to attack our children. We need to know where they are at all times. Period. With this technology, law enforcement will be equipped to do just that. Technology today is good, and it is accurate.

Offenders who would fail to register, under the bill, with a State are currently penalized with a $100,000 fine and 1 year in prison, for a first offense, and a $100,000 fine and 10 years in prison for two or more offenses. My legislation applies this penalty to those who fail to report a change of address, as well.

Most importantly, it mandates that sex offenders who fail to register with a State, or fail to report a change of address, have to wear ankle monitoring devices for 5 years when, and if, they are released from prison. Sexual predators would wear the device for 10 years upon release. Families can feel safer knowing that these penalties ensure that the lowest of criminals are consistently and constantly monitored, and properly punished.

Additionally, my bill requires that address verifications be sent out at least twice per year, and that they are randomly generated. The current Wetterling law requires that they be sent out once a year, and that they're not randomly generated. Non-forwardable verification mailers were written into the Jacob Wetterling Act, but then later removed. The bill ensures that offenders can no longer game the system. Under the bill, they would be unaware of when to expect this mailer.

Mark Lunsford's heart breaks every time he thinks of missing his little girl's first day in high school, her college graduation, or the grandchildren that he never will meet. I urge this Committee to take action so that no other family suffers because of needless loopholes in the current law. We must fix this, and I stand ready to help in whatever capacity I can.

Thank you again, Chairman Coble, for the opportunity to testify on this legislation.

[The prepared statement of Ms. Brown-Waite follows:]

PREPARED STATEMENT OF THE HONORABLE GINNY BROWN-WAITE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

I would like to extend my heartfelt thanks to Chairman Coble for holding this important hearing today.

Nine-year-old Jessica Lunsford was stolen from us on February 24th, 2005 and our community has not stopped mourning for her. As a mother and a grandmother, my heart goes out to the Lunsford family in their terrible time of grieving.

I personally experienced the anxiety and fear throughout the Citrus County, Florida area when residents searched for Jessica for days. When sexual offender John Couey was arrested, we learned that little Jessica had not only been kidnapped but had been sexually assaulted and buried alive. Every heart in the community broke. I saw the pain in Jessica's father's eyes when he spoke of how she was stolen from him. She was his best friend and his future. I still cannot get out of my head what that little girl must have gone through during days hidden in Couey's closet.

Almost daily, we hear tragic stories of young children whose lives were robbed from them and parents who cannot escape from these tragedies. Frankly, I am fed

up with these stories because in most cases, such as Jessica's, they could have been prevented.

Jessica's killer, John Couey, was a registered sex offender in the state of Florida. A man already convicted of molesting a child, he was not living at the address on file with law enforcement. In addition, this monster had a criminal record of 24 arrests, including a DUI and drug charges. If harsher penalties and more frequent checks had been in place for failing to report a change of address, Couey would not have been on the streets and able to prey on our innocent children. Additionally, Couey's probation officer has stated that if he had known of Couey's sex offender status, he would have kept a closer eye on his whereabouts.

NEED FOR ACTION

There is nothing we can do about the "what ifs" of Jessica's murder, but Congress can make sure we never fail another family because stricter laws and the elimination of loopholes could have prevented a tragedy. Moreover, Florida is not the only state to suffer from such tragedies. Taken as a whole, states cannot account for 24% of sex offenders who were supposed to register.

Worried constituents ask me every day how this tragedy could have happened, and what their government is doing to prevent it from happening again. Congress has a duty to act and to protect our children nationwide, because these predators move from state to state.

HR 1505

Before you today is my bill, H.R. 1505, the *Jessica Lunsford Act,* which would make the needed reforms to our sex offender laws. Electronic monitoring of sex offenders *must* be one of these reforms. Today, these monsters are free to attack our children. We need to know where they are at all times—period. With this technology, law enforcement will be equipped to do just that. We can even program the devices to send alarms if an offender is too close to a school or a playground. Technology today is that good and that accurate.

My legislation mandates that sex offenders who fail to register with a state or fail to report a change of address two or more times wear an ankle-monitoring device for 5 years. Sexual predators would wear the device for 10 years. Families can feel safer knowing that these penalties ensure these lowest of criminals are constantly monitored and properly punished.

Additionally, my bill requires that address verification mailers be sent out at least twice per year and that they are randomly generated. Current law only specifies annual address verification. HR 1505 ensures that offenders can no longer game the system. Under my bill, they would be unaware of when to expect the mailer, or how often they would be checked.

HR 1505 also corrects the information block that has prevented probation officers from being provided with their probationer's sex offender background. The Jessica Lunsford Act requires a state officer or a court to notify the individual's supervising probation officer of any past sexual offense.

Random address checks, electronic monitoring, and probation officer notification could have saved Jessica Lunsford's life. If these provisions had been in place, Jessica might be alive today.

Mark Lunsford's heart breaks every time he thinks of missing his little girl's first day of high school, her college graduation, the grandchildren he could have met, and all the beautiful life events they could have shared together. I urge this Committee to take action so that no other family suffers because of needless loopholes in the current law.

Pass this bill and make sure Jessica's death was not meaningless. Give her a legacy of saving lives. We must fix this, and I stand ready to help in whatever capacity I can.

Thank you again Chairman Coble for the opportunity to testify on this legislation.

Mr. COBLE. Thank you, Ms. Brown-Waite.

Mr. Pomeroy, you are our clean-up hitter today.

TESTIMONY OF THE HONORABLE EARL POMEROY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH DAKOTA

Mr. POMEROY. And it's a very impressive starting lineup that's been before me, Mr. Chairman. I commend my colleagues for the

legislation that they've introduced. I'm honored to be on this panel with them.

I also want to thank you, Mr. Chairman, and the Committee Members. Here we are late in the legislative day, after the last vote's been had for the week. We very much appreciate you spending the time in this hearing to hear about these circumstances.

I believe that these circumstances of the bill that I've introduced, H.R. 95, the "Dru Sjodin National Sex Offender Public Database Act of 2005," along with the other legislation noted today, show that tragedies have happened. We can learn from these tragedies and make legislative responses that make it less likely for tragedies to happen in the future.

We had a situation in Grand Forks, North Dakota, where a lovely young co-ed, Dru Sjodin, was abducted from a shopping center parking lot in daylight on a Saturday afternoon. This never happens in our part of the country, and it traumatized the whole community.

They trudged through snowbanks in the worst weather you ever saw, searching for Dru Sjodin for months. When the snow started to melt, they found her dead body. And some time after that, an arrest was made. A trial was pending, but Alfonso Rodriguez, Jr., has been charged with the crime.

He had been recently released from serving a 23-year sentence for rape and attempted kidnapping, and had other prior convictions before that. He was released. Upon his release, his Minnesota registration was placed in the Minnesota database. The information was sent in to the Department of Justice, under the Jacob Wetterling Act. But there was no other publication, and so the community of Grand Forks, North Dakota, just across the border, a short distance from where he was residing, did not have broad knowledge in any way that we had such a dangerous individual in our midst.

Additionally, he was released from prison without any referral to the attorney general's office relative to whether they might want to pursue civil commitment. Minnesota has civil commitment laws but, essentially, the jailer made the determination he was free to go, and they never even had the chance to apply that type of review.

Finally, there was no particular extraordinary monitoring, even though while in prison he had not participated in the psychological counseling, not participated in the sexual offender treatment that was specifically recommended for this particular inmate. He was clearly high-risk, and indeed classified high-risk upon his discharge; but there was no extraordinary monitoring.

The legislation that I'm pleased to have co-sponsored with Paul Gillmor is identical to what passed out of the Senate, with lead sponsor Senator Dorgan, called the Dru Sjodin Law, and addresses, we think, in three common-sense basic areas, loopholes that possibly, when closed, would stop this from happening again.

First, we would allow the public to have access to this national database compiled by the Department of Justice under the Jacob Wetterling Act.

Secondly, we would have mandatory referral, mandatory notification to the attorney general's office in those States where civil com-

mitment laws exist, so that they have awareness that the individual is coming out of jail, in a timely fashion to evaluate whether they want to seek civil commitment in light of ongoing danger to the society.

Thirdly, we would also have extraordinary monitoring for especially the first year of release. Statistics show us that the most likely period of repeat offense will occur within the first year of release from prison. And so we would have exceptional monitoring during this period of time as part of the release.

I also want to say that I have co-sponsored Congressman Foley's legislation, H.R. 2423, and commend that to you. I believe H.R. 95 and H.R. 2423 are fair and reasonable responses to further secure the safety of our children, and commend them to your attention. Thank you for listening.

[The prepared statement of Mr. Pomeroy follows:]

PREPARED STATEMENT OF THE HONORABLE EARL POMEROY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH DAKOTA

Mr. Chairman, Ranking Member Scott, and members of the Subcommittee, thank you for inviting me to join you to discuss efforts to strengthen our laws in ways that will protect children from sexual predators. Let me commend you at the outset for holding this hearing and for your willingness to examine this critical issue.

It has been conclusively established that recidivism rates are alarming high for those convicted of sexual offenses. According to a Bureau of Justice Statistics study of male sex offenders released from 15 states in 1994, 78.5 percent of those studied had been arrested at least one time prior to their incarceration and 13.9 percent had a prior conviction for a violent sexual offense. This study further finds that 5.3 percent of those sex offenders studied were rearrested for a new sex crime within three years of their release. In addition, the study found that of the released sex offenders who allegedly committed another sex crime, 40 percent perpetrated the new offense within a year or less from their prison discharge.

A tragedy in my state of North Dakota has demonstrated the need for legislation to address these facts. Dru Sjodin, a 22-year-old University of North Dakota student, disappeared on November 22, 2003, at the Columbia Mall in Grand Forks, North Dakota. This young woman's disappearance sent Grand Forks, a small town which had not seen a kidnapping since 1989, reeling. And for days and weeks and months on end, thousands of volunteers worked tirelessly, trudging through snow, ice and sleet in search of any signs that could unlock the mystery to her disappearance. Her body was eventually discovered in a ravine, nearly five months later, in Crookston, Minnesota.

A 51-year-old Minnesota man named Alfonso Rodriguez Jr. was charged with Dru's kidnapping and murder. Mr. Rodriguez had been released from prison just six months prior to Dru's disappearance after having completed a 23-year sentence for rape and attempted kidnapping. During Mr. Rodriquez's incarceration, he repeatedly refused psychological treatment offered to assist him in his rehabilitation. Mr. Rodriguez was released from prison under just one condition: that he register as a sex offender in the state of Minnesota.

What's significant about the story of Mr. Rodriguez is that he had been rated by the Minnesota Department of Corrections as a "level three sex offender," a category for those viewed to be likely to re-offend. Although Minnesota had a civil commitment law for dangerous sex offenders, failure of the Department of Corrections to alert applicable authorities meant that no consideration was given about the need for civil commitment in this case.

The circumstances surrounding this tragic case reveal the significant shortcomings of our present system. As Members of Congress, we have a responsibility to take these lessons and improve our laws to prevent similar tragedies from occurring in the future. That is why Rep. Paul Gillmor and I introduced the "Dru Sjodin National Sex Offender Public Database Act." This bill is identical to legislation introduced by my North Dakotan colleague, Senator Byron Dorgan, that passed the Senate last November by unanimous consent. This common-sense bill gives our citizens the tools necessary to better protect themselves from sexual offenders.

Sex offenders do not stop at state lines, and neither should our sex offender registries. That is why this legislation would create a federal online sex offender data-

base that would be free and accessible to the general public. The current national database, established under the Jacob Wetterling Act, is accessible only by law enforcement. While many states and local communities provide their own online, public registries, they do not provide information on neighboring states.

Recently, the Department of Justice announced their plans to provide for an online collection of the state databases that currently exist. While I applaud their efforts to nationalize these registries, I believe we must go a step further to ensure that a standardized and truly national database is created. Currently, not all states have online sex offender registries and those that do have registries do not collect the same information. This legislation would ensure that the same information would be collected and posted for all fifty states. Should states not comply with this legislation within three years, the state's funding allocated to them under the Violent Crime Control and Law Enforcement Act of 1994 would be cut by 25 percent and reallocated to state's already complying with the law.

The Sjodin case demonstrated that the decision to proceed with a civil commitment proceeding in the case of a level three offender should be left to the state and not a prison corrections officer. Under this legislation, states with civil commitment proceedings would be required to provide timely notice to their state's attorney general of the impending release of a high risk sex offender, so that they can consider whether to institute a civil commitment proceeding.

Finally, the Sjodin case demonstrated that high risk offenders cannot be without some level of monitoring to ensure that these individuals do not once again prey on our communities. Just because someone has served their time does not mean that they have been rehabilitated. Under this legislation, the state would be required to intensely monitor for at least one year any high risk sex offender who has not been civilly committed and who has been unconditionally released.

Before I conclude, I would also like to mention that I am also an original co-sponsor of H.R. 2423, The Sex Offender and Registry Notification Act of 2005. I believe it is imperative to protect our children when they are online and to go after those who would bring harm to our children. H.R. 2423 addresses the threat of online predators by expanding the definition of a criminal offense against a minor to include "use of the Internet to facilitate or commit a crime against a minor." I appreciate the Subcommittee's full and fair consideration of this bill.

I believe that H.R. 95 and H.R. 2423 are fair and reasonable responses to further secure the safety of our children, and I would deeply appreciate your assistance in moving legislation on this issue through the Committee and to the floor of the House of Representatives. Thank you for your attention to this important matter.

Mr. COBLE. Thank you. And I think, Mr. Scott, this is the first case, the first impression, when all the witnesses complied with the 5-minute request. I commend you for that.

I've been told that Mr. Poe is on a short leash, that you have to leave in 25 minutes, Mr. Poe; so let me start with you. Mr. Poe, you've discussed in your testimony the gaps in current law in terms of coverage of certain sexual offenders. More specifically, how significant is this problem when it comes to States, and how much variance is there?

Mr. POE. States have different registration laws. Some comply mentally with a mental—excuse me, minimal registration requirement. Others, such as Florida and Texas, have great registration laws. People move across State lines. They fall through the cracks. They don't re-register when they move to another State. The State they left loses jurisdiction. And that is the purpose of this bill, to prevent that from happening, by having a national database.

Mr. COBLE. Thank you, sir.

Mr. Foley, you submitted a national map revealing the number of "lost" sexual offenders in each State. And I'm told that, conservatively, there are 100,000 in that group. Elaborate on the problem, the extent of it, and why this problem has occurred.

Mr. FOLEY. Well, I think you have to take it back to the basic problem of not having cross-State registrations. First and foremost, we are able to collect data from all of these States, thanks to the

National Center's excellent efforts in doing so. The Federal Government relies on them for this information.

But as Mr. Pomeroy clearly indicated, and particularly, anyone on a border area, whether you're living in north Florida and surrounded by Georgia, Alabama, or a quick trip to Mississippi, you may feel harassed or put upon in one of those States, so you quickly go across another State's jurisdiction where you no longer have a registration responsibility or capability.

That's why we try to incorporate this as a model for 50 States to follow, because we think it's best not only to get the data to the law enforcement personnel that can then monitor, but also protect those residents of adjoining States.

And so this is why we chose to show the severity of the problem with the kind of numbers that are evident throughout the entirety of the United States. It's not just Florida. It's not just one State. All of us share in the same grave responsibility.

Mr. COBLE. I thank you, sir.

Mr. Pomeroy, your proposal would require the creation of a national sex offender registry. How would that differ from the recent announcement by the Justice Department of its plan to create a National Sex Offender Public Registry Website?

Mr. POMEROY. Right. The proposal—and we certainly welcome it, and it's an advance from where we are—by the Department of Justice would essentially collect the State registrations, and put them out in a compiled form.

What the legislation would do is have a uniform format, applied across the 50 States. And so we think, therefore, the legislative response is a bit stronger and is going to be more helpful. But we certainly do welcome the DOJ initiative.

Mr. COBLE. I thank you, sir.

Ms. Brown-Waite, you've outlined an interesting idea. That is, mail verification of addresses for sexual offenders on the registry. Elaborate, if you will, logistically how that would work. And in your view, would it be cost-effective?

Ms. BROWN-WAITE. Mr. Chairman, I'm delighted to answer that. The bill calls for a random mailing to the sex offender and predators twice a year. By this random mailing, they're not going to know when it's going to arrive. Right now, States do one mailing a year, and most States do it shortly after the beginning of the year, or after the beginning of their fiscal year; so that the sexual offenders know when it's going to arrive. A random mailing would be a better method to determine whether or not these predators and offenders who violate our children are really living where they say they're living.

Mr. COBLE. You probably don't have—well, I shouldn't say that. Do you have an idea as to cost?

Ms. BROWN-WAITE. Actually, we do have an idea as to cost. And I would remind the members of the panel that there are right now methods that States can go through to draw down some funding. One is what are called SOMA grants, Sexual Offender Management Assistance grants. So that's one source that States could turn to. And of course, the other is the Byrne grant process.

But CBO has given our bill a preliminary estimate of 500,000 for the mailer; and a range of 5 million, possibly as high as 30 million,

with an estimate of about 18 million, for the ankle monitoring device.

Mr. COBLE. Thank you, ma'am.

The gentleman from Virginia.

Mr. SCOTT. Thank you, Mr. Chairman. Eighteen million for the ankle bracelet? Is that what you said?

Ms. BROWN-WAITE. Yes, sir.

Mr. SCOTT. I've seen estimates for Virginia alone at the $100 million range for the ankle bracelet program.

Ms. BROWN-WAITE. I can just share with you that technology has brought down the cost of the ankle monitoring devices. And I know that the State of Florida recently passed legislation requiring this, and we are using many of the newer figures.

Mr. SCOTT. Are these national figures, or just Florida figures?

Ms. BROWN-WAITE. They're national figures, but they also—they reflect the newer, lower cost of the tracking devices.

Mr. SCOTT. How many offenders would be monitored?

Ms. BROWN-WAITE. Well, it would depend—I don't know the number that they were looking at when they came up with this estimate. Those who did not notify of a change of address or those who failed to respond to the mailer would then be sent to prison. So that's, of course, part of the cost. They would be sent to prison. When they get out, then they would have to wear the ankle monitoring device.

Mr. SCOTT. Of all of the children abused in America, how many are abused by those who have already been convicted of a sex offense and would be covered by this notification?

Ms. BROWN-WAITE. There have been estimates. I have seen estimates, Mr. Scott, of anywhere from a recidivism rate of about 24 percent, all the way up to a very high percentage, over 50 percent, so I don't——

Mr. SCOTT. What does "recidivism rate" mean?

Ms. BROWN-WAITE. The "recidivism rate" means they were a sexual offender on a child; they got out, and did it again, sir.

Mr. SCOTT. Did anything again? Or the 3 percent that would offend again with a sex offense?

Ms. BROWN-WAITE. Yes, they were sex offenders. Sex offense.

Mr. SCOTT. It's your testimony that the recidivism rate for sex offenders is higher than average recidivism rate? That's your testimony?

Ms. BROWN-WAITE. I didn't compare it to average recidivism rate, sir. I just gave the criminal rate——

Mr. SCOTT. Of the portion of children that are abused, what portion are abused by those convicted of a child abuse crime?

Ms. BROWN-WAITE. Of the percentage of children who are sexually abused——

Mr. SCOTT. Right.

Ms. BROWN-WAITE.—what percentage are violated by somebody who previously was convicted of a sex crime?

Mr. SCOTT. Right.

Ms. BROWN-WAITE. Again, that figure, the recidivism rate figure, is 24 percent——

Mr. SCOTT. Do you know? It's a very simple question. If a million children have been abused, how many of them were abused by

someone already convicted of a sex crime against children? Do you know?

Ms. BROWN-WAITE. Mr. Scott, I don't know.

Mr. SCOTT. Okay.

Ms. BROWN-WAITE. I can only give you the recidivism rate.

Mr. SCOTT. Does anybody on the panel know? The Justice Department has 3 percent. You've said 20. Does anybody know?

Mr. FOLEY. Well, the statistic I have is that a sex offender released from custody is four times more likely to be arrested for a sex offense crime than any other criminal infraction.

Mr. SCOTT. Okay. Of the children who are abused in America this year, how many of them will be abused by a person previously convicted of a child sex crime? Does anybody on the panel know?

Mr. POMEROY. Mr. Scott, the statistics I have are from an article entitled, "Recidivism of Sex Offenders Released From Prison in 1994." This is a study of Bureau of Justice statistics: 9,691 male sex offenders. And again, it is the 1994 year. Some of these stats may be helpful to you. Released child molesters with more than one prior arrest for child molestation were more likely to be rearrested for the same crime——

Mr. SCOTT. Wait a minute. Of all of the children who are abused in America, what portion of them were abused by someone who had previously been convicted?

Mr. POMEROY. I do not have that figure.

Mr. SCOTT. Okay. If no one has the—if you don't know, I mean, you don't know. I mean, we just make up questions. It's a simple question. Because if we're trying to reduce child abuse, and a very small percentage are being abused by those convicted, then we're missing most of the target, if our goal is to reduce child abuse. My question was: Of all of those abused, how many of them were abused by someone convicted of a child sexual offense? And no one appears to know. Okay.

Now, we know we're going to hear later this afternoon from experts who will tell us that rehabilitation programs will reduced the problem 50 percent. Any of the bills have any rehabilitation in them, since we know that works?

Mr. FOLEY. My bill does not. But I welcome that kind of insight because I truly believe that this is a serious issue that needs to be dealt with, not only with criminal penalties and ankle bracelets, but we've got to get to the root cause, which is mental illness and other things that cause someone to so aggressively go after a child.

Mr. SCOTT. Okay. Now, Ms. Brown-Waite has given the cost estimates of the cost of her bill. Do others have the cost estimates for their bills?

Mr. POMEROY. I do not.

Mr. SCOTT. Okay. Okay, we do not. And finally, before my time expires, we have these reporting requirements in effect in, what, all 50 States now? All 50 States? Do we have any research showing the result of reducing child sexual abuse as a result of those initiatives?

Mr. FOLEY. Do we have empirical data, is that what you're asking? I think, clearly, when you know where they are and you're able to monitor them you have a better handle on their whereabouts and their presence. Some of the crimes we've seen com-

mitted are a result of their either not being on the registry, not having properly registered, not complying with probation.

Mr. POMEROY. Mr. Scott, I would add to that, these accounts carry reports of communities that are highly concerned upon learning that they have someone with a—has a conviction record relative to sex offenses moving into their community, and they are moved out of the community. So we don't know whether that in the end prevents a crime, but we know they feel safer.

Mr. SCOTT. I know it's an unfair question to ask, if there's any research to suggest that any of these proposals will make a difference. I know that's an unfair question.

Mr. FOLEY. Well, I think one of the things we want to do is, by having a conversation, a national conversation on the consequences of what people are doing, we hope it may stop them from acting. The Virginia State Crime Commission today, which is just meeting, came up with a lot of problems in the registry there. They have 170 registered sex offenders who were discovered among the State prison population, even though the registry shows them as free and living in Virginia. We have a lot of problems, Mr. Scott, in Florida, in Virginia, in North Carolina.

Mr. SCOTT. Those are problems with the registry. My question was, has there been any study to show that the registry makes a difference in the number of children sexually abused in the State in which the registry is active?

Mr. POMEROY. I don't have empirical data. You want empirical data——

Mr. SCOTT. Because you have, I'm sure, reports of child sexual abuse, and then you have the registry coming in, and then you have other reports of child sexual abuse. Did the registry make a difference?

Mr. POMEROY. I see——

Mr. SCOTT. And I know it's an unfair question to ask, if there's any evidence to show that these make a difference. I know it's an unfair question.

Mr. POMEROY. Well, look, I think we don't have to have empirical data to tell you it absolutely makes a difference to people concerned about the safety of their children, to be able to have access to information that there might be an elevated risk of a sexual offender down the street. They care deeply about that. They think that's information they need to have to keep their——

Mr. COBLE. The gentleman's time has expired. We could revisit this in second round, if we do that. We've got to get Mr. Poe out of here.

We've been joined by the distinguished gentleman from Ohio, Mr. Chabot, the distinguished gentleman from Texas, Mr. Gohmert. And in order of appearance, the gentleman from Wisconsin is going to be recognized, since you were here first. Mark?

Mr. GREEN. If it's okay, I will yield my place and order to Mr. Lungren.

Mr. COBLE. I recognize the distinguished gentleman from California, Mr. Lungren, for 5 minutes.

Mr. LUNGREN. I thank the gentleman. I would not ask for that, except I have to go to the transportation conference. And it's been

a while since I've been on a conference committee, and I don't want to miss that opportunity.

Mr. COBLE. Mr. Lungren, I'm supposed to be there, too, so cover me.

Mr. LUNGREN. I'll promise not to take your programs. That's a nice gesture. [Laughter.]

This is an important subject for so many of us. We've moved so far. When I was in Congress the first time around, 25 years ago, we worked with John Walsh to set up the first legislation dealing with missing and exploited children. That was controversial at the time. The question was, "Why should there be any Federal responsibility?"

When I was attorney general in California, I noted that at that time, while sex offenders were required to register and their records were "public," we had created such difficulty for any member of the public to find that out that, in essence, they were a protected class.

And, at that point in time, the argument against legislation that my office drafted and we carried and eventually was passed was that we were invading the privacy rights of sexual offenders, and that it would somehow upset their rehabilitation.

We were asked questions such as just asked by the gentleman from Virginia, as to whether we would prove absolutely whether or not publication of this information would provide a difference. And it's the difficulty of proving a negative, because it is successful in the area of deterrence.

The question really is whether or not parents of children ought to have information so they can take reasonable approaches to protect their children from those who have offended previously. That's really the question. If one parent, having that information, intervenes such that a child does not come in the custody of an individual, that may very well be a deterrent effect. Without this information, you couldn't check on those who sign up to be volunteer baseball coaches, soccer coaches. And we found that on numerous occasions.

But the question I'd like to ask the four of you is this: I see there is support for further publication of this information by ease of the Internet. At the time I first dealt with the legislation in California, some "experts" in the field suggested that we not do that because they suggested that some confirmed pedophiles, frankly, liked to work with one another, given the opportunity, and that Internet access would give them the opportunity to find out who else might also be involved in this aberrant behavior.

As a result, when we first set it up, we required that people had to access that information at a law enforcement department, and at that time had to sign a document saying they were not a registered sex offender. Believe it or not, the first time we tried it out at the California state fair, we had a specific instance in which a woman was checking for sex offenders in her neighborhood, and discovered that her boyfriend, who was standing next to her, was a registered child sex offender. He had neglected to tell her that.

We had other instances where individuals were preyed upon by male adults who apparently were seeking a relationship with the

mother of a child or children, such that they would have the opportunity for sexual exploitation.

So my question is, with the four of you who support this legislation, has that ever entered into it with respect to your thinking on these bills? And has anybody ever advised you that we ought to be concerned about this information being accessible to the pedophile sexual predators themselves? Mr. Foley?

Mr. FOLEY. I don't know if there's a way to limit those types from viewing and joining together, if you will.

Mr. LUNGREN. Well, the question is, do we put it on the Internet so that it's accessible to anybody who's got Internet access? Or do we have it in some other form or fashion?

Mr. FOLEY. I think a wide publication, the widest possible publication, is the best deterrent.

Mr. LUNGREN. Okay.

Mr. FOLEY. And the Internet today is the modem of choice for people to gather information. And I think, again, if people have committed the most senseless of crimes against innocent victims, then they should suffer the consequences. And if that includes everyone in America seeing their face, then that is the sentence for their behavior.

Mr. LUNGREN. Judge Poe?

Mr. POE. Likewise, I think public notice of conduct is the greatest deterrent of conduct. And make it easy access. I think it's absurd that many parents now in some of our databases have to pay to get into the Internet site. And so I would agree with Mr. Foley. Let everybody know who they are.

Mr. COBLE. And the other two witnesses may respond to the question, as well.

Ms. BROWN-WAITE. I certainly agree with Mr. Foley. And I can just tell you that in Florida we have the availability—you put in your zip code. And it used to give you just the sexual offenders and predators in your zip code. It now does a 5-mile radius around your zip code. So that, you know, the whole community can know.

And whether you live in a mobile home community, or whether you live in a gated, multi-million-dollar-home community, regardless, people are shocked when they put that information in and they find out that right down the street is a sexual offender or predator; which puts parents and caregivers and grandparents on guard. And that's the important thing. That's the benefit from having it on the Internet.

Mr. POMEROY. I think that the technology now available through the Internet, and people's broad acceptance and familiarity with that technology, lends itself toward broader publication, along with my fellow panelists. And in the course of the consideration of the Dru Sjodin law, which included last Congress, I've not heard this raised as a serious concern by law enforcement. Interesting idea, though.

Mr. COBLE. The gentleman's time has expired.

The gentleman from Wisconsin, Mr. Green.

Mr. GREEN. Thank you, Mr. Chairman. And Mr. Chairman, I think one of the frustrations that many of us have when we engage in debates on these bills is that we just don't have very good numbers, period. There are not very good studies out there. There are

not good statistics that we can refer to. And my friend and colleague, Mr. Scott, as he was cross-examining each of the witnesses testifying here——

Mr. SCOTT. I wasn't cross-examining them. I was asking them questions.

Mr. GREEN. Oh, I think "cross-examination" is a pretty good term for what you were attempting.

Let me ask a similar question of at least a couple of the members of the panel. Now, I'm not going to ask you if you have absolute proof that these databases, that these registries would make a huge, marked difference in deterring such crime, but I'll ask you something else.

And let me begin with Ms. Brown-Waite, if I can. Instead of giving us numbers and statistics on a national scale, perhaps you can tell us how your legislation would in fact have made a difference in the case of Jessica Lunsford. You can tell us with that.

Ms. BROWN-WAITE. Thank you. That's an excellent question. Let me give you but one portion of the bill that certainly would have helped. Mr. Couey, the offender, the kidnapper/sexual predator, who also killed the young lady, was on probation. His probation officer was never told that he had a prior sexual offense. And he was working at the same school that Jessica went to. Had his probation officer known that, he never would have allowed him to work at a school. That's one of the provisions that certainly would have been a preventative measure that would have kept Jessica, perhaps, alive today.

Mr. GREEN. So I guess what you're saying is, while you don't have broad studies that you can point to, to show how this would make a huge difference nationwide, if this had been the law, there is at least a good chance that Jessica Lunsford would be alive?

Ms. BROWN-WAITE. Absolutely, sir.

Mr. GREEN. Well, it seems to me that that's a pretty good purpose for legislation.

I turn now to my good friend, Mr. Pomeroy. I guess I'd ask you a similar question. With your legislation—obviously, so many of our bills—my own, as well—are driven by stories where a human face is put on a problem that all too often is reduced to numbers and anecdotes. Perhaps if you can talk a bit about your legislation and how that legislation, had it been in effect, would have made a difference in this case?

Mr. POMEROY. Sure. Three provisions in the law. First, the national publication of the registry. It is highly probable that there would have been an awareness that a dangerous individual, a person, Mr. Rodriguez, was in the vicinity; albeit on the Minnesota side.

Secondly, it's highly possible that there might have been civil commitment proceedings brought, had the attorney general's office only known that this dangerous sex offender, who had refused to participate in the prison programs, had been released. And so it's quite possible he never would have been on the street. He would have been civilly committed.

Thirdly, with the extraordinary monitoring required under the bill, Mr. Rodriguez, assuming he's convicted, would have had the pressure of very frequent, heavy monitoring. And that might have

influenced his behavior in ways where he was not out there perpetrating. Thank you.

Mr. GREEN. So again, Congressman Pomeroy, you're not telling us that you have studies that can show how this law would dramatically change the overall crime rate, recidivism rate; but you are saying to us, at least in the case that we all know about and followed, quite frankly, from all parts of the country, this legislation would almost certainly have made a difference, and perhaps have prevented her untimely death?

Mr. POMEROY. Yes, I'm convinced it would have prevented her death.

Mr. GREEN. Thanks. That's all I have.

Mr. COBLE. I thank the gentleman.

The gentlelady from Texas.

Ms. JACKSON LEE. Thank you, Mr. Chairman. Again, I want to applaud the hearing, which I think is long overdue. It seems that we can give attention to so many different issues in this Congress, and not focus in a pointed way on how do we resolve a most gruesome and continuing problem.

Let me just note for the record—though I wish I had sort of the long list—it seems that this has been a bad year. In 2004 and 2005, we have seen time after time—and it is not regionally directed—violence and atrocities that have occurred to the most vulnerable, and that is our children.

Let me ask, I'd appreciate it if I could hear from all of my colleagues. And I thank you for indulging—I've reviewed your testimony, but was taken away by another meeting. What would be the single most important aspect, if we could come together and generate the marking up and the moving to the floor of the legislative initiatives that are before us, what would be the statement that we would be making nationally?

And I think that's really the key. Because someone reminded me that we're talking about Federal law. And Judge Poe, I think you're well aware that there's a State jurisdiction, as well, that oversees these individuals, many of whom may be tried in State courts. And so I think that one of the most important things that we can do in the Judiciary Committee is to make the national statement of intolerance, that we will no longer tolerate this kind of random and reckless and violent attacks against the Nation's children.

So maybe, Congressman Foley, you want to pull out a singular entity of your bill, Congressman Poe, Congresswoman Brown-Waite, and certainly Congressman Pomeroy. And certainly, all of them seem to center around the question of registration.

You know that I'm going to offer the point that we want to make sure that we have the rights of the innocent protected, and that means those who may be charged inappropriately. But I think that there is always a higher standard when we are talking about children, who cannot speak for themselves.

And many times, unfortunately, the Government has to step in where parents and custodial adults fall, if you will, for whatever reason, or fail for whatever reason, to protect the Nation's children, or their children.

So I'd appreciate your comment on the importance of a national statement, and the importance of seeing these bills through the

process of hearings and markups and some results that would create this national standard that we're so eager to have. Congressman Foley?

Mr. FOLEY. Well, first, let me suggest, regrettably, that in this Nation we track library books better than we do pedophiles. Your suggestion on DNA testing and other things is so critically important, and I think what you said is absolutely accurate: to send a clear message to anyone contemplating a crime of this nature, that we will make their life a living hell.

Because part of what we do here in this process is to try and set up deterrence; whether it's Sarbanes-Oxley on criminal mischief in corporations, or pedophiles and our children. It's not always about reconciling statistics. It's about setting the bar so they realize that if they offend, that their life as they knew it will be terminated.

No longer will they have freedoms. Ankle bracelets, some people reject. I'm sorry. We put one on Martha Stewart. She wasn't going to hurt anyone. And we're worried about a sexual predator being monitored during their probation—and required to wear it for life, as our bill does, if they re-offend?

So I think you're right on point, Ms. Jackson Lee. It's high time we elevate this debate to a national voice—a yelling match, if we have to. Thank you.

Ms. JACKSON LEE. Congressman Poe? I'm going down the line.

Mr. POE. Thank you, Jackson Lee. I appreciate your concern about this epidemic. It's not only a crime issue. I think we should make a statement that it is a public health issue, when you're dealing with the health and wellbeing, physical and mental health, of children. That would be the first place that I would move on a national basis.

And second, based on the over 20,000 criminal cases I heard—and a good many of them are these type of cases—the one thing that these individuals want is to remain anonymous. Those days need to be over. Therefore, community notification in my bill I think is vital; that they notify the communities which they move into.

And the second thing we know is that they repeat again. The people I've tried, we know that most of them had multiple crimes against the one victim, and there were other victims as well that were never in the courtroom that were also prey to these individuals. So community notification and a public health issue.

Ms. JACKSON LEE. Thank you. Congresswoman?

Ms. BROWN-WAITE. Thank you very much. I know of your sensitivity to this issue. I think whether we are from Texas or whether we're from Florida, whether we are from North Dakota, we want to make sure that children nationwide have, and families have, a sense of security.

Unfortunately, predators and offenders don't stay in one State. They go across State lines. And we need to make sure that there is a time frame and a punishment for not registering when you do move, when you change your address. Because if I pull up on the Internet my zip code, and I know who's around there, but three of the people have left and they've moved to your State, I think you need to know that right away, and your State officials need to know that right away. Absent a severe penalty for not informing

officials that they move, then our children are clearly at risk. That, to me, we can't tolerate.

We, as Federal elected officials, have to make the Jacob Wetterling Act and Megan's Law, all of those laws that protect children, we need to make them tougher.

Mr. COBLE. The gentlelady's time has expired.

Mr. Pomeroy, you may respond.

Mr. POMEROY. While I've been serving in Congress, I've been privileged to become the father to two children that I've adopted, and I feel this legislation so deeply and so personally. The parents of the victims that we've discussed in the course of this hearing have had to live the worst fears of any parents.

There's an awful lot of parents out there worrying about the safety of their children. And moving this legislation forward, I'm absolutely convinced, can do some good in terms of keeping those children safe. Certainly, it's not the end of the day, it's not the guarantee; it's still a dangerous world out there. But this helps. And these families deserve our response.

Ms. JACKSON LEE. I thank the Chairman. Some of the things, Mr. Chairman, that we are speaking of I believe only the Federal legal system can handle, and that's why I think it's so very important.

Mr. COBLE. The gentlelady's time has expired.

The gentleman from Ohio, Mr. Chabot. Mr. Poe, what do you have, Mr. Poe, four or 5 minutes left?

Mr. POE. I need to leave now, Mr. Chairman, if I could be excused.

Mr. COBLE. If you have a question, put it to Mr. Poe first, if you will, Mr. Chabot.

Mr. CHABOT. Okay. I don't have one specifically, but I appreciate your testimony here this morning. And I want to thank you for holding this hearing.

Mr. COBLE. You are recognized, Mr. Chabot. And Mr. Poe, if you have to leave, you may be excused.

Mr. POE. Thank you, Mr. Chairman.

Mr. GOHMERT. Could I ask the gentleman to yield, so I could ask Mr. Poe?

Mr. CHABOT. I'd be happy to yield.

Mr. COBLE. That will be fine.

Mr. GOHMERT. Thank you, and I can yield back. But to my former fellow district judge from Texas, I know you have sensitivities about States' rights, too. I know we both feel very passionately about this issue, and the recurrence of these types of offenses. So I'm sure you in your own mind dealt with the States' rights issues here. And is the Federal Government usurping Federal—I mean States' rights? And I'd just ask for you to comment on that, please.

Mr. POE. Mr. Gohmert, the problem is, they cross State lines. And because they cross State lines, they re-offend, and the Federal Government has to do something about that. But I'm sensitive to State's rights, but this is a problem that has occurred with the numerous cases this year. All of these individuals moved about from State to State, because of the lack of a national registration requirement.

Mr. CHABOT. Okay. Reclaiming my time, we've got a very distinguished panel. We appreciate their time being here today. And the statistics that our colleague, Mr. Foley, had included in his testimony are really shocking, and they demonstrate what our children are up against, and the fact that we need to mobilize all the resources available to us to stop really this horrible trend that we've seen in our country.

And it includes using DNA technology. And we know the effectiveness of DNA testing to help crack down on sex offenders and child predators. But I'd like to focus my question on the effectiveness of DNA testing to help families find their children who may be missing because they've been abducted by a predator; or in the most unfortunate situation, to identify the remains of those that have been violently murdered.

We had a particularly horrific incident in our area in Cincinnati, and we've been working with the mother of a daughter who was abducted and ultimately discovered to have been murdered. Her remains, however, have—they've not discovered the location of the remains; although the perpetrator has been convicted.

And we have discovered that there are literally thousands of remains at coroners' offices around the country, in police departments. And, unfortunately, we haven't done the DNA testing that's really necessary to locate a number of these people and give some closure to some of these families.

So Mr. Foley, in Florida you have a very comprehensive missing person program, including receiving grants to increase the use of DNA testing to locate missing children and adults and identify human remains.

Do you believe that encouraging law enforcement to take DNA from family members is part of a missing person investigation? Would it enhance our efforts to help families who may have had to go through these ordeals? And do you think that encouraging law enforcement to take DNA samples from remains would help to locate and to bring the families more—let them know that actually something's being done and that they're positively contributing by cooperating in that manner?

Mr. FOLEY. It serves a multitude of opportunities. As Ms. Jackson Lee knows in her bill, what you try to do both is use it as a way to go back after prior crimes and find out if the person accused in this crime committed the crime against that child, using DNA collections.

You also, most recently, had a case where a mother was told there was a fire in a building; her child they thought had died in the fire. They found this child who looked very similar to hers several years later. They did a DNA test, identified it as the child of this woman who thought her own child had perished. So DNA testing can be a valuable tool to help families come to grips on whether the missing person is in fact theirs.

Once in a while, we're never able to solve the crime, but closure for them is as important, knowing if that is their loved one, that at least they can bring closure and finality to their search.

I've got to imagine the pain of a family wondering where their child is. And I just believe that that gives us a tool both for the

protection and, as Ms. Jackson Lee mentioned, the exoneration of people that are not complicit to the crime.

Mr. CHABOT. Thank you. I know Mr. Green has a bill that deals a little more specifically with DNA. And we've talked with them, and are willing and would like to work with them.

With the additional remaining time that I have here, I'd be happy to allow the other two panel members to comment either on what we talked about just now or anything else that you perhaps thought that we needed to go into a little bit more and didn't have sufficient time. Ms. Brown-Waite?

Ms. BROWN-WAITE. Let me just briefly touch on the DNA testing. It certainly is one tool that law enforcement can use. And I was delighted, about a month and a half ago, 2 months ago, they were telling on the news that there is a kit that's out now that parents can actually take a swab from the inside of the child's mouth, put it in a preservative, and keep it in the refrigerator indefinitely. Certainly, medical and scientific technology like this, as it advances, will go a long, long way to help to solve some of the issues involving missing family members.

Mr. CHABOT. Thank you.

Mr. POMEROY. Well, thank you very much for the opportunity. I very much want to call your attention to this provision in the bill that I've introduced relative to making sure civil commitment authorities are notified when there is a release from prison.

A number of States—I think it's a trend—are bringing on-line civil commitment. And it's the traditional civil commitment jurisdiction where, if you're a danger to yourself or others, you can be—it's not criminal, but you can be civilly committed.

And so if you have a dangerous offender, highly likely to commit a crime again, and they can prove that up in a civil commitment hearing, that individual is not in society. That individual is civilly committed.

And there has to be agencies talking to one another. There has to be notification when these people are coming out of prison. This seems to me to be a very simple thing. But I think the Federal Government can help address some dysfunction at the State level, with this provision. Thank you.

Mr. CHABOT. Thank you. Yield back, Mr. Chairman.

Mr. COBLE. The gentleman's time has expired.

The gentleman from Texas, Mr. Gohmert.

Mr. GOHMERT. And I would be glad to yield, Mr. Chabot, if you'd like more time. All right, thank you.

I had a question actually for each of you, just to see your impression and get your comments. And before I ask, I would like to just commend all of you for the work you've done, and Ms. Jackson Lee. There are so many of us that, as I mentioned, my former judge friend, are very passionate about this issue. We've seen so much injustice, so much that could have been avoided if the proper steps had been taken.

My question has to do with the type of registration. Texas requires registration. I've seen situations where people were paroled far sooner than they should have been, and adequate registration didn't occur and other things happened.

I'm wondering if we should require perhaps even the charge itself to be accessible in the registration. Because I've known of situations where some young kid "moons" somebody, and his lawyer said, "Just plead 'No Contest'. You get probation." And the next thing you know, he's got to register as a sex offender. And then it scares everybody in the neighborhood that this nice young man is a sex offender.

On the other hand, one of the things that makes sex offenders often so dangerous is they are so persuasive. They are incredibly persuasive. So they can convince young people, they can convince girlfriends, they can convince people that they are not this horrible person, and convince them that the charge wasn't nearly what somebody might have thought it was.

I'm wondering if it might not be a good idea to have the actual charge set out, that they on such-and-such day of such-and-such, they did then and there do such-and-such act to such-and-such person, something along that—I'd just like you all's comments.

Mr. FOLEY. No question. I think we have to be very, very cautious, because there are differences between aggravated sexual offenses and things like you described. A recent case, where neighbors chose to create posters of a young man in the community; he happened to be suffering a mental illness, and he probably exposed himself and was listed as a sex offender. He was so mortified, he committed suicide.

We've got to be careful that we delineate what a sex offender is, and maybe some unusual behavior. We have to rely on the courts to discern. We could get into familia situations, where a 19-year-old boy takes off with a 17-year-old girl; the father has a problem with it, despite the fact they're consenting; charges him with a crime. His life could be ruined. And facts should prevail in that case to exonerate him from a sexually deviant behavior.

And so I think your question is why we're before the Judiciary Committee; to sort out and provide some guidelines and some safety valves from, you know, going too far, as well.

Ms. BROWN-WAITE. Actually, I think that's an excellent idea, and I'll tell you why. Because it also could go the other way. I know of a case where a middle-aged man truly was a sexual offender. He told people it was a lot less serious than what it was. He said, you know, someone walked in the men's room. And to make matters even worse, this particular person's wife had an adult home, where she took elderly people into her home.

And the State of Florida, until I made a ruckus over it, did absolutely nothing about it. But he was able to talk it down and say exactly that. So I think having the offense specifically be spelled out will help on both ends of the spectrum.

Mr. POMEROY. I agree. I've nothing to add in terms of well-spoken words of my panelists here, but I agree.

Mr. GOHMERT. Well, I appreciate you all's comments. That was my question. I applaud you all's efforts. And having handled thousands of criminal cases and having testified in different types of cases myself, I know it's never comfortable to be in the hot seat, but I applaud your efforts in doing so. This is a good cause you're here for.

Thank you, Mr. Chairman, I yield back.

Mr. COBLE. I say to the gentleman from Texas, I commend you for that line of questioning. And Mr. Foley pointed out the tragic situation where the guy died by his own hand. We do have to be extremely cautious. And I don't want to nail anybody unjustly. And I'm glad you opened that door, Mr. Gohmert.

Now, folks, keep in mind, we've got to be out of here imminently, but I do think we have time for another round. And I'll start mine off very quickly, and then I'll recognize Mr. Scott.

Much has been said, folks, about the State compliance on registry requirements, or the non-compliance. Let me ask each of you this question. What is your belief regarding the role of the Federal Government in ensuring that States comply with the registry requirements? Mr. Foley, I'll start with you.

Mr. FOLEY. Well, the first thing we want is the U.S. Attorney General, in consultation with the States, to develop a seamless statewide-national database. We also provide some funding for their—if you will, a "carrot" approach, to get them into compliance. It doesn't do any good to have 50 different States working on 50 different systems. So in this bill we set up a national, with consultation with States, and try to encourage their compliance and participation.

Mr. COBLE. Ms. Brown-Waite?

Ms. BROWN-WAITE. I think the role of the Federal Government is to set stricter minimum standards than currently exist in the law now. States, of course, because of States' rights, have the ability to have more stringent regulations in place. But I think it's incumbent on us to set stricter Federal regulations.

Mr. COBLE. Mr. Pomeroy?

Mr. POMEROY. I think that Federal action would make it comprehensive, could make it uniform, and could establish a floor of protection. Because clearly, the danger to our little ones shouldn't vary by geography. I want a floor of protection.

Mr. COBLE. The gentleman from Virginia.

Mr. SCOTT. Thank you, Mr. Chairman. Mr. Chairman, I think there's some confusion between notifying law enforcement and monitoring and those who may need to know, like a day care center or something like that getting access, and public release on the Internet where anybody out of curiosity can just look. They're two different things.

In the cases that were cited, I think the suggestion was, had the person been monitored by law enforcement, things wouldn't have happened. I don't think there's any debate over the law enforcement's need to know and monitor and all this information available to law enforcement. The question is whether it is productive or counterproductive to have it, or the expense of having the public display.

One of the—I think it's well known, and we're going to hear later this afternoon, that 90 to 95 percent of child sexual abuse is friends and family. And so if we're talking about stranger convicts, you're talking about a small, minuscule number of the cases of child sexual abuse.

Ms. Brown-Waite, I think you cited a study from 1994. And I assume it's the "Recidivism of Sex Offenders Released From Prison in 1994," that's presently available on the Bureau of Justice Statis-

tics' website, Department of Justice. And you cited that of the released sex offenders, 24 percent were re-convicted of a new offense.

You didn't read the part that said compared to non-sex offenders released from State prison, sex offenders have a lower overall re-arrest rate. When re-arrests of any type of crime, not just sex crimes, were counted, the study found that 43 percent of released sex offenders were re-arrested. The overall re-arrest rate of those released for non-sex offenders was higher, 68 percent. It goes on to say that of those released sex offenders, 3.5 percent were re-convicted of a sex crime within the 3-year follow-up, 3.5 percent.

Let me ask a couple of questions. Is there anything in any of the bills that deals with the liability questions if someone is wrongfully listed, or someone wrongfully not listed, or not sanctioned if they haven't reported, or they haven't been followed up on?

Mr. FOLEY. Are there any penalties if they do not?

Mr. SCOTT. Is there any consideration of liability one way or the other?

Mr. FOLEY. No. I have not created liability for——

Mr. SCOTT. So if someone is wrongfully listed, what happens? Anything?

Mr. FOLEY. Well, hopefully, they can declare their innocence and be immediately removed from the list.

Mr. SCOTT. Is there any process for that?

Mr. FOLEY. [No response.]

Mr. SCOTT. Okay.

Mr. POMEROY. Mr. Scott, I think they'd also have their full array of civil justice remedies.

Mr. SCOTT. Well, that's civil liability. You can sue somebody for wrongfully—for damages.

Mr. POMEROY. Right.

Mr. FOLEY. Current law has a way in which to be removed from a website. And this would continue in our bill, as well.

Mr. SCOTT. There would just be removal? No civil liability?

Mr. FOLEY. No, sir.

Mr. SCOTT. You suggested that the crime reporting is not uniform; different States describe different crimes using different descriptions. With that being the case, how do you have a uniform reporting so that everybody is reporting similar crimes? What kind of database would we be talking about?

Mr. FOLEY. Again, working with the U.S. Department of Justice and the Attorney General, trying to create similar fields, so you have data entry points much like we have a 1040 form, a standardized form, for our taxes; try to create a uniform form for all States to input the same data and then share the data.

Mr. SCOTT. I can assure you, that's going to be difficult, because people describe—I mean, just assaults, there are various gradations, from a little fistfight to attempted murder. Different States describe those crimes using different terms, and where you draw the line is going to be extremely difficult. Thank you, Mr. Chairman.

Mr. COBLE. I thank the gentleman.

The gentleman from Wisconsin, Mr. Green.

Mr. GREEN. Thank you, Mr. Chairman. No more questions.

Mr. COBLE. I thank the gentleman.

The gentlelady from Texas, Ms. Sheila Jackson Lee.

Ms. JACKSON LEE. Thank you, Mr. Chairman. Again, I want to offer my appreciation for the Ranking Member and the Chairman of this Committee, to finally gather all of these legislative initiatives for it to be heard that Congress is concerned.

And I just want to offer these two points into the record. Some of these statistics, obviously, are always changing. Murder is the only major cause of childhood death that has increased over the past three decades. Between 300,000 and 400,000 children are victims of some type of sexual abuse, exploitation, every year.

And certainly, Mr. Pomeroy, as you've noted, becoming a father during your tenure in Congress, your interest and concern is raised; but I would simply say that we owe an obligation, regardless of our status. We're grateful, those of us who are parents. We do have this great interest. But we know all of our colleagues realize that we must make a national statement on behalf of our children.

I would say to you this question in closing, as well. One of the aspects of the legislation that I have offered that I'm glad that Mr. Foley and I are on the same page is that we provide a single database for convicted sexual predators, so that there is the opportunity for law enforcement to have a quick check, if you will, when they begin to do their investigation.

I want to acknowledge that we have been really moved on this issue by Missing and Exploited Children's organization, that has been a great leader for years.

And then I want to share two stories. In my community, a series of sexual acts against little boys—and that's another thing that we need to realize. This is an equal-opportunity offender, a sexual predator. No parent who has a son should be comforted, or has a daughter should be comforted, of any age.

And this individual was preying upon a region or an area in my congressional district for a 2-year period. And certainly, our local law enforcement were doing a fine job. But I came in all of a sudden and met with community leaders, and I said, "Has anybody called the FBI?" No one had called the FBI to engage on a number of grounds that they could have been called.

Once they got called in, you would not have imagined. In 24 hours, this individual, who lived in the neighborhood—I can't say that he was a friend of these children; he just happened to live in the neighborhood; a grown, grown man, living with his mother—was found immediately. That's one incident where we can do better at cooperation.

The second one is this whole idea of stranger, friend, or not. What about a little boy who's in a shopping area with his family. Someone comes up to him and says, "I don't speak English well—" he happens to be of the same ethic background "—help me go and talk to the McDonald's man about getting some food." In a matter of seconds, this little boy is taken away, 12 years old, and sexually assaulted.

So I think that the point again about the national standard is key. And one of the things I'd appreciate if you'd answer so that—this whole question of cooperation between Federal and State, if I allow each of you to answer it.

But this other point in the legislation that I have is the whole question of recidivism. Giving States incentives that can prove that they are working with some sort of strategy to eliminate the recidivist inclination of a sexual predator or someone who violently acts against a child. I'd appreciate if you all would answer those questions.

Ms. BROWN-WAITE. I'll be happy to go first. I had a problem with the Jessica Lunsford case, where the State's attorney did not proceed—actually, dropped charges against three people who had information about what was going on in the trailer. Thankfully, the United States Attorney's Office—I'd been working with them—they have assured me that they have an ongoing case.

But very often, what you have is a turf battle, where the local law enforcement doesn't want the big brother to come in from outside. And so that, unfortunately, is a problem.

Ms. JACKSON LEE. We need more cooperation.

Ms. BROWN-WAITE. Absolutely. And, you know, I don't know if you mandate that. I guess that would be like, you know, mandating goodness. Like one child asked me to draft a bill that everybody be kind to each other. But getting law enforcement to cooperate. And you know, certainly the FBI has a lot more technology available to them than what very often local law enforcement has.

Ms. JACKSON LEE. Mr. Pomeroy?

Mr. POMEROY. I think legislation, Ms. Jackson Lee, could help encourage the kind of cooperation that we need. Federal, State, local—parent's don't care; they want their kids safe. And we've got to cut across jurisdictional lines to do it. I think maybe some encouraging direction in the language of the legislation itself could be helpful.

And I like what you said about a special sentence to really work on this recidivist question. Because the statistics in the article I earlier quoted show that convicted sex offenders are significantly more likely than a non-convicted sex offender to re-perpetrate. And so let's get after this with more of a focused effort. And I think some incentives would be a great idea.

Ms. JACKSON LEE. Mr. Foley.

Mr. FOLEY. Let me just say that, in all my 11 years serving in this Congress, this has probably been the most productive on issues like this, where Democrats and Republicans are blurred by partisan distinction.

And I think the same goes for our law enforcement communities. They want to do a good job protecting kids. We haven't given them comprehensive tools. We haven't provided the funding that we promised in these bills. We mandate things, and then we say, "Go it alone, and good luck."

And the technology is so out of date, no one can even access the data. They don't even report missing persons to a national registry. So we've got to start, I think, with a clean page; start with a proper approach; provide uniformity and continuity; and then give them the efforts, or at least the resources that they need to fulfill the mission.

When we find these cases, these horrific cases, I can tell you, those State attorneys and those sheriffs and those police chiefs who

have been in the glare of the media spotlight think, "What could we have done to prevent this?" Well, it's a little late at that point.

So what we are doing here in these bills—and, thankfully, we're all on the same page with different provisions—but at the end of the day, as these bills merge together, we're going to have a product that works and that has been thought through and contemplates all of the pitfalls. And that's why I'm very proud of the kind of tone we're setting here today.

Ms. JACKSON LEE. Thank you. Thank you, Mr. Chairman.

Mr. COBLE. You're indeed welcome.

Ms. JACKSON LEE. And if you would indulge me just a minute to thank these witnesses, and to make mention of the fact that, as you were speaking, the CEO and President of Missing and Exploited Children walked into the room. And I hope he sensed the harmony and the spirit of cooperation that the Chairman and the Ranking Member are exhibiting, and, of course, Members of this body are exhibiting.

And hopefully, this will work all the way through passage of these legislative initiatives, with a sense of fairness to individuals who would be prosecuted wrongly; but to make sure we make a national statement on behalf of our children.

Mr. FOLEY. If the gentlelady will yield, Mr. Allen was, in fact, on the NBC "Today Show" this morning, doing the great work of the National Center, as well. And I thank you.

Mr. COBLE. I thank the gentlelady.

Ms. JACKSON LEE. And I thank the Chairman.

Mr. COBLE. And I want to reiterate what the lady from Texas said. I commend you all for your passion. Obviously, you feel very passionately about this. And we thank you all for your testimony.

In order to ensure a full record and adequate consideration of this important issue, the record will be left open for additional submissions for 7 days. Also, any written questions that a Member wants to submit to the witnesses should be submitted within the same 7-day period.

This concludes the legislative hearing on "House Sexual Crimes Against Children Bills." Thank you for your cooperation, and for those in the audience, as well. The Subcommittee stands adjourned.

[Whereupon, at 3:40 p.m., the Subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE ROBERT C. SCOTT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA, AND RANKING MEMBER, SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

Thank you, Mr. Chairman, for holding ths hearing on bills regarding sex and other violent crimes against children. A host of bills have been filed by members on both sides of the aisle in the wake of several horrific sex crimes and murders against children in recent years. These types crimes are especially abhorrent and the public demands actions to address them and to prevent similar crimes to the extent possible.

I know that all of the bills before us are developed with these objectives in mind. However, as policy makers, we know that these type tragedies will occur from time to time, so it is incumbent upon us to not simply do something, but to do something that will actually reduce the incidences of these crimes. We know that many more children die as a result of child abuse than is reflected by the tragic cases of child sexual abuse and murder that have been in the news, and we know that the vast majority of child abusers, including child sex offenders, were abused themselves as children. We also know that the vast majority of abusers are relatives and other individuals well known to the child and family, 90–95% according to BACHNET (Be a Child's Hero Network), and that most cases of abuse are never reported to authorities or ever dealt with in an official manner.

It would be nice to think that we can legislate away the possibility of such horrific crimes, but it is not realistic to believe we can and we should certainly seek to avoid enacting legislation that expends scarce resources in a manner that is not cost effective or that exacerbates the problem. While it is clear that having police and supervision authorities aware of all location and identification information about child sex offenders, it is not clear that making that information indiscriminately available to the public, with no guidance or restriction on what they can do with, or in response to, such information, is helpful or harmful to children. There have been incidences of vigilante and other activities which have driven offenders underground. And, again, the vast majority of offenders are family members or associates known to the victim. In one case, a teacher was reading the names of offenders to a grade school class on which there was the name of the father of one of the students, the victim, in the class.

Moreover, some of the elaborate procedures and requirements of the bills before us will cost a lot of money, and we should assure there is a cost benefit analysis of what would be the most productive use of such money rather than simply impose the requirements without references to effectiveness or cost/benefit.

So, Mr. Chairman in hearing the testimony today, I will be listening for anything that reflects research and reliable evidence regarding what might actually protect children and reduce incidences of child sexual and other abuse. I know we all mean well, but we must also assure that what we do is actually productive rather simply something that sounds good, but is counterproductive. Thank you.

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS, AND MEMBER, SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

The problem of violence against children and sexual exploitation of children has been highlighted by recent events involving brutal acts of violence against children. Recent examples include: (1) the abduction, rape and killing of 9 year old Jessica Lunford (who was buried alive); (2) the slaying of 13 year old Sarah Lunde, both

of whom were killed in Florida by career criminals and sex offenders. In Philadelphia, four defendants were charged with the stabbing and killing of a 15 year old girl, who they then threw into the Schuykill River. All of these tragic events have underscored the continuing epidemic of violence against children.

These tragic events have underscored the continuing epidemic of violence against children, and the need to reexamine the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, Megan's Law and the Pam Lyncher Sex Offender Trafficking and Identification Act. Specifically, recent proposals have been made to fill in gaps in existing law in order to protect children from sexual predators.

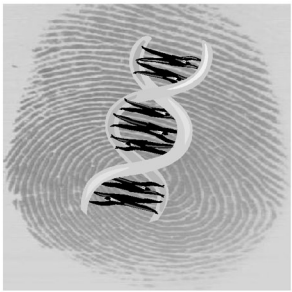
Furthermore, there is a wide disparity among the state programs in the registration requirements and notification obligations for sex offenders. Given the transient nature of sex offenders and the inability of the states to track these offenders, it is conservatively estimated that approximately 20 percent of 400,000 sex offenders are "lost" under state sex offender registry programs. In addition, there is a disparity among state programs as to the existence of Internet availability of relevant sex offender information, and the specific types of information included in such websites. Moreover, the States tend to take a more passive role in disseminating sex offender information, relying instead on law enforcement to disseminate such information to interested entities such as schools and community groups. Recently, the Justice Department announced that its plan to implement a public, national sex offender registry, linking together the State registries into one national website.

In addition, the sexual victimization of children is overwhelming in magnitude and largely unrecognized and underreported. Statistics show that 1 in 5 girls and 1 in 10 boys are sexually exploited before they reach adulthood, yet less than 35 percent of the incidents are reported to authorities. This problem is exacerbated by the number of children who are solicited online—according to the Department of Justice 1 in 5 children (10 to 17 years old) receive unwanted sexual solicitations online.

Department of Justice statistics underscore the staggering toll that violence takes on our youth (DOJ national crime surveys do not account for victims under the age of 12, but even for 12 to 18 year olds, the figures are alarming). Data from 12 States during the period of 1991 to 1996 show that 67 percent of the all victims of sexual assaults were juveniles (under the age of 18), and 34 percent were under the age of 12. One of every seven victims of sexual assault was under the age of 6.

In closing, I look forward to hearing the testimony of our distinguished panelist.

DOCUMENT ENTITLED "CASE STUDY OF SERIAL KILLERS AND RAPISTS: 60 VIOLENT CRIMES COULD HAVE BEEN PREVENTED INCLUDING 53 MURDERS AND RAPES"



CASE STUDY OF SERIAL KILLERS AND RAPISTS: 60 VIOLENT CRIMES COULD HAVE BEEN PREVENTED INCLUDING 53 MURDERS AND RAPES

If Illinois collected DNA from 8 serial killers and rapists during any of their felony arrests, over 60 serious violent crimes would never have occurred.

- 22 Murders – all female victims ranging from 24 to 44 years old
- 30 Rapes – all victims ranging from 15 to 65 years old
- Attempted rapes
- Aggravated Kidnapping

DNA CASE STUDY

OFFENDER ANDRE CRAWFORD, 37-YEARS OLD

Andre Crawford has been charged with eleven murders and one attempted murder/aggravated criminal sexual assault.

In March 1993, Andre Crawford was arrested for Felony Theft. If Illinois required him to give a DNA sample during that felony arrest, a DNA match could have been obtained with the DNA evidence recovered from his first murder, thereby identifying him as the offender and the subsequent 10 murders and one attempted murder/criminal sexual assault would have been prevented.

----------*Timeline of Events*----------

On March 6, 1993, Andre Crawford was arrested for Felony Theft.

On September 21, 1993, a 37-year old woman was found murdered. Her body was discovered in a vacant factory lot on the 700 block of West 50th Street. She had blunt trauma to her head. DNA evidence was recovered.

THE FOLLOWING ARE 10 PREVENTABLE MURDERS & 1 PREVENTABLE ATTEMPTED MURDER/RAPE WHICH WOULD NOT HAVE OCCURRED HAD CRAWFORD'S DNA SAMPLE BEEN TAKEN ON MARCH 6, 1993.

On December 21, 1994, a 24-year old woman was found murdered. Her body was found murdered in an abandoned building on the 800 block of West 50th Place. DNA evidence was recovered.

On April 3, 1995, a 36-year old woman was found murdered. Her body was discovered in an abandoned house on the 5000 block of South Carpenter. DNA evidence was recovered.

On May 3, 1995, Andre Crawford was arrested for Attempted Criminal Sexual Abuse (Felony). Another missed opportunity to have his DNA sample entered into the system and to prevent further violence.

On July 23, 1997, a 27-year old woman was found murdered. Her body was discovered in a closet of an abandoned house on the 900 block of West 51st Street. DNA evidence was recovered.

On December 27, 1997, a 42-year old woman was raped. As she walked, an offender approached her from behind, placed a knife to her head, dragged her into an abandoned building on the 5100 block of South Peoria, then beat and raped her. DNA evidence was recovered.

DNA CASE STUDY

CONTINUATION: OFFENDER ANDRE CRAWFORD, 37-YEARS OLD

In January 1998, Andre Crawford was arrested for Possession of a Controlled Substance (Felony). Another missed opportunity to have his DNA sample entered into the system and to prevent further violence.

In June 1998, a 31-year old woman was found murdered. Her body was discovered in an abandoned building on the 5000 block of South May Street.

On August 13, 1998, a 44-year old woman was found murdered. A rehabber discovered her body in the kitchen of an abandoned house on the 900 block of West 52nd Street. Her clothes were found in the alley. DNA evidence was recovered.

On August 13, 1998, a 32-year old woman was found murdered. A real estate agent discovered her decomposed body lying on the floor in the attic on the 5200 block of South Marshfield. DNA evidence was recovered.

On December 8, 1998, a 35-year old woman was found murdered. A rehabber discovered her body with her pants one around her ankle and the other completely off in a building on the 1200 block of West 52nd Street. She had rope marks around her neck and injuries to her face. DNA evidence was recovered.

On February 2, 1999, a 35-old woman was found murdered. Her body was discovered on the 1300 block of West 51st Street. DNA evidence was recovered.

On April 21,1999, a 44-year old woman was found murdered. Her body was discovered in the upstairs of an abandoned house on the 5000 block of South Justine. DNA evidence was recovered.

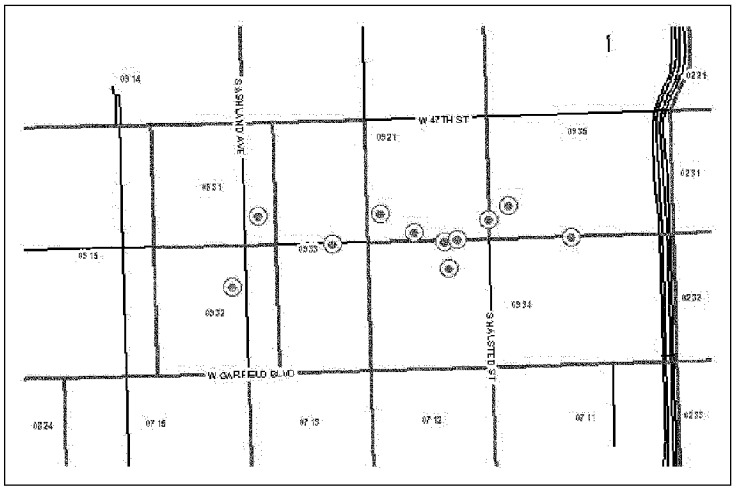
On June 20, 1999, a 41-year old woman was found murdered. Her body was found in the attic of an abandoned building on the 1500 block of West 51st Street. DNA evidence was recovered from blood on the wall which indicated a struggle.

In November 1999, Andre Crawford was arrested for Possession of a Controlled Substance (Felony). Another missed opportunity to have his DNA sample entered into the system and to prevent further violence.

DNA CASE STUDY

CONTINUATION: OFFENDER ANDRE CRAWFORD, 37-YEARS OLD

In January 2000, Andre Crawford was charged with 11 murders and 1 Aggravated Criminal Sexual Assault. If his DNA sample had been taken on March 6, 1993, the subsequent 10 murders and 1 rape would not have happened.



DNA CASE STUDY

OFFENDER BRANDON HARRIS, 18-YEARS OLD

Brandon Harris was convicted of five Aggravated Criminal Sexual Assaults and one Aggravated Kidnapping/Attempted Rape.

In August 2000, Brandon Harris was arrested with a felony charge. If Illinois required him to give a DNA sample after that arrest, a DNA match could have been obtained with the DNA evidence recovered from his first rape, thereby identifying him as the offender and the subsequent four rapes and one attempt rape/armed robbery/aggravated kidnapping would have been prevented.

----------*Timeline of events*----------

On December 2, 1999, a 17-year old girl was raped. As she was waited for a bus, an offender displayed a knife, forced her to an abandoned garage on the 100 block of South 83rd Street and raped her.

On August 25, 2000, Brandon Harris was arrested for Aggravated Criminal Sexual Assault.

On October 29, 2000, Brandon Harris was arrested for Aggravated Criminal Sexual Assault.

THE FOLLOWING ARE 4 PREVENTABLE RAPES & 1 ATTEMPTED RAPE/ARMED ROBBERY/AGGRAVATED KIDNAPPING WHICH WOULD NOT HAVE OCCURRED HAD HARRIS' DNA SAMPLE BEEN TAKEN ON AUGUST 25, 2000.

On November 26, 2000, a 25-year old woman was raped. As she walked to work, an offender approached her, displayed a handgun, forced her into an abandoned house on the 7900 block of South Yale and raped her. DNA evidence was recovered.

On November 29, 2000, a 19-year old girl was robbed and kidnapped. As she attempted to exit an L-Train, an offender displayed a handgun and demanded her to stay on the train. The offender ordered the victim to exit the train at a later stop, took her to an abandoned basement on the 200 block of West 80th Street where he made her take her clothes off and took her money.

On December 7, 2000, Brandon Harris was arrested for Robbery – Armed with a Firearm & UUW (Felony). However, Brandon was not convicted until February 5, 2001 and sentenced to Home Confinement. Six days later, he rapes again.

DNA CASE STUDY

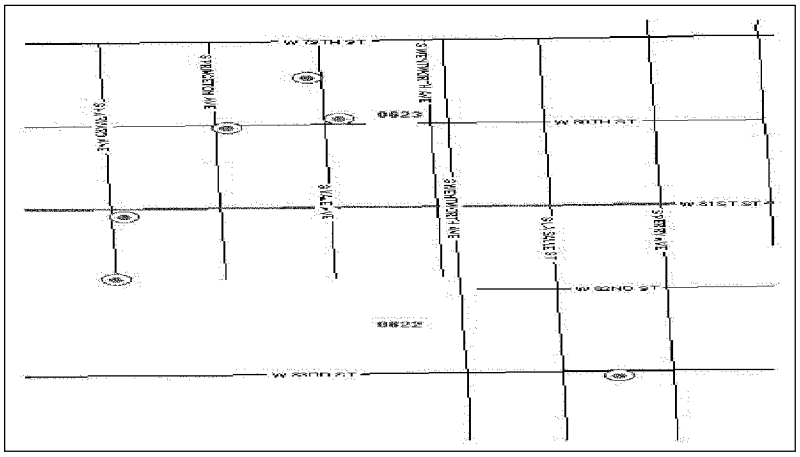
CONTINUATION: OFFENDER BRANDON HARRIS, 18-YEARS OLD

On February 11, 2001, a 22-year old woman was raped. As she was waited for a bus, an offender pulled up in a vehicle, ordered her into the car at gunpoint and raped her on the 8200 block of South Harvard. DNA evidence was recovered.

On February 28, 2001, a 15-year old girl was raped. She exited an L-station and began to walk home when an offender walked up behind her, stuck a piece of glass to her neck, forced her to a basement stairwell on the 8000 block of South Princeton and raped her. DNA evidence was recovered.

On May 19, 2001, a 17-year old girl was raped. As she waited for a bus, an offender approached her, led her at gunpoint to a backyard on the 8100 South Harvard and raped her.

Brandon Harris was convicted of 5 Aggravated Criminal Sexual Assaults and 1 Attempt Aggravated Criminal Sexual Assault. If his DNA sample had been taken on August 25, 2000, the subsequent 4 Rapes and 1 Attempt Rape would not have happened.



DNA CASE STUDY

OFFENDER GEOFFREY T. GRIFFIN, 31-YEARS OLD

Geoffrey Griffin has been charged with eight murders and one aggravated criminal sexual assault.

In December 1993, Geoffrey Griffin was arrested for Possession of a Controlled Substance (Felony). If Illinois required him to give a DNA sample after that felony arrest, a DNA match could have been obtained with the DNA evidence recovered from his first rape, thereby identifying him as the offender and the subsequent eight murders, one rape and one attempted rape would have been prevented.

----------*Timeline of Events*----------

On August 26, 1995, Geoffrey Griffin was arrested for Possession of a Controlled Substance.

On July 10, 1998, a 37-year-old woman was raped. She was forced into an abandoned building on the 6700 block of South Halsted. After being raped, she was beat into unconsciousness and left to die. DNA evidence was recovered from sexual assault kit.

THE FOLLOWING ARE 8 PREVENTABLE MURDERS, 1 RAPE & 1 ATTEMPT RAPE WHICH WOULD NOT HAVE OCCURRED HAD GRIFFIN'S DNA SAMPLE BEEN TAKEN ON AUGUST 26, 1995.

On July 11, 1998, a 36-year old woman was found murdered. She was found in the rear yard on the 7400 block of South Halsted, naked from the waist down. She suffered blunt trauma to the face and head. DNA evidence recovered from the sexual assault kit.

On February 7, 1999, a 22-year-old woman was raped. She was attacked in an abandoned building on the 10900 block of South Edbrooke. The offender raped her, then beat her in the head with a brick and burned her eyes. DNA evidence recovered from sexual assault kit.

On May 2, 2000, a 33-year-old woman was found murdered. She was raped, and then strangled to death on the 15800 block of South Park. She was found naked. DNA evidence was recovered from the victim's fingernail clippings.

On May 12, 2000, a 32-year old woman was found murdered. She was found naked in an abandoned building on the 11800 block of South Yale. She was strangled to death. DNA evidence of the assailant was recovered from the sexual assault kit.

DNA CASE STUDY

CONTINUATION: OFFENDER GEOFFREY GRIFFIN, 31-YEARS OLD

On May 17, 2000, a 32-year old woman was found murdered. Her body was discovered in an abandoned building on the 11900 block of South LaSalle. The murder's jacket had the victim's blood stains on it. DNA evidence was recovered.

On June 13, 2000, a 21-year-old woman was attacked. As she was in an abandoned building on the 11900 block of South Wallace, an offender attempted to rape her. She was struck with a knife, but escaped.

On June 16, 2000, a 29-year-old woman was found murdered. Her body was discovered in an abandoned building on the 10700 block of South Michigan. DNA of the assailant was recovered from the victim's fingernails. Later matched.

On June 19, 2000, a 47-year-old woman was found murdered. Her body was found naked from her waist down and the cause of death was strangulation on the 20 block of East 113th Place (occurrence May 25, 2000). DNA of the assailant was recovered from the victim's fingernails.

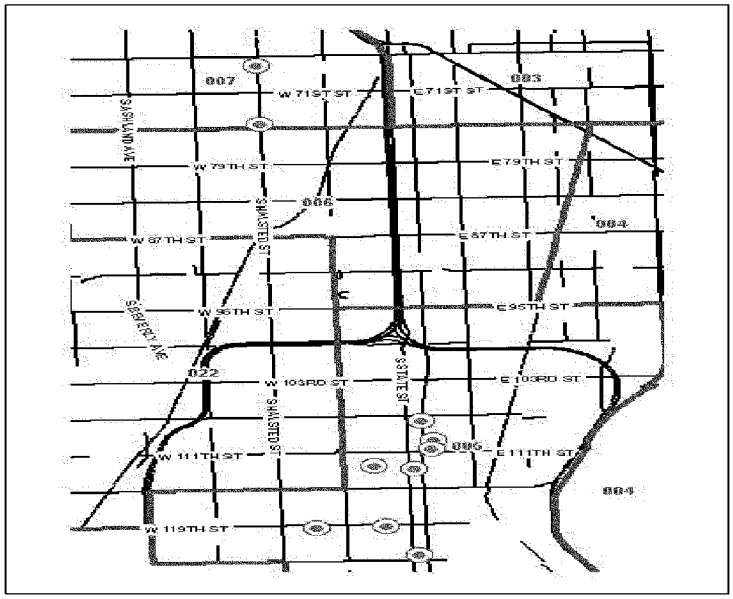
On June 22, 2000, a 39-year-old woman was found murdered. Her body was found in an abandoned house on the 200 block of West 112th Place (occurrence June 13, 2000). She was naked from waist down and the cause of death was strangulation. DNA evidence was recovered. The murder's jacket had the victim's blood on it.

On June 27, 2000, a 44-year-old woman was found murdered. She was strangled to death. Her naked body was found waist down on the 11000 block of South Edbrooke (occurrence June 13, 2000). The murder's jacket had the victim's blood on it.

DNA CASE STUDY

CONTINUATION: OFFENDER GEOFFREY GRIFFIN, 31-YEARS OLD

Geoffrey Griffin was arrested on June 17, 2000. He has subsequently charged with eight murders and 1 aggravated criminal sexual assault. If his DNA sample had been taken on August 26, 1995, the 8 murders, 1 rape and 1 attempt rape would not have happened.



DNA CASE STUDY

OFFENDER MARIO VILLA, 37-YEARS OLD

Mario Villa has been charged with four rapes, linked by DNA to two other rapes, and a main suspect in an additional rape and two attempted rapes.

In February 1999, Mario Villa was arrested for felony burglary. If Illinois required him to give a DNA sample after that arrest, a DNA match could have been obtained with the DNA evidence recovered from his first rape, thereby identifying him as the offender and the subsequent six rapes and two attempted rapes would have been prevented

----------*Timeline of Events*----------

On February 6, 1999, Mario Villa was arrested for Burglary (Felony).

On July 5, 1999, a 16-year old girl was raped. As she slept in her apartment on the 1300 block of North Dean Street, an offender entered her apartment and raped her. He ordered her to take a shower after raping her. DNA evidence was recovered from the criminal sexual assault kit.

THE FOLLOWING ARE 8 PREVENTABLE RAPES OR ATTEMPT RAPES WHICH WOULD NOT HAVE OCCURRED HAD VILLA'S DNA SAMPLE BEEN TAKEN ON FEBRUARY 6, 1999.

On May 26, 2002, a 32-year woman was raped. As she slept in her apartment on the 1300 block of South Greenview, an offender entered her residence, raped her and then ordered her to take a shower. DNA evidence of the assailant was recovered from the criminal sexual assault kit.

On March 17, 2003, a 47-year old woman, was raped. As she sat in her car at a forest preserve in Lisle, Illinois, the offender ordered her into the woods and raped her. DNA evidence of the assailant was recovered from the criminal sexual assault kit. Linked by DNA.

On June 8, 2003, a 19-year old woman was attacked in her apartment. As she slept in her apartment on the 1800 block of North Halsted, an offender entered her residence and attempted to rape her. The victim yelled, "Fire, fire" and the offender field.

On August 22, 2003, a woman was raped in Kenosha, Wisconsin. DNA evidence of the assailant was recovered from the criminal sexual assault kit. Linked by DNA.

On October 4, 2003, a 29-year woman was attacked at home on the 1200 block of West Byron at 3:00 in the morning, an offender entered her apartment and attempted to rape her.

DNA CASE STUDY

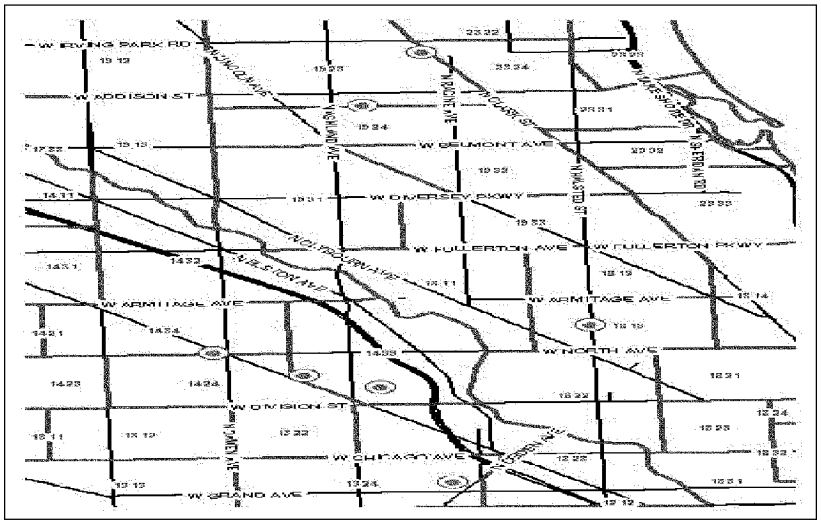
CONTINUATION OFFENDER MARIO VILLA, 37-YEARS OLD

On October 15, 2003, a 24-year old woman was raped. As she slept in her apartment on the 3500 block of West Greenview, the offender entered her residence, placed a pillow over her face and raped her. Offender ordered her to take a shower after raping her.

On December 20, 2003, a 40-year old woman was raped. As she slept in her apartment at 1300 of West Ohio, an offender entered her residence, told her not to say anything, placed a pillow over her mouth and raped her. Offender ordered her to take shower after raping her.

On February 7, 2004, a 23-year woman was raped. As she slept in her apartment, an offender entered her residence on the 2000 block of North Cleveland and raped her. The offender ordered her to take a shower after raping her.

On March 19, 2004, Police Officers obtained a search warrant and swabbed a DNA sample from Mario Villa as he appeared in court on an unrelated criminal trespassing charge. Subsequently, Mario Villa was charged with 4 Aggravated Criminal Sexual Assaults, linked by DNA or similarities in the other crimes. If his DNA sample had been taken on February 6, 1999, the subsequent 6 rapes and 2 attempted rapes would not have happened.



DNA CASE STUDY

OFFENDER BERNARD MIDDLETON, 55-YEARS OLD

Bernard Middleton has been charged with one murder and three aggravated criminal sexual assaults.

Bernard Middleton was arrested for felonies in 1987 and 1993, if Illinois required him to give a DNA sample after either arrest, a DNA match could have been obtained with the DNA evidence recovered from his first rape, thereby identifying him as the offender and the subsequent murder and two rapes would have been prevented.

----------*Timeline of Events*----------

On January 17, 1987, Bernard Middleton was arrested for Aggravated Battery.

On May 6, 1993, Bernard Middleton was arrested for Felony Theft.

On September 25, 1995, a 22-year old woman was raped. As she waited for a bus, an offender placed a knife to her head, led her to an isolated area, beat and raped her on the 600 block of West Garfield. DNA evidence was recovered.

THE FOLLOWING IS 1 PREVENTABLE MURDER & 2 PREVENTABLE RAPES WHICH WOULD NOT HAVE OCCURRED HAD MIDDLETON'S DNA SAMPLE BEEN TAKEN ON MAY 6, 1993.

On October 16, 1995, a 32-year old woman was found murdered. She was lured into a stairwell at Hope Academy on the 5500 block of South Lowe, raped, and then murdered. Her body was found in the stairwell. DNA evidence was recovered from the criminal sexual assault kit.

On May 28, 1997, Bernard Middleton was arrested for Felony Theft. Another missed opportunity to have his DNA sample entered into the system and to prevent further violence.

On July 25, 1997, a 34-year old woman was raped. The offender placed a knife against her head, told that she would be killed and then raped her on the 5500 block of South Calumet. DNA evidence was recovered.

On September 14, 1998, Bernard Middleton was arrested for Felony Theft. Convicted on October 9, 1998 and sentenced to probation for 1 year. Another missed opportunity to have his DNA sample entered into the system and to prevent further violence.

DNA CASE STUDY

CONTINUATION: OFFENDER BERNARD MIDDLETON, 55-YEARS OLD

On October 31, 1998, a 48-year woman was raped. As she walked down the street, an offender grabbed her from behind, placed a knife against her, forced her to the alley and raped her on the 1500 Block of North Claremont Avenue. DNA evidence was recovered.

> *On November 12, 2001, Bernard Middleton was arrested for Possession of a Controlled Substance. Another missed opportunity to have his DNA sample entered into the system and to prevent further violence.*
>
> *On August 8, 2002, Bernard Middleton was arrested for Felony Retail Theft. Convicted and sentence to 20 months. Another missed opportunity to have his DNA sample entered into the system and to prevent further violence.*

On May 1, 2003, Bernard Middleton was charged with the aforementioned murder and three rapes. While Bernard Middleton was in prison for a Retail Theft conviction in 2002, his DNA sample was entered into the DNA database and his sample matched the evidence recovered from the previous unresolved cases. If his DNA sample had been taken on May 6, 1993, the murder and 2 rapes would not have happened.

DNA CASE STUDY

OFFENDER RONALD MACON, 35-YEARS OLD

In 2003, Ronald Macon was convicted of three murders and one criminal sexual assault.

Ronald Macon was arrested for a felony charge on three separate occasions in 1998. If Illinois required him to give a DNA sample after his first felony arrest in 1998, a DNA match could have been obtained with the DNA evidence recovered from his first murder, thereby identifying him as the offender and the subsequent two murders and one criminal sexual assault would have been prevented.

----------Timeline of Events----------

On January 13, 1998, Ronald Macon was arrested for Retail Theft (Felony)

On July 20, 1998, Ronald Macon was arrested for Defacing Property (Felony)

On September 8, 1998, Ronald Macon was arrested for Retail Theft (Felony).

On February 18, 1999, a 43-year old woman was found murdered. Her body was discovered on the 100 block of East 45th Street. DNA evidence was recovered.

THE FOLLOWING ARE 2 PREVENTABLE MURDERS & 1 PREVENTABLE CRIMINAL SEXUAL ASSAULT WHICH WOULD NOT HAVE OCCURRED HAD MACON'S DNA SAMPLE BEEN TAKEN ON JANUARY 13, 1998.

On April 4, 1999, a 35-year old woman was found murdered. She was choked and beaten to death with an electrical box on the 5900 block of South Damen Ave. DNA was evidence recovered.

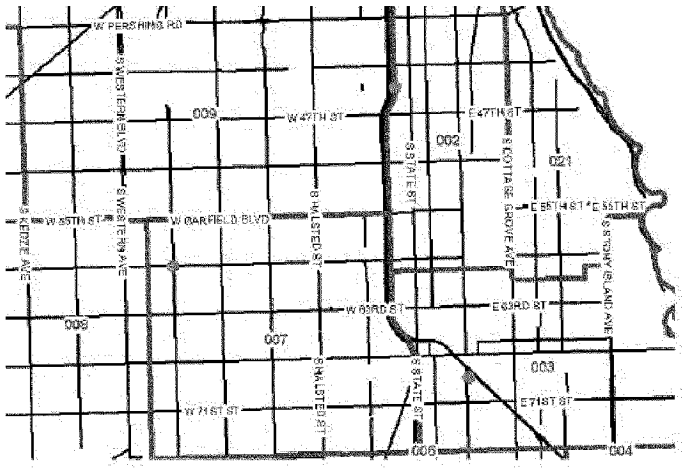
On June 21, 1999, a woman was found murdered. She was choked, raped; her hands and feet were bound with shoelaces, and then strangled to death with a strap from a bag. Her body was discovered on the 400 block of East 69th Street. DNA evidence was recovered. .

On August 9, 1999, Ronald Macon was arrested for Criminal Sexual Assault of a 65-year old woman. Ronald Macon placed a knife to the victim's neck and demanded her jewelry and money. Ronald Macon then wrapped a cord around her hands, led her into the bedroom and raped her.

DNA CASE STUDY

CONTINUATION: OFFENDER RONALD MACON, 35-YEARS OLD

On September 11, 2003, Ronald Macon was sentenced for life in prison for killing the three women and sentenced to 30 years for raping a 65-year old woman. If his DNA sample had been taken on January 13, 1998, 2 murders and 1 rape would not have happened.



DNA CASE STUDY

OFFENDERS RONALD HARRIS, 33-YEARS OLD & ARTO JONES, 18-YEARS OLD

Ronald Harris and Arto Jones have been each charged for 13 Aggravated Criminal Sexual Assaults and 13 Armed Robberies. There were a total of 15 rapes between them.

Ronald Harris was arrested for Possession of a Stolen Motor Vehicle (felony) in 1994. If Illinois required him to give a DNA sample after that felony arrest, a DNA match could have been obtained with the evidence recovered from the June 28, 2000 rape, thereby identifying him as the offender and the subsequent 11 rapes and robberies would have been prevented.

----------*Timeline of Events*----------

On July 15, 1994, Ronald Harris was arrested for Possession of a Stolen Motor Vehicle.

On May 29, 2000, an 18-year old woman was raped. After she got off a bus and began to walk in the park, an offender approached her, grabbed her by the neck, placed a gun to her head and asked for her money. The offender pushed her by the dumpsters, took her belongings and raped her on the 10400 block of South Bensley.

On June 5, 2000, a 20-year old woman was raped. After she got off the bus, an offender approached her, displayed a handgun and forced her into a yard on the 66 block of East 91st Street where another offender was standing. Both offenders raped her.

On June 12, 2000, a 19-year old woman was raped. After she got off the bus, an offender approached, placed a gun to her chest and told her, "You know what bitch, come into the alley." Another offender entered the yard on the 500 block of East 88th Street and fondled her breast. The offenders took her belongings.

On June 28, 2000, a 16-year old was raped. An offender approached her as she waited for a bus, displayed a handgun, and ordered her to the alley where another offender was standing. Both offenders raped her in a backyard on the 700 block of West 109th Street. The offenders took her belongings. DNA evidence was recovered.

THE FOLLOWING ARE 11 PREVENTABLE RAPES WHICH WOULD NOT HAVE OCCURRED HAD HARRIS' DNA SAMPLE BEEN TAKEN ON JULY 15, 1994.

On August 6, 2000, a woman was raped on the 14700 block of South Central Avenue in Harvey, Illinois. DNA evidence was recovered.

DNA CASE STUDY

CONTINUATION: OFFENDERS RONALD HARRIS, 33-YEARS OLD & ARTO JONES, 18-YEARS OLD

On November 2, 2000, Arto Jones was arrested for Aggravated Battery in Evergreen Park, Illinois. Missed opportunity to have his DNA sample entered into the system and to prevent further violence.

On November 6, 2000, a woman was raped on the 14500 block of South Emerald in Riverdale, Illinois. RD#00-18030. DNA evidence was recovered.

On March 10, 2001, a 20-year old woman was raped. DNA evidence was recovered.

On March 20, 2001, a 15-year old was raped. After she got off the bus, two offenders displayed a handgun as she walked past them and they forced her into a yard on the 7900 block of South Crandon where they raped her. The offenders took her belongings.

On March 23, 2001, a 16-year old was raped. After she got off the bus and began to walk home, an offender approached her. The offender grabbed her neck and shoulder, placed a gun in her side and told her to walk with him. He forced her to a garage located on the 13300 block of South Prairie where a second offender entered. Both offenders raped her.

On March 27, 2001, a woman was raped on the 14400 block of South Parnell in Riverdale, Illinois.

On April 20, 2001, a 20-year old was raped. After she exited a bus, two offenders approached her, placed a gun to her side and ordered her into a backyard on the 9700 block of South Oglesby where they raped her. DNA evidence was recovered.

On May 18, 2001, a 19-year old was raped. After she got off the bus and began to walk home, an offender asked her if she had a bus transfer. A second offender approached. The first offender displayed a handgun, forced her into a basement stairwell of a vacant residence on the 12400 block of South Lowe Ave and raped her.

On May 22, 2001, a 22-year old woman was raped. After she got off a bus and began to walk, two offenders approached her and asked for her phone number. One offender told her that he had a gun, took her two rings and ordered her to jump a fence into a yard on the 11500 block of South Morgan where they raped her.

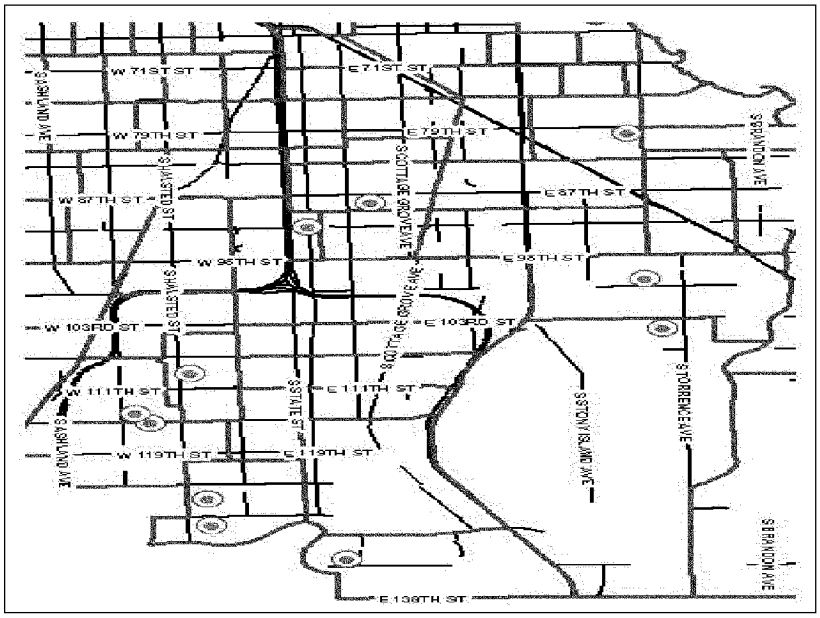
DNA CASE STUDY

CONTINUATION: OFFENDERS RONALD HARRIS, 33-YEARS OLD & ARTO JONES, 18-YEARS OLD

On June 5, 2001, a 17-year old was raped. After she got off a bus and began to walk, two offenders ran in her direction. One of the offenders placed a hard object in her back and stated, "I got a gun." Offenders ordered her into a yard on the 11300 block of South Aberdeen Street where they raped her. The offenders took her belongings. DNA evidence was recovered.

On June 8, 2001, an 18-year-old was raped. After she got off a bus, two offenders approached her, displayed a handgun, and ordered her to a backyard on the 12800 block of South Lowe where they raped her. The offenders took her belongings including her "Winnie the Pooh" wristwatch." DNA evidence was recovered.

On September 19, 2001, Ronald Harris and Arto Jones were each charged with 13 counts of Aggravated Criminal Sexual Assaults and 13 Armed Robberies. They committed a total of 15 rapes. If Harris' DNA sample had been taken on July 15, 1994, 11 of the rapes would not have happened.



DNA CASE STUDY

OFFENDER NOLAN WATSON, 37-YEARS OLD

In 2004, Nolan Watson was charged with five counts of Aggravated Criminal Sexual Assaults.

If Illinois required him to give a DNA sample during his 1999 arrest for crack cocaine, a DNA match could have been obtained with the DNA evidence recovered from his first rape, thereby identifying him as the offender and the subsequent 4 rapes would have been prevented.

----------*Timeline of Events*----------

*On May 12, 1989, Nolan Watson was **arrested** for felony possession of other controlled substance.*

*On November 14, 1990, Nolan Watson was **arrested** for felony possession of other control substance.*

*On August 6, 1991, Nolan Watson was **arrested** for possession of other controlled substance.*

*On July 8, 1999, Nolan Watson was **arrested** for felony possession of a controlled substance – crack. A missed opportunity to have his DNA sample entered into the system.*

THE FOLLOWING ARE 5 PREVENTABLE RAPES THAT WOULD NOT HAVE OCCURRED HAD WATSON'S DNA SAMPLE BEEN TAKEN ON JULY 8, 1999.

On October 27, 1999, a 48-year old **woman was raped**. The Offender took off the victim's clothes and raped her.

On December 14, 1999, an 18-year old **woman was raped**. As the victim was standing at the bus stop, the offender walked up and pointed a gun to the side of the victim's head and said "Get in the car Bitch I got a gun." Offender drove victim to an alley and raped her.

On September 30, 2001, a 19-year old **woman was raped**. The 19-year old was sitting on a curb when the Offender asked her what she was doing. As she got up to leave, the Offender stuck a knife in her back, causing a puncture and directed her by the garage where he raped her. After the offender fled, the 19-year old victim stopped a stranger for help. She was treated at the hospital for rape.

DNA CASE STUDY

CONTINUATION: OFFENDER NOLAN WATSON, 37-YEARS OLD

On October 7, 2001, a 31-year old woman **was raped**. As the victim was at the corner of 79th & Ashland selling cds, the offender pulled up and told her to get into the car. The offender drove to an alley, punched the victim in the face, causing her right eye to swell. As the offender took off the victim's clothes as the victim stated, "Don't do this" and the offender struck the victim in the face again. The Offender raped the victim.

*On July 17, 2002, Nolan Watson **was arrested** for felony financial identity theft.*

On September 18 2002, a 27-year old woman **was raped**. As the victim was walking home, as the offender approached her he began asking her questions. The victim continued walking and the offender punched her in the face and dragged her into the alley and raped her.

On July 25, 2003, Nolan Watson was arrested for felony retail theft.

DOCUMENT ENTITLED "HIGHLIGHTS OF THE FOLEY SEX OFFENDER REGISTRATION AND NOTIFICATION ACT"

Highlights of the Foley Sex Offender Registration and Notification Act

I. NEW CHANGES TO CURRENT LAW: GENERAL

- *Full Integration*: The bill fully integrates Megan's Law and the "Lychner Amendments" into the Wetterling Act.

- *Expands Covered Offenses against Children*: The bill adds the "use of the Internet to facilitate or commit a crime against a minor" as one that could trigger registration.

- *Tribal Lands*: For the first time, the sex offender law will cover "federally recognized tribal lands."

II. NEW REQUIREMENTS FOR SEX OFFENDERS

- *Prior to Release*: A sex offender will have to register prior to release from prison or supervised release. Current law requires registration after release.

- *Semi-annual, In-Person Registration*: Requires that a sex offender register/update their registry in person at an office designated by the state twice a year (every three months for a sexually violent predator) – not just once.

- *Increase of Duration for Periodic Registration*: The duration to register for a first-time sex offender increases from 10 years to 20 years and for second offenders and sexually violent offenders for their lifetime.

- *Shortened Time to Comply*: Any change of status (change of address, employment, etc) must be made three days after the change occurs – not ten days.

- *Social Security Number*: Social Security numbers will now be a required piece of information that sex offenders must supply to the state registries. However, that information will not be released on state sex offender notification websites.

- *Fingerprints and Photographs*: The bill adds a mandatory annual update (current law is just once) to the taking of a sex offender's photograph and fingerprints. The state is required to maintain that information as part of their registry.

- *Tracking Devices*: Requires a first-time sex offender to wear a tracking device for the duration of their supervised release and requires a second-time offender to wear the device for their lifetime (sexually violent predators must wear a device for their lifetime). The type of device will be determined by the U.S. Attorney General after consulting with the states.

- *New Notification Requirements for those Attending Educational Institutions*: Requires an individual to notify police when they enroll or attend (current law is just attend) high schools, vocational/technical institutions or higher education institutions.

III. NEW STATE REQUIREMENTS

- *Searchable Statewide Sex Offender Registry*: Requires the states, not local governments, to maintain a multi-field, searchable sex offender registry.

- *Tracking of Persons in Prison*: provides funding for law enforcement to purchase programs – like JusticeXchange -- to identify individuals currently in jail.

IV. NEW FEDERAL REQUIREMENTS

- *Immediate Electronic Notification to States of a Sex Offender's Intent to Relocate*: Requires the Attorney General, through the National Sex Offender Registry (NSOR), to send out an immediate electronic notification of a sex offender's intent to move to a new domicile state once the Attorney General is notified by the current domiciliary state of the sex offender's intent to relocate.

- *Sex Offender DNA Database*: Establishes a new federally maintained sex offender DNA database to be used by law enforcement and prosecutors.

- *Model Sex Offender Registry*: Requires the U.S. Attorney General, in consultation with the states, to develop a sex offender registry that can be used by those states that currently do not have such a registry or prefer a better system.

- *Strict Liability Crime*: Makes failing to comply with the law – whether or not the sex offender had any intent to do so – a crime.

- *Felony*: Makes failing to register or updating registry information a federal felony.

- *Taxpayer and Social Security Information*: Allows for the release of taxpayer and Social Security information to law enforcement, when necessary, in trying to locate the sex offender or verify information supplied by the sex offender.

- *Immigration Provision*: makes failing to provide registration information as a sex offender a deportable offense.

- *Releasing Numbers of Sex Offenders to the Public*: Requires the U.S. Attorney General to poll states every three months to assess the total number of sex offenders in their registry and release that information to the public.

- *Study*: Requires the U.S. Attorney General to examine ways for law enforcement to do a better job of actively notifying communities when a sex offender moves into their neighborhood.

V. COMPLIANCE

- *Bonus Payments*: provides bonus payments to states for complying with this act sooner than the three-year timeline set out in this measure.

- *Penalties*: provides a 10% reduction in justice assistance grants and certain reductions of Sex Offender Management Assistance Program monies for those states that do not comply.

LIST OF INDIVIDUALS AND ORGANIZATIONS SUPPORTING H.R. 2423, THE "SEX OFFENDER REGISTRATION AND NOTIFICATION ACT"

Individuals and Victim's Parents

Maureen Kanka, Megan Kanka's mother
Ed Smart, Elizabeth Smart's father
Linda Walker, Dru Sjodin's mother
John Walsh, America's Most Wanted
Patty Wetterling, Jacob Wetterling's mother

Organizations

Boys and Girls Clubs of America
Federal Law Enforcement Officers Association
Fraternal Order of Police
National Center for Missing and Exploited Children
National Children's Alliance
National District Attorneys Association

LETTER FROM THE HONORABLE WILLIAM MOSCHELLA, ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGISLATIVE AFFAIRS, U.S. DEPARTMENT OF JUSTICE, TO THE HONORABLE ORRIN G. HATCH

U.S. Department of Justice

Office of Legislative Affairs

Washington, D.C. 20530

The Honorable Orrin G. Hatch
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This letter presents the views of the Department of Justice and the Administration concerning S. 1700, the "Advancing Justice Through DNA Technology Act of 2003." The Department of Justice strongly supports the enactment of titles I and II of this bill, with certain modifications as discussed in this letter. The Department of Justice opposes the enactment of most provisions of title III as currently drafted.[1] Before turning to the specifics of the bill, it should be noted that there is another version of the proposed "Advancing Justice Through DNA Technology Act of 2003," which has been separately introduced as S. 1828. S. 1828 incorporates all of the beneficial provisions appearing in titles I and II of S. 1700, but not the problematic provisions of title III.

We have stated our views and recommendations with respect to most matters addressed in S. 1700 in earlier testimony. *See* Statement of Sarah V. Hart, Director, National Institute of Justice, before the House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security regarding the President's DNA Initiative: Advancing Justice Through DNA Technology (July 17, 2003) (hereafter, "DNA Testimony"). In brief, titles I and II of the bill consist primarily of provisions based on our recommendations as follows:

(1) Provisions to authorize and implement the President's DNA initiative – a five-year initiative proposed by the President, totaling more than $1 billion, in order to fully realize the potential of the DNA technology in the criminal justice process to bring the guilty to justice and to protect the innocent. The critical funding needs addressed in the President's initiative are: (i) assisting State and local jurisdictions to clear their backlogs of unanalyzed crime scene DNA samples (such as rape kits) and offender DNA samples, and to increase

---

[1]A bill passed by the House of Representatives, H.R. 3214, is in most respects identical to S. 1700. Hence, the views expressed in this letter are generally applicable to H.R. 3214 as well as S. 1700.

State and local forensic laboratory capacity for DNA analysis, (ii) DNA-related training for criminal justice and medical personnel, (iii) DNA research and development, (iv) use of the DNA technology to identify missing persons and unidentified human remains, and (v) defraying State costs for postconviction DNA testing.[2] We support the enactment of the provisions of S. 1700 addressing these critical funding needs with authorization of funding that conforms to the funding levels requested for the President's DNA initiative in the 2005 Budget.

(2) Provisions to implement related Federal law reforms to strengthen the DNA identification system, including reforms to: (i) authorize DNA sample collection from all Federal felons, (ii) allow submitting jurisdictions to include the DNA profiles of all persons from whom they lawfully collect DNA samples in the national DNA index, and (iii) toll any otherwise applicable statute of limitations in cases in which the perpetrator is identified through DNA matching.

See generally DNA Testimony, *supra*, at 1-20.

In some respects, however, the provisions in titles I and II fall short of the measures proposed in the President's initiative and related law reforms. The specific features in these titles requiring correction include the following:

- Under the proposed amendments to 42 U.S.C. 14132 in section 103(a), the proposed expansion of the national DNA index is subject to an unjustified proviso that would exclude DNA profiles submitted for "elimination purposes" from the Combined DNA Index System (CODIS). This restriction is regressive in relation to existing law – prohibiting States from databasing DNA profiles they are now allowed to include in CODIS – and should be stricken.

- Section 104, which generally tolls the statute of limitations in felony cases in which the perpetrator is identified through DNA testing, excludes cases under the sexual abuse chapter of the criminal code (chapter 109A). The exclusion of chapter 109A offenses should be stricken, because it would result in uniquely restrictive statute of limitations rules for the prosecution of rapes and other sexual assaults under chapter 109A.

- Section 106, relating to outsourcing of DNA analysis to private laboratories, section 203, concerning DNA-related training of criminal justice personnel, section 205, concerning DNA research and development, and section 207, relating to DNA identification of missing persons, require technical corrections in order to achieve their intended objectives.

---

[2]One element of the President's initiative – funding to defray costs of State postconviction DNA testing – appears in title III of this bill (section 312), rather than titles I-II.

In contrast to titles I and II, which mainly encompass positive measures based on our recommendations, title III of the bill raises many concerns. It includes provisions that could effectively nullify major elements of the President's DNA initiative through unwarranted funding eligibility conditions (section 313), provisions relating to postconviction DNA testing that fail to provide adequate safeguards against abusive litigation and abuse of crime victims (section 311), and provisions that could seriously interfere with the future ability of States to impose and carry out capital punishment (sections 321-26). *See generally* DNA Testimony, *supra*, at 3-5, 20-27. With respect to section 311, we support establishing postconviction DNA testing standards and procedures for Federal cases, but these provisions must strike a reasonable balance in order to clear the actually innocent while providing adequate safeguards against abuse of the judicial system and abuse of crime victims by the actually guilty. We support the provision of title III that authorizes funding to help States defray the costs of postconviction DNA testing (section 312), which is an element of the President's DNA initiative. *See* DNA Testimony, *supra*, at 2-3, 10-11, 21-22.

Our detailed comments on the bill are as follows:

TITLE I – RAPE KITS AND DNA EVIDENCE BACKLOG ELIMINATION ACT OF 2003; TITLE II – DNA SEXUAL ASSAULT JUSTICE ACT OF 2003

Section 103 – Expansion of Combined DNA Index System

Section 103 includes important reforms to expand the information contained in the DNA identification system, and thereby enhance its ability to solve crimes. One of these reforms would generally expand the national DNA index to allow inclusion of DNA profiles from all persons whose DNA samples are collected under applicable legal authorities (but subject to an unjustified exception discussed below). Currently, statutory language in 42 U.S.C. 14132(a)(1) that refers only to "persons convicted of crimes" excludes DNA profiles from other categories of persons from whom States may collect DNA samples, such as adjudicated juvenile delinquents, arrestees, insanity acquittees, and mentally disordered offenders who are civilly committed as sexually dangerous persons. Another reform in section 103 would expand the DNA sample collection categories for Federal offenders to include all felons, an important reform that has already been enacted in most States. *See* DNA Testimony, *supra*, at 2-3, 13-14.

However, the language in section 103(a) to expand the national DNA index beyond convicted offender profiles (amendment to 42 U.S.C. 14132(a)(1)) is subject to the following proviso: "provided that DNA profiles from DNA samples that are voluntarily submitted solely for elimination purposes shall not be included in the Combined DNA Index System."

In terms of formulation, the proviso in section 103(a) may reflect some confusion between the national DNA index – a set of databases maintained by the FBI – and the Combined DNA Index System (CODIS) – which usually refers to the full network of local, State, and Federal

DNA databases and the means of exchanging information among them. Perhaps the intent is to exclude DNA profiles in the specified category only from the national index, but not also from the State and local databases that are part of CODIS, in which they may now be included.

Be that as it may, Federal law should not require the exclusion of such DNA profiles from either the national index or more broadly from CODIS, but should instead allow the States to make their own decisions about the inclusion of such profiles. DNA samples provided by convicts for purposes of postconviction DNA testing applications are "voluntarily submitted solely for elimination purposes" from the convict's point of view. But many State postconviction DNA testing provisions provide for the entry of resulting DNA profiles into DNA databases in these circumstances, as does the proposed postconviction DNA testing remedy for Federal cases in section 311 of this bill (see proposed 18 U.S.C. 3600(e)(2) in section 311). More generally, a person suspected in a rape case, for example, may offer to provide DNA to eliminate himself as a suspect, though he is under no legal obligation to do so. States are now free to make their own decisions in such cases as to whether they will enter the resulting DNA profiles into their State DNA databases. There is no legitimate reason to have a rule that would prevent them from doing so in the future if they wish to participate in CODIS, or that would prevent them from entering such profiles into the national DNA index, which should provide a comprehensive compilation of the information in the State DNA databases.

Section 103 of S. 1700 also falls short of fully accommodating State DNA profiles in the national index by failing to strike the existing expungement provisions in 42 U.S.C. 14132(d). These expungement provisions require removal of a DNA profile from the national index in case of the overturning of the conviction on which the profile's submission to the national index was based.

However, there is no requirement of expungement in the analogous context of fingerprints. States usually do not expunge fingerprint records obtained in connection with a criminal prosecution if the defendant is not convicted, or if the conviction is ultimately overturned, nor are they required to remove fingerprint records in such cases from the national (fingerprint-based) criminal history records systems. There is no reason to have a contrary Federal policy mandating expungement for DNA information. If the person whose DNA it is does not commit other crimes, then the information simply remains in a secure database and there is no adverse effect on his life. But if he commits a murder, rape, or other serious crime, and DNA matching can identify him as the perpetrator, then it is good that the information was retained.

Nor are there any legitimate privacy concerns that require the retention of these expungement provisions. The DNA identification system is already subject to strict privacy rules, which generally limit the use of DNA samples and DNA profiles in the system to law enforcement identification purposes. *See* 42 U.S.C. 14132(b)-(c). Moreover, the DNA profiles that are maintained in the national index relate to 13 DNA sites that do not control any traits or characteristics of individuals. Hence, the databased information cannot be used to discern, for

example, anything about an individual's genetic illnesses, disorders, or dispositions. Rather, by design, the information the system retains in the databased DNA profiles is the equivalent of a "genetic fingerprint" that uniquely identifies an individual, but does not disclose other facts about him.

As with fingerprints, States should be free to make their own decisions concerning the circumstances under which the DNA profiles they have generated will be left in, or removed from, the national index. Striking 42 U.S.C. 14132(d) would have the salutary effect of enabling the States to effectuate their own policies regarding expungement.

We would note that section 103 of S. 1828 contains correctly formulated provisions regarding the expansion of information in the DNA identification system that take account of the considerations discussed above. The corresponding provisions of section 103 of S. 1828 should accordingly be enacted in lieu of those now appearing in section 103 of S. 1700.

Section 104 – Tolling of Statute of Limitations

This section generally tolls the statute of limitations in felony cases in which the defendant is implicated in the offense through DNA testing. This is an important reform that ensures that a person who has committed a serious crime, and who is eventually identified as the perpetrator through matching of DNA derived from crime scene evidence to his DNA profile, will not become effectively immune from prosecution because of the expiration of a restrictive limitation period. (The limitation period for prosecution of most Federal offenses is five years, as provided in 18 U.S.C. 3282.)

However, as formulated in S. 1700, the utility of this reform is limited by language in section 104 that states that the tolling based on DNA identification applies to all felonies, "except for a felony offense under chapter 109A." This proviso would make the benefits of the statute of limitations reform unavailable in prosecutions for offenses under chapter 109A of title 18, which defines "sexual abuse" offenses. The proviso should be stricken because it would work against the effective prosecution of rapes and other serious sexual assaults under chapter 109A, and would anomalously make the statute of limitation rules for such offenses more restrictive than those for all other Federal offenses in cases involving DNA identification.[3]

---

[3]The possibility of filing "John Doe" indictments identifying the defendant by DNA profile in cases under chapter 109A, as authorized by 18 U.S.C. 3282(b), is not an adequate substitute for the applicability of the statute of limitations reform proposed in section 104, for reasons we have explained in earlier communications to Congress. *See* DNA Testimony, *supra*, at 14-17, 19-20; Letter of Assistant Attorney General Daniel J. Bryant to Honorable Joseph R. Biden, Jr., concerning S. 2513, at 7, 10-12 (Nov. 25, 2002).

A correct formulation of the statute of limitations reform, which does not exclude chapter 109A offenses, appears in section 104 of S. 1828.

Section 106 – Ensuring Private Laboratory Assistance in Eliminating DNA Backlog

This section amends provisions that allow grants to States under the DNA backlog elimination program to be made in the form of vouchers for laboratory services, that are redeemable at approved private laboratories that receive direct payment from the Attorney General for providing the services. It would be advisable to include more explicit language in this section that makes it clear that both non-profit and for-profit laboratories may be approved for this purpose, and that the transactions authorized in this context are allowed even if the laboratory makes a reasonable profit for the services. This will ensure that the authorization to outsource DNA analysis to private laboratories under these provisions will not be trumped by general provisions that limit the use of grant funds in transactions that generate a profit for the recipient. The formulation of these provisions in section 106 of S. 1828 provides suitable language for this purpose.

Section 106 of S. 1700 includes limiting language at the end of subparagraph (C) in proposed 42 U.S.C. 14135(d)(3) that allows authorized funding to be used to pay private laboratories only "for the collection of DNA samples or DNA analysis of samples from casework." This limiting language is incorrect because it would not permit payment to private laboratories for analysis of convicted offender DNA samples – a type of analysis for which outsourcing to private laboratories is commonly used under the backlog elimination program. The limiting language in subparagraph (C) is also inconsistent with subparagraph (A) in proposed 42 U.S.C. 14135(d)(3), which recognizes that grants for convicted offender DNA sample analysis may properly be made in the form of vouchers for private laboratory services by cross-referencing the authorization of such analysis in paragraph (1) of 42 U.S.C. 14135(a). For this reason as well, the version of these provisions in section 106 of S. 1828, which does not include the incorrect limiting language, should be used instead of the version now appearing in section 106 of S. 1700.

Section 203 – DNA Training and Education for Law Enforcement, Correctional Personnel, and Court Officers

This section authorizes funding for DNA-related training, technical assistance, education, and information for law enforcement personnel, court officers, forensic science professionals, and corrections personnel. The language in this section that limits potential grantees to "States and units of local government" should be stricken, since appropriate grantees under this element of the President's DNA initiative include entities other than State and local governments, such as prosecutors' organizations, bar associations, and judicial conferences. *See Advancing Justice Through DNA Technology*, at 8-10 (March 2003) (Presidential Document). The correct formulation of this grant funding authorization, which is not so limited, appears in section 203 of S. 1828.

Section 205 – DNA Research and Development

This section authorizes funding for DNA research and development and DNA demonstration projects, and provides for the establishment of a National Forensic Science Commission. The language in subsection (a) that limits potential grantees for research and development funding to "States and units of local government" should be stricken, since appropriate recipients of grant funding under this element of the President's DNA initiative include researchers at private institutions. The correct formulation of these authorizations appears in section 205 of S. 1828.

Section 207 – DNA Identification of Missing Persons

This section authorizes grants to promote the use of DNA technology to identify missing persons and unidentified human remains. The language in this section that limits potential grantees to "States and units of local government" should be stricken, since appropriate grantees under this element of the President's DNA initiative may include entities other than State and local governments (such as coroner and medical examiner associations). The correct formulation appears in section 207 of S. 1828.

TITLE III – INNOCENCE PROTECTION ACT OF 2003

Section 313 – Incentive Grants to States to Ensure Consideration of Claims of Actual Innocence

Section 313 would make States, and entities that operate in those States, ineligible for funding in several critical areas under the President's DNA initiative, unless the States submit to federally prescribed postconviction DNA testing and evidence retention requirements.[4] Since most, if not all, States currently fail to satisfy these requirements – and will reasonably be reluctant to submit to them in the future, for reasons discussed below – the practical effect could be to nullify these parts of the President's initiative by making almost every one ineligible for them. The affected portions of the President's initiative are funding for DNA-related training of criminal justice personnel under section 203; funding for DNA research and development, DNA demonstration projects, and a National Forensic Science Commission under section 205; DNA

---

[4]This is evidently the intent in section 313, though its language does not fully mesh with the cross-referenced sections to which the funding eligibility conditions would apply – 203, 205, 207, and 312 – because of inconsistencies in drafting. Unlike section 313, none of the cross-referenced provisions expressly refer to potential grantees as "eligible entities"; most refer to grants to State and local governments or to States. It is unclear how section 313's reservation of "all funds" under the cross-referenced sections for grants to eligible entities in compliant States could be applied at all in relation to section 203(c), relating to a National Forensic Science Commission, whose funding would not be provided through grants.

identification of missing persons under section 207; and funding to defray costs of postconviction DNA testing under section 312.

We have previously advised that "[t]he appropriate approach to this issue is that proposed in the President's DNA initiative," under which the availability of DNA funding is not conditioned on States' submission to extraneous Federal policy prescriptions. DNA Testimony, *supra*, at 22. We advised specifically that States "should not be subject to new Federal mandates concerning the specific standards and procedures" for postconviction DNA testing, and "certainly should not be denied Federal DNA funding assistance because they make their own reasonable judgments on these issues." *Id.*; *see id.* at 4, 21-22. In other words, "[w]e do not believe that the Federal government should attempt to prescribe a one-size-fits-all set of postconviction testing standards and procedures for the States." *Id.* at 4. By undermining the broader program to strengthen the DNA identification system, such funding conditions would work against the effective use of DNA technology to protect and exonerate innocent persons and would work against using the technology to bring the guilty to justice. *See id.* at 3-4, 21-22.

In contrast, section 313 in part makes States, and entities operating within those States, ineligible for funding unless they adopt postconviction DNA testing and evidence retention requirements that are comparable to those proposed in section 311 of the bill for Federal cases. *See* section 313(2)(A)(ii) and (B)(ii). As discussed below in relation to section 311, however, the requirements proposed in that section are one-sided provisions that do not provide adequate safeguards against abuse of the judicial system and abuse of crime victims by the actually guilty. While most States have enacted postconviction DNA testing statutes,[5] these statutes typically incorporate reasonable standards and limitations that do not appear in section 311 of the bill. For example, most State statutes do not create a right to postconviction DNA testing for convicts who failed to seek available DNA testing before trial. Moreover, relatively few States have global requirements comparable to those proposed in section 311 to retain biological evidence beyond the point of conviction, merely on the theoretical possibility that some convict in some such case *might* at some later point wish to seek postconviction DNA testing of the evidence.

Hence, the funding eligibility conditions in section 313 pose a dilemma for the states: Either (1) they will refuse to submit to these conditions, become ineligible for funding, and forego important benefits for the public offered through the President's DNA initiative, or (2) they will submit to these conditions to obtain the funding, but will then harm crime victims and the public in other ways through the adoption of postconviction DNA testing provisions that are contrary to the general judgment of the States about how such provisions should be formulated. This is a dilemma that should not be posed.

Section 313 attempts to moderate these consequences in some measure by including provisions to "grandfather" States that already have postconviction DNA provisions, excluding

---

[5]*See* S. Rep. No. 315, 107th Cong., 2d Sess. 187-207 (2002).

them from the requirement to adopt provisions like those proposed in section 311. *See* section 313(2)(A)(i) and (B)(i). However, this attempt is not successful. The "grandfather" provision in section 313(2)(A)(i) with respect to existing State postconviction DNA testing provisions is that the State must:

> provide post-conviction DNA testing of specified evidence . . . under a State statute enacted before the date of enactment of this Act (or extended or renewed after such date), to any person convicted after trial and under a sentence of imprisonment or death for a State offense, in a manner that ensures a meaningful process for resolving a claim of actual innocence.

Most existing State postconviction DNA testing statutes do not satisfy this condition, because most State statutes do not provide any process for resolving claims of actual innocence through postconviction DNA testing for some categories of imprisoned offenders who were convicted after trial. As noted above, for example, most existing State provisions do not provide postconviction DNA testing for convicts who failed to take advantage of available DNA testing before conviction. Likewise, it is unlikely that many States would be deemed to satisfy the "grandfather" provision relating to postconviction biological evidence retention in section 313(2)(B)(i).

Hence, States that already have postconviction DNA testing provisions – as well as those that do not – are unlikely to satisfy the funding eligibility conditions of section 313. Moreover, the two-tiered system in section 313 – with different funding eligibility conditions for States that now have postconviction DNA provisions and for States that may adopt such provisions hereafter – is indefensible in principle. If it is legitimate for States that already have postconviction DNA provisions to adopt approaches that differ from that proposed for Federal cases in section 311 of the bill, then it is equally legitimate for States that may adopt postconviction DNA provisions in the future to do so.

Finally, most of the elements of the President's initiative that section 313 of the bill targets are by their nature unsuited to the use that section 313 attempts to make of them. Of these four provisions – sections 203, 205, 207, and 312 – three have nothing to do with postconviction DNA testing. Section 203 is funding for DNA-related training and education for law enforcement, correctional personnel, and court officers ($12.5 million annually); section 205 is funding for DNA research and development, DNA demonstration projects, and a National Forensic Science Commission ($15 million annually); and section 207 is funding for DNA identification of missing persons ($2 million annually).

The application of section 313 in relation to these provisions has anomalous and repellent consequences. For example:

- Funding under section 203 for DNA-related training of criminal justice personnel is supposed to be available for entities whose operations may not be specific to any particular State, such as grants to national judicial conferences for judicial training, or grants to national bar associations for defense lawyer training. *See Advancing Justice Through DNA Technology*, at 9 (March 2003) (Presidential Document). Section 313 would make these intended and appropriate recipients ineligible for funding under section 203 either on the ground that there is no single State in which they operate – contravening section 313's requirement that "the State in which the eligible entity operates" must satisfy the section's conditions – or alternatively because they are deemed to operate in all States, some of which will not satisfy section 313's conditions.

- Section 205 authorizes grant funding for research to improve forensic DNA technology. Section 313 would prohibit funding of researchers who are capable of, and best-suited to carry out, research for this purpose, solely on the ground that the institutions they work at happen to be located in States that do not comply with section 313's mandates. The fact that the researchers are not responsible for the State's policies and are in no position to change them would be irrelevant under section 313.

- Section 207 offers hope to the families of missing persons that they will learn the fate of their loved ones, through the use of DNA technology. Section 313 would limit the effectiveness of this program by denying the missing persons DNA funding to entities in States that do not satisfy the mandates of that section.

The absence of these unsound provisions in S. 1828 – which does not encumber the funding proposals of the President's DNA initiative with such conditions – is a cogent reason for enacting the relevant provisions of S. 1828 in lieu of those in S. 1700 as currently formulated.

Section 311 – Federal Postconviction DNA Testing

This section includes provisions for postconviction DNA testing in Federal cases, and global requirements to retain biological evidence in Federal criminal cases following conviction (even where the defense had no interest in seeking DNA testing of the evidence before conviction). These provisions would open the door wide for abusive prisoner litigation and pointless retraumatization of crime victims, and would impose burdensome evidence retention requirements on the Government. Nor would the harm necessarily be limited to Federal cases. As discussed above, section 313 of the bill attempts to impose similar requirements on the States, and makes States ineligible for funding under various parts of the President's DNA initiative if they fail to submit to these new Federal requirements.

The inappropriateness of attempting to induce the States to adopt such standards – by a mechanism that seriously jeopardizes major elements of the President's DNA initiative – has been noted in relation to section 313. With respect to Federal cases, in which the standards would be

imposed directly, section 311 fails to strike a reasonable balance. The advocacy for open-ended DNA provisions like those proposed in section 311 has not involved imputations against the operation of the Federal jurisdiction's justice system. There is no reason to believe that there have been, or will be, miscarriages of justice in Federal cases that require for their correction postconviction DNA provisions of the extraordinary breadth proposed in section 311.

Our testimony on the President's DNA initiative explained that the need for special postconviction DNA testing provisions results from the historically recent emergence of the DNA technology, and the resulting ability to generate new evidence in a large class of old cases that predated its availability. *See* DNA Testimony, *supra*, at 2-4, 10-11, 17, 21-22. Hence, the availability of postconviction DNA testing should be limited to "convicts who could not have obtained such testing at the time of their trials." *Id.* at 3. We emphasized that the formulation of postconviction DNA testing provisions must strike a reasonable balance, furthering their legitimate purpose of clearing the actually innocent, while also "providing adequate safeguards against abuse of the judicial system and further abuse of crime victims by the actually guilty." *Id.* at 4; *see id.* at 10-11, 17, 21-22.

In the absence of such balance, the creation of a new postconviction remedy can readily result in abuse by convicted criminals who wish to game the system or retaliate against the victims of their crimes. The recent experience of a local jurisdiction is instructive concerning the resulting human costs:

> Twice last month, DNA tests at the police crime lab in St. Louis confirmed the guilt of convicted rapists. Two other tests, last year and in 2001, also showed the right men were behind bars for brutal rapes committed a decade or more earlier.
>
> [The St. Louis circuit attorney's] staff spent scores of hours and thousands of dollars on those tests. She personally counseled shaking, sobbing victims who were distraught to learn that their traumas were being aired again.
>
> One victim, she said, became suicidal and then vanished; her family has not heard from her for months. Another, a deaf elderly woman, grew so despondent that her son has not been able to tell her the results of the DNA tests. Every time he raises the issue, she squeezes her eyes shut so that she will not be able to read his lips.
>
> "She finally seemed to have some peace about the rape, and now she's gone back to being angry," the woman's son said.
>
> DNA tests confirmed that she was raped by Kenneth Charron in 1985, when she was 59. To get that confirmation, however, investigators had to collect a swab of saliva from her so that they could analyze her DNA. They also had to inquire

> about her sexual past, so they could be sure the semen found in her home was not that of a consensual partner.
>
> The questioning sent the woman into such depression that she's now on medication. "None of this needed to happen," her son said . . . .
>
> The Innocence Project screens inmate petitions, selecting only the cases that seem to offer the best shot at exoneration. Still, [an Innocence Project attorney] said, 60% of the inmates represented . . . prove to be guilty when the results come in.[6]

The postconviction DNA testing provisions in section 311 of S. 1700 are heedless of these human costs, and inconsistent with the need for reasonable balance and boundaries in postconviction litigation. Before discussing these provisions at a detailed level, it will be helpful to consider what they would mean in the context of an actual recent case, involving perhaps the most prolific serial killer in the history of the United States. On November 6, 2003, Gary Leon Ridgway, the "Green River Killer," pleaded guilty to killing 48 women. The case had been solved in part through the matching of Ridgway's DNA to DNA in semen found in the bodies of a number of the victims. *See, e.g.,* "In Plea Deal, Green River Killer Admits He Murdered 48 Women," Los Angeles Times, November 6, 2003; "Green River Suspect Admits to 48 Murders," Washington Post, November 6, 2003.

Suppose that an offender under the exact facts of this case, following his conviction, claimed that he was actually innocent of some or all of the scores of murders to which he had pleaded guilty, and sought postconviction DNA testing to establish that alleged fact. Suppose further that he did not only seek postconviction DNA testing on one occasion, but that he did so repeatedly over a period of years and decades following his conviction, each time seeking DNA testing of additional or slightly different pieces of evidence in the case.

As a matter of basic common sense, one would suppose that the postconviction DNA testing requests of an offender like Ridgway would be dismissed out of hand for a variety of cogent reasons. The reasons would include: (i) the offender had admitted his guilt by pleading guilty, (ii) there had already been DNA testing of evidence in the case prior to conviction, (iii) to the extent that the offender might have wished to have additional DNA testing, he had the opportunity to seek such testing before conviction, but failed to do so, (iv) given the quantity and quality of the known evidence in the case, it would be incredible to assume that postconviction DNA testing would produce exonerative results and prove that he had been wrongly identified as the perpetrator, and (v) even if there were some point in affording postconviction DNA testing in the case, there would be no reason to allow applications for such testing repeatedly and without any limitation of time.

---

[6]Los Angeles Times, "DNA Tests for Inmates Debated," A10 (Feb. 10, 2003).

However, no such reasonable limitation is found in the postconviction DNA testing standards of S. 1700. Rather, offenders would be allowed to apply for postconviction DNA testing even if they have pleaded guilty, and even if they had failed to seek available DNA testing before trial. Nor would there be any significant limitation on seeking such testing, and doing so repeatedly, based on the fact that there had been earlier DNA testing applications or earlier actual DNA testing in the case, so long as the convict sought testing of slightly different evidence on successive applications.

Moreover, in deciding whether to grant testing based on such applications, section 311 would require the court to assume in advance that the test results will be favorable to the applicant (exclusionary), regardless of how fantastic such an assumption is under the known facts of the case. And finally, under the provisions of section 311, the government would be required to retain the biological evidence in the case beyond the point of conviction, merely on the theoretical possibility that an offender like Ridgway might at some later point wish to seek postconviction DNA testing, notwithstanding the fact that he had shown no interest in seeking such testing before conviction, and notwithstanding the existence of a host of reasons why such an offender should not be entitled to postconviction DNA testing if he did later apply for such testing.

The legitimate purpose of postconviction DNA testing is to afford persons who have been mistakenly convicted for crimes they did not commit – but could not establish their innocence at the time of their trials because of the unavailability of DNA testing technology – a reasonable opportunity to prove their innocence now that this technology is available. The purpose is not to enable killers, rapists, and other criminals to re-open the wounds of crime victims and their survivors years and decades after the normal conclusion of criminal proceedings, and to squander judicial, prosecutorial, investigative, and forensic resources in dealing with specious claims of innocence and repetitive applications by criminals who have been validly convicted of their crimes.

The standards of section 311 of S. 1700, as indicated above, are not tailored to further the legitimate objectives of postconviction DNA testing for the benefit of the actually innocent, and fail to provide appropriate protection against the abuse of crime victims and the justice system by the actually guilty. We note that S. 1828, in contrast to S. 1700, does not include these problematic provisions.

The remainder of this part discusses in greater detail the most problematic features of the standards for postconviction DNA testing and evidence retention in section 311 of S. 1700:

1. <u>No requirement of unavailability of DNA testing before conviction</u>

In contrast to most State postconviction DNA testing provisions, there is no requirement in section 311 of S. 1700 that the DNA testing requested in a postconviction application was unavailable at the time of trial. Hence, convicts who failed to seek available DNA testing before

trial – which has been available in a technologically mature form in Federal cases since the mid-1990's – would nevertheless be able to turn around and seek it for the first time after conviction. This is not allowed for other types of evidence, and it would be impossible to have an orderly system of criminal procedure if it were. The general rule is that a convict cannot seek a new trial on the basis of evidence that is brought forward for the first time after trial, unless the evidence is "newly discovered" – which means that it could not have been obtained or produced through due diligence at the original trial. There is no reason to have a contrary rule for DNA evidence.

The only aspect of section 311 that even touches on this issue is provisions (proposed 18 U.S.C. 3600(a)(3)) indicating that a defendant who "knowingly and voluntarily waive[s] the right to request DNA testing of . . . evidence in a court proceeding after" the enactment of the legislation, does not thereafter have a right to seek postconviction DNA testing of the same evidence. However, since no special waiver of this sort is required as the predicate for foreclosing postconviction litigation involving other forms of evidence or forensic testing that are available before trial – e.g., failure to seek available testing of evidence for fingerprints, ballistics testing, etc. – there is no basis for imposing such a special requirement as the necessary predicate for foreclosing postconviction DNA testing applications. Moreover, the bill's special "knowing and voluntary waiver" requirement regarding DNA testing does not offset its omission of a requirement of unavailability of DNA testing before trial because: (i) the bill requires a waiver coming after the enactment of the legislation, and hence does not help with the enormous class of cases that predate the enactment of the legislation, (ii) even in relation to cases arising after the enactment of the legislation, it provides no procedure for defendants to waive DNA testing before trial, nor is there any apparent reason why they would be motivated to make such a waiver, and (iii) if a formal offer-and-waiver procedure were established for pretrial DNA testing, it could entail substantial systemic costs, in the form of increased requests for such testing by defense counsel for dilatory purposes.

2. <u>No requirement of any realistic likelihood that testing will be exonerative</u>

There is no requirement under section 311 that a convict show any realistic likelihood that the requested DNA testing will exonerate him, before testing is ordered. Hence, criminal cases could be reopened, and victims retraumatized years or decades after the normal conclusion of criminal proceedings, even if there is no reason to believe that the testing will serve any legitimate purpose.

The bill does require a showing that the requested testing "assuming the DNA test result excludes the applicant, would raise a reasonable probability that the applicant did not commit the offense" (proposed 18 U.S.C. 3600(a)(8)(B)). However, this entitles a convict to postconviction testing merely on a theoretical possibility that the results may be exclusionary and then have some exculpatory tendency, even if there is no realistic likelihood that the results will actually be exclusionary. A convict can always allege a purely theoretical possibility that DNA testing will

turn up the DNA of some other person who is the actual perpetrator, and hence will exclude and exonerate him, no matter how fantastic that outcome is under the known facts of the case.

3. No requirement of conviction after trial

In contrast to most State postconviction DNA testing provisions, section 311 does not limit the entitlement to postconviction DNA testing to convicts who were convicted after trial (as opposed to pleading guilty). This omission increases perhaps tenfold the number of prisoners who could seek postconviction DNA testing, because the vast majority of Federal defendants plead guilty.

Beyond the order-of-magnitude increase in the number of applications that could be expected, this amounts to an unjustified attack on the integrity of guilty pleas which, as noted, are the means by which most cases are resolved. Where convicts who pleaded guilty sought postconviction DNA testing years later, judges and prosecutors would have little ability to protect against fraudulent and abusive applications, not having even a trial transcript to help determine what has happened factually in the case. Defendants whose guilty pleas are not valid, e.g., because of ineffective assistance of counsel in connection with the plea, can get the plea withdrawn, and then can seek DNA testing as part of the pretrial proceedings in connection with the ensuing trial. So allowing postconviction DNA testing applications by convicts who pleaded guilty is not needed for such cases. Rather, it would only serve to enable defendants who voluntarily and validly acknowledged their guilt in open court, with the full assistance of counsel, to turn around years or decades later and to seek postconviction DNA testing in support of new claims of supposed innocence.

4. No meaningful limits on repetitive applications

Even where there is good reason to allow a convict to seek postconviction DNA testing, there is no reason to allow him to do so many times. It would seem fundamental that a defendant or convict should have to seek all DNA testing he may wish to have in an initial request or application, rather than doling out fragmentary requests for testing of one piece of evidence and then another, in successive proceedings.

But there is no rule against multiple postconviction DNA testing applications in section 311. Nor is there even any rule against postconviction DNA testing where there was actual DNA testing of evidence in the case before trial, or in a case where the convict had sought DNA testing before conviction, but the court denied the request as without merit.

There is a provision in section 311 (proposed 18 U.S.C. 3600(a)(3)(B)) that indicates that postconviction DNA testing is not authorized where "the specific evidence to be tested . . . was previously subjected to DNA testing," except in cases involving new technology. However, this only affects cases in which there was actually DNA testing in earlier proceedings –

it does not limit repetitive unsuccessful requests for DNA testing – and in any event, its limitation to "the specific evidence" for which testing is sought makes it largely meaningless. In a murder case, for example, there may be a large mass of crime scene material for which testing might be sought, on the theory that the DNA of the actual perpetrator may be found somewhere within it – blankets, sheets, and pillow cases from the bed where the victim's body was found, the clothing and skin of the victim's body, other articles in the vicinity of the victim's body, etc. There is no meaningful constraint on successive applications if an earlier application for testing of particular sites within, or pieces of, such a mass of evidence can be freely followed with later applications for testing of different sites or pieces.

5. Express authorization for challenges to sentences by the actually guilty

Section 311 does not limit postconviction testing applications to convicts who claim to be innocent of the crimes for which they presently stand convicted and for which they are currently imprisoned. Rather, it also explicitly authorizes postconviction DNA testing applications by criminals who challenge only earlier convictions that have been relied on for certain types of sentencing enhancement (proposed 18 U.S.C. 3600(a)(1)(B)).

In most cases, the earlier convictions in question will be *State* convictions. Allowing postconviction DNA testing requests to challenge these convictions in *Federal* court proceedings will inappropriately cast Federal judges and prosecutors in the role of having to determine the facts of, and effectively relitigate, State cases. In addition, if an earlier conviction that has been the basis for sentencing enhancement is overturned under the low threshold that S. 1700 sets for overturning criminal judgments on the basis of DNA test results (see discussion below), there is unlikely to be any possible means of retrying the convict for the offense underlying that earlier conviction. Hence, the normal result would be the automatic and irremediable elimination of the enhanced sentence, even if it remains highly probable that the defendant in fact committed the offense for which he was earlier convicted.

6. Low threshold for overturning convictions

Once DNA test results have been obtained, the question arises whether they raise sufficient doubt concerning the defendant's guilt to justify overturning the conviction. The answer provided to this question must take into account that postconviction DNA testing applications are likely to come many years or even decades after the normal conclusion of criminal proceedings, when the lapse of time has made retrial of the defendant difficult or impossible.

However, section 311 sets a low threshold for overturning criminal convictions on the basis of postconviction DNA testing. (*See* proposed 18 U.S.C. 3600(g)(2).) The DNA test results would not have to provide clear proof of innocence, or even make innocence more likely than not. Rather, the bill adopts the much lower threshold of Rule 33 of the Federal Rules of Criminal Procedure for new trials based on newly discovered evidence – a finding of reasonable

doubt as to guilt (and hence acquittal) would be more likely than not if the DNA results were figured in. The bill proposes this standard in the absence of anything like the critical limitations under Rule 33 that make a relatively low threshold appropriate – first, the requirement that motions be brought within three years, so that retrial has not been made difficult or impossible by the passage of time, and second, the requirement that the evidence on which a new trial motion is based be newly discovered, in the sense that it could not have been obtained by the defense through due diligence at the time of the trial. In contrast, applications for postconviction relief under the proposed postconviction DNA testing remedy in S. 1700 could come literally decades after the conviction, and could be brought by convicts who failed to seek DNA testing that was fully available to them at the time of trial.

7. Global evidence retention requirements

Section 311 has broad requirements (proposed 18 U.S.C. 3600A) that the government retain biological evidence in criminal cases beyond the point of conviction, to hold open the option of convicts to seek postconviction DNA testing of the evidence at some later point. This is *not* a requirement to retain evidence after a defendant has applied for DNA testing, pending the conclusion of litigation relating to the application. Rather, it is a global requirement to retain biological evidence in criminal cases generally, even where the defendant has not shown the slightest interest in having DNA testing of the evidence done prior to conviction.

Such provisions potentially impose large evidence retention burdens and costs on the government in an enormous class of criminal cases, which could not be justified by the purely theoretical possibility that some defendant in some such case might some day wish to seek postconviction DNA testing. If a requirement of this type were imposed, it should come with reasonable limitations so as not to require retention of evidence in cases where the defendant could not legitimately later claim an entitlement to postconviction DNA testing – including not requiring retention where the biological evidence has already been subjected to DNA testing; not requiring retention where the defendant failed to seek available DNA testing of the biological evidence before conviction; not requiring retention where the defense requested DNA testing before trial but the court found in pretrial proceedings that the testing request lacked merit; and not requiring retention of biological evidence in a case where the defendant did not dispute his guilt of the crime, but rather pleaded guilty.

No such limitations appear in proposed 18 U.S.C. 3600A in section 311. The few limitations on the evidence retention requirement that do appear in section 311 are meager and haphazard. For example:

- The bill does not require that biological evidence be retained where the applicant has already filed an application for postconviction DNA testing of the evidence under the new remedy, and the court denied the application. However, it would require that the evidence be retained where the defendant applied for DNA testing before trial, and the court denied

the application because it was without merit. It also would require that the evidence be retained even if it was actually subjected to DNA testing in earlier proceedings.

- The bill does not require that biological evidence be retained where the defendant knowingly and voluntarily waives the right to request DNA testing in a court proceeding conducted after the enactment of the bill. However, it would require that biological evidence be retained where the defendant knowingly and voluntarily waived the right to request DNA testing in a court proceeding conducted before the enactment of the bill, and in any event, such a "knowing and voluntary waiver" requirement is unjustified and ineffective for reasons discussed earlier.

- The bill does not require that biological evidence be retained where the defendant is notified after conviction that the evidence may be destroyed and the defendant does not file a motion under the new remedy within 180 days of receipt of the notice. However, there is no comparable exception to the postconviction evidence retention requirement where the defendant is aware of the evidence before trial, and fails to seek available pretrial testing. Moreover, a special postconviction notice requirement of this type would likely provoke a large volume of meritless and abusive postconviction testing applications by prisoners because it would specifically impress on them that biological material has been kept and point to the possibility of exploiting its availability to renew litigation in their cases.

8. No time limit

The need for a special postconviction DNA testing remedy relates to a limited class of older cases that predated the availability of such testing. Hence, the duration or availability of the remedy should be no more than the time reasonably needed for convicts in such cases to seek postconviction testing. There is no reason to hold open such a remedy (or related evidence retention requirements) forever, and doing so invites abuse. A person who is actually innocent has every reason to seek relief promptly, while a person who is actually guilty has reason to delay until it is impossible for the government to retry his case.

However, section 311 has no limitation at all on the duration of its proposed postconviction DNA testing remedy and evidence retention requirements, or on how long a convict may wait before seeking postconviction DNA testing once the remedy becomes available. The other principal postconviction remedies under Federal law are subject to time limits, including the 3-year limitation on motions for new trials based on newly discovered evidence under Fed. R. Crim. P. 33, and the one-year limitation period for Federal habeas corpus petitions and § 2255 motions. (*See* 28 U.S.C. 2244(d), 2255.) There is no valid reason for adopting a uniquely open-ended approach in the proposed postconviction DNA testing provisions.

Subtitle B (Sections 321-326) – Improving the Quality of Representation in State Capital Cases

These sections of the bill effectively propose a Federal regulatory system, enforced by the Department of Justice, for defense and prosecution representation in State capital cases. The system would be implemented through a grant program funded at $100 million a year for five years. States could escape the regulation by not participating in the grant program. But as a practical matter, many States would obviously be under strong pressure to accept the funding and submit to the Federal regulation of their capital counsel systems that it entails.

Such a grant program is not included as part of the President's DNA initiative, and no funding for such a program has been proposed in the President's 2005 Budget. We have previously urged that legislation to implement the President's DNA initiative should not be entangled with controversial measures concerning capital punishment and capital counsel, which intrinsically have nothing to do with DNA. *See* DNA Testimony, *supra*, at 4, 23. We note that, in contrast to S. 1700, there is no such linkage in S. 1828 of positive DNA proposals to controversial proposals relating to the death penalty.

The specific requirements of section 321 of S. 1700 include vesting responsibility for a State's indigent capital defense system in a public defender program, or in a special capital defense entity established by statute or the highest court of the State. The entity would be required to:

(i) Establish qualifications for capital defense attorneys;

(ii) Establish a roster of qualified attorneys;

(iii) Assign two attorneys from the roster to represent an indigent in any capital case (the court's role in appointment could at most involve deciding between two pairs of attorneys selected by the capital defense entity – see section 321(d)(2)(C));

(iv) Operate training programs for capital defense counsel;

(v) Monitor the performance of attorneys appointed in capital cases, and debar from capital case representation attorneys who fail to deliver effective representation or fail to meet training requirements; and

(vi) "[E]nsure funding for the full cost of competent legal representation by the defense team and outside experts selected by counsel," using federally prescribed requirements concerning the level of compensation for defense lawyers and other defense personnel.

There are few, if any, jurisdictions that currently satisfy the conditions set forth in this program, nor are they even arguably necessary to ensure effective representation in capital cases. Among other remarkable features, these standards would require that appointment of capital counsel and control over capital counsel compensation and expenses be vested in a public defender organization or specially constituted capital defense entity. This would preclude vesting the appointment of counsel in the courts, or having the courts be responsible for counsel compensation and the defrayal of defense expenses. In contrast, the standards that Congress has provided for Federal capital cases have consistently ensured effective representation for Federal capital defendants and adequate defense resources, but the Federal capital case standards are inconsistent with those that this bill seeks to impose on the States because (among other reasons) the Federal case standards assign responsibility to the courts for the appointment of counsel and provision of defense resources. *See* 18 U.S.C. 3005; 21 U.S.C. 848(q)(4)-(10).

It would not make sense for Congress to decree that all States should adopt novel capital counsel systems that go far beyond what Congress has required in Federal capital cases, and that are demonstrably not necessary to ensure effective representation in capital cases. Beyond the Federal overreaching inherent in this scheme, its requirement that a defense entity be given full control over the capital defense system raises obvious concerns about conflict of interest and potential obstruction of capital punishment.

Likewise, the defense entity would have obvious motivation to utilize its control over defense compensation and expenses to pour limitless resources into the defense side in State capital cases. In contrast to the blank check on the State treasury that the bill's standards effectively require for the capital defense entity, prosecutors would remain subject to the budgetary limitations they now live with. This promotes a serious imbalance, threatening the future ability of the States to impose and carry out the death penalty, because of the chronic "outresourcing" of the prosecution by the defense in capital cases that could be expected to result, and the inability or unwillingness of State and local governments to bear limitless representation costs in these cases.

We have further concerns regarding section 325 of the bill, which includes the inspection element of the Federal regulatory system the bill proposes for State capital counsel systems. Under that section, the Justice Department's Inspector General would be required to evaluate the State capital counsel systems, and would be allocated at least $12.5 million for that purpose (at least 2.5 percent of $500 million – see sections 325(e), 326(a)). This evaluation function would include, in addition to considering information reported by the States, consideration of "comments provided by any other person." The Inspector General would be required to "submit to Congress and to the Attorney General" reports evaluating the compliance by the States with the requirements of the bill's capital counsel provisions.

We would note initially that these requirements are constitutionally infirm. The phrasing of the provision about reporting "to Congress and to the Attorney General" strongly implies that

the reports are supposed to be submitted simultaneously to the Attorney General and to Congress. This, in turn, incorrectly implies that there could be no Executive branch supervision over the reports that the Inspector General would make to Congress.

Such a requirement that the Inspector General directly transmit reports to Congress is inconsistent with his status as an officer in the Executive branch, reporting to and under the general supervision of the Attorney General. *See* 5 U.S.C. App. 3 § 3(a). The President's control extends to the entire Executive branch, and includes the right to coordinate and supervise all replies and comments from the Executive branch to Congress. Requiring a presidential subordinate to report both to Congress and to his superiors within the Executive branch would intrude deeply into the President's constitutional prerogatives, and it would violate the separation of powers to require such a direct submission by the Inspector General to Congress without permitting his superiors in the Executive branch to review these reports.

Beyond the illegality inherent in this scheme, the requirements of section 325 raise serious practical concerns. The process set up by the bill, involving consideration of comments submitted by "any person" concerning State capital counsel systems (section 325(a)(1)(A), (2)), would predictably be exploited by anti-death penalty advocacy groups in furtherance of their cause. For example, claims of ineffectiveness of counsel are routinely raised by anti-death penalty litigators in State and Federal court review in State capital cases, though such claims are usually found to be without merit by the courts. It would be easy to dress up such claims as purported violations of the grant conditions under section 321 of the bill. Specifically, the Department's Inspector General could be presented with claims that the defendant's counsel had failed to provide effective representation in hundreds of capital cases, and that the State was not complying with the requirement of section 321(d)(2)(E) to debar such ineffective counsel from capital case representation. Likewise, claims that inadequate defense resources had been provided in particular cases could be presented as purported violations of the requirements concerning funding of defense costs in section 321(d)(2)(F), and claims of prosecutorial dereliction or misconduct might be cast as purported violations of provisions in section 322.

We have no doubt that the claims and accusations of anti-death penalty groups would in fact be dressed up and submitted to the process under section 325 of S. 1700, and the Department's Inspector General's office and the Attorney General would then be called upon to investigate and adjudicate their merits. However, there is no legitimate interest in creating a new forum for ventilating such claims about State capital cases – beyond the State and Federal judicial remedies that are already available to address and act on any real issues of counsel ineffectiveness – that would justify such a diversion of the Department's Inspector General office from its important functions of promoting the efficiency and integrity of the Department's Federal programs. In closing, we note again the absence of such problematic provisions in S. 1828.

Thank you for the opportunity to present our views. The Office of Management and Budget has advised us that from the perspective of the Administration's program, there is no objection to submission of this letter.

Sincerely,

William Moschella
Assistant Attorney General

cc: The Honorable Patrick J. Leahy
Ranking Minority Member
Committee on the Judiciary
United States Senate

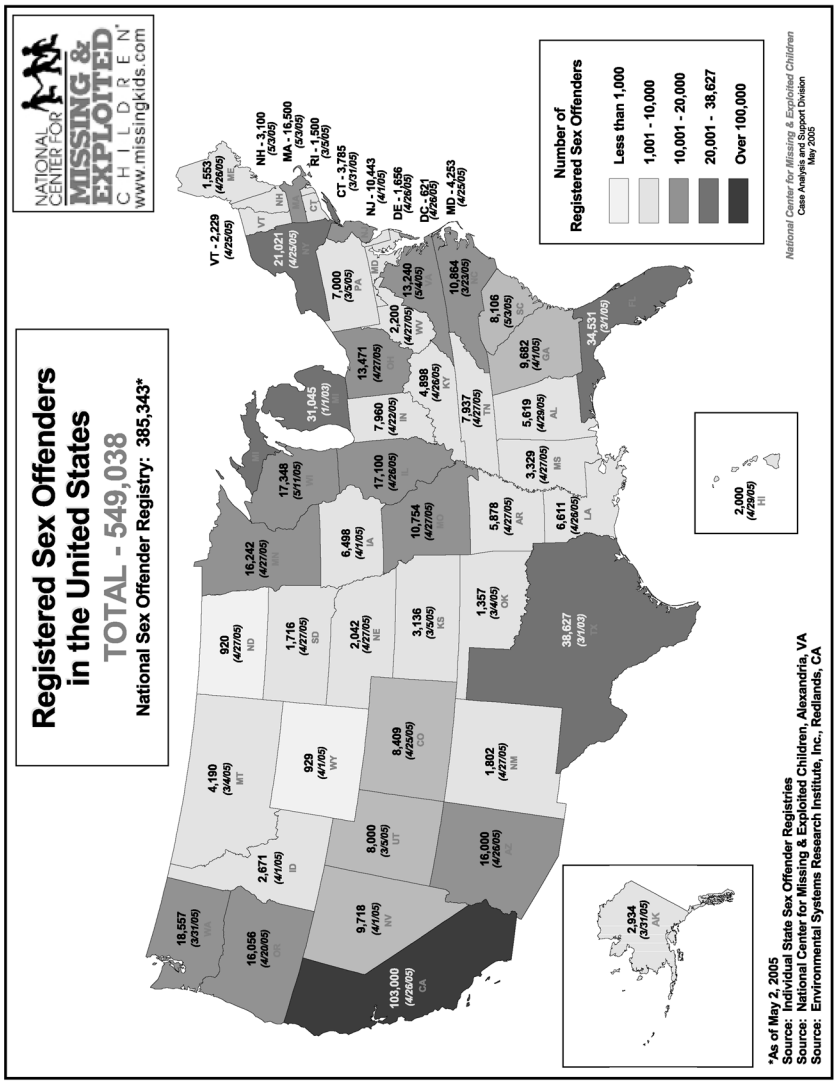
The Honorable Jon Kyl
Chairman
Subcommittee on Terrorism, Technology, and Homeland Security
Committee on the Judiciary
United States Senate

The Honorable Dianne Feinstein
Ranking Minority Member
Subcommittee on Terrorism, Technology, and Homeland Security
Committee on the Judiciary
United States Senate

The Honorable F. James Sensenbrenner
Chairman
Committee on the Judiciary
U.S. House of Representatives

The Honorable John Conyers, Jr.
Ranking Minority Member
Committee on the Judiciary
U.S. House of Representatives

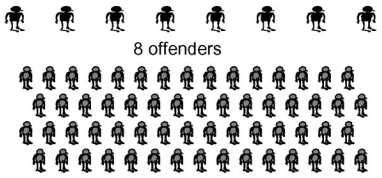
MAP OF REGISTERED SEX OFFENDERS IN THE UNITED STATES



Preventable Crimes In Chicago

A study of just 8 offenders in Chicago has identified
60 violent crimes that could have been prevented
if DNA samples had been taken at arrest –
including 30 rapes and 22 murders.

Allowing offenders to remain on the street to commit more crime expands the number of senseless tragedies to victims & their families.

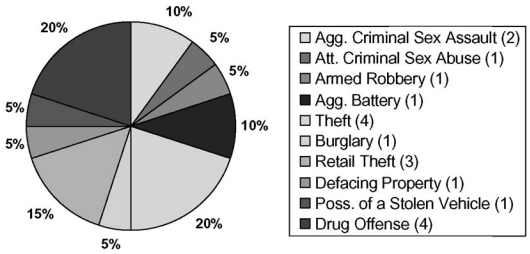


8 offenders

60 unnecessary victims

These 8 offenders accumulated a combined total of **21 prior felony arrests, only 7 of which were violent felony arrests** – two-thirds of prior arrests were for non-violent felonies.

Prior Felony Arrests of 8 Offenders



Forensic DNA Testing

Fingerprints of the 21st Century

Purges racial bias from the criminal justice system. The science of DNA is blind to race, and requiring DNA from all felony arrestees will ensure that those who are wrongfully accused of serious crimes will be freed in a timely manner. They will not become victims themselves of an overburdened system, with many wrongfully accused slipping through the cracks.

Frees the Innocent as soon as possible and will not permit someone falsely accused to spend one minute more in jail when they should be freed. Consider the following exonerations in recent news:

> **Arkansas** – Man detained in jail since April 2004 on murder charges finally released on December 31, 2004 after DNA evidence from the murder is not a match. (9 months)
> *Arkansas Democrat-Gazette, February 20, 2005.*
>
> **New Jersey** -- Man detained in jail on rape charges since 2003 finally released March 2, 2005 after DNA evidence from the rape is not a match. (Over one year)
> *Courier News, March 4, 2005.*
>
> **West Virginia** – Man detained in jail on rape charges since April 2004 finally released in February 2005 after DNA evidence from the rape is not a match. (10 months)
> *The Associated Press, March 15, 2005.*

Solves crime faster and keeps the guilty behind bars. Collecting DNA from arrestees means identifying criminals at an earlier stage in the criminal justice process, and will allow for more efficient prosecution practices. Virginia, which began collecting DNA from arrestees two years ago, has already solved 147 crimes through links to arrestees.

Prevents crime. A Chicago study has documented 60 *violent* crimes that could have been prevented if the perpetrator had been required to submit a DNA sample for a prior felony *arrest.* These 60 victims are a tragic testament to the potential for DNA testing of arrestees to halt the needless victimization of Illinois residents.

Minimally invasive and not similar to predictive genetic testing. Forensic DNA testing conducted on cheek cells gives only the most basic data needed to establish a unique forensic identity. Crime labs do not have the personnel, training, software, time nor money to screen DNA samples for predictive health tests. Moreover, such tests would serve no purpose to law enforcement.

Federal and state laws strictly prohibit and harshly penalize any misuse of DNA samples collected for database purposes. Misuse includes disclosure of samples or related data for any use not related to law enforcement. The privacy of the forensic DNA samples is tightly guarded.

Use is specific to law enforcement. *Unlike fingerprints,* DNA databases are not, and cannot, be checked for the general purpose criminal history background checks that are often completed for employment screening by using fingerprints. By law, DNA taken from arrestees can only be used for comparison against profiles from unsolved crimes.

Not an effort to create a database of the innocent. DNA samples can be routinely expunged upon acquittal or dropped charges. Additionally, samples that are not expunged will have no impact on a person's criminal history record – the DNA database is only checked for linkages to DNA profiles found at unsolved crime scenes.

DOCUMENT ENTITLED "THE DNA FINGERPRINT ACT OF 2005,"
INTRODUCED BY SENATOR JON KYL

THE DNA FINGERPRINT ACT OF 2005

Introduced by Senator Kyl

Building a Comprehensive, Robust DNA Database. The DNA Fingerprint Act would make it easier to include and keep criminal arrestees' DNA profiles in the National DNA Index System, where it can be compared to evidence from other crimes. By removing current barriers to maintaining data from criminal arrestees, the Act would allow the creation of a comprehensive, robust database that would make it possible to catch serial rapists, murderers, and other violent criminals early in their careers. The Act's opt-out standard is the same standard approved by 62% of the voters in California in 2004.

SUMMARY OF PROVISIONS: The DNA Fingerprint Act does five things:

(1) Including Arrestees Early. The Act eliminates current federal statutory restrictions that prevent inclusion of arrestee profiles in the National DNA Index System (NDIS) until the arrestee is charged in an indictment or information. Under current law, even an arrestee charged in a pleading cannot have his DNA uploaded to the national index. The Act eliminates this restriction, allowing arrestees to be included as soon as they are arrested. It also eliminates a statutory restriction that bars inclusion of profiles from suspects who provide so-called "exoneration" samples. The Fingerprint Act recognizes that criminal suspects have no legitimate interest in evading identification for crimes that they have committed.

(2) Opt Out Removal from Database. The Act requires the defendant to opt out of NDIS if charges against him have been dismissed or he has been acquitted and he does not want his DNA profile compared in the future to other crime-scene evidence. Current law places the burden of determining who may be removed from the index on the administrator of the DNA database, thus requiring this Administrator to track the progress of individual criminal cases. This bureaucratic burden discourages states from creating and maintaining comprehensive, all-arrestee DNA databases.

(3) Expanded Use of CODIS Grants. Congress currently appropriates funds for use by states to expand their DNA databases. Current law restricts the use of these grants, however, to only building databases of convicted felons. This bill expands this authorization to allow use of the funds for building a database of all DNA samples collected under lawful authority, including samples taken from arrestees.

(4) Federal Authority to Sample Arrestees. The Act gives the Attorney General the authority to develop regulations allowing collection of DNA profiles from federal arrestees or detainees. The authority to issue such regulations would give the Attorney General the flexibility needed to respond to new legal developments and changes in technology.

(5) Tolling of the Statute of Limitation for Sex Offenses. Current law generally tolls the statute of limitations for felony cases in which the perpetrator is implicated in the offense through DNA testing. The one exception to this tolling is the sexual-abuse offenses in chapter 109A of title 18. When Congress adopted general tolling, it left out chapter 109A, apparently because those crimes already are subject to the use of "John Doe" indictments to charge unidentified perpetrators. The Justice Department has made clear, however, that John Doe indictments are "not an adequate substitute for the applicability of [tolling]." It has criticized the exception in current law as "work[ing] against the effective prosecution of rapes and other serious sexual assaults under chapter 109A," noting that it makes "the statute of limitation rules for such offenses more restrictive that those for all other Federal offenses in cases involving DNA identification." The DNA Fingerprint Act correct this anomaly by allowing tolling for chapter 109A offenses.

THE CASE FOR THE DNA FINGERPRINT ACT: A ROBUST, ALL-ARRESTEE DATABASE IS THE ONLY WAY TO STOP VIOLENT, SERIAL PREDATORS EARLY. Building a comprehensive national DNA database is the only way to catch many serial rapists and other violent criminals early in their careers – for example, when they have committed one rape, rather than 50. Failure to create a broad database today would guarantee that in future years, some sex offenders and other serial predators whom we could have identified and stopped early will instead attack more victims for years to come.

U.S. Examples: Serial Rapists Who Could Have Been Stopped *Only* with a Comprehensive, All-Arrestee Database. The following examples are taken from "National Forensic DNA Study Report," a study commission by the National Institute of Justice and produced by Washington State University.

- **St. Louis: one perpetrator commits over 100 rapes.** Between 1988 and 1997, an unidentified masked man was beating up and raping women in areas of Missouri and across the Mississippi River in Illinois. Because many of the 29 or more attacks happened in south St. Louis, the media dubbed the attacker the "South Side Rapist." DNA linked at least 13 of the cases together, but the police were unable to identify a perpetrator. In October of 1998 St. Louis City Police were called when a man was seen breaking into a house. The suspect voluntarily agreed to have his mouth swabbed. Several weeks later the DNA results were returned and positively identified the suspect as the South Side Rapist. The suspect ultimately confessed to raping at least 100 women since his late teens.

- **Bronx: one perpetrator commits 51 rapes.** In August of 1993 a young woman was raped in the Bronx in what was to be the first of up to 51 rapes attributed to the same offender over a five-year period. The perpetrator was dubbed the "Bronx Rapist" by the media. A person known to the police became a suspect when he was identified in a

> transaction involving a victim's jewelry at a pawnshop. He was arrested and subsequent DNA testing linked him to several of the rapes. He has been convicted on fourteen counts of rape in the Bronx, six counts of sexual abuse, nineteen counts of robbery, and two counts of possession of a weapon. He has been sentenced to two life sentences.

The only way that these predators could have been stopped early is if the United States had a comprehensive, all-arrestee database.

The British Example: A Comprehensive Database Works. Great Britain has taken the lead in using DNA to solve crimes, creating a database that now includes 2,000,000 profiles. The British database has now reached a critical mass where it is a highly effective tool for solving crimes; in the U.K., DNA from crime scenes produces a match to the database in *40% of all cases*, which amounted to *58,176 cold hits* in 2001. *See generally* "The Application of DNA Technology in England and Wales," a study commissioned by the National Institute of Justice.
Why wouldn't we want the same thing for the United States?

THE PRIVACY ARGUMENT. Some criticshave argued that a comprehensive database would violate criminal suspects' privacy rights. This is untrue:

(1) Keeping DNA samples in NDIS does not affect privacy – NDIS samples have no medical predictive value. The sample of DNA that is kept in NDIS is what is called "junk DNA" – it is impossible to determine anything medically sensitive from this DNA. For example, this DNA does not allow a tester to determine if the donor is susceptible to particular diseases. The Justice Department addressed this issue in its statement of views on S. 1700, a DNA bill introduced in the 108th Congress:

> [T]here [are no] legitimate privacy concerns that require the retention or expansion of these [burdensome expungement provisions]. The DNA identification system is already subject to strict privacy rules, which generally limit the use of DNA samples and DNA profiles in the system to law enforcement identification purposes. *See* 42 U.S.C. 14132(b)-(c). Moreover, the DNA profiles that are maintained in the national index relate to 13 DNA sites that do not control any traits or characteristics of individuals. Hence, the databased information cannot be used to discern, for example, anything about an individual's genetic illnesses, disorders, or dispositions. Rather, by design, the information the system retains in the databased DNA profiles is the equivalent of a "genetic fingerprint" that uniquely identifies an individual, but does not disclose other facts about him.

(2) What about Medicare and Medicaid – they keep lots of medically sensitive information. Why should we trust those agencies, but not the FBI? Misuse of the information in NDIS – if even possible – is prohibited by law. The Medicare and Medicaid system keep vast stores of medically sensitive information about individuals. If we are so afraid of NDIS, what about Medicare?

(3) Fingerprints are kept for all arrestees – should we expunge those too? The FBI maintains a database of fingerprints of arrestees – without regard to whether the arrestee is later acquitted or convicted. As Justice Department noted in its statement of views on S. 1700, "With respect to the proposed exclusion of DNA profiles of unindicted arrestees, it should be noted by way of comparison that there is no Federal policy that bars States from including fingerprints of arrestees in State and Federal law enforcement databases prior to indictment."

(4) Keeping a DNA profile in the national database will only affect the donor if he commits a crime. The Justice Department's 2003 views letter also notes that: "There is no reason to have a * * * Federal policy mandating expungement for DNA information. If the person whose DNA it is does not commit other crimes, then the information simply remains in a secure database and there is no adverse effect on his life. But if he commits a murder, rape, or other serious crime, and DNA matching can identify him as the perpetrator, then it is good that the information was retained."