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JUSTICE FOR ALL ACT OF 2004

SEPTEMBER 30, 2004.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SENSENBRENNER, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany H.R. 5107]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 5107) to protect crime victims' rights, to eliminate the substantial backlog of DNA samples collected from crime scenes and convicted offenders, to improve and expand the DNA testing capacity of Federal, State, and local crime laboratories, to increase research and development of new DNA testing technologies, to develop new training programs regarding the collection and use of DNA evidence, to provide post-conviction testing of DNA evidence to exonerate the innocent, to improve the performance of counsel in State capital cases, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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29–006

PURPOSE AND SUMMARY

H.R. 5107, the "Justice For All Act of 2004," enhances the rights and protections for all persons involved in the criminal justice system. H.R. 5107 does this through two different, but complementary mechanisms: (1) a new set of statutory victims' rights that are both enforceable in a court of law and supported by fully-funded victims' assistance programs; and (2) a comprehensive DNA bill that seeks to ensure that the true offender is caught and convicted for the crime.

Title I enumerates eight rights for crime victims and provides an enforcement mechanism for those rights. It also authorizes $155 million in funding over the next 5 years for victims' assistance programs at the Federal and state level.

Titles II, III, and IV address three interrelated DNA problems. Title II will help to eliminate the large backlog of DNA evidence that has not been analyzed. It also provides resources to remedy the lack of training, equipment, technology, and standards for handling DNA and other forensic evidence. Title II addresses the backlog by reauthorizing and expanding the DNA Analysis Backlog Elimination Act of 2000. It increases the authorized funding levels for the DNA Analysis Backlog Elimination program to $151 million annually for the next 5 years.

Title III authorizes funding for training for law enforcement, correctional, court, and medical personnel on the use of DNA evidence. Title III also authorizes grant programs to reduce other forensic science backlogs, research new DNA technology, and promote the use of DNA technology to identify missing persons. Lastly, Title III provides funds to the Federal Bureau Investigation ("FBI") for the administration of its DNA programs.

Title IV establishes rules for post-conviction DNA testing of Federal prison inmates and requires the preservation of biological evidence in Federal criminal cases while the defendant remains incarcerated. It provides incentive grants to States that adopt adequate procedures for providing post-conviction DNA testing and preserving biological evidence. Additionally, it authorizes funding to help States provide competent legal services for both the prosecution and the defense in death penalty cases and provides funds for post-conviction DNA testing.

BACKGROUND AND NEED FOR THE LEGISLATION

BACKGROUND

A. Victims' Rights

In 2002, U.S. residents aged 12 or older experienced approximately 23 million crimes, according to findings from the National Crime Victimization Survey. Of those, 76% (17.5 million) were property crimes, 23% (5.3 million) were crimes of violence, and 1% were personal thefts. In 2002, for every 1,000 persons aged 12 or older, one rape or sexual assault, one assault with injury and two robberies occurred. Murders are the least frequent violent crime—there were about 6 murder victims per 100,000 persons in 2001. In surveys of 12 cities in 1998, violent crime victimization rates per 1,000 residents aged 12 or older ranged from 60 in Washington,

D.C. to 85 in New York City. Nationally, the violent crime victimization rate in urban areas was 51 per 1,000 residents.

Victims of crime often do not feel their voices are heard or that their concerns are adequately addressed in the judicial process. Many express frustration with a judicial system that affords many rights to the accused while giving few to the victim. This legislation addresses these concerns by codifying the rights of victims and providing the means to enforce those rights. Additionally, the victims' rights section of this legislation provides grants to state and local governments to provide legal assistance to victims of crimes and develop state-of-the-art systems for notifying victims of important dates and developments relating to criminal proceedings.

B. DNA Technology

In addition to their frustration with the judicial process, victims of violent crime are often frustrated with the length of time it takes to track down their attackers. DNA samples can help to quickly track down offenders and solve crimes if law enforcement agencies have access to the most up-to-date testing capabilities. Currently, however, many law enforcement agencies do not have the capacity to process DNA samples fast enough.

News stories extolling the successful use of DNA to solve crimes abound. To give just a few examples, consider the following. In 1999, New York City authorities linked a man through DNA evidence to at least 22 sexual assaults and robberies that had terrorized the city. In 2002, authorities in Philadelphia, Pennsylvania, and Fort Collins, Colorado, used DNA evidence to link and solve a series of crimes perpetrated by the same individual. In the 2001 "Green River" killings, DNA evidence provided a major breakthrough in a series of crimes that had remained unsolved for years despite a large law enforcement task force and a $15 million investigation.

DNA generally solves crimes in one of two ways. First, in cases in which a suspect is identified, a sample of that person's DNA can be compared to evidence from the crime scene. The results of this comparison may help establish whether the suspect committed the crime. Second, in cases in which a suspect has not yet been identified, biological evidence from the crime scene can be analyzed and compared to offender profiles in DNA databases to help identify the perpetrator.

Crime scene evidence can also be linked to other crime scenes through the use of DNA databases. In the late 1980's, the Federal Government laid the groundwork for a system of federal, state, and local DNA databases for the storage and exchange of DNA profiles. This system, called the Combined DNA Index System ("CODIS"), maintains DNA profiles obtained under the federal, state, and local systems in a set of databases that are available to law enforcement agencies across the country for law enforcement purposes. CODIS can compare crime scene evidence to a database of DNA profiles obtained from convicted offenders. CODIS can also link DNA evidence obtained from different crime scenes, thereby identifying repeat offenders.

To take advantage of the investigative potential of CODIS, in the late 1980's and early 1990's, states began passing laws requiring offenders convicted of certain offenses to provide DNA samples.

Currently, all 50 states and the Federal Government have laws requiring that DNA samples be collected from some categories of offenders for inclusion in CODIS. However, only certain types of profiles authorized under Federal law may be uploaded to the Federal system. When used to its full potential, DNA evidence will help solve and may even prevent some of the most serious violent crimes.

In short, DNA technology is increasingly vital to ensuring accuracy and fairness in the criminal justice system. It can identify criminals with incredible accuracy when biological evidence exists, and it can clear suspects and exonerate persons mistakenly accused or convicted of crimes.

NEED FOR LEGISLATION

A. Victims' Rights

Crime victims already have a listing of rights in Title 42 of the United States Code. However, because those rights are not enumerated in the criminal code, most practitioners do not even know these rights exist. Further, the rights as they are currently enumerated do not contain any explicit enforcement provision. As such, crime victims often feel that they are ignored by a system that gives a great number of rights and protections to the person accused of the crime, but few to the victim. H.R. 5107 addresses these problems by moving the victims' rights to Title 18 of the United States Code, where they will be more readily available to practitioners. It also amplifies the current rights and sets forth an explicit enforcement mechanism for those rights. H.R. 5107 also provides funding for legal counsel for victims to assist them in the process and to ensure that these rights are enforced.

B. DNA Technology

Despite DNA's enormous potential, the current Federal and state DNA collection and analysis system suffers from a variety of problems. In many instances, public crime laboratories are overwhelmed by backlogs of unanalyzed DNA samples—samples that could be used to solve violent crimes if the states had the funds to eliminate this backlog. Some estimates indicate that DNA evidence from at least 300,000 rape crime scenes has been collected but never analyzed by a crime lab. In addition, many of the laboratories are ill-equipped to handle the increasing flow of DNA samples and evidence.

The problems of backlogs and the lack of up-to-date technology result in significant delays in the administration of justice. The system needs more research to develop faster methods to analyze DNA evidence. Legal and medical personnel need additional training and assistance to ensure the optimal use of DNA evidence to solve crimes and assist victims. The criminal justice system needs the means to provide DNA testing in appropriate circumstances for individuals who assert that they have been wrongly convicted.

In addition to the benefits of DNA analysis, there are benefits from the use of other forensic technology. Additional funds are needed to allow grants to laboratories that perform research and analysis in other types of forensic disciplines such as firearms ex-

aminations, latent prints, toxicology, controlled substances, forensic pathology, questionable documents, and trace evidence.

DNA testing has the capacity not only to identify the perpetrators of crimes but also to exonerate the innocent. DNA testing has revealed various wrongful convictions around the country; however, DNA alone will not eliminate wrongful convictions. Greater access to DNA testing is essential. However, biological evidence that can establish guilt or innocence is available in fewer than 20 percent of violent crimes.

In addition to correcting the erroneous convictions that DNA testing reveals, there are steps that can be taken to prevent wrongful convictions in the first place. The single most important of these is to ensure that every indigent defendant has a competent attorney, particularly in capital cases. Many of the most egregious cases of wrongful convictions have involved attorneys who failed to inquire into the facts, failed to present or challenge evidence at trial, or worse—were drunk or asleep during key portions of the proceedings.

The provision of competent counsel benefits the prosecution as well as the defense. As Oklahoma City prosecutor Beth Wilkinson testified before the Subcommittee on Crime, Terrorism, and Homeland Security last year, providing defendants with a competent defense is the best way to ensure "that the right person is convicted and justice is served, that reversible error is avoided at trial, and that verdicts for the government are upheld on appeal." However, such a system must be funded. The Committee believes the Federal Government should offer affirmative assistance and encouragement to the States to adopt effective systems for the appointment and performance of counsel, rather than imposing new unfunded Federal mandates.

HEARINGS

No hearings were held in the Committee on the Judiciary on H.R. 5107. However, the Subcommittee on Crime, Terrorism, and Homeland Security held an oversight hearing on "Advancing Justice Through the Use of Forensic DNA Technology" on July 23, 2003. The Subcommittee on the Constitution held a hearing on the issue of victims' rights on September 30, 2003. This legislation addresses both of these issues.

COMMITTEE CONSIDERATION

On September 22, 2004, the Committee met in open session and ordered favorably reported the bill H.R. 5107 without amendment by voice vote, a quorum being present.

VOTE OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee notes that there were no recorded votes during the Committee's consideration of H.R. 5107.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings

and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee notes that this legislation provides new budgetary authority as outlined in the Congressional Budget Office estimate printed in the next section.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 5107, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 29, 2004.

Hon. F. JAMES SENSENBRENNER, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5107, the "Justice for All Act of 2004."

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz, who can be reached at 226–2860.

Sincerely,

DOUGLAS HOLTZ-EAKIN.

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

H.R. 5107—Justice for All Act of 2004.

SUMMARY

CBO estimates that H.R. 5107 would authorize the appropriation of about $2 billion over the 2005–2009 period to expand the use of DNA analysis in the criminal justice system and to assist victims of crimes. (Most of that total is specifically authorized in the bill.) The bill would establish six new grant programs and extend the authority for two current grant programs that provide funding for States to improve forensic analysis of crime-scene evidence, collect DNA samples from offenders, and train law enforcement personnel. The bill would authorize appropriations for the Federal Bureau of Investigation (FBI) to carry out its programs concerning DNA evidence, including the Combined DNA Index System (CODIS), and would establish the National Forensic Science Commission. The legislation also would provide funding for several Department of Justice (DOJ) programs to assist victims of crimes. Finally, H.R.

5107 would require the collection of DNA samples from persons convicted of felonies.

Assuming appropriation of the necessary amounts, CBO estimates that implementing H.R. 5107 would cost about $1.4 billion over the 2005–2009 period. Over $1 billion of this total would be for the grant programs mentioned above. Enacting this legislation could affect direct spending, but CBO estimates that any such effects would not be significant.

H.R. 5107 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates however, that State, local, and tribal governments would incur no additional costs to comply with that mandate; therefore, the threshold established in that act would not be exceeded ($60 million in 2004, adjusted annually for inflation). Other provisions in the bill would benefit those governments.

H.R. 5107 contains no new private-sector mandates as defined in UMRA.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 5107 is shown in the following table. The cost of this legislation falls within budget function 750 (administration of justice).

By Fiscal Year, in Millions of Dollars

	2004	2005	2006	2007	2008	2009
SPENDING SUBJECT TO APPROPRIATION [1]						
Spending Under Current Law for the Programs That Would Be Authorized By H.R. 5107						
Budget Authority/Authorization Level [2]	271	57	42	0	0	0
Estimated Outlays	165	118	86	60	15	6
Proposed Changes:						
Grant Programs						
Authorization Level	0	316	316	336	336	336
Estimated Outlays	0	69	164	232	285	330
FBI and National Forensic Science Commission						
Authorization Level	0	43	43	43	43	43
Estimated Outlays	0	34	43	43	43	43
DOJ Programs to Assist Crime Victims						
Authorization Level	0	21	34	34	34	34
Estimated Outlays	0	7	21	30	33	34
Additional DNA Samples from Felons						
Estimated Authorization Level	0	13	3	3	3	3
Estimated Outlays	0	12	4	3	3	3
Total Changes [3]						
Estimated Authorization Level	0	392	394	414	415	415
Estimated Outlays	0	122	231	307	364	409
Spending Under H.R. 5107 [3]						
Estimated Authorization Level	271	449	437	414	415	415
Estimated Outlays	165	240	317	367	378	415

1. In addition to the discretionary costs, enacting H.R. 5107 could affect direct spending, but CBO estimates that any such effects would be less than $500,000 annually.

2. The 2004 level is the total amount appropriated for that year for the programs that would be authorized by H.R. 5107. The 2005 and 2006 levels are the total amounts authorized in current law for those programs.

3. Components may not sum to totals because of rounding.

BASIS OF ESTIMATE

Assuming appropriation of the necessary amounts, CBO estimates that implementing H.R. 5107 would cost $1.4 billion over the 2005–2009 period. This legislation also could affect direct spending, but CBO estimates that any such effects would not be significant.

Spending Subject to Appropriation

For this estimate, CBO assumes that the amounts authorized for the grant programs, the FBI, the National Forensic Science Commission, and the DOJ programs to assist victims of crimes will be appropriated near the start of each fiscal year and that outlays will follow the historical spending rates for these or similar activities.

In addition, implementing H.R. 5107 would require the federal government to collect DNA samples from each person who has been convicted of a felony and who is in federal custody or on federally supervised release. Currently, the government collects DNA samples only from persons convicted of certain violent crimes. Based on information from the Bureau of Prisons, the Administrative Office of the United States Courts, and the Department of Defense, CBO estimates that implementing H.R. 5107 would require the collection of roughly 200,000 additional samples in 2005 and over 40,000 samples in each subsequent year. We expect that it would cost $60 to take each DNA sample, so collection costs would total about $13 million in fiscal year 2005 and $3 million a year over the 2006–2009 period, assuming appropriation of the necessary amounts.

Direct Spending

Enacting H.R. 5107 could increase direct spending by raising the maximum compensation from $5,000 to $50,000 per year of imprisonment that could be paid to certain persons wrongly convicted of crimes by the federal government. Any such payments would be made from the U.S. Treasury's Judgment Fund and would be considered direct spending. The number of such cases in recent years has been very small, so we do not expect any increase in payments for this purpose to be significant.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

H.R. 5107 contains an intergovernmental mandate as defined in UMRA because it would codify into federal law certain rights for victims of crime in the District of Columbia. According to court representatives, such rights are currently provided to those victims under local statute; thus, the District of Columbia would incur no additional costs to comply with that mandate.

Other provisions in the bill would benefit State, local, and tribal governments by authorizing the appropriation of more than $1.5 billion in grants to those governments over fiscal years 2005 through 2009. The bill would create six new grant programs and reauthorize and expand two existing grants for DNA analysis. It also would create several new grant programs to protect victims' rights. Any costs to grant recipients would be incurred voluntarily as conditions of receiving federal aid.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

H.R. 5107 contains no new private-sector mandates as defined in UMRA.

PREVIOUS CBO ESTIMATES

On October 16, 2003, CBO transmitted a cost estimate for H.R. 3214, the Advancing Justice Through DNA Technology Act of 2003, as ordered reported by the House Committee on the Judiciary on October 8, 2003. That legislation is very similar to H.R. 5107, and we estimated that implementing H.R. 3214 would cost about $1.1 billion over the 2005–2008 period (with additional amounts spent after 2008), assuming appropriation of the necessary amounts.

On September 29, 2004, CBO transmitted a cost estimate for S. 1700, the Advancing Justice Through DNA Technology Act of 2004, as ordered reported by the Senate Committee on the Judiciary on September 21, 2004. That legislation is very similar to H.R. 5107 but would not provide funding for DOJ programs to assist victims of crime. We estimate that implementing S. 1700 would cost about $1.3 billion over the 2005–2009 period, assuming appropriation of the necessary amounts.

ESTIMATE PREPARED BY:

Federal Costs: Mark Grabowicz (226–2860)
Impact on State, Local, and Tribal Governments: Melissa Merrell (225–3220)
Impact on the Private Sector: Paige Piper/Bach (226–2960)

ESTIMATE APPROVED BY:

Peter H. Fontaine
Deputy Assistant Director for Budget Analysis

PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goals and objectives of H.R. 5107 are to provide crime victims with meaningful, enforceable rights in the criminal justice system, to authorize grants to Federal and state programs that promote victims' rights, and to authorize a variety of grants to State and local governments to combat crimes with DNA and other forensic technology and to provide safeguards to prevent wrongful convictions and executions.

Title I of the bill provides a list of eight statutory rights for crime victims, as well as providing an enforcement mechanism for those rights. It also authorizes $155 million over 5 years in funding for grants to improve victims' assistance and legal support programs at both the Federal and state levels.

Titles II and III of the bill include the Debbie Smith DNA Backlog Grant Program, which authorizes $755 million over 5 years to address the DNA backlog crisis in the nation's crime labs. Additional grant programs are authorized to reduce other forensic science backlogs, train criminal justice and medical personnel in the use of DNA evidence, and promote the use of DNA technology to identify missing persons. The Committee expects State and local

governments to use these grants to the maximum extent possible to reduce DNA backlogs and to improve their DNA and other forensic capabilities.

Title IV of the bill, the Innocence Protection Act, provides access to post-conviction DNA testing in Federal cases and provides $100 million over 5 years for a grant program for States to improve the quality of legal representation in capital cases, and increases compensation in Federal cases of wrongful conviction. In addition, the Kirk Bloodsworth Post-Conviction DNA Testing Program authorizes $25 million for the States over 5 years to defray the costs of post-conviction DNA testing. The Committee expects federal, state, and local authorities to use this money to the maximum extent possible to reduce wrongful convictions and increase the quality of representation in capital cases.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, § 8 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

The following discussion describes the bill as it was introduced. The Committee reported the bill without amendment.

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

Section 1 of the bill sets forth the short title of the bill as the "Justice for All Act of 2004" and sets out the table of contents.

TITLE I. THE "SCOTT CAMPBELL, STEPHANIE ROPER, WENDY PRESTON, LOUARNA GILLIS, AND NILA LYNN CRIME VICTIMS' RIGHTS ACT"

Section 101. Short Title.

This section sets forth the short title of Title I as the "Scott Campbell, Stephanie Roper, Wendy Preston, Louarna Gillis, and Nila Lynn Crime Victims' Rights Act."

Section 102. Crime Victims' Rights.

This section amends Title 18 to codify eight statutory rights of crime victims in the Federal judicial system. Among these rights are: the right to be reasonably protected from the accused; the right to be notified of, and not excluded from, public proceedings involving their case; the right to be heard at release, plea, or sentencing; the right to confer with the government attorney; the right to full and timely restitution; the right to be free from unreasonable delays in proceedings; and the right to respect. It requires Federal Government agencies to make their best efforts to ensure that crime victims are given these rights and to advise the victim of any conflict in providing these rights.

Additionally, it allows a victim or the government, after a Federal court denies its request for appropriate relief, to apply for a writ of mandamus to a court of appeals to enforce the rights outlined in this section. This section does not allow a victim to reopen a plea or sentence or to receive a new trial as relief, and it makes

no changes in the law with respect to victims' ability to get restitution.

Section 103 Increase Resources for Enforcement of Crime Victims' Rights.

Section 103 authorizes $155 million in grants over 5 years for a variety of victims assistance programs in the following manner:

—$2 million in FY 2005 and $5 million annually for FY 2006–09 for Victim/Witness Assistance programs at the offices of the United States Attorneys.

—$2 million for FY 2005 and $5 million annually for FY 2006–09 for the enhancement of the Victim Notification System at the Department of Justice.

—$7 million for FY 2005 and $11 million annually for FY 2006–09 for organizations that provide legal counsel and support services for victims both in the Federal Government and in the states and tribal governments that have victims' rights laws substantially equivalent to those provided in § 102.

—$300,000 for FY 2005 and $500,000 annually for FY 2006–09 to the Department of Justice's Office for Victims of Crime to administer the grants.

—$5 million in FY 2005 and $7 million for FY 2006–09 for the Office for Victims of Crime to support programs that will create state-of-the-art victims' rights laws in the states and provide compliance systems to ensure that victims are fairly treated under those statutes.

—$5 million each for FY 2005–09 to develop state-of-the-art crime victim notification systems.

Section 104. Reports.

Federal courts are required under this legislation to collect data and report on the number of times a victim is denied the rights provided in this section. Section 104 further requires the Comptroller General to conduct a study not later than 4 years after the date of enactment that assesses the effect of the implementation of this Act on the treatment of crime victims in the Federal criminal justice system.

TITLE II. THE "DEBBIE SMITH ACT OF 2004"

Section 201. Short Title.

This section sets forth the short title of Title II as the "Debbie Smith Act of 2004."

Section 202. The Debbie Smith DNA Backlog Grant Program.

This section amends and expands the DNA Backlog Elimination Act of 2000 to allow for formula grants to states and units of local governments for analyses of DNA samples and for improvements to DNA laboratories. The language also makes it explicit that these improvements may extend to samples from rape kits, samples from other sexual assault evidence and samples taken in cases without an identified suspect. This section also adds the collection of DNA from convicted offenders as a specific program purpose and clarifies that funds can be used to increase the capacity of public labs. Additionally, this section allows 1% of the funds to be used for states

or units of local governments to prepare for accreditation or to perform audits of programs to ensure compliance with Federal quality assurance standards.

This section authorizes $151 million each year from FY 2005 through FY 2009.

Section 203. Expansion of Combined DNA Index System.

This section amends the statute governing the Combined DNA Index System ("CODIS") to allow states to include in the DNA index the DNA profiles of all persons whose DNA samples have been collected under applicable legal authorities, including those authorized by State law as well as all felons convicted of Federal crimes and qualifying military offenses.

Section 204. Tolling of Statute of Limitations.

This section provides that, in a case in which DNA testing implicates an identified person in the commission of a felony, except for a felony offense under chapter 109A, no statute of limitations would preclude prosecution of the offense until a time period equal to the statute of limitations has elapsed from the date of identification of the perpetrator.

Section 205. Legal Assistance for Victims of Violence.

This section expands the Violence Against Women Act to allow the grant programs to be used to provide legal assistance for victims of dating violence.

Section 206. Ensuring Private Laboratory Assistance in Eliminating DNA Backlog.

This section amends the DNA Analysis Backlog Elimination Act of 2000 to ensure that states and local units of government may use grant funds to contract with private for profit companies to expedite DNA collection, analyses of DNA from crime scenes, and elimination of any backlog.

TITLE III. THE "DNA SEXUAL ASSAULT JUSTICE ACT OF 2004"

Section 301. Short Title.

This section sets forth the short title of Title III as the "DNA Sexual Assault Justice Act of 2004."

Section 302. Ensuring Public Crime Laboratory Compliance with Federal Standards.

This section requires that state and local government crime labs undergo accreditation and auditing at least every 2 years to ensure compliance with Federal standards that will be established by the Federal Bureau of Investigation.

Section 303. DNA Training and Education for Law Enforcement, Correctional Personnel, and Court Officers.

This section authorizes $12.5 million per year for 5 years to provide grants for training and education relating to the identification, collection, preservation, and analysis of DNA evidence for law enforcement, correctional personnel, court officers including prosecutors, defense lawyers, judges, and forensic scientists.

Section 304. Sexual Assault Forensic Exam Program Grants.

This section authorizes $30 million per year for 5 years to create a grant program to provide training, technical assistance, education, equipment, and information to medical personnel relating to the identification, collection, preservation, analysis, and use of DNA samples and evidence.

Section 305. DNA Research and Development.

This section authorizes $15 million per year for 5 years to establish a National Forensic Science Commission and allows for grants for demonstration projects to improve forensic DNA technology.

Section 306. National Forensic Science Commission.

This section authorizes $500,000 for the National Forensic Science Commission to be appointed by the Attorney General to provide recommendations for maximizing the use of forensic science technology.

Section 307. FBI DNA Programs.

This section authorizes $42.1 million in additional funds for the FBI to carry out its DNA programs including nuclear DNA analysis; mitochondrial DNA analysis; regional mitochondrial DNA laboratories; the Combined DNA Index System; the Federal convicted offender DNA program; and DNA research and development.

Section 308. DNA Identification of Missing Persons.

This section authorizes $2 million per year for 5 years for DNA identification of missing persons and unidentified human remains.

Section 309. Enhanced Criminal Penalties for Unauthorized Disclosure or Use of DNA Information.

This section expands the criminal code provisions which criminalize unauthorized disclosure of DNA information to criminalize the unauthorized "use" of such information, and increases the potential fine to $100,000 for each criminal offense.

Section 310. Tribal Coalition Grants.

This section authorizes grants to tribes for domestic violence and sexual assault awareness under the Violence Against Women Act.

Section 311. Creation of a New Forensic Backlog Elimination Grant Program.

This section authorizes $10 million per year for 5 years for grants to states, units of local governments, and tribal governments to eliminate forensic science backlogs including backlog in the analysis of firearms examinations, latent prints, toxicology, controlled substances, forensic pathology, questionable documents, and trace evidence.

Section 312. Report to Congress.

This section requires the Attorney General to provide a report to Congress within 3 years of the date of enactment relating to progress in the implementation of Title I and II of this bill.

TITLE IV. THE "INNOCENCE PROTECTION ACT"

Section 401. Short Title.

This section sets forth the short title of Title IV as the "Innocence Protection Act of 2004."

Section 411. Federal Post Conviction DNA Testing.

This section establishes new procedures for applications for DNA testing by inmates in the Federal system. The new procedures require a court to order DNA testing if: (1) an applicant for testing asserts that he or she is actually innocent of a qualifying offense, (2) the proposed DNA testing would produce new material evidence that would support such an assertion, and (3) it would create a reasonable probability that the applicant did not commit the offense. Penalties are established in the event that testing inculpates the applicant. If the test results are exculpatory, the court must grant the applicant's motion for a new trial or resentencing if the evidence establishes by a preponderance of the evidence that a new trial would result in an acquittal of the offense at issue.

Additionally, this section seeks to preserve DNA evidence by prohibiting the destruction of biological evidence in a Federal criminal case while a defendant remains incarcerated unless there is a waiver by the defendant or prior notification to the defendant that the evidence may be destroyed. Violations of this section to prevent evidence from being tested or used in court are punishable by imprisonment.

Section 412. The Kirk Bloodsworth Actual Innocence Grant Program.

Named for a death row inmate exonerated by DNA testing, this section authorizes $5 million per year for 5 years to provide grants to states for post conviction testing.

Section 413. Bonus Grants to States to Ensure Consideration of Legitimate Claims of Actual Innocence.

This section reserves the grant funds in §§ 203, 205, 207 and 303 of this bill for states that do the following: (1) make post-conviction DNA testing available to any person convicted of a State crime; (2) allow post conviction relief if such testing excludes the defendant; and (3) preserve evidence in relation to state cases.

Section 421. Capital Representation Improvement Grants.

This section establishes a grant program to States to ensure effective representation in capital cases. Such a program may include training for defense counsel who litigate capital cases and establishment of qualifications standards for such counsel. To receive funding, the States must adopt and implement minimum standards for appointment of defense counsel to represent defendants in a capital case.

Section 422. Capital Prosecution Improvement Grants.

This section authorizes grants to States to improve the representation by prosecutors in capital cases by requiring States that receive funding to: establish training programs for capital prosecutors; develop, implement, and enforce appropriate standards and

qualifications for such prosecutors and assess their performance; establish programs under which prosecutors conduct a systematic review of cases in which a defendant is sentenced to death in order to identify cases in which post-conviction DNA testing is appropriate; and assist the families of murder victims.

Section 423. Applications.

This section requires States applying for grants under this subtitle to provide a long-term strategy and detailed implementation plan. The plan must reflect consultation with the judiciary, the organized bar, and State and local prosecutor and defender organizations, and establish as a priority improvement in the quality of trial-level representation of indigents charged with capital crimes and trial-level prosecution of capital crimes to enhance the reliability of capital trial verdicts. This section also requires that funds received under this subtitle shall be allocated equally between the capital prosecution and capital representation improvement grants.

Section 424. State Reports.

This section requires states receiving funds under this subtitle to provide an annual report to the Attorney General explaining the activities funded under the grant and the relationship to the grant program.

Section 425. Evaluations by Inspector General and Administrative Remedies.

This section requires the Inspector General of the Department of Justice to evaluate the States receiving funds under this title and submit reports to the Attorney General regarding compliance with the terms and conditions of the grant. In conducting such evaluations, the Inspector General must give priority to states at the highest risk of noncompliance. If, after receiving a report from the Inspector General, Attorney General finds that a state is not in compliance, the Attorney General shall take a series of steps to bring the state into compliance and report to Congress on the results.

Section 426. Authorization of Appropriations.

This section authorizes $100 million per year for 5 years to provide grants under this subsection.

Section 431. Compensation for the Wrongfully Convicted.

This section increases the maximum amount of damages an individual may be awarded for being wrongfully imprisoned from $5,000 to $50,000 per year in non-capital cases and $100,000 per year in capital cases.

Section 432. Sense of Congress Regarding Compensation in State Death Penalty Cases.

This section states that it is the sense of Congress that States should provide compensation to those persons who are wrongfully convicted.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

TITLE 18, UNITED STATES CODE

* * * * * * *

PART II—CRIMINAL PROCEDURE

Chap.		Sec.
201.	**General provisions**	**3001**
	* * * * * * *	
228A.	***Post-conviction DNA testing***	***3600***
	* * * * * * *	
237.	***Crime victims' rights***	***3771***
	* * * * * * *	

CHAPTER 213—LIMITATIONS

Sec.
3281. Capital offenses.
* * * * * * *
3297. Cases involving DNA evidence.
* * * * * * *

§ 3297. Cases involving DNA evidence

In a case in which DNA testing implicates an identified person in the commission of a felony, no statute of limitations that would otherwise preclude prosecution of the offense shall preclude such prosecution until a period of time following the implication of the person by DNA testing has elapsed that is equal to the otherwise applicable limitation period.

* * * * * * *

CHAPTER 228A—POST-CONVICTION DNA TESTING

Sec.
3600. DNA testing.
3600A. Preservation of biological evidence.

§ 3600. DNA testing

(a) IN GENERAL.—Upon a written motion by an individual under a sentence of imprisonment or death pursuant to a conviction for a Federal offense (referred to in this section as the "applicant"), the court that entered the judgment of conviction shall order DNA testing of specific evidence if—

(1) the applicant asserts, under penalty of perjury, that the applicant is actually innocent of—

(A) the Federal offense for which the applicant is under a sentence of imprisonment or death; or

(B) another Federal or State offense, if—

(i)(I) such offense was legally necessary to make the applicant eligible for a sentence as a career offender under section 3559(e) or an armed career offender under section 924(e), and exoneration of such offense would entitle the applicant to a reduced sentence; or

(II) evidence of such offense was admitted during a Federal death sentencing hearing and exoneration of such offense would entitle the applicant to a reduced sentence or new sentencing hearing; and

(ii) in the case of a State offense—

(I) the applicant demonstrates that there is no adequate remedy under State law to permit DNA testing of the specified evidence relating to the State offense; and

(II) to the extent available, the applicant has exhausted all remedies available under State law for requesting DNA testing of specified evidence relating to the State offense;

(2) the specific evidence to be tested was secured in relation to the investigation or prosecution of the Federal or State offense referenced in the applicant's assertion under paragraph (1);

(3) the specific evidence to be tested—

(A) was not previously subjected to DNA testing and the applicant did not knowingly and voluntarily waive the right to request DNA testing of that evidence in a court proceeding after the date of enactment of the Innocence Protection Act of 2004; or

(B) was previously subjected to DNA testing and the applicant is requesting DNA testing using a new method or technology that is substantially more probative than the prior DNA testing;

(4) the specific evidence to be tested is in the possession of the Government and has been subject to a chain of custody and retained under conditions sufficient to ensure that such evidence has not been substituted, contaminated, tampered with, replaced, or altered in any respect material to the proposed DNA testing;

(5) the proposed DNA testing is reasonable in scope, uses scientifically sound methods, and is consistent with accepted forensic practices;

(6) the applicant identifies a theory of defense that—

(A) is not inconsistent with an affirmative defense presented at trial; and

(B) would establish the actual innocence of the applicant of the Federal or State offense referenced in the applicant's assertion under paragraph (1);

(7) if the applicant was convicted following a trial, the identity of the perpetrator was at issue in the trial;

(8) the proposed DNA testing of the specific evidence—

(A) would produce new material evidence to support the theory of defense referenced in paragraph (6); and

(B) assuming the DNA test result excludes the applicant, would raise a reasonable probability that the applicant did not commit the offense;

(9) the applicant certifies that the applicant will provide a DNA sample for purposes of comparison; and

(10) the applicant's motion is filed for the purpose of demonstrating the applicant's actual innocence of the Federal or State offense, and not to delay the execution of the sentence or the administration of justice.

(b) NOTICE TO THE GOVERNMENT; PRESERVATION ORDER; APPOINTMENT OF COUNSEL.—

(1) NOTICE.—Upon the receipt of a motion filed under subsection (a), the court shall—

(A) notify the Government; and

(B) allow the Government a reasonable time period to respond to the motion.

(2) PRESERVATION ORDER.—To the extent necessary to carry out proceedings under this section, the court shall direct the Government to preserve the specific evidence relating to a motion under subsection (a).

(3) APPOINTMENT OF COUNSEL.—The court may appoint counsel for an indigent applicant under this section in the same manner as in a proceeding under section 3006A(a)(2)(B).

(c) TESTING PROCEDURES.—

(1) IN GENERAL.—The court shall direct that any DNA testing ordered under this section be carried out by the Federal Bureau of Investigation.

(2) EXCEPTION.—Notwithstanding paragraph (1), the court may order DNA testing by another qualified laboratory if the court makes all necessary orders to ensure the integrity of the specific evidence and the reliability of the testing process and test results.

(3) COSTS.—The costs of any DNA testing ordered under this section shall be paid—

(A) by the applicant; or

(B) in the case of an applicant who is indigent, by the Government.

(d) TIME LIMITATION IN CAPITAL CASES.—In any case in which the applicant is sentenced to death—

(1) any DNA testing ordered under this section shall be completed not later than 60 days after the date on which the Government responds to the motion filed under subsection (a); and

(2) not later than 120 days after the date on which the DNA testing ordered under this section is completed, the court shall order any post-testing procedures under subsection (f) or (g), as appropriate.

(e) REPORTING OF TEST RESULTS.—

(1) IN GENERAL.—The results of any DNA testing ordered under this section shall be simultaneously disclosed to the court, the applicant, and the Government.

(2) NDIS.—The Government shall submit any test results relating to the DNA of the applicant to the National DNA Index System (referred to in this subsection as "NDIS").

(3) RETENTION OF DNA SAMPLE.—

(A) ENTRY INTO NDIS.—If the DNA test results obtained under this section are inconclusive or show that the applicant was the source of the DNA evidence, the DNA sample of the applicant may be retained in NDIS.

(B) MATCH WITH OTHER OFFENSE.—If the DNA test results obtained under this section exclude the applicant as the source of the DNA evidence, and a comparison of the DNA sample of the applicant results in a match between the DNA sample of the applicant and another offense, the Attorney General shall notify the appropriate agency and preserve the DNA sample of the applicant.

(C) NO MATCH.—If the DNA test results obtained under this section exclude the applicant as the source of the DNA evidence, and a comparison of the DNA sample of the applicant does not result in a match between the DNA sample of the applicant and another offense, the Attorney General shall destroy the DNA sample of the applicant and ensure that such information is not retained in NDIS if there is no other legal authority to retain the DNA sample of the applicant in NDIS.

(f) POST-TESTING PROCEDURES; INCONCLUSIVE AND INCULPATORY RESULTS.—

(1) INCONCLUSIVE RESULTS.—If DNA test results obtained under this section are inconclusive, the court may order further testing, if appropriate, or may deny the applicant relief.

(2) INCULPATORY RESULTS.—If DNA test results obtained under this section show that the applicant was the source of the DNA evidence, the court shall—

(A) deny the applicant relief; and

(B) on motion of the Government—

(i) make a determination whether the applicant's assertion of actual innocence was false, and, if the court makes such a finding, the court may hold the applicant in contempt;

(ii) assess against the applicant the cost of any DNA testing carried out under this section;

(iii) forward the finding to the Director of the Bureau of Prisons, who, upon receipt of such a finding, may deny, wholly or in part, the good conduct credit authorized under section 3632 on the basis of that finding;

(iv) if the applicant is subject to the jurisdiction of the United States Parole Commission, forward the finding to the Commission so that the Commission may deny parole on the basis of that finding; and

(v) if the DNA test results relate to a State offense, forward the finding to any appropriate State official.

(3) SENTENCE.—In any prosecution of an applicant under chapter 79 for false assertions or other conduct in proceedings under this section, the court, upon conviction of the applicant, shall sentence the applicant to a term of imprisonment of not less than 3 years, which shall run consecutively to any other term of imprisonment the applicant is serving.

(g) POST-TESTING PROCEDURES; MOTION FOR NEW TRIAL OR RESENTENCING.—

(1) IN GENERAL.—Notwithstanding any law that would bar a motion under this paragraph as untimely, if DNA test results obtained under this section exclude the applicant as the source of the DNA evidence, the applicant may file a motion for a new trial or resentencing, as appropriate. The court shall establish a reasonable schedule for the applicant to file such a motion and for the Government to respond to the motion.

(2) STANDARD FOR GRANTING MOTION FOR NEW TRIAL OR RESENTENCING.—The court shall grant the motion of the applicant for a new trial or resentencing, as appropriate, if the DNA test results, when considered with all other evidence in the case (regardless of whether such evidence was introduced at trial), establish by a preponderance of the evidence that a new trial would result in an acquittal of—

(A) in the case of a motion for a new trial, the Federal offense for which the applicant is under a sentence of imprisonment or death; and

(B) in the case of a motion for resentencing, another Federal or State offense, if—

(i) such offense was legally necessary to make the applicant eligible for a sentence as a career offender under section 3559(e) or an armed career offender under section 924(e), and exoneration of such offense would entitle the applicant to a reduced sentence; or

(ii) evidence of such offense was admitted during a Federal death sentencing hearing and exoneration of such offense would entitle the applicant to a reduced sentence or a new sentencing proceeding.

(h) OTHER LAWS UNAFFECTED.—

(1) POST-CONVICTION RELIEF.—Nothing in this section shall affect the circumstances under which a person may obtain DNA testing or post-conviction relief under any other law.

(2) HABEAS CORPUS.—Nothing in this section shall provide a basis for relief in any Federal habeas corpus proceeding.

(3) APPLICATION NOT A MOTION.—An application under this section shall not be considered to be a motion under section 2255 for purposes of determining whether the application or any other motion is a second or successive motion under section 2255.

§ 3600A. Preservation of biological evidence

(a) IN GENERAL.—Notwithstanding any other provision of law, the Government shall preserve biological evidence that was secured in the investigation or prosecution of a Federal offense, if a defendant is under a sentence of imprisonment for such offense.

(b) DEFINED TERM.—For purposes of this section, the term "biological evidence" means—

(1) a sexual assault forensic examination kit; or

(2) semen, blood, saliva, hair, skin tissue, or other identified biological material.

(c) APPLICABILITY.—Subsection (a) shall not apply if—

(1) a court has denied a request or motion for DNA testing of the biological evidence by the defendant under section 3600, and no appeal is pending;

(2) the defendant knowingly and voluntarily waived the right to request DNA testing of such evidence in a court proceeding conducted after the date of enactment of the Innocence Protection Act of 2004;

(3) the defendant is notified after conviction that the biological evidence may be destroyed and the defendant does not file a motion under section 3600 within 180 days of receipt of the notice; or

(4)(A) the evidence must be returned to its rightful owner, or is of such a size, bulk, or physical character as to render retention impracticable; and

(B) the Government takes reasonable measures to remove and preserve portions of the material evidence sufficient to permit future DNA testing.

(d) OTHER PRESERVATION REQUIREMENT.—Nothing in this section shall preempt or supersede any statute, regulation, court order, or other provision of law that may require evidence, including biological evidence, to be preserved.

(e) REGULATIONS.—Not later than 180 days after the date of enactment of the Innocence Protection Act of 2004, the Attorney General shall promulgate regulations to implement and enforce this section, including appropriate disciplinary sanctions to ensure that employees comply with such regulations.

(f) CRIMINAL PENALTY.—Whoever knowingly and intentionally destroys, alters, or tampers with biological evidence that is required to be preserved under this section with the intent to prevent that evidence from being subjected to DNA testing or prevent the production or use of that evidence in an official proceeding, shall be fined under this title, imprisoned for not more than 5 years, or both.

(g) HABEAS CORPUS.—Nothing in this section shall provide a basis for relief in any Federal habeas corpus proceeding.

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CHAPTER 237—CRIME VICTIMS' RIGHTS

Sec.
3771. Crime victims' rights.

§ 3771. Crime victims' rights

(a) RIGHTS OF CRIME VICTIMS.—A crime victim has the following rights:

(1) The right to be reasonably protected from the accused.

(2) The right to reasonable, accurate, and timely notice of any public court proceeding involving the crime or of any release or escape of the accused.

(3) The right not to be excluded from any such public court proceeding, unless the court determines that testimony by the victim would be materially affected if the victim heard other testimony at that proceeding.

(4) The right to be reasonably heard at any public proceeding involving release, plea, or sentencing.

(5) The reasonable right to confer with the attorney for the Government in the case.

(6) The right to full and timely restitution as provided in law.

(7) The right to proceedings free from unreasonable delay.

(8) The right to be treated with fairness and with respect for the victim's dignity and privacy.

(b) RIGHTS AFFORDED.—In any court proceeding involving an offense against a crime victim, the court shall ensure that the crime victim is afforded the rights described in subsection (a). Before denying a crime victim the right described in subsection (a)(3), the court shall make every effort to permit the fullest attendance possible by the victim and shall consider reasonable alternatives to the exclusion of the victim from the criminal proceeding. The reasons for any decision denying relief under this chapter shall be clearly stated on the record.

(c) BEST EFFORTS TO ACCORD RIGHTS.—

(1) GOVERNMENT.—Officers and employees of the Department of Justice and other departments and agencies of the United States engaged in the detection, investigation, or prosecution of crime shall make their best efforts to see that crime victims are notified of, and accorded, the rights described in subsection (a).

(2) ADVICE OF ATTORNEY.—The prosecutor shall advise the crime victim that the crime victim can seek the advice of an attorney with respect to the rights described in subsection (a).

(3) NOTICE.—Notice of release otherwise required pursuant to this chapter shall not be given if such notice may endanger the safety of any person.

(d) ENFORCEMENT AND LIMITATIONS.—

(1) RIGHTS.—The crime victim or the crime victim's lawful representative, and the attorney for the Government may assert the rights described in subsection (a). A person accused of the crime may not obtain any form of relief under this chapter.

(2) MULTIPLE CRIME VICTIMS.—In a case where the court finds that the number of crime victims makes it impracticable to accord all of the crime victims the rights described in subsection (a), the court shall fashion a reasonable procedure to give effect to this chapter that does not unduly complicate or prolong the proceedings.

(3) MOTION FOR RELIEF AND WRIT OF MANDAMUS.—The rights described in subsection (a) shall be asserted in the district court in which a defendant is being prosecuted for the crime or, if no prosecution is underway, in the district court in the district in which the crime occurred. The district court shall take up and decide such motion forthwith. If the district court denies the relief sought, the movant may petition the court of appeals for a writ of mandamus. The court of appeals may issue the writ on the order of a single judge pursuant to circuit rule or the Federal Rules of Appellate Procedure. The court of appeals shall take up and decide such application forthwith within 72 hours after the petition has been filed. In no event shall proceedings be stayed or subject to a continuance of more than five day, or affect the defendant's right to a speedy trial, for purposes of enforcing this chapter.

(4) ERROR.—In any appeal in a criminal case, the Government may assert as error the district court's denial of any crime victim's right in the proceeding to which the appeal relates.

(5) LIMITATION ON RELIEF.—In no case shall a failure to afford a right under this chapter provide grounds for a new trial, or to reopen a plea or a sentence, except in the case of restitution as provided in title 18.

(6) NO CAUSE OF ACTION.—Nothing in this chapter shall be construed to authorize a cause of action for damages or to create, to enlarge, or to imply any duty or obligation to any victim or other person for the breach of which the United States or any of its officers or employees could be held liable in damages. Nothing in this chapter shall be construed to impair the prosecutorial discretion of the Attorney General or any officer under his direction.

(e) DEFINITIONS.—For the purposes of this chapter, the term "crime victim" means a person directly and proximately harmed as a result of the commission of a Federal offense or an offense in the District of Columbia. In the case of a crime victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardians of the crime victim or the representatives of the crime victim's estate, family members, or any other persons appointed as suitable by the court, may assume the crime victim's rights under this chapter, but in no event shall the defendant be named as such guardian or representative.

(f) PROCEDURES TO PROMOTE COMPLIANCE.—

(1) REGULATIONS.—Not later than 1 year after the date of enactment of this chapter, the Attorney General of the United States shall promulgate regulations to enforce the rights of crime victims and to ensure compliance by responsible officials with the obligations described in law respecting crime victims.

(2) CONTENTS.—The regulations promulgated under paragraph (1) shall—

(A) designate an administrative authority within the Department of Justice to receive and investigate complaints relating to the provision or violation of the rights of a crime victim;

(B) require a course of training for employees and offices of the Department of Justice that fail to comply with provisions of Federal law pertaining to the treatment of crime victims, and otherwise assist such employees and offices in responding more effectively to the needs of crime victims;

(C) contain disciplinary sanctions, including suspension or termination from employment, for employees of the Department of Justice who willfully or wantonly fail to comply with provisions of Federal law pertaining to the treatment of crime victims; and

(D) provide that the Attorney General, or the designee of the Attorney General, shall be the final arbiter of the complaint, and that there shall be no judicial review of the final decision of the Attorney General by a complainant.

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SECTION 502 OF THE VICTIMS' RIGHTS AND RESTITUTION ACT OF 1990

[SEC. 502. VICTIMS' RIGHTS.

[(a) BEST EFFORTS TO ACCORD RIGHTS.—Officers and employees of the Department of Justice and other departments and agencies of the United States engaged in the detection, investigation, or prosecution of crime shall make their best efforts to see that victims of crime are accorded the rights described in subsection (b).

[(b) RIGHTS OF CRIME VICTIMS.—A crime victim has the following rights:

[(1) The right to be treated with fairness and with respect for the victim's dignity and privacy.

[(2) The right to be reasonably protected from the accused offender.

[(3) The right to be notified of court proceedings.

[(4) The right to be present at all public court proceedings related to the offense, unless the court determines that testimony by the victim would be materially affected if the victim heard other testimony at trial.

[(5) The right to confer with attorney for the Government in the case.

[(6) The right to restitution.

[(7) The right to information about the conviction, sentencing, imprisonment, and release of the offender.

[(c) NO CAUSE OF ACTION OR DEFENSE.—This section does not create a cause of action or defense in favor of any person arising out of the failure to accord to a victim the rights enumerated in subsection (b).]

VICTIMS OF CRIME ACT OF 1984

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CHAPTER XIV—VICTIM COMPENSATION AND ASSISTANCE

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SEC. 1404D. CRIME VICTIMS LEGAL ASSISTANCE GRANTS.

(a) IN GENERAL.—The Director may make grants as provided in section 1404(c)(1)(A) to State, tribal, and local prosecutors' offices, law enforcement agencies, courts, jails, and correctional institutions, and to qualified public and private entities, to develop, establish, and maintain programs for the enforcement of crime victims' rights as provided in law.

(b) PROHIBITION.—Grant amounts under this section may not be used to bring a cause of action for damages.

(c) FALSE CLAIMS ACT.—Notwithstanding any other provision of law, amounts collected pursuant to sections 3729 through 3731 of title 31, United States Code (commonly known as the "False Claims Act"), may be used for grants under this section, subject to appropriation.

SEC. 1404E. CRIME VICTIMS NOTIFICATION GRANTS.

(a) IN GENERAL.—The Director may make grants as provided in section 1404(c)(1)(A) to State, tribal, and local prosecutors' offices, law enforcement agencies, courts, jails, and correctional institutions,

and to qualified public or private entities, to develop and implement state-of-the-art systems for notifying victims of crime of important dates and developments relating to the criminal proceedings at issue in a timely and efficient manner, provided that the jurisdiction has laws substantially equivalent to the provisions of chapter 237 of title 18, United States Code.

(b) INTEGRATION OF SYSTEMS.—Systems developed and implemented under this section may be integrated with existing case management systems operated by the recipient of the grant.

(c) AUTHORIZATION OF APPROPRIATIONS.—In addition to funds made available under section 1402(d), there are authorized to be appropriated to carry out this section—

(1) $5,000,000 for fiscal year 2005; and

(2) $5,000,000 for each of the fiscal years 2006, 2007, 2008, and 2009.

(d) FALSE CLAIMS ACT.—Notwithstanding any other provision of law, amounts collected pursuant to sections 3729 through 3731 of title 31, United States Code (commonly known as the "False Claims Act"), may be used for grants under this section, subject to appropriation.

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DNA ANALYSIS BACKLOG ELIMINATION ACT OF 2000

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[SEC. 2. AUTHORIZATION OF GRANTS.]

SEC. 2. THE DEBBIE SMITH DNA BACKLOG GRANT PROGRAM.

(a) AUTHORIZATION OF GRANTS.—The Attorney General may make grants to eligible States *or units of local government* for use by the State *or unit of local government* for the following purposes:

(1) * * *

(2) To carry out, for inclusion in such Combined DNA Index System, DNA analyses of samples from crime scenes*, including samples from rape kits, samples from other sexual assault evidence, and samples taken in cases without an identified suspect*.

(3) To increase the capacity of laboratories owned by the State or by units of local government **[**within the State**]** to carry out DNA analyses of samples specified in paragraph *(1) or* (2).

(4) To collect DNA samples specified in paragraph (1).

(5) To ensure that DNA testing and analysis of samples from crimes, including sexual assault and other serious violent crimes, are carried out in a timely manner.

(b) ELIGIBILITY.—For a State *or unit of local government* to be eligible to receive a grant under this section, the chief executive officer of the State *or unit of local government* shall submit to the Attorney General an application in such form and containing such information as the Attorney General may require. The application shall*, as required by the Attorney General—*

(1) provide assurances that the State *or unit of local government* has implemented, or will implement not later than

120 days after the date of such application, a comprehensive plan for the expeditious DNA analysis of samples in accordance with this section;

* * * * * * *

(3) include a certification that the State *or unit of local government* has determined, by statute, rule, or regulation, those offenses under State law that shall be treated for purposes of this section as qualifying State offenses;

(4) specify the allocation that the State *or unit of local government* shall make, in using grant amounts to carry out DNA analyses of samples, as between samples specified in subsection (a)(1) and samples specified in subsection (a)(2); **[**and**]**

(5) specify that portion of grant amounts that the State *or unit of local government* shall use for the purpose specified in subsection (a)(3)**[**.**]***;*

(6) if submitted by a unit of local government, certify that the unit of local government has taken, or is taking, all necessary steps to ensure that it is eligible to include, directly or through a State law enforcement agency, all analyses of samples for which it has requested funding in the Combined DNA Index System; and

(7) specify that portion of grant amounts that the State or unit of local government shall use for the purpose specified in subsection (a)(4).

[(c) CRIMES WITHOUT SUSPECTS.—A State that proposes to allocate grant amounts under paragraph (4) or (5) of subsection (b) for the purposes specified in paragraph (2) or (3) of subsection (a) shall use such allocated amounts to conduct or facilitate DNA analyses of those samples that relate to crimes in connection with which there are no suspects.**]**

(c) FORMULA FOR DISTRIBUTION OF GRANTS.—

(1) IN GENERAL.—The Attorney General shall distribute grant amounts, and establish appropriate grant conditions under this section, in conformity with a formula or formulas that are designed to effectuate a distribution of funds among eligible States and units of local government that—

(A) maximizes the effective utilization of DNA technology to solve crimes and protect public safety; and

(B) allocates grants among eligible entities fairly and efficiently to address jurisdictions in which significant backlogs exist, by considering—

(i) the number of offender and casework samples awaiting DNA analysis in a jurisdiction;

(ii) the population in the jurisdiction; and

(iii) the number of part 1 violent crimes in the jurisdiction.

(2) MINIMUM AMOUNT.—The Attorney General shall allocate to each State not less than 0.50 percent of the total amount appropriated in a fiscal year for grants under this section, except that the United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands shall each be allocated 0.125 percent of the total appropriation.

(3) LIMITATION.—Grant amounts distributed under paragraph (1) shall be awarded to conduct DNA analyses of samples

from casework or from victims of crime under subsection (a)(2) in accordance with the following limitations:

(A) For fiscal year 2005, not less than 50 percent of the grant amounts shall be awarded for purposes under subsection (a)(2).

(B) For fiscal year 2006, not less than 50 percent of the grant amounts shall be awarded for purposes under subsection (a)(2).

(C) For fiscal year 2007, not less than 45 percent of the grant amounts shall be awarded for purposes under subsection (a)(2).

(D) For fiscal year 2008, not less than 40 percent of the grant amounts shall be awarded for purposes under subsection (a)(2).

(E) For fiscal year 2009, not less than 40 percent of the grant amounts shall be awarded for purposes under subsection (a)(2).

(d) ANALYSIS OF SAMPLES.—

(1) IN GENERAL.—**[**The plan**]** *A plan pursuant to subsection (b)(1)* shall require that, except as provided in paragraph (3), each DNA analysis be carried out in a laboratory that satisfies quality assurance standards and is—

(A) operated by the State or a unit of local government **[**within the State**]**; or

(B) operated by a private entity pursuant to a contract with the State or a unit of local government **[**within the State**]**.

(2) QUALITY ASSURANCE STANDARDS.—(A) The Director of the Federal Bureau of Investigation shall maintain and make available to States *and units of local government* a description of quality assurance protocols and practices that the Director considers adequate to assure the quality of a forensic laboratory.

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[(3) USE OF VOUCHERS FOR CERTAIN PURPOSES.—A grant for the purposes specified in paragraph (1) or (2) of subsection (a) may be made in the form of a voucher for laboratory services, which may be redeemed at a laboratory operated by a private entity approved by the Attorney General that satisfies quality assurance standards. The Attorney General may make payment to such a laboratory for the analysis of DNA samples using amounts authorized for those purposes under subsection (j).**]**

(3) USE OF VOUCHERS OR CONTRACTS FOR CERTAIN PURPOSES.—

(A) IN GENERAL.—A grant for the purposes specified in paragraph (1), (2), or (5) of subsection (a) may be made in the form of a voucher or contract for laboratory services.

(B) REDEMPTION.—A voucher or contract under subparagraph (A) may be redeemed at a laboratory operated by a private entity that satisfies quality assurance standards and has been approved by the Attorney General.

(C) PAYMENTS.—The Attorney General may use amounts authorized under subsection (j) to make payments to a laboratory described under subparagraph (B).

(e) RESTRICTIONS ON USE OF FUNDS.—

(1) NONSUPPLANTING.—Funds made available pursuant to this section shall not be used to supplant State *or local government* funds, but shall be used to increase the amount of funds that would, in the absence of Federal funds, be made available from State *or local government* sources for the purposes of this Act.

(2) ADMINISTRATIVE COSTS.—A State *or unit of local government* may not use more than 3 percent of the funds it receives from this section for administrative expenses.

(f) REPORTS TO THE ATTORNEY GENERAL.—Each State *or unit of local government* which receives a grant under this section shall submit to the Attorney General, for each year in which funds from a grant received under this section is expended, a report at such time and in such manner as the Attorney General may reasonably require, which contains—

(1) * * *

* * * * * * *

(g) REPORTS TO CONGRESS.—Not later than 90 days after the end of each fiscal year for which grants are made under this section, the Attorney General shall submit to the Congress a report that includes—

(1) the aggregate amount of grants made under this section to each State *or unit of local government* for such fiscal year; **[**and**]**

(2) a summary of the information provided by States *or units of local government* receiving grants under this section**[**.**]***; and*

(3) a description of the priorities and plan for awarding grants among eligible States and units of local government, and how such plan will ensure the effective use of DNA technology to solve crimes and protect public safety.

(h) EXPENDITURE RECORDS.—

(1) IN GENERAL.—Each State *or unit of local government* which receives a grant under this section shall keep records as the Attorney General may require to facilitate an effective audit of the receipt and use of grant funds received under this section.

(2) ACCESS.—Each State *or unit of local government* which receives a grant under this section shall make available, for the purpose of audit and examination, such records as are related to the receipt or use of any such grant.

* * * * * * *

(j) AUTHORIZATION OF APPROPRIATIONS.—Amounts are authorized to be appropriated to the Attorney General for grants under subsection (a) as follows:

[(1) For grants for the purposes specified in paragraph (1) of such subsection—

[(A) $15,000,000 for fiscal year 2001;

[(B) $15,000,000 for fiscal year 2002; and

[(C) $15,000,000 for fiscal year 2003.

[(2) For grants for the purposes specified in paragraphs (2) and (3) of such subsection—

[(A) $25,000,000 for fiscal year 2001;

[(B) $50,000,000 for fiscal year 2002;
[(C) $25,000,000 for fiscal year 2003; and
[(D) $25,000,000 for fiscal year 2004.]

(1) $151,000,000 for fiscal year 2005;
(2) $151,000,000 for fiscal year 2006;
(3) $151,000,000 for fiscal year 2007;
(4) $151,000,000 for fiscal year 2008; and
(5) $151,000,000 for fiscal year 2009.

(k) USE OF FUNDS FOR ACCREDITATION AND AUDITS.—The Attorney General may distribute not more than 1 percent of the grant amounts under subsection (j)—

(1) to States or units of local government to defray the costs incurred by laboratories operated by each such State or unit of local government in preparing for accreditation or reaccreditation;

(2) in the form of additional grants to States, units of local government, or nonprofit professional organizations of persons actively involved in forensic science and nationally recognized within the forensic science community—

(A) to defray the costs of external audits of laboratories operated by such State or unit of local government, which participates in the National DNA Index System, to determine whether the laboratory is in compliance with quality assurance standards;

(B) to assess compliance with any plans submitted to the National Institute of Justice, which detail the use of funds received by States or units of local government under this Act; and

(C) to support future capacity building efforts; and

(3) in the form of additional grants to nonprofit professional associations actively involved in forensic science and nationally recognized within the forensic science community to defray the costs of training persons who conduct external audits of laboratories operated by States and units of local government and which participate in the National DNA Index System.

(l) EXTERNAL AUDITS AND REMEDIAL EFFORTS.—In the event that a laboratory operated by a State or unit of local government which has received funds under this Act has undergone an external audit conducted to determine whether the laboratory is in compliance with standards established by the Director of the Federal Bureau of Investigation, and, as a result of such audit, identifies measures to remedy deficiencies with respect to the compliance by the laboratory with such standards, the State or unit of local government shall implement any such remediation as soon as practicable.

SEC. 3. COLLECTION AND USE OF DNA IDENTIFICATION INFORMATION FROM CERTAIN FEDERAL OFFENDERS.

(a) * * *

* * * * * * *

[(d) QUALIFYING FEDERAL OFFENSES.—(1) The offenses that shall be treated for purposes of this section as qualifying Federal offenses are the following offenses under title 18, United States Code, as determined by the Attorney General:

[(A) Murder (as described in section 1111 of such title), voluntary manslaughter (as described in section 1112 of such

title), or other offense relating to homicide (as described in chapter 51 of such title, sections 1113, 1114, 1116, 1118, 1119, 1120, and 1121).

[(B) An offense relating to sexual abuse (as described in chapter 109A of such title, sections 2241 through 2245), to sexual exploitation or other abuse of children (as described in chapter 110 of such title, sections 2251 through 2252), or to transportation for illegal sexual activity (as described in chapter 117 of such title, sections 2421, 2422, 2423, and 2425).

[(C) An offense relating to peonage and slavery (as described in chapter 77 of such title).

[(D) Kidnapping (as defined in section 3559(c)(2)(E) of such title).

[(E) An offense involving robbery or burglary (as described in chapter 103 of such title, sections 2111 through 2114, 2116, and 2118 through 2119).

[(F) Any violation of section 1153 involving murder, manslaughter, kidnapping, maiming, a felony offense relating to sexual abuse (as described in chapter 109A), incest, arson, burglary, or robbery.

[(G) Any attempt or conspiracy to commit any of the above offenses.

[(2) In addition to the offenses described in paragraph (1), the following offenses shall be treated for purposes of this section as qualifying Federal offenses, as determined by the Attorney General:

[(A) Any offense listed in section 2332b(g)(5)(B) of title 18, United States Code.

[(B) Any crime of violence (as defined in section 16 of title 18, United States Code).

[(C) Any attempt or conspiracy to commit any of the above offenses.]

(d) QUALIFYING FEDERAL OFFENSES.—The offenses that shall be treated for purposes of this section as qualifying Federal offenses are the following offenses, as determined by the Attorney General:

(1) Any felony.

(2) Any offense under chapter 109A of title 18, United States Code.

(3) Any crime of violence (as that term is defined in section 16 of title 18, United States Code).

(4) Any attempt or conspiracy to commit any of the offenses in paragraphs (1) through (3).

* * * * * * *

SEC. 10. PRIVACY PROTECTION STANDARDS.

(a) * * *

* * * * * * *

[(c) CRIMINAL PENALTY.—A person who knowingly—

[(1) discloses a sample or result described in subsection (a) in any manner to any person not authorized to receive it; or

[(2) obtains, without authorization, a sample or result described in subsection (a),

shall be fined not more than $100,000.]

(c) CRIMINAL PENALTY.—A person who knowingly discloses a sample or result described in subsection (a) in any manner to any

person not authorized to receive it, or obtains or uses, without authorization, such sample or result, shall be fined not more than $100,000. Each instance of disclosure, obtaining, or use shall constitute a separate offense under this subsection.

* * * * * * *

SECTION 210304 OF THE DNA IDENTIFICATION ACT OF 1994

SEC. 210304. INDEX TO FACILITATE LAW ENFORCEMENT EXCHANGE OF DNA IDENTIFICATION INFORMATION.

(a) ESTABLISHMENT OF INDEX.—The Director of the Federal Bureau of Investigation may establish an index of—

(1) DNA identification records [of persons convicted of crimes;] *of—*

(A) persons convicted of crimes;

(B) persons who have been indicted or who have waived indictment for a crime; and

(C) other persons whose DNA samples are collected under applicable legal authorities, provided that DNA profiles from arrestees who have not been indicted and DNA samples that are voluntarily submitted solely for elimination purposes shall not be included in the Combined DNA Index System;

* * * * * * *

(b) INFORMATION.—The index described in subsection (a) shall include only information on DNA identification records and DNA analyses that are—

(1) * * *

[(2) prepared by laboratories, and DNA analysts, that undergo semiannual external proficiency testing by a DNA proficiency testing program meeting the standards issued under section 210303; and]

(2) prepared by laboratories that—

(A) not later than 2 years after the date of enactment of the DNA Sexual Assault Justice Act of 2004, have been accredited by a nonprofit professional association of persons actively involved in forensic science that is nationally recognized within the forensic science community; and

(B) undergo external audits, not less than once every 2 years, that demonstrate compliance with standards established by the Director of the Federal Bureau of Investigation; and

* * * * * * *

(d) EXPUNGEMENT OF RECORDS.—

(1) * * *

(2) BY STATES.—(A) As a condition of access to the index described in subsection (a), a State shall promptly expunge from that index the DNA analysis of a person included in the index by that State [if the responsible agency] *if—*

(i) the responsible agency or official of that State receives, for each conviction of the person of an offense on the basis of which that analysis was or could have

been included in the index, a certified copy of a final court order establishing that such conviction has been overturned[.]*; or*

(ii) the person has not been convicted of an offense on the basis of which that analysis was or could have been included in the index, and all charges for which the analysis was or could have been included in the index have been dismissed or resulted in acquittal.

* * * * * * *

(e) AUTHORITY FOR KEYBOARD SEARCHES.—

(1) IN GENERAL.—The Director shall ensure that any person who is authorized to access the index described in subsection (a) for purposes of including information on DNA identification records or DNA analyses in that index may also access that index for purposes of carrying out a one-time keyboard search on information obtained from any DNA sample lawfully collected for a criminal justice purpose except for a DNA sample voluntarily submitted solely for elimination purposes.

(2) DEFINITION.—For purposes of paragraph (1), the term "keyboard search" means a search under which information obtained from a DNA sample is compared with information in the index without resulting in the information obtained from a DNA sample being included in the index.

(3) NO PREEMPTION.—This subsection shall not be construed to preempt State law.

SECTION 1565 OF TITLE 10, UNITED STATES CODE

§ 1565. DNA identification information: collection from certain offenders; use

(a) * * *

* * * * * * *

[(d) QUALIFYING MILITARY OFFENSES.—(1) Subject to paragraph (2), the Secretary of Defense, in consultation with the Attorney General, shall determine those felony or sexual offenses under the Uniform Code of Military Justice that shall be treated for purposes of this section as qualifying military offenses.

[(2) An offense under the Uniform Code of Military Justice that is comparable to a qualifying Federal offense (as determined under section 3(d) of the DNA Analysis Backlog Elimination Act of 2000), as determined by the Secretary in consultation with the Attorney General, shall be treated for purposes of this section as a qualifying military offense.]

(d) QUALIFYING MILITARY OFFENSES.—The offenses that shall be treated for purposes of this section as qualifying military offenses are the following offenses, as determined by the Secretary of Defense, in consultation with the Attorney General:

(1) Any offense under the Uniform Code of Military Justice for which a sentence of confinement for more than one year may be imposed.

(2) Any other offense under the Uniform Code of Military Justice that is comparable to a qualifying Federal offense (as

determined under section 3(d) of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135a(d))).

* * * * * * *

SECTION 1201 OF THE VIOLENCE AGAINST WOMEN ACT OF 2000

SEC. 1201. LEGAL ASSISTANCE FOR VICTIMS.

(a) IN GENERAL.—The purpose of this section is to enable the Attorney General to award grants to increase the availability of legal assistance necessary to provide effective aid to victims of domestic violence, *dating violence,* stalking, or sexual assault who are seeking relief in legal matters arising as a consequence of that abuse or violence, at minimal or no cost to the victims.

(b) DEFINITIONS.—In this section:

(1) DATING VIOLENCE.—The term "dating violence" means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on a consideration of—

(A) the length of the relationship;

(B) the type of relationship; and

(C) the frequency of interaction between the persons involved in the relationship.

[(1)**]** *(2)* DOMESTIC VIOLENCE.—The term "domestic violence" has the meaning given the term in section 2003 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796gg–2).

[(2)**]** *(3)* LEGAL ASSISTANCE FOR VICTIMS.—The term "legal assistance" includes assistance to victims of domestic violence, *dating violence,* stalking, and sexual assault in family, immigration, administrative agency, or housing matters, protection or stay away order proceedings, and other similar matters. No funds made available under this section may be used to provide financial assistance in support of any litigation described in paragraph (14) of section 504 of Public Law 104–134.

[(3)**]** *(4)* SEXUAL ASSAULT.—The term "sexual assault" has the meaning given the term in section 2003 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796gg–2).

(c) LEGAL ASSISTANCE FOR VICTIMS GRANTS.—The Attorney General may award grants under this subsection to private nonprofit entities, Indian tribal governments, and publicly funded organizations not acting in a governmental capacity such as law schools, and which shall be used—

(1) to implement, expand, and establish cooperative efforts and projects between domestic violence*, dating violence,* and sexual assault victim services organizations and legal assistance providers to provide legal assistance for victims of domestic violence, *dating violence,* stalking, and sexual assault;

(2) to implement, expand, and establish efforts and projects to provide legal assistance for victims of domestic violence, *dating violence,* stalking, and sexual assault by organiza-

tions with a demonstrated history of providing direct legal or advocacy services on behalf of these victims; and

(3) to provide training, technical assistance, and data collection to improve the capacity of grantees and other entities to offer legal assistance to victims of domestic violence, *dating violence,* stalking, and sexual assault.

(d) ELIGIBILITY.—To be eligible for a grant under subsection (c), applicants shall certify in writing that—

(1) any person providing legal assistance through a program funded under subsection (c) has completed or will complete training in connection with domestic violence*, dating violence,* or sexual assault and related legal issues;

(2) any training program conducted in satisfaction of the requirement of paragraph (1) has been or will be developed with input from and in collaboration with a State, local, or tribal domestic violence*, dating violence,* or sexual assault program or coalition, as well as appropriate State and local law enforcement officials;

(3) any person or organization providing legal assistance through a program funded under subsection (c) has informed and will continue to inform State, local, or tribal domestic violence*, dating violence,* or sexual assault programs and coalitions, as well as appropriate State and local law enforcement officials of their work; and

(4) the grantee's organizational policies do not require mediation or counseling involving offenders and victims physically together, in cases where sexual assault, domestic violence, *dating violence,* or child sexual abuse is an issue.

(e) EVALUATION.—The Attorney General may evaluate the grants funded under this section through contracts or other arrangements with entities expert on domestic violence, *dating violence,* stalking, and sexual assault, and on evaluation research.

(f) AUTHORIZATION OF APPROPRIATIONS.—

(1) * * *

(2) ALLOCATION OF FUNDS.—

(A) TRIBAL PROGRAMS.—Of the amount made available under this subsection in each fiscal year, not less than 5 percent shall be used for grants for programs that assist victims of domestic violence, *dating violence,* stalking, and sexual assault on lands within the jurisdiction of an Indian tribe.

* * * * * * *

OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968

* * * * * * *

TITLE I—JUSTICE SYSTEM IMPROVEMENT

* * * * * * *

PART J—FUNDING

AUTHORIZATION OF APPROPRIATIONS

SEC. 1001. (a)(1) * * *

* * * * * * *

(24) There are authorized to be appropriated to carry out part BB, to remain available until expended—

(A) $35,000,000 for fiscal year 2001;
(B) $85,400,000 for fiscal year 2002;
(C) $134,733,000 for fiscal year 2003;
(D) $128,067,000 for fiscal year 2004;
(E) $56,733,000 for fiscal year 2005; **[**and**]**
(F) $42,067,000 for fiscal year 2006**[**.**]***;*
(G) $20,000,000 for fiscal year 2007;
(H) $20,000,000 for fiscal year 2008; and
(I) $20,000,000 for fiscal year 2009.

(25)(A) Except as provided in subparagraph (C), there are authorized to be appropriated to carry out part EE—

(i) $50,000,000 for fiscal year 2002;
(ii) $54,000,000 for fiscal year 2003;
(iii) $58,000,000 for fiscal year 2004; and
(iv) $60,000,000 for fiscal year 2005.

(B) The Attorney General shall reserve not less than 1 percent and not more than 4.5 percent of the sums appropriated for this program in each fiscal year for research and evaluation of this program.

(C) No funds made available to carry out part EE shall be expended if the Attorney General fails to submit the report required to be submitted under section 2401(c) of title II of Division B of the 21st Century Department of Justice Appropriations Authorization Act.

* * * * * * *

PART T—GRANTS TO COMBAT VIOLENT CRIMES AGAINST WOMEN

SEC. 2001. PURPOSE OF THE PROGRAM AND GRANTS.

(a) * * *

* * * * * * *

(d) TRIBAL COALITION GRANTS.—

(1) PURPOSE.—The Attorney General shall award grants to tribal domestic violence and sexual assault coalitions for purposes of—

(A) increasing awareness of domestic violence and sexual assault against Indian women;

(B) enhancing the response to violence against Indian women at the tribal, Federal, and State levels; and

(C) identifying and providing technical assistance to coalition membership and tribal communities to enhance access to essential services to Indian women victimized by domestic and sexual violence.

(2) GRANTS TO TRIBAL COALITIONS.—The Attorney General shall award grants under paragraph (1) to—

(A) established nonprofit, nongovernmental tribal coalitions addressing domestic violence and sexual assault against Indian women; and

(B) individuals or organizations that propose to incorporate as nonprofit, nongovernmental tribal coalitions to address domestic violence and sexual assault against Indian women.

(3) ELIGIBILITY FOR OTHER GRANTS.—Receipt of an award under this subsection by tribal domestic violence and sexual assault coalitions shall not preclude the coalition from receiving additional grants under this title to carry out the purposes described in subsection (b).

* * * * * * *

SEC. 2007. STATE GRANTS.

(a) * * *

(b) AMOUNTS.—Of the amounts appropriated for the purposes of this part—

(1) * * *

* * * * * * *

[(4) 1/54 shall be available for the development and operation of nonprofit tribal domestic violence and sexual assault coalitions in Indian country;**]**

(4) 1/54 shall be available for grants under section 2001(d);

* * * * * * *

PART BB—PAUL COVERDELL FORENSIC SCIENCES IMPROVEMENT GRANTS

* * * * * * *

SEC. 2802. APPLICATIONS.

To request a grant under this part, a State or unit of local government shall submit to the Attorney General—

(1) * * *

(2) a certification that any forensic science laboratory system, medical examiner's office, or coroner's office in the State, including any laboratory operated by a unit of local government within the State, that will receive any portion of the grant amount uses generally accepted laboratory practices and procedures, established by accrediting organizations or appropriate certifying bodies; **[**and**]**

(3) a specific description of any new facility to be constructed as part of the program for a State or local plan described in paragraph (1), and the estimated costs of that facility, and a certification that the amount of the grant used for the costs of the facility will not exceed the limitations set forth in section 2804(c)**[**.**]***; and*

(4) a certification that a government entity exists and an appropriate process is in place to conduct independent external investigations into allegations of serious negligence or misconduct substantially affecting the integrity of the forensic results committed by employees or contractors of any forensic laboratory system, medical examiner's office, coroner's office, law

enforcement storage facility, or medical facility in the State that will receive a portion of the grant amount.

* * * * * * *

SEC. 2804. USE OF GRANTS.

(a) IN GENERAL.—A State or unit of local government that receives a grant under this part [shall use the grant to carry out] *shall use the grant to do any one or more of the following:*

(1) To carry out all or a substantial part of a program intended to improve the quality and timeliness of forensic science or medical examiner services in the State, including such services provided by the laboratories operated by the State and those operated by units of local government within the State.

(2) To eliminate a backlog in the analysis of forensic science evidence, including firearms examination, latent prints, toxicology, controlled substances, forensic pathology, questionable documents, and trace evidence.

(3) To train, assist, and employ forensic laboratory personnel, as needed, to eliminate such a backlog.

(b) PERMITTED CATEGORIES OF FUNDING.—Subject to subsections (c) and (d), a grant awarded [under this part] *for the purpose set forth in subsection (a)(1)—*

(1) may only be used for program expenses relating to facilities, personnel, computerization, equipment, supplies, accreditation and certification, education, and training; and

(2) may not be used for any general law enforcement or nonforensic investigatory function.

* * * * * * *

(e) BACKLOG DEFINED.—For purposes of this section, a backlog in the analysis of forensic science evidence exists if such evidence—

(1) has been stored in a laboratory, medical examiner's office, coroner's office, law enforcement storage facility, or medical facility; and

(2) has not been subjected to all appropriate forensic testing because of a lack of resources or personnel.

* * * * * * *

SECTION 402 OF THE VIOLENCE AGAINST WOMEN OFFICE ACT

(Public Law 107–273)

SEC. 402. ESTABLISHMENT OF VIOLENCE AGAINST WOMEN OFFICE.

Part T of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796gg et seq.) is amended—

(1) * * *

(2) by redesignating sections 2002 through 2006 as [sections 2006 through 2011] *sections 2007 through 2011*, respectively; and

* * * * * * *

SECTION 2513 OF TITLE 28, UNITED STATES CODE

SEC. 2513. UNJUST CONVICTION AND IMPRISONMENT.

(a) * * *

* * * * * * *

(e) The amount of damages awarded shall not [exceed the sum of $5,000] *exceed $100,000 for each 12-month period of incarceration for any plaintiff who was unjustly sentenced to death and $50,000 for each 12-month period of incarceration for any other plaintiff.*

MARKUP TRANSCRIPT

BUSINESS MEETING

WEDNESDAY, SEPTEMBER 22, 2004

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 11:00 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr. [Chairman of the Committee] presiding.

Chairman SENSENBRENNER. The Committee on the Judiciary will be in order. A working quorum is present.

Pursuant to notice, I call up the bill, H.R. 5107, the "Justice For All Act of 2004" for purposes of markup and move its favorable recommendation to the House.

Without objection, the bill will be considered as read and open for amendment at any point and the Chair recognizes himself for 5 minutes.

[The bill, H.R. 5107, follows:]

I

108TH CONGRESS
2D SESSION

H. R. 5107

To protect crime victims' rights, to eliminate the substantial backlog of DNA samples collected from crime scenes and convicted offenders, to improve and expand the DNA testing capacity of Federal, State, and local crime laboratories, to increase research and development of new DNA testing technologies, to develop new training programs regarding the collection and use of DNA evidence, to provide post-conviction testing of DNA evidence to exonerate the innocent, to improve the performance of counsel in State capital cases, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 21, 2004

Mr. SENSENBRENNER (for himself, Mr. CONYERS, Mr. CHABOT, Mr. COBLE, Mr. DELAHUNT, Ms. PRYCE of Ohio, Mr. GREEN of Wisconsin, Mr. SCOTT of Virginia, Mr. JENKINS, Mr. SCHIFF, Mr. WEINER, Ms. HART, Mr. BACHUS, Ms. BALDWIN, Mr. KELLER, and Mr. NADLER) introduced the following bill; which was referred to the Committee on the Judiciary

---

A BILL

To protect crime victims' rights, to eliminate the substantial backlog of DNA samples collected from crime scenes and convicted offenders, to improve and expand the DNA testing capacity of Federal, State, and local crime laboratories, to increase research and development of new DNA testing technologies, to develop new training programs regarding the collection and use of DNA evidence, to provide post-conviction testing of DNA evidence to exonerate the innocent, to improve the performance of counsel in State capital cases, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 ''Justice for All Act of 2004''.

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

Sec. 1. Short title; table of contents.

TITLE I—SCOTT CAMBELL, STEPHANIE ROPER, WENDY PRESTON, LOUARNA GILLIS, AND NILA LYNN CRIME VICTIMS' RIGHTS ACT

Sec. 101. Short title.
Sec. 102. Crime victims' rights.
Sec. 103. Increased resources for enforcement of crime victims' rights.
Sec. 104. Reports.

TITLE II—DEBBIE SMITH ACT OF 2004

Sec. 201. Short title.
Sec. 202. Debbie Smith DNA Backlog Grant Program.
Sec. 203. Expansion of Combined DNA Index System.
Sec. 204. Tolling of statute of limitations.
Sec. 205. Legal assistance for victims of violence.
Sec. 206. Ensuring private laboratory assistance in eliminating DNA backlog.

TITLE III—DNA SEXUAL ASSAULT JUSTICE ACT OF 2004

Sec. 301. Short title.
Sec. 302. Ensuring public crime laboratory compliance with Federal standards.
Sec. 303. DNA training and education for law enforcement, correctional personnel, and court officers.
Sec. 304. Sexual assault forensic exam program grants.
Sec. 305. DNA research and development.
Sec. 306. National Forensic Science Commission.
Sec. 307. FBI DNA programs.
Sec. 308. DNA identification of missing persons.
Sec. 309. Enhanced criminal penalties for unauthorized disclosure or use of DNA information.
Sec. 310. Tribal coalition grants.
Sec. 311. Expansion of Paul Coverdell Forensic Sciences Improvement Grant Program.
Sec. 312. Report to Congress.

TITLE IV—INNOCENCE PROTECTION ACT OF 2004

Sec. 401. Short title.

Subtitle A—Exonerating the innocent through DNA testing

Sec. 411. Federal post-conviction DNA testing.
Sec. 412. Kirk Bloodsworth Post-Conviction DNA Testing Grant Program.
Sec. 413. Incentive grants to States to ensure consideration of claims of actual innocence.

Subtitle B—Improving the quality of representation in State capital cases

Sec. 421. Capital representation improvement grants.
Sec. 422. Capital prosecution improvement grants.
Sec. 423. Applications.
Sec. 424. State reports.
Sec. 425. Evaluations by Inspector General and administrative remedies.
Sec. 426. Authorization of appropriations.

Subtitle C—Compensation for the wrongfully convicted

Sec. 431. Increased compensation in Federal cases for the wrongfully convicted.
Sec. 432. Sense of Congress regarding compensation in State death penalty cases.

TITLE I—SCOTT CAMBELL, STEPHANIE ROPER, WENDY PRESTON, LOUARNA GILLIS, AND NILA LYNN CRIME VICTIMS' RIGHTS ACT

SEC. 101. SHORT TITLE.

This title may be cited as the ''Scott Campbell, Stephanie Roper, Wendy Preston, Louarna Gillis, and Nila Lynn Crime Victims' Rights Act''.

SEC. 102. CRIME VICTIMS' RIGHTS.

(a) AMENDMENT TO TITLE 18.—Part II of title 18, United States Code, is amended by adding at the end the following:

''CHAPTER 237—CRIME VICTIMS' RIGHTS

''Sec.
''3771. Crime victims' rights.

"§ 3771. Crime victims' rights

"(a) RIGHTS OF CRIME VICTIMS.—A crime victim has the following rights:

"(1) The right to be reasonably protected from the accused.

"(2) The right to reasonable, accurate, and timely notice of any public court proceeding involving the crime or of any release or escape of the accused.

"(3) The right not to be excluded from any such public court proceeding, unless the court determines that testimony by the victim would be materially affected if the victim heard other testimony at that proceeding.

"(4) The right to be reasonably heard at any public proceeding involving release, plea, or sentencing.

"(5) The reasonable right to confer with the attorney for the Government in the case.

"(6) The right to full and timely restitution as provided in law.

"(7) The right to proceedings free from unreasonable delay.

"(8) The right to be treated with fairness and with respect for the victim's dignity and privacy.

"(b) RIGHTS AFFORDED.—In any court proceeding involving an offense against a crime victim, the court shall ensure that the crime victim is afforded the rights described in subsection (a). Before denying a crime victim the right described in subsection (a)(3), the court shall make every effort to permit the fullest attendance possible by the victim and shall consider reasonable alternatives to the exclusion of the victim from the criminal proceeding. The reasons for any decision denying relief under this chapter shall be clearly stated on the record.

"(c) BEST EFFORTS TO ACCORD RIGHTS.—

"(1) GOVERNMENT.—Officers and employees of the Department of Justice and other departments and agencies of the United States engaged in the detection, investigation, or prosecution of crime shall make their best efforts to see that crime victims are notified of, and accorded, the rights described in subsection (a).

"(2) ADVICE OF ATTORNEY.—The prosecutor shall advise the crime victim that the crime victim can seek the advice of an attorney with respect to the rights described in subsection (a).

"(3) NOTICE.—Notice of release otherwise required pursuant to this chapter shall not be given if such notice may endanger the safety of any person.

"(d) ENFORCEMENT AND LIMITATIONS.—

"(1) RIGHTS.—The crime victim or the crime victim's lawful representative, and the attorney for the Government may assert the rights described in subsection (a). A person accused of the crime may not obtain any form of relief under this chapter.

"(2) MULTIPLE CRIME VICTIMS.—In a case where the court finds that the number of crime victims makes it impracticable to accord all of the crime victims the rights described in subsection (a), the court shall fashion a reasonable procedure to give effect to this chapter that does not unduly complicate or prolong the proceedings.

"(3) MOTION FOR RELIEF AND WRIT OF MANDAMUS.—The rights described in subsection (a) shall be asserted in the district court in which a defendant is being prosecuted for the crime or, if no prosecution is underway, in the district court in the district in which the crime occurred. The district court shall take up and decide such motion forthwith. If the district court denies the relief sought, the movant may petition the court of appeals for a writ of mandamus. The court of appeals may issue the writ on the order of a single judge pursuant to circuit rule or the Federal Rules of Appellate Procedure.

The court of appeals shall take up and decide such application forthwith within 72 hours after the petition has been filed. In no event shall proceedings be stayed or subject to a continuance of more than five day, or affect the defendant's right to a speedy trial, for purposes of enforcing this chapter.

"(4) ERROR.—In any appeal in a criminal case, the Government may assert as error the district court's denial of any crime victim's right in the proceeding to which the appeal relates.

"(5) LIMITATION ON RELIEF.—In no case shall a failure to afford a right under this chapter provide grounds for a new trial, or to reopen a plea or a sentence, except in the case of restitution as provided in title 18.

"(6) NO CAUSE OF ACTION.—Nothing in this chapter shall be construed to authorize a cause of action for damages or to create, to enlarge, or to imply any duty or obligation to any victim or other person for the breach of which the United States or any of its officers or employees could be held liable in damages. Nothing in this chapter shall be construed to impair the prosecutorial discretion of the Attorney General or any officer under his direction.

1 "(e) DEFINITIONS.—For the purposes of this chap-
2 ter, the term 'crime victim' means a person directly and
3 proximately harmed as a result of the commission of a
4 Federal offense or an offense in the District of Columbia.
5 In the case of a crime victim who is under 18 years of
6 age, incompetent, incapacitated, or deceased, the legal
7 guardians of the crime victim or the representatives of the
8 crime victim's estate, family members, or any other per-
9 sons appointed as suitable by the court, may assume the
10 crime victim's rights under this chapter, but in no event
11 shall the defendant be named as such guardian or rep-
12 resentative.

13 "(f) PROCEDURES TO PROMOTE COMPLIANCE.—

14 "(1) REGULATIONS.—Not later than 1 year
15 after the date of enactment of this chapter, the At-
16 torney General of the United States shall promul-
17 gate regulations to enforce the rights of crime vic-
18 tims and to ensure compliance by responsible offi-
19 cials with the obligations described in law respecting
20 crime victims.

21 "(2) CONTENTS.—The regulations promulgated
22 under paragraph (1) shall—

23 "(A) designate an administrative authority
24 within the Department of Justice to receive and

investigate complaints relating to the provision or violation of the rights of a crime victim;

"(B) require a course of training for employees and offices of the Department of Justice that fail to comply with provisions of Federal law pertaining to the treatment of crime victims, and otherwise assist such employees and offices in responding more effectively to the needs of crime victims;

"(C) contain disciplinary sanctions, including suspension or termination from employment, for employees of the Department of Justice who willfully or wantonly fail to comply with provisions of Federal law pertaining to the treatment of crime victims; and

"(D) provide that the Attorney General, or the designee of the Attorney General, shall be the final arbiter of the complaint, and that there shall be no judicial review of the final decision of the Attorney General by a complainant.".

(b) TABLE OF CHAPTERS.—The table of chapters for part II of title 18, United States Code, is amended by inserting at the end the following:

"237. Crime victims' rights ..... 3771".

(c) REPEAL.—Section 502 of the Victims' Rights and Restitution Act of 1990 (42 U.S.C. 10606) is repealed.

SEC. 103. INCREASED RESOURCES FOR ENFORCEMENT OF CRIME VICTIMS' RIGHTS.

(a) CRIME VICTIMS LEGAL ASSISTANCE GRANTS.—The Victims of Crime Act of 1984 (42 U.S.C. 10601 et seq.) is amended by inserting after section 1404C the following:

"SEC. 1404D. CRIME VICTIMS LEGAL ASSISTANCE GRANTS.

"(a) IN GENERAL.—The Director may make grants as provided in section 1404(c)(1)(A) to State, tribal, and local prosecutors' offices, law enforcement agencies, courts, jails, and correctional institutions, and to qualified public and private entities, to develop, establish, and maintain programs for the enforcement of crime victims' rights as provided in law.

"(b) PROHIBITION.—Grant amounts under this section may not be used to bring a cause of action for damages.

"(c) FALSE CLAIMS ACT.—Notwithstanding any other provision of law, amounts collected pursuant to sections 3729 through 3731 of title 31, United States Code (commonly known as the 'False Claims Act'), may be used for grants under this section, subject to appropriation.".

(b) AUTHORIZATION OF APPROPRIATIONS.—In addition to funds made available under section 1402(d) of the Victims of Crime Act of 1984, there are authorized to be appropriated to carry out this title—

(1) $2,000,000 for fiscal year 2005 and $5,000,000 for each of fiscal years 2006, 2007, 2008, and 2009 to United States Attorneys Offices for Victim/Witnesses Assistance Programs;

(2) $2,000,000 for fiscal year 2005 and $5,000,000 in each of the fiscal years 2006, 2007, 2008, and 2009, to the Office for Victims of Crime of the Department of Justice for enhancement of the Victim Notification System;

(3) $300,000 in fiscal year 2005 and $500,000 for each of the fiscal years 2006, 2007, 2008, and 2009, to the Office for Victims of Crime of the Department of Justice for staff to administer the appropriation for the support of organizations as designated under paragraph (4);

(4) $7,000,000 for fiscal year 2005 and $11,000,000 for each of the fiscal years 2006, 2007, 2008, and 2009, to the Office for Victims of Crime of the Department of Justice, for the support of organizations that provide legal counsel and support services for victims in criminal cases for the enforce-

ment of crime victims' rights in Federal jurisdictions, and in States and tribal governments that have laws substantially equivalent to the provisions of chapter 237 of title 18, United States Code; and

(5) $5,000,000 for fiscal year 2005 and $7,000,000 for each of fiscal years 2006, 2007, 2008, and 2009, to the Office for Victims of Crime of the Department of Justice, for the support of—

(A) training and technical assistance to States and tribal jurisdictions to craft state-of-the-art victims' rights laws; and

(B) training and technical assistance to States and tribal jurisdictions to design a variety of compliance systems, which shall include an evaluation component.

(c) INCREASED RESOURCES TO DEVELOP STATE-OF-THE-ART SYSTEMS FOR NOTIFYING CRIME VICTIMS OF IMPORTANT DATES AND DEVELOPMENTS.—The Victims of Crime Act of 1984 (42 U.S.C. 10601 et seq.) is amended by inserting after section 1404D the following:

"SEC. 1404E. CRIME VICTIMS NOTIFICATION GRANTS.

"(a) IN GENERAL.—The Director may make grants as provided in section 1404(c)(1)(A) to State, tribal, and local prosecutors' offices, law enforcement agencies, courts, jails, and correctional institutions, and to qualified

public or private entities, to develop and implement state-of-the-art systems for notifying victims of crime of important dates and developments relating to the criminal proceedings at issue in a timely and efficient manner, provided that the jurisdiction has laws substantially equivalent to the provisions of chapter 237 of title 18, United States Code.

"(b) INTEGRATION OF SYSTEMS.—Systems developed and implemented under this section may be integrated with existing case management systems operated by the recipient of the grant.

"(c) AUTHORIZATION OF APPROPRIATIONS.—In addition to funds made available under section 1402(d), there are authorized to be appropriated to carry out this section—

"(1) $5,000,000 for fiscal year 2005; and

"(2) $5,000,000 for each of the fiscal years 2006, 2007, 2008, and 2009.

"(d) FALSE CLAIMS ACT.—Notwithstanding any other provision of law, amounts collected pursuant to sections 3729 through 3731 of title 31, United States Code (commonly known as the 'False Claims Act'), may be used for grants under this section, subject to appropriation.".

SEC. 104. REPORTS.

(a) ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS.—Not later than 1 year after the date of enactment of this Act and annually thereafter, the Administrative Office of the United States Courts, for each Federal court, shall report to Congress the number of times that a right established in chapter 237 of title 18, United States Code, is asserted in a criminal case and the relief requested is denied and, with respect to each such denial, the reason for such denial, as well as the number of times a mandamus action is brought pursuant to chapter 237 of title 18, and the result reached.

(b) GOVERNMENT ACCOUNTABILITY OFFICE.—

(1) STUDY.—The Comptroller General shall conduct a study that evaluates the effect and efficacy of the implementation of the amendments made by this title on the treatment of crime victims in the Federal system.

(2) REPORT.—Not later than 4 years after the date of enactment of this Act, the Comptroller General shall prepare and submit to the appropriate committees a report containing the results of the study conducted under subsection (a).

TITLE II—DEBBIE SMITH ACT OF 2004

SEC. 201. SHORT TITLE.

This title may be cited as the ''Debbie Smith Act of 2004''.

SEC. 202. DEBBIE SMITH DNA BACKLOG GRANT PROGRAM.

(a) DESIGNATION OF PROGRAM; ELIGIBILITY OF LOCAL GOVERNMENTS AS GRANTEES.—Section 2 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135) is amended—

(1) by amending the heading to read as follows: **''SEC. 2. THE DEBBIE SMITH DNA BACKLOG GRANT PROGRAM.''**;

(2) in subsection (a)—

(A) in the matter preceding paragraph (1)—

(i) by inserting ''or units of local government'' after ''eligible States''; and

(ii) by inserting ''or unit of local government'' after ''State'';

(B) in paragraph (2), by inserting before the period at the end the following: '', including samples from rape kits, samples from other sexual assault evidence, and samples taken in cases without an identified suspect''; and

(C) in paragraph (3), by striking ''within the State'';

(3) in subsection (b)—

(A) in the matter preceding paragraph (1)—

(i) by inserting ''or unit of local government'' after ''State'' both places that term appears; and

(ii) by inserting '', as required by the Attorney General'' after ''application shall'';

(B) in paragraph (1), by inserting ''or unit of local government'' after ''State'';

(C) in paragraph (3), by inserting ''or unit of local government'' after ''State'' the first place that term appears;

(D) in paragraph (4)—

(i) by inserting ''or unit of local government'' after ''State''; and

(ii) by striking ''and'' at the end;

(E) in paragraph (5)—

(i) by inserting ''or unit of local government'' after ''State''; and

(ii) by striking the period at the end and inserting a semicolon; and

(F) by adding at the end the following:

''(6) if submitted by a unit of local government, certify that the unit of local government has taken, or is taking, all necessary steps to ensure that it is eligible to include, directly or through a State law enforcement agency, all analyses of samples for which it has requested funding in the Combined DNA Index System; and'';

(4) in subsection (d)—

(A) in paragraph (1)—

(i) in the matter preceding subparagraph (A), by striking ''The plan'' and inserting ''A plan pursuant to subsection (b)(1)'';

(ii) in subparagraph (A), by striking ''within the State''; and

(iii) in subparagraph (B), by striking ''within the State''; and

(B) in paragraph (2)(A), by inserting ''and units of local government'' after ''States'';

(5) in subsection (e)—

(A) in paragraph (1), by inserting ''or local government'' after ''State'' both places that term appears; and

(B) in paragraph (2), by inserting ''or unit of local government'' after ''State'';

(6) in subsection (f), in the matter preceding paragraph (1), by inserting ''or unit of local government'' after ''State'';

(7) in subsection (g)—

(A) in paragraph (1), by inserting ''or unit of local government'' after ''State''; and

(B) in paragraph (2), by inserting ''or units of local government'' after ''States''; and

(8) in subsection (h), by inserting ''or unit of local government'' after ''State'' both places that term appears.

(b) REAUTHORIZATION AND EXPANSION OF PROGRAM.—Section 2 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135) is amended—

(1) in subsection (a)—

(A) in paragraph (3), by inserting ''(1) or'' before ''(2)''; and

(B) by inserting at the end the following:

''(4) To collect DNA samples specified in paragraph (1).

''(5) To ensure that DNA testing and analysis of samples from crimes, including sexual assault and

other serious violent crimes, are carried out in a timely manner.'';

(2) in subsection (b), as amended by this section, by inserting at the end the following:

''(7) specify that portion of grant amounts that the State or unit of local government shall use for the purpose specified in subsection (a)(4).'';

(3) by amending subsection (c) to read as follows:

''(c) FORMULA FOR DISTRIBUTION OF GRANTS.—

''(1) IN GENERAL.—The Attorney General shall distribute grant amounts, and establish appropriate grant conditions under this section, in conformity with a formula or formulas that are designed to effectuate a distribution of funds among eligible States and units of local government that—

''(A) maximizes the effective utilization of DNA technology to solve crimes and protect public safety; and

''(B) allocates grants among eligible entities fairly and efficiently to address jurisdictions in which significant backlogs exist, by considering—

"(i) the number of offender and casework samples awaiting DNA analysis in a jurisdiction;

"(ii) the population in the jurisdiction; and

"(iii) the number of part 1 violent crimes in the jurisdiction.

"(2) MINIMUM AMOUNT.—The Attorney General shall allocate to each State not less than 0.50 percent of the total amount appropriated in a fiscal year for grants under this section, except that the United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands shall each be allocated 0.125 percent of the total appropriation.

"(3) LIMITATION.—Grant amounts distributed under paragraph (1) shall be awarded to conduct DNA analyses of samples from casework or from victims of crime under subsection (a)(2) in accordance with the following limitations:

"(A) For fiscal year 2005, not less than 50 percent of the grant amounts shall be awarded for purposes under subsection (a)(2).

"(B) For fiscal year 2006, not less than 50 percent of the grant amounts shall be awarded for purposes under subsection (a)(2).

"(C) For fiscal year 2007, not less than 45 percent of the grant amounts shall be awarded for purposes under subsection (a)(2).

"(D) For fiscal year 2008, not less than 40 percent of the grant amounts shall be awarded for purposes under subsection (a)(2).

"(E) For fiscal year 2009, not less than 40 percent of the grant amounts shall be awarded for purposes under subsection (a)(2).";

(4) in subsection (g)—

(A) in paragraph (1), by striking "and" at the end;

(B) in paragraph (2), by striking the period at the end and inserting "; and"; and

(C) by adding at the end the following:

"(3) a description of the priorities and plan for awarding grants among eligible States and units of local government, and how such plan will ensure the effective use of DNA technology to solve crimes and protect public safety.";

(5) in subsection (j), by striking paragraphs (1) and (2) and inserting the following:

"(1) $151,000,000 for fiscal year 2005;

"(2) $151,000,000 for fiscal year 2006;

"(3) $151,000,000 for fiscal year 2007;

"(4) $151,000,000 for fiscal year 2008; and

"(5) $151,000,000 for fiscal year 2009."; and

(6) by adding at the end the following:

"(k) USE OF FUNDS FOR ACCREDITATION AND AUDITS.—The Attorney General may distribute not more than 1 percent of the grant amounts under subsection (j)—

"(1) to States or units of local government to defray the costs incurred by laboratories operated by each such State or unit of local government in preparing for accreditation or reaccreditation;

"(2) in the form of additional grants to States, units of local government, or nonprofit professional organizations of persons actively involved in forensic science and nationally recognized within the forensic science community—

"(A) to defray the costs of external audits of laboratories operated by such State or unit of local government, which participates in the National DNA Index System, to determine whether the laboratory is in compliance with quality assurance standards;

"(B) to assess compliance with any plans submitted to the National Institute of Justice, which detail the use of funds received by States

or units of local government under this Act; and

"(C) to support future capacity building efforts; and

"(3) in the form of additional grants to nonprofit professional associations actively involved in forensic science and nationally recognized within the forensic science community to defray the costs of training persons who conduct external audits of laboratories operated by States and units of local government and which participate in the National DNA Index System.

"(l) EXTERNAL AUDITS AND REMEDIAL EFFORTS.—In the event that a laboratory operated by a State or unit of local government which has received funds under this Act has undergone an external audit conducted to determine whether the laboratory is in compliance with standards established by the Director of the Federal Bureau of Investigation, and, as a result of such audit, identifies measures to remedy deficiencies with respect to the compliance by the laboratory with such standards, the State or unit of local government shall implement any such remediation as soon as practicable.".

SEC. 203. EXPANSION OF COMBINED DNA INDEX SYSTEM.

(a) INCLUSION OF ALL DNA SAMPLES FROM STATES.—Section 210304 of the DNA Identification Act of 1994 (42 U.S.C. 14132) is amended—

(1) in subsection (a)(1), by striking ''of persons convicted of crimes;'' and inserting the following: ''of—

''(A) persons convicted of crimes;

''(B) persons who have been indicted or who have waived indictment for a crime; and

''(C) other persons whose DNA samples are collected under applicable legal authorities, provided that DNA profiles from arrestees who have not been indicted and DNA samples that are voluntarily submitted solely for elimination purposes shall not be included in the Combined DNA Index System;''; and

(2) in subsection (d)(2)—

(A) by striking ''if the responsible agency'' and inserting ''if—

''(i) the responsible agency'';

(B) by striking the period at the end and inserting ''; or''; and

(C) by adding at the end the following:

''(ii) the person has not been convicted of an offense on the basis of which that analysis

was or could have been included in the index, and all charges for which the analysis was or could have been included in the index have been dismissed or resulted in acquittal.''.

(b) FELONS CONVICTED OF FEDERAL CRIMES.—Section 3(d) of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135a(d)) is amended to read as follows:

''(d) QUALIFYING FEDERAL OFFENSES.—The offenses that shall be treated for purposes of this section as qualifying Federal offenses are the following offenses, as determined by the Attorney General:

''(1) Any felony.

''(2) Any offense under chapter 109A of title 18, United States Code.

''(3) Any crime of violence (as that term is defined in section 16 of title 18, United States Code).

''(4) Any attempt or conspiracy to commit any of the offenses in paragraphs (1) through (3).''.

(c) MILITARY OFFENSES.—Section 1565(d) of title 10, United States Code, is amended to read as follows:

''(d) QUALIFYING MILITARY OFFENSES.—The offenses that shall be treated for purposes of this section as qualifying military offenses are the following offenses,

as determined by the Secretary of Defense, in consultation with the Attorney General:

"(1) Any offense under the Uniform Code of Military Justice for which a sentence of confinement for more than one year may be imposed.

"(2) Any other offense under the Uniform Code of Military Justice that is comparable to a qualifying Federal offense (as determined under section 3(d) of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135a(d))).".

(d) KEYBOARD SEARCHES.—Section 210304 of the DNA Identification Act of 1994 (42 U.S.C. 14132), as amended by subsection (a), is further amended by adding at the end the following new subsection:

"(e) AUTHORITY FOR KEYBOARD SEARCHES.—

"(1) IN GENERAL.—The Director shall ensure that any person who is authorized to access the index described in subsection (a) for purposes of including information on DNA identification records or DNA analyses in that index may also access that index for purposes of carrying out a one-time keyboard search on information obtained from any DNA sample lawfully collected for a criminal justice purpose except for a DNA sample voluntarily submitted solely for elimination purposes.

"(2) DEFINITION.—For purposes of paragraph (1), the term 'keyboard search' means a search under which information obtained from a DNA sample is compared with information in the index without resulting in the information obtained from a DNA sample being included in the index.

"(3) NO PREEMPTION.—This subsection shall not be construed to preempt State law.".

SEC. 204. TOLLING OF STATUTE OF LIMITATIONS.

(a) IN GENERAL.—Chapter 213 of title 18, United States Code, is amended by adding at the end the following:

"§ 3297. Cases involving DNA evidence

"In a case in which DNA testing implicates an identified person in the commission of a felony, no statute of limitations that would otherwise preclude prosecution of the offense shall preclude such prosecution until a period of time following the implication of the person by DNA testing has elapsed that is equal to the otherwise applicable limitation period.".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 213 of title 18, United States Code, is amended by adding at the end the following:

"3297. Cases involving DNA evidence.".

(c) APPLICATION.—The amendments made by this section shall apply to the prosecution of any offense com-

1 mitted before, on, or after the date of the enactment of
2 this section if the applicable limitation period has not yet
3 expired.

4 **SEC. 205. LEGAL ASSISTANCE FOR VICTIMS OF VIOLENCE.**

5 Section 1201 of the Violence Against Women Act of
6 2000 (42 U.S.C. 3796gg–6) is amended—

7 (1) in subsection (a), by inserting ''dating vio-
8 lence,'' after ''domestic violence,'';

9 (2) in subsection (b)—

10 (A) by redesignating paragraphs (1)
11 through (3) as paragraphs (2) through (4), re-
12 spectively;

13 (B) by inserting before paragraph (2), as
14 redesignated by subparagraph (A), the fol-
15 lowing:

16 ''(1) DATING VIOLENCE.—The term 'dating vio-
17 lence' means violence committed by a person who is
18 or has been in a social relationship of a romantic or
19 intimate nature with the victim. The existence of
20 such a relationship shall be determined based on a
21 consideration of—

22 ''(A) the length of the relationship;

23 ''(B) the type of relationship; and

24 ''(C) the frequency of interaction between
25 the persons involved in the relationship.''; and

(C) in paragraph (3), as redesignated by subparagraph (A), by inserting ''dating violence,'' after ''domestic violence,'';

(3) in subsection (c)—

(A) in paragraph (1)—

(i) by inserting '', dating violence,'' after ''between domestic violence''; and

(ii) by inserting ''dating violence,'' after ''victims of domestic violence,'';

(B) in paragraph (2), by inserting ''dating violence,'' after ''domestic violence,''; and

(C) in paragraph (3), by inserting ''dating violence,'' after ''domestic violence,'';

(4) in subsection (d)—

(A) in paragraph (1), by inserting '', dating violence,'' after ''domestic violence'';

(B) in paragraph (2), by inserting '', dating violence,'' after ''domestic violence'';

(C) in paragraph (3), by inserting '', dating violence,'' after ''domestic violence''; and

(D) in paragraph (4), by inserting ''dating violence,'' after ''domestic violence,'';

(5) in subsection (e), by inserting ''dating violence,'' after ''domestic violence,''; and

(6) in subsection (f)(2)(A), by inserting ''dating violence,'' after ''domestic violence,''.

SEC. 206. ENSURING PRIVATE LABORATORY ASSISTANCE IN ELIMINATING DNA BACKLOG.

Section 2(d)(3) of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135(d)(3)) is amended to read as follows:

''(3) USE OF VOUCHERS OR CONTRACTS FOR CERTAIN PURPOSES.—

''(A) IN GENERAL.—A grant for the purposes specified in paragraph (1), (2), or (5) of subsection (a) may be made in the form of a voucher or contract for laboratory services.

''(B) REDEMPTION.—A voucher or contract under subparagraph (A) may be redeemed at a laboratory operated by a private entity that satisfies quality assurance standards and has been approved by the Attorney General.

''(C) PAYMENTS.—The Attorney General may use amounts authorized under subsection (j) to make payments to a laboratory described under subparagraph (B).''.

TITLE III—DNA SEXUAL ASSAULT JUSTICE ACT OF 2004

SEC. 301. SHORT TITLE.

This title may be cited as the ''DNA Sexual Assault Justice Act of 2004''.

SEC. 302. ENSURING PUBLIC CRIME LABORATORY COMPLIANCE WITH FEDERAL STANDARDS.

Section 210304(b)(2) of the DNA Identification Act of 1994 (42 U.S.C. 14132(b)(2)) is amended to read as follows:

''(2) prepared by laboratories that—

''(A) not later than 2 years after the date of enactment of the DNA Sexual Assault Justice Act of 2004, have been accredited by a nonprofit professional association of persons actively involved in forensic science that is nationally recognized within the forensic science community; and

''(B) undergo external audits, not less than once every 2 years, that demonstrate compliance with standards established by the Director of the Federal Bureau of Investigation; and''.

SEC. 303. DNA TRAINING AND EDUCATION FOR LAW ENFORCEMENT, CORRECTIONAL PERSONNEL, AND COURT OFFICERS.

(a) IN GENERAL.—The Attorney General shall make grants to eligible entities to provide training, technical assistance, education, and information relating to the identification, collection, preservation, analysis, and use of DNA samples and DNA evidence.

(b) ELIGIBLE ENTITY.—For purposes of subsection (a), an eligible entity is an organization consisting of, comprised of, or representing—

(1) law enforcement personnel, including police officers and other first responders, evidence technicians, investigators, and others who collect or examine evidence of crime;

(2) court officers, including State and local prosecutors, defense lawyers, and judges;

(3) forensic science professionals; and

(4) corrections personnel, including prison and jail personnel, and probation, parole, and other officers involved in supervision.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $12,500,000 for each of fiscal years 2005 through 2009 to carry out this section.

SEC. 304. SEXUAL ASSAULT FORENSIC EXAM PROGRAM GRANTS.

(a) IN GENERAL.—The Attorney General shall make grants to eligible entities to provide training, technical assistance, education, equipment, and information relating to the identification, collection, preservation, analysis, and use of DNA samples and DNA evidence by medical personnel and other personnel, including doctors, medical examiners, coroners, nurses, victim service providers, and other professionals involved in treating victims of sexual assault and sexual assault examination programs, including SANE (Sexual Assault Nurse Examiner), SAFE (Sexual Assault Forensic Examiner), and SART (Sexual Assault Response Team).

(b) ELIGIBLE ENTITY.—For purposes of this section, the term ''eligible entity'' includes—

(1) States;

(2) units of local government; and

(3) sexual assault examination programs, including—

(A) sexual assault nurse examiner (SANE) programs;

(B) sexual assault forensic examiner (SAFE) programs;

(C) sexual assault response team (SART) programs;

(D) State sexual assault coalitions;

(E) medical personnel, including doctors, medical examiners, coroners, and nurses, involved in treating victims of sexual assault; and

(F) victim service providers involved in treating victims of sexual assault.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $30,000,000 for each of fiscal years 2005 through 2009 to carry out this section.

SEC. 305. DNA RESEARCH AND DEVELOPMENT.

(a) IMPROVING DNA TECHNOLOGY.—The Attorney General shall make grants for research and development to improve forensic DNA technology, including increasing the identification accuracy and efficiency of DNA analysis, decreasing time and expense, and increasing portability.

(b) DEMONSTRATION PROJECTS.—The Attorney General shall make grants to appropriate entities under which research is carried out through demonstration projects involving coordinated training and commitment of resources to law enforcement agencies and key criminal justice participants to demonstrate and evaluate the use of forensic DNA technology in conjunction with other forensic tools. The demonstration projects shall include scientific evaluation of the public safety benefits, improve-

ments to law enforcement operations, and cost-effectiveness of increased collection and use of DNA evidence.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $15,000,000 for each of fiscal years 2005 through 2009 to carry out this section.

SEC. 306. NATIONAL FORENSIC SCIENCE COMMISSION.

(a) APPOINTMENT.—The Attorney General shall appoint a National Forensic Science Commission (in this section referred to as the ''Commission''), composed of persons experienced in criminal justice issues, including persons from the forensic science and criminal justice communities, to carry out the responsibilities under subsection (b).

(b) RESPONSIBILITIES.—The Commission shall—

(1) assess the present and future resource needs of the forensic science community;

(2) make recommendations to the Attorney General for maximizing the use of forensic technologies and techniques to solve crimes and protect the public;

(3) identify potential scientific advances that may assist law enforcement in using forensic technologies and techniques to protect the public;

(4) make recommendations to the Attorney General for programs that will increase the number of qualified forensic scientists available to work in public crime laboratories;

(5) disseminate, through the National Institute of Justice, best practices concerning the collection and analyses of forensic evidence to help ensure quality and consistency in the use of forensic technologies and techniques to solve crimes and protect the public;

(6) examine additional issues pertaining to forensic science as requested by the Attorney General;

(7) examine Federal, State, and local privacy protection statutes, regulations, and practices relating to access to, or use of, stored DNA samples or DNA analyses, to determine whether such protections are sufficient;

(8) make specific recommendations to the Attorney General, as necessary, to enhance the protections described in paragraph (7) to ensure—

(A) the appropriate use and dissemination of DNA information;

(B) the accuracy, security, and confidentiality of DNA information;

(C) the timely removal and destruction of obsolete, expunged, or inaccurate DNA information; and

(D) that any other necessary measures are taken to protect privacy; and

(9) provide a forum for the exchange and dissemination of ideas and information in furtherance of the objectives described in paragraphs (1) through (8).

(c) PERSONNEL; PROCEDURES.—The Attorney General shall—

(1) designate the Chair of the Commission from among its members;

(2) designate any necessary staff to assist in carrying out the functions of the Commission; and

(3) establish procedures and guidelines for the operations of the Commission.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $500,000 for each of fiscal years 2005 through 2009 to carry out this section.

SEC. 307. FBI DNA PROGRAMS.

(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Federal Bureau of Investigation $42,100,000 for each of fiscal years 2005

through 2009 to carry out the DNA programs and activities described under subsection (b).

(b) PROGRAMS AND ACTIVITIES.—The Federal Bureau of Investigation may use any amounts appropriated pursuant to subsection (a) for—

(1) nuclear DNA analysis;

(2) mitochondrial DNA analysis;

(3) regional mitochondrial DNA laboratories;

(4) the Combined DNA Index System;

(5) the Federal Convicted Offender DNA Program; and

(6) DNA research and development.

SEC. 308. DNA IDENTIFICATION OF MISSING PERSONS.

(a) IN GENERAL.—The Attorney General shall make grants to States and units of local government to promote the use of forensic DNA technology to identify missing persons and unidentified human remains.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $2,000,000 for each of fiscal years 2005 through 2009 to carry out this section.

SEC. 309. ENHANCED CRIMINAL PENALTIES FOR UNAUTHORIZED DISCLOSURE OR USE OF DNA INFORMATION.

Section 10(c) of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135e(c)) is amended to read as follows:

''(c) CRIMINAL PENALTY.—A person who knowingly discloses a sample or result described in subsection (a) in any manner to any person not authorized to receive it, or obtains or uses, without authorization, such sample or result, shall be fined not more than $100,000. Each instance of disclosure, obtaining, or use shall constitute a separate offense under this subsection.''.

SEC. 310. TRIBAL COALITION GRANTS.

(a) IN GENERAL.—Section 2001 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796gg) is amended by adding at the end the following:

''(d) TRIBAL COALITION GRANTS.—

''(1) PURPOSE.—The Attorney General shall award grants to tribal domestic violence and sexual assault coalitions for purposes of—

''(A) increasing awareness of domestic violence and sexual assault against Indian women;

"(B) enhancing the response to violence against Indian women at the tribal, Federal, and State levels; and

"(C) identifying and providing technical assistance to coalition membership and tribal communities to enhance access to essential services to Indian women victimized by domestic and sexual violence.

"(2) GRANTS TO TRIBAL COALITIONS.—The Attorney General shall award grants under paragraph (1) to—

"(A) established nonprofit, nongovernmental tribal coalitions addressing domestic violence and sexual assault against Indian women; and

"(B) individuals or organizations that propose to incorporate as nonprofit, nongovernmental tribal coalitions to address domestic violence and sexual assault against Indian women.

"(3) ELIGIBILITY FOR OTHER GRANTS.—Receipt of an award under this subsection by tribal domestic violence and sexual assault coalitions shall not preclude the coalition from receiving additional grants under this title to carry out the purposes described in subsection (b).".

(b) TECHNICAL AMENDMENT.—Effective as of November 2, 2002, and as if included therein as enacted, Public Law 107–273 (116 Stat. 1789) is amended in section 402(2) by striking ''sections 2006 through 2011'' and inserting ''sections 2007 through 2011''.

(c) AMOUNTS.—Section 2007 of the Omnibus Crime Control and Safe Streets Act of 1968 (as redesignated by section 402(2) of Public Law 107–273, as amended by subsection (b)) is amended by amending subsection (b)(4) (42 U.S.C. 3796gg–1(b)(4)) to read as follows:

''(4) 1/54 shall be available for grants under section 2001(d);''.

SEC. 311. EXPANSION OF PAUL COVERDELL FORENSIC SCIENCES IMPROVEMENT GRANT PROGRAM.

(a) FORENSIC BACKLOG ELIMINATION GRANTS.—Section 2804 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3797m) is amended—

(1) in subsection (a)—

(A) by striking ''shall use the grant to carry out'' and inserting ''shall use the grant to do any one or more of the following:

''(1) To carry out''; and

(B) by adding at the end the following:

''(2) To eliminate a backlog in the analysis of forensic science evidence, including firearms exam-

ination, latent prints, toxicology, controlled substances, forensic pathology, questionable documents, and trace evidence.

"(3) To train, assist, and employ forensic laboratory personnel, as needed, to eliminate such a backlog.";

(2) in subsection (b), by striking "under this part" and inserting "for the purpose set forth in subsection (a)(1)"; and

(3) by adding at the end the following:

"(e) BACKLOG DEFINED.—For purposes of this section, a backlog in the analysis of forensic science evidence exists if such evidence—

"(1) has been stored in a laboratory, medical examiner's office, coroner's office, law enforcement storage facility, or medical facility; and

"(2) has not been subjected to all appropriate forensic testing because of a lack of resources or personnel.".

(b) EXTERNAL AUDITS.—Section 2802 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3797k) is amended—

(1) in paragraph (2), by striking "and" at the end;

(2) in paragraph (3), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following:

"(4) a certification that a government entity exists and an appropriate process is in place to conduct independent external investigations into allegations of serious negligence or misconduct substantially affecting the integrity of the forensic results committed by employees or contractors of any forensic laboratory system, medical examiner's office, coroner's office, law enforcement storage facility, or medical facility in the State that will receive a portion of the grant amount.".

(c) THREE-YEAR EXTENSION OF AUTHORIZATION OF APPROPRIATIONS.—Section 1001(a)(24) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793(a)(24)) is amended—

(1) in subparagraph (E), by striking "and" at the end;

(2) in subparagraph (F), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

"(G) $20,000,000 for fiscal year 2007;

"(H) $20,000,000 for fiscal year 2008; and

"(I) $20,000,000 for fiscal year 2009.".

(d) TECHNICAL AMENDMENT.—Section 1001(a) of such Act, as amended by subsection (c), is further amended by realigning paragraphs (24) and (25) so as to be flush with the left margin.

SEC. 312. REPORT TO CONGRESS.

(a) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Attorney General shall submit to Congress a report on the implementation of this Act and the amendments made by this Act.

(b) CONTENTS.—The report submitted under subsection (a) shall include a description of—

(1) the progress made by Federal, State, and local entities in—

(A) collecting and entering DNA samples from offenders convicted of qualifying offenses for inclusion in the Combined DNA Index System (referred to in this subsection as "CODIS");

(B) analyzing samples from crime scenes, including evidence collected from sexual assaults and other serious violent crimes, and entering such DNA analyses in CODIS; and

(C) increasing the capacity of forensic laboratories to conduct DNA analyses;

(2) the priorities and plan for awarding grants among eligible States and units of local government to ensure that the purposes of this Act are carried out;

(3) the distribution of grant amounts under this Act among eligible States and local governments, and whether the distribution of such funds has served the purposes of the Debbie Smith DNA Backlog Grant Program;

(4) grants awarded and the use of such grants by eligible entities for DNA training and education programs for law enforcement, correctional personnel, court officers, medical personnel, victim service providers, and other personnel authorized under sections 303 and 304;

(5) grants awarded and the use of such grants by eligible entities to conduct DNA research and development programs to improve forensic DNA technology, and implement demonstration projects under section 305;

(6) the steps taken to establish the National Forensic Science Commission, and the activities of the Commission under section 306;

(7) the use of funds by the Federal Bureau of Investigation under section 307;

(8) grants awarded and the use of such grants by eligible entities to promote the use of forensic DNA technology to identify missing persons and unidentified human remains under section 308;

(9) grants awarded and the use of such grants by eligible entities to eliminate forensic science backlogs under the amendments made by section 311;

(10) State compliance with the requirements set forth in section 413; and

(11) any other matters considered relevant by the Attorney General.

TITLE IV—INNOCENCE PROTECTION ACT OF 2004

SEC. 401. SHORT TITLE.

This title may be cited as the ''Innocence Protection Act of 2004''.

Subtitle A—Exonerating the Innocent Through DNA Testing

SEC. 411. FEDERAL POST-CONVICTION DNA TESTING.

(a) FEDERAL CRIMINAL PROCEDURE.—

(1) IN GENERAL.—Part II of title 18, United States Code, is amended by inserting after chapter 228 the following:

"CHAPTER 228A—POST-CONVICTION DNA TESTING

"Sec.
"3600. DNA testing.
"3600A. Preservation of biological evidence.

"§ 3600. DNA testing

"(a) IN GENERAL.—Upon a written motion by an individual under a sentence of imprisonment or death pursuant to a conviction for a Federal offense (referred to in this section as the 'applicant'), the court that entered the judgment of conviction shall order DNA testing of specific evidence if—

"(1) the applicant asserts, under penalty of perjury, that the applicant is actually innocent of—

"(A) the Federal offense for which the applicant is under a sentence of imprisonment or death; or

"(B) another Federal or State offense, if—

"(i)(I) such offense was legally necessary to make the applicant eligible for a sentence as a career offender under section 3559(e) or an armed career offender under section 924(e), and exoneration of such offense would entitle the applicant to a reduced sentence; or

1 ''(II) evidence of such offense was ad-
2 mitted during a Federal death sentencing
3 hearing and exoneration of such offense
4 would entitle the applicant to a reduced
5 sentence or new sentencing hearing; and
6 ''(ii) in the case of a State offense—
7 ''(I) the applicant demonstrates
8 that there is no adequate remedy
9 under State law to permit DNA test-
10 ing of the specified evidence relating
11 to the State offense; and
12 ''(II) to the extent available, the
13 applicant has exhausted all remedies
14 available under State law for request-
15 ing DNA testing of specified evidence
16 relating to the State offense;
17 ''(2) the specific evidence to be tested was se-
18 cured in relation to the investigation or prosecution
19 of the Federal or State offense referenced in the ap-
20 plicant's assertion under paragraph (1);
21 ''(3) the specific evidence to be tested—
22 ''(A) was not previously subjected to DNA
23 testing and the applicant did not knowingly and
24 voluntarily waive the right to request DNA test-
25 ing of that evidence in a court proceeding after

the date of enactment of the Innocence Protection Act of 2004; or

"(B) was previously subjected to DNA testing and the applicant is requesting DNA testing using a new method or technology that is substantially more probative than the prior DNA testing;

"(4) the specific evidence to be tested is in the possession of the Government and has been subject to a chain of custody and retained under conditions sufficient to ensure that such evidence has not been substituted, contaminated, tampered with, replaced, or altered in any respect material to the proposed DNA testing;

"(5) the proposed DNA testing is reasonable in scope, uses scientifically sound methods, and is consistent with accepted forensic practices;

"(6) the applicant identifies a theory of defense that—

"(A) is not inconsistent with an affirmative defense presented at trial; and

"(B) would establish the actual innocence of the applicant of the Federal or State offense referenced in the applicant's assertion under paragraph (1);

"(7) if the applicant was convicted following a trial, the identity of the perpetrator was at issue in the trial;

"(8) the proposed DNA testing of the specific evidence—

"(A) would produce new material evidence to support the theory of defense referenced in paragraph (6); and

"(B) assuming the DNA test result excludes the applicant, would raise a reasonable probability that the applicant did not commit the offense;

"(9) the applicant certifies that the applicant will provide a DNA sample for purposes of comparison; and

"(10) the applicant's motion is filed for the purpose of demonstrating the applicant's actual innocence of the Federal or State offense, and not to delay the execution of the sentence or the administration of justice.

"(b) NOTICE TO THE GOVERNMENT; PRESERVATION ORDER; APPOINTMENT OF COUNSEL.—

"(1) NOTICE.—Upon the receipt of a motion filed under subsection (a), the court shall—

"(A) notify the Government; and

1 "(B) allow the Government a reasonable
2 time period to respond to the motion.
3 "(2) PRESERVATION ORDER.—To the extent
4 necessary to carry out proceedings under this sec-
5 tion, the court shall direct the Government to pre-
6 serve the specific evidence relating to a motion under
7 subsection (a).
8 "(3) APPOINTMENT OF COUNSEL.—The court
9 may appoint counsel for an indigent applicant under
10 this section in the same manner as in a proceeding
11 under section 3006A(a)(2)(B).
12 "(c) TESTING PROCEDURES.—
13 "(1) IN GENERAL.—The court shall direct that
14 any DNA testing ordered under this section be car-
15 ried out by the Federal Bureau of Investigation.
16 "(2) EXCEPTION.—Notwithstanding paragraph
17 (1), the court may order DNA testing by another
18 qualified laboratory if the court makes all necessary
19 orders to ensure the integrity of the specific evidence
20 and the reliability of the testing process and test re-
21 sults.
22 "(3) COSTS.—The costs of any DNA testing or-
23 dered under this section shall be paid—
24 "(A) by the applicant; or

1 "(B) in the case of an applicant who is in-
2 digent, by the Government.
3 "(d) TIME LIMITATION IN CAPITAL CASES.—In any
4 case in which the applicant is sentenced to death—
5 "(1) any DNA testing ordered under this sec-
6 tion shall be completed not later than 60 days after
7 the date on which the Government responds to the
8 motion filed under subsection (a); and
9 "(2) not later than 120 days after the date on
10 which the DNA testing ordered under this section is
11 completed, the court shall order any post-testing
12 procedures under subsection (f) or (g), as appro-
13 priate.
14 "(e) REPORTING OF TEST RESULTS.—
15 "(1) IN GENERAL.—The results of any DNA
16 testing ordered under this section shall be simulta-
17 neously disclosed to the court, the applicant, and the
18 Government.
19 "(2) NDIS.—The Government shall submit any
20 test results relating to the DNA of the applicant to
21 the National DNA Index System (referred to in this
22 subsection as 'NDIS').
23 "(3) RETENTION OF DNA SAMPLE.—
24 "(A) ENTRY INTO NDIS.—If the DNA test
25 results obtained under this section are inconclu-

sive or show that the applicant was the source of the DNA evidence, the DNA sample of the applicant may be retained in NDIS.

"(B) MATCH WITH OTHER OFFENSE.—If the DNA test results obtained under this section exclude the applicant as the source of the DNA evidence, and a comparison of the DNA sample of the applicant results in a match between the DNA sample of the applicant and another offense, the Attorney General shall notify the appropriate agency and preserve the DNA sample of the applicant.

"(C) NO MATCH.—If the DNA test results obtained under this section exclude the applicant as the source of the DNA evidence, and a comparison of the DNA sample of the applicant does not result in a match between the DNA sample of the applicant and another offense, the Attorney General shall destroy the DNA sample of the applicant and ensure that such information is not retained in NDIS if there is no other legal authority to retain the DNA sample of the applicant in NDIS.

"(f) POST-TESTING PROCEDURES; INCONCLUSIVE AND INCULPATORY RESULTS.—

1 "(1) INCONCLUSIVE RESULTS.—If DNA test re-
2 sults obtained under this section are inconclusive,
3 the court may order further testing, if appropriate,
4 or may deny the applicant relief.
5 "(2) INCULPATORY RESULTS.—If DNA test re-
6 sults obtained under this section show that the ap-
7 plicant was the source of the DNA evidence, the
8 court shall—
9 "(A) deny the applicant relief; and
10 "(B) on motion of the Government—
11 "(i) make a determination whether
12 the applicant's assertion of actual inno-
13 cence was false, and, if the court makes
14 such a finding, the court may hold the ap-
15 plicant in contempt;
16 "(ii) assess against the applicant the
17 cost of any DNA testing carried out under
18 this section;
19 "(iii) forward the finding to the Direc-
20 tor of the Bureau of Prisons, who, upon
21 receipt of such a finding, may deny, wholly
22 or in part, the good conduct credit author-
23 ized under section 3632 on the basis of
24 that finding;

"(iv) if the applicant is subject to the jurisdiction of the United States Parole Commission, forward the finding to the Commission so that the Commission may deny parole on the basis of that finding; and

"(v) if the DNA test results relate to a State offense, forward the finding to any appropriate State official.

"(3) SENTENCE.—In any prosecution of an applicant under chapter 79 for false assertions or other conduct in proceedings under this section, the court, upon conviction of the applicant, shall sentence the applicant to a term of imprisonment of not less than 3 years, which shall run consecutively to any other term of imprisonment the applicant is serving.

"(g) POST-TESTING PROCEDURES; MOTION FOR NEW TRIAL OR RESENTENCING.—

"(1) IN GENERAL.—Notwithstanding any law that would bar a motion under this paragraph as untimely, if DNA test results obtained under this section exclude the applicant as the source of the DNA evidence, the applicant may file a motion for a new trial or resentencing, as appropriate. The court shall establish a reasonable schedule for the

applicant to file such a motion and for the Government to respond to the motion.

"(2) STANDARD FOR GRANTING MOTION FOR NEW TRIAL OR RESENTENCING.—The court shall grant the motion of the applicant for a new trial or resentencing, as appropriate, if the DNA test results, when considered with all other evidence in the case (regardless of whether such evidence was introduced at trial), establish by a preponderance of the evidence that a new trial would result in an acquittal of—

"(A) in the case of a motion for a new trial, the Federal offense for which the applicant is under a sentence of imprisonment or death; and

"(B) in the case of a motion for resentencing, another Federal or State offense, if—

"(i) such offense was legally necessary to make the applicant eligible for a sentence as a career offender under section 3559(e) or an armed career offender under section 924(e), and exoneration of such offense would entitle the applicant to a reduced sentence; or

"(ii) evidence of such offense was admitted during a Federal death sentencing hearing and exoneration of such offense would entitle the applicant to a reduced sentence or a new sentencing proceeding.

"(h) OTHER LAWS UNAFFECTED.—

"(1) POST-CONVICTION RELIEF.—Nothing in this section shall affect the circumstances under which a person may obtain DNA testing or post-conviction relief under any other law.

"(2) HABEAS CORPUS.—Nothing in this section shall provide a basis for relief in any Federal habeas corpus proceeding.

"(3) APPLICATION NOT A MOTION.—An application under this section shall not be considered to be a motion under section 2255 for purposes of determining whether the application or any other motion is a second or successive motion under section 2255.

"§ 3600A. Preservation of biological evidence

"(a) IN GENERAL.—Notwithstanding any other provision of law, the Government shall preserve biological evidence that was secured in the investigation or prosecution of a Federal offense, if a defendant is under a sentence of imprisonment for such offense.

"(b) DEFINED TERM.—For purposes of this section, the term 'biological evidence' means—

"(1) a sexual assault forensic examination kit; or

"(2) semen, blood, saliva, hair, skin tissue, or other identified biological material.

"(c) APPLICABILITY.—Subsection (a) shall not apply if—

"(1) a court has denied a request or motion for DNA testing of the biological evidence by the defendant under section 3600, and no appeal is pending;

"(2) the defendant knowingly and voluntarily waived the right to request DNA testing of such evidence in a court proceeding conducted after the date of enactment of the Innocence Protection Act of 2004;

"(3) the defendant is notified after conviction that the biological evidence may be destroyed and the defendant does not file a motion under section 3600 within 180 days of receipt of the notice; or

"(4)(A) the evidence must be returned to its rightful owner, or is of such a size, bulk, or physical character as to render retention impracticable; and

"(B) the Government takes reasonable measures to remove and preserve portions of the material evidence sufficient to permit future DNA testing.

"(d) OTHER PRESERVATION REQUIREMENT.—Nothing in this section shall preempt or supersede any statute, regulation, court order, or other provision of law that may require evidence, including biological evidence, to be preserved.

"(e) REGULATIONS.—Not later than 180 days after the date of enactment of the Innocence Protection Act of 2004, the Attorney General shall promulgate regulations to implement and enforce this section, including appropriate disciplinary sanctions to ensure that employees comply with such regulations.

"(f) CRIMINAL PENALTY.—Whoever knowingly and intentionally destroys, alters, or tampers with biological evidence that is required to be preserved under this section with the intent to prevent that evidence from being subjected to DNA testing or prevent the production or use of that evidence in an official proceeding, shall be fined under this title, imprisoned for not more than 5 years, or both.

"(g) HABEAS CORPUS.—Nothing in this section shall provide a basis for relief in any Federal habeas corpus proceeding.".

(2) CLERICAL AMENDMENT.—The chapter analysis for part II of title 18, United States Code, is amended by inserting after the item relating to chapter 228 the following:

"228A. Post-conviction DNA testing ..... 3600".

(b) SYSTEM FOR REPORTING MOTIONS.—

(1) ESTABLISHMENT.—The Attorney General shall establish a system for reporting and tracking motions filed in accordance with section 3600 of title 18, United States Code.

(2) OPERATION.—In operating the system established under paragraph (1), the Federal courts shall provide to the Attorney General any requested assistance in operating such a system and in ensuring the accuracy and completeness of information included in that system.

(3) REPORT.—Not later than 2 years after the date of enactment of this Act, the Attorney General shall submit a report to Congress that contains—

(A) a list of motions filed under section 3600 of title 18, United States Code, as added by this Act;

(B) whether DNA testing was ordered pursuant to such a motion;

(C) whether the applicant obtained relief on the basis of DNA test results; and

(D) whether further proceedings occurred following a granting of relief and the outcome of such proceedings.

(4) ADDITIONAL INFORMATION.—The report required to be submitted under paragraph (3) may include any other information the Attorney General determines to be relevant in assessing the operation, utility, or costs of section 3600 of title 18, United States Code, as added by this Act, and any recommendations the Attorney General may have relating to future legislative action concerning that section.

(c) EFFECTIVE DATE; APPLICABILITY.—This section and the amendments made by this section shall take effect on the date of enactment of this Act and shall apply with respect to any offense committed, and to any judgment of conviction entered, before, on, or after that date of enactment.

SEC. 412. KIRK BLOODSWORTH POST-CONVICTION DNA TESTING GRANT PROGRAM.

(a) IN GENERAL.—The Attorney General shall establish the Kirk Bloodsworth Post-Conviction DNA Testing Grant Program to award grants to States to help defray the costs of post-conviction DNA testing.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $5,000,000 for each of fiscal years 2005 through 2009 to carry out this section.

(c) STATE DEFINED.—For purposes of this section, the term ''State'' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

SEC. 413. INCENTIVE GRANTS TO STATES TO ENSURE CONSIDERATION OF CLAIMS OF ACTUAL INNOCENCE.

For each of fiscal years 2005 through 2009, all funds appropriated to carry out sections 303, 305, 307, and 412 shall be reserved for grants to eligible entities that—

(1) meet the requirements under section 303, 305, 307, or 412, as appropriate; and

(2) demonstrate that the State in which the eligible entity operates—

(A) provides post-conviction DNA testing of specified evidence—

(i) 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; or

(ii) under a State statute enacted after the date of enactment of this Act, or under a State rule, regulation, or practice, to any person under a sentence of imprisonment or death for a State offense, in a manner comparable to section 3600(a) of title 18, United States Code (provided that the State statute, rule, regulation, or practice may make post-conviction DNA testing available in cases in which such testing is not required by such section), and if the results of such testing exclude the applicant, permits the applicant to apply for post-conviction relief, notwithstanding any provision of law that would otherwise bar such application as untimely; and

(B) preserves biological evidence secured in relation to the investigation or prosecution of a State offense—

(i) under a State statute or a State or local rule, regulation, or practice, enacted or adopted before the date of enactment of

this Act (or extended or renewed after such date), in a manner that ensures that reasonable measures are taken by all jurisdictions within the State to preserve such evidence; or

(ii) under a State statute or a State or local rule, regulation, or practice, enacted or adopted after the date of enactment of this Act, in a manner comparable to section 3600A of title 18, United States Code, if—

(I) all jurisdictions within the State comply with this requirement; and

(II) such jurisdictions may preserve such evidence for longer than the period of time that such evidence would be required to be preserved under such section 3600A.

Subtitle B—Improving the Quality of Representation in State Capital Cases

SEC. 421. CAPITAL REPRESENTATION IMPROVEMENT GRANTS.

(a) IN GENERAL.—The Attorney General shall award grants to States for the purpose of improving the quality of legal representation provided to indigent defendants in State capital cases.

(b) DEFINED TERM.—In this section, the term ''legal representation'' means legal counsel and investigative, expert, and other services necessary for competent representation.

(c) USE OF FUNDS.—Grants awarded under subsection (a)—

(1) shall be used to establish, implement, or improve an effective system for providing competent legal representation to—

(A) indigents charged with an offense subject to capital punishment;

(B) indigents who have been sentenced to death and who seek appellate or collateral relief in State court; and

(C) indigents who have been sentenced to death and who seek review in the Supreme Court of the United States; and

(2) shall not be used to fund, directly or indirectly, representation in specific capital cases.

(d) EFFECTIVE SYSTEM.—As used in subsection (c)(1), an effective system for providing competent legal representation is a system that—

(1) invests the responsibility for appointing qualified attorneys to represent indigents in capital cases—

(A) in a public defender program that relies on staff attorneys, members of the private bar, or both, to provide representation in capital cases;

(B) in an entity established by statute or by the highest State court with jurisdiction in criminal cases, which is composed of individuals with demonstrated knowledge and expertise in capital representation; or

(C) pursuant to a statutory procedure enacted before the date of the enactment of this Act under which the trial judge is required to appoint qualified attorneys from a roster main-

tained by a State or regional selection committee or similar entity; and

(2) requires the program described in paragraph (1)(A), the entity described in paragraph (1)(B), or an appropriate entity designated pursuant to the statutory procedure described in paragraph (1)(C), as applicable, to—

(A) establish qualifications for attorneys who may be appointed to represent indigents in capital cases;

(B) establish and maintain a roster of qualified attorneys;

(C) except in the case of a selection committee or similar entity described in paragraph (1)(C), assign 2 attorneys from the roster to represent an indigent in a capital case, or provide the trial judge a list of not more than 2 pairs of attorneys from the roster, from which 1 pair shall be assigned, provided that, in any case in which the State elects not to seek the death penalty, a court may find, subject to any requirement of State law, that a second attorney need not remain assigned to represent the indigent to ensure competent representation;

(D) conduct, sponsor, or approve specialized training programs for attorneys representing defendants in capital cases;

(E) monitor the performance of attorneys who are appointed and their attendance at training programs, and remove from the roster attorneys who fail to deliver effective representation or who fail to comply with such requirements as such program, entity, or selection committee or similar entity may establish regarding participation in training programs; and

(F) ensure funding for the full cost of competent legal representation by the defense team and outside experts selected by counsel, who shall be compensated—

(i) in the case of a State that employs a statutory procedure described in paragraph (1)(C), in accordance with the requirements of that statutory procedure; and

(ii) in all other cases, as follows:

(I) Attorneys employed by a public defender program shall be compensated according to a salary scale that is commensurate with the salary

1 scale of the prosecutor's office in the
2 jurisdiction.
3 (II) Appointed attorneys shall be
4 compensated for actual time and serv-
5 ice, computed on an hourly basis and
6 at a reasonable hourly rate in light of
7 the qualifications and experience of
8 the attorney and the local market for
9 legal representation in cases reflecting
10 the complexity and responsibility of
11 capital cases.
12 (III) Non-attorney members of
13 the defense team, including investiga-
14 tors, mitigation specialists, and ex-
15 perts, shall be compensated at a rate
16 that reflects the specialized skills
17 needed by those who assist counsel
18 with the litigation of death penalty
19 cases.
20 (IV) Attorney and non-attorney
21 members of the defense team shall be
22 reimbursed for reasonable incidental
23 expenses.

SEC. 422. CAPITAL PROSECUTION IMPROVEMENT GRANTS.

(a) IN GENERAL.—The Attorney General shall award grants to States for the purpose of enhancing the ability of prosecutors to effectively represent the public in State capital cases.

(b) USE OF FUNDS.—

(1) PERMITTED USES.—Grants awarded under subsection (a) shall be used for one or more of the following:

(A) To design and implement training programs for State and local prosecutors to ensure effective representation in State capital cases.

(B) To develop and implement appropriate standards and qualifications for State and local prosecutors who litigate State capital cases.

(C) To assess the performance of State and local prosecutors who litigate State capital cases, provided that such assessment shall not include participation by the assessor in the trial of any specific capital case.

(D) To identify and implement any potential legal reforms that may be appropriate to minimize the potential for error in the trial of capital cases.

(E) To establish a program under which State and local prosecutors conduct a system-

atic review of cases in which a death sentence was imposed in order to identify cases in which post-conviction DNA testing may be appropriate.

(F) To provide support and assistance to the families of murder victims.

(2) PROHIBITED USE.—Grants awarded under subsection (a) shall not be used to fund, directly or indirectly, the prosecution of specific capital cases.

SEC. 423. APPLICATIONS.

(a) IN GENERAL.—The Attorney General shall establish a process through which a State may apply for a grant under this subtitle.

(b) APPLICATION.—

(1) IN GENERAL.—A State desiring a grant under this subtitle shall submit an application to the Attorney General at such time, in such manner, and containing such information as the Attorney General may reasonably require.

(2) CONTENTS.—Each application submitted under paragraph (1) shall contain—

(A) a certification by an appropriate officer of the State that the State authorizes capital punishment under its laws and conducts, or

will conduct, prosecutions in which capital punishment is sought;

(B) a description of the communities to be served by the grant, including the nature of existing capital defender services and capital prosecution programs within such communities;

(C) a long-term statewide strategy and detailed implementation plan that—

(i) reflects consultation with the judiciary, the organized bar, and State and local prosecutor and defender organizations; and

(ii) establishes as a priority improvement in the quality of trial-level representation of indigents charged with capital crimes and trial-level prosecution of capital crimes;

(D) in the case of a State that employs a statutory procedure described in section 421(d)(1)(C), a certification by an appropriate officer of the State that the State is in substantial compliance with the requirements of the applicable State statute; and

(E) assurances that Federal funds received under this subtitle shall be—

(i) used to supplement and not supplant non-Federal funds that would otherwise be available for activities funded under this subtitle; and

(ii) allocated in accordance with section 426(b).

SEC. 424. STATE REPORTS.

(a) IN GENERAL.—Each State receiving funds under this subtitle shall submit an annual report to the Attorney General that—

(1) identifies the activities carried out with such funds; and

(2) explains how each activity complies with the terms and conditions of the grant.

(b) CAPITAL REPRESENTATION IMPROVEMENT GRANTS.—With respect to the funds provided under section 421, a report under subsection (a) shall include—

(1) an accounting of all amounts expended;

(2) an explanation of the means by which the State—

(A) invests the responsibility for identifying and appointing qualified attorneys to represent indigents in capital cases in a program described in section 421(d)(1)(A), an entity described in section 421(d)(1)(B), or selection

1 committee or similar entity described in section
2 421(d)(1)(C); and
3 (B) requires such program, entity, or selec-
4 tion committee or similar entity, or other appro-
5 priate entity designated pursuant to the statu-
6 tory procedure described in section
7 421(d)(1)(C), to—
8 (i) establish qualifications for attor-
9 neys who may be appointed to represent
10 indigents in capital cases in accordance
11 with section 421(d)(2)(A);
12 (ii) establish and maintain a roster of
13 qualified attorneys in accordance with sec-
14 tion 421(d)(2)(B);
15 (iii) assign attorneys from the roster
16 in accordance with section 421(d)(2)(C);
17 (iv) conduct, sponsor, or approve spe-
18 cialized training programs for attorneys
19 representing defendants in capital cases in
20 accordance with section 421(d)(2)(D);
21 (v) monitor the performance and
22 training program attendance of appointed
23 attorneys, and remove from the roster at-
24 torneys who fail to deliver effective rep-
25 resentation or fail to comply with such re-

quirements as such program, entity, or selection committee or similar entity may establish regarding participation in training programs, in accordance with section 421(d)(2)(E); and

(vi) ensure funding for the full cost of competent legal representation by the defense team and outside experts selected by counsel, in accordance with section 421(d)(2)(F), including a statement setting forth—

(I) if the State employs a public defender program under section 421(d)(1)(A), the salaries received by the attorneys employed by such program and the salaries received by attorneys in the prosecutor's office in the jurisdiction;

(II) if the State employs appointed attorneys under section 421(d)(1)(B), the hourly fees received by such attorneys for actual time and service and the basis on which the hourly rate was calculated;

(III) the amounts paid to non-attorney members of the defense team, and the basis on which such amounts were determined; and

(IV) the amounts for which attorney and non-attorney members of the defense team were reimbursed for reasonable incidental expenses;

(3) in the case of a State that employs a statutory procedure described in section 421(d)(1)(C), an assessment of the extent to which the State is in compliance with the requirements of the applicable State statute; and

(4) a statement confirming that the funds have not been used to fund representation in specific capital cases or to supplant non-Federal funds.

(c) CAPITAL PROSECUTION IMPROVEMENT GRANTS.—With respect to the funds provided under section 422, a report under subsection (a) shall include—

(1) an accounting of all amounts expended;

(2) a description of the means by which the State has—

(A) designed and established training programs for State and local prosecutors to ensure

1 effective representation in State capital cases in
2 accordance with section 422(b)(1)(A);
3 (B) developed and implemented appro-
4 priate standards and qualifications for State
5 and local prosecutors who litigate State capital
6 cases in accordance with section 422(b)(1)(B);
7 (C) assessed the performance of State and
8 local prosecutors who litigate State capital cases
9 in accordance with section 422(b)(1)(C);
10 (D) identified and implemented any poten-
11 tial legal reforms that may be appropriate to
12 minimize the potential for error in the trial of
13 capital cases in accordance with section
14 422(b)(1)(D);
15 (E) established a program under which
16 State and local prosecutors conduct a system-
17 atic review of cases in which a death sentence
18 was imposed in order to identify cases in which
19 post-conviction DNA testing may be appro-
20 priate in accordance with section 422(b)(1)(E);
21 and
22 (F) provided support and assistance to the
23 families of murder victims; and

(3) a statement confirming that the funds have not been used to fund the prosecution of specific capital cases or to supplant non-Federal funds.

(d) PUBLIC DISCLOSURE OF ANNUAL STATE REPORTS.—The annual reports to the Attorney General submitted by any State under this section shall be made available to the public.

SEC. 425. EVALUATIONS BY INSPECTOR GENERAL AND ADMINISTRATIVE REMEDIES.

(a) EVALUATION BY INSPECTOR GENERAL.—

(1) IN GENERAL.—As soon as practicable after the end of the first fiscal year for which a State receives funds under a grant made under this title, the Inspector General of the Department of Justice (in this section referred to as the ''Inspector General'') shall—

(A) after affording an opportunity for any person to provide comments on a report submitted under section 424, submit to Congress and to the Attorney General a report evaluating the compliance by the State with the terms and conditions of the grant; and

(B) if the Inspector General concludes that the State is not in compliance with the terms and conditions of the grant, specify any defi-

ciencies and make recommendations for corrective action.

(2) PRIORITY.—In conducting evaluations under this subsection, the Inspector General shall give priority to States that the Inspector General determines, based on information submitted by the State and other comments provided by any other person, to be at the highest risk of noncompliance.

(3) DETERMINATION FOR STATUTORY PROCEDURE STATES.—For each State that employs a statutory procedure described in section 421(d)(1)(C), the Inspector General shall submit to Congress and to the Attorney General, not later than the end of the first fiscal year for which such State receives funds, after affording an opportunity for any person to provide comments on a certification submitted under section 423(b)(2)(D), a determination as to whether the State is in substantial compliance with the requirements of the applicable State statute.

(b) ADMINISTRATIVE REVIEW.—

(1) COMMENT.—Upon receiving the report under subsection (a)(1) or the determination under subsection (a)(3), the Attorney General shall provide the State with an opportunity to comment regarding

the findings and conclusions of the report or the determination.

(2) CORRECTIVE ACTION PLAN.—If the Attorney General, after reviewing the report under subsection (a)(1) or the determination under subsection (a)(3), determines that a State is not in compliance with the terms and conditions of the grant, the Attorney General shall consult with the appropriate State authorities to enter into a plan for corrective action. If the State does not agree to a plan for corrective action that has been approved by the Attorney General within 90 days after the submission of the report under subsection (a)(1) or the determination under subsection (a)(3), the Attorney General shall, within 30 days, direct the State to take corrective action to bring the State into compliance.

(3) REPORT TO CONGRESS.—Not later than 90 days after the earlier of the implementation of a corrective action plan or a directive to implement such a plan under paragraph (2), the Attorney General shall submit a report to Congress as to whether the State has taken corrective action and is in compliance with the terms and conditions of the grant.

(c) PENALTIES FOR NONCOMPLIANCE.—If the State fails to take the prescribed corrective action under sub-

1 section (b) and is not in compliance with the terms and
2 conditions of the grant, the Attorney General shall dis-
3 continue all further funding under sections 421 and 422
4 and require the State to return the funds granted under
5 such sections for that fiscal year. Nothing in this para-
6 graph shall prevent a State which has been subject to pen-
7 alties for noncompliance from reapplying for a grant under
8 this subtitle in another fiscal year.

9 (d) PERIODIC REPORTS.—During the grant period,
10 the Inspector General shall periodically review the compli-
11 ance of each State with the terms and conditions of the
12 grant.

13 (e) ADMINISTRATIVE COSTS.—Not less than 2.5 per-
14 cent of the funds appropriated to carry out this subtitle
15 for each of fiscal years 2005 through 2009 shall be made
16 available to the Inspector General for purposes of carrying
17 out this section. Such sums shall remain available until
18 expended.

19 (f) SPECIAL RULE FOR "STATUTORY PROCEDURE"
20 STATES NOT IN SUBSTANTIAL COMPLIANCE WITH STAT-
21 UTORY PROCEDURES.—

22 (1) IN GENERAL.—In the case of a State that
23 employs a statutory procedure described in section
24 421(d)(1)(C), if the Inspector General submits a de-
25 termination under subsection (a)(3) that the State is

not in substantial compliance with the requirements of the applicable State statute, then for the period beginning with the date on which that determination was submitted and ending on the date on which the Inspector General determines that the State is in substantial compliance with the requirements of that statute, the funds awarded under this subtitle shall be allocated solely for the uses described in section 421.

(2) RULE OF CONSTRUCTION.—The requirements of this subsection apply in addition to, and not instead of, the other requirements of this section.

SEC. 426. AUTHORIZATION OF APPROPRIATIONS.

(a) AUTHORIZATION FOR GRANTS.—There are authorized to be appropriated $100,000,000 for each of fiscal years 2005 through 2009 to carry out this subtitle.

(b) RESTRICTION ON USE OF FUNDS TO ENSURE EQUAL ALLOCATION.—Each State receiving a grant under this subtitle shall allocate the funds equally between the uses described in section 421 and the uses described in section 422, except as provided in section 425(f).

Subtitle C—Compensation for the Wrongfully Convicted

SEC. 431. INCREASED COMPENSATION IN FEDERAL CASES FOR THE WRONGFULLY CONVICTED.

Section 2513(e) of title 28, United States Code, is amended by striking ''exceed the sum of $5,000'' and inserting ''exceed $100,000 for each 12-month period of incarceration for any plaintiff who was unjustly sentenced to death and $50,000 for each 12-month period of incarceration for any other plaintiff''.

SEC. 432. SENSE OF CONGRESS REGARDING COMPENSATION IN STATE DEATH PENALTY CASES.

It is the sense of Congress that States should provide reasonable compensation to any person found to have been unjustly convicted of an offense against the State and sentenced to death.

○

Chairman SENSENBRENNER. Yesterday I introduced this bill with the bipartisan cosponsorship of a number of Members of the Committee. The bill is called "Justice For All" because it will enhance the rights and protections of all persons who are involved in the criminal justice system. The legislation does this through two different but complementary mechanisms: a new set of statutory victims' rights that are both enforceable in court and supported by fully funded victims' assistance programs, and a comprehensive DNA bill that seeks to ensure that the true offender is caught and convicted of the crime.

Victims of crime have longed complained that they are the forgotten voice in the criminal justice system. For example, Roberta Roper, whose daughter Stephanie was kidnapped, brutally raped, tortured, and murdered in 1982, testified before the Subcommittee on the Constitution that, unlike her daughter's killers, she had no rights to be informed, no rights to attend the trial, and no rights to be heard before sentencing. Her experience and that of many others like her have led victims' rights advocates to push for a victims' rights statute to counterbalance the rights provided to the accused under the Constitution.

The victims' rights portion of this bill originated with S. 2329, which passed the Senate on April 22 by a vote of 96 to 1. Like S. 2329, this bill contains eight enumerated rights for the victim, including the rights to be reasonably protected from the accused; the right to timely notice of public court proceedings involving the crime; the right not to be excluded from such public court proceedings; the right to be reasonably heard at certain proceedings and the reasonable right to confer with the prosecutor; the right to restitution and the right to proceedings free from unreasonable delay; and the right to be treated with fairness and respect. Each of these rights is enforceable by both the prosecutor and the crime victim.

A crime victim or the prosecutor may assert the crime victim's rights and, if necessary, seek a stay of any proceeding in which the victim's rights are being denied. The Government or the crime victim can then seek a writ of mandamus from the appropriate court of appeals to ensure that the crime victim's rights are protected.

In addition, the Justice For All Act contains important provisions to ensure that the criminal justice system will continue to operate in an efficient manner and that there will be an appropriate level of finality to the proceedings. Additionally, the legislation will provide funds for victims' assistance programs at both the Federal and State level.

The bill is not identical to the Senate bill, but it is close. Since Senate passage, the Committee has worked with many interested parties on the issues. I believe this bill, which is the product of that process, is a very good bill that meets many of the concerns expressed. We will continue to work on this bill as it goes to the floor to make the best bill possible.

The second important element of the Justice For All Act pertains to the use of DNA technology. These provisions come from H.R. 3214, which the House passed 357 to 67 on November 5 of last year, but continues to await action in the Senate.

The DNA of the Justice For All Act is identical with the version of H.R. 3214 passed by the House. It seeks also to resolve another

problem that victims face: frustration and depression over the length of time it takes to track down and apprehend their attacker. DNA samples can help to quickly apprehend offenders and solve crimes if law enforcement agencies have access to the most up-to-date testing capabilities. Additionally, DNA technology is increasingly vital to ensuring accuracy and fairness in the criminal justice system. DNA can be used to identify criminals with incredible accuracy, and if biological evidence exists, and DNA can be used to clear suspects and exonerate persons mistakenly accused or convicted of crimes.

The current Federal and State DNA collection and analysis system needs improvement. The Justice For All Act will provide the necessary funding to ensure that these critical programs have access to the necessary equipment and training. It will also provide funds to eliminate the backlog of DNA samples in need of testing and provide greater access to potentially exculpatory evidence to those who may have been wrongfully convicted of a crime.

As with the victims' portion, we will also continue to work on this portion of the bill as we go to the floor to make it the best bill possible.

I would like to thank Congressman Chabot, who has been a tireless advocate for victims rights, for his support of the Justice For All Act. I would like to thank Ranking Member Conyers and Congressman Delahunt and all of the other co-sponsors for their support, and I urge my colleagues to support it.

[The prepared statement of Mr. Sensenbrenner follows:]

PREPARED STATEMENT OF THE HONORABLE F. JAMES SENSENBRENNER, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN, AND CHAIRMAN, COMMITTEE ON THE JUDICIARY

Yesterday, I introduced H.R. 5107, the "Justice for All Act of 2004," with the bipartisan cosponsorship of a number of members of the Committee. The bill is called "Justice for All" because it will enhance the rights and protections of all persons who are involved in the criminal justice system. The legislation does this through two different, but complementary mechanisms: (1) a new set of statutory victims' rights that are both enforceable in a court of law and supported by fully-funded victims' assistance programs; and (2) a comprehensive DNA bill that seeks to ensure that the true offender is caught and convicted for the crime.

Victims of crime have long complained that they are the forgotten voice in the criminal justice system. For example, Roberta Roper, whose daughter Stephanie was kidnapped, brutally raped, tortured, and murdered in 1982, testified before the Subcommittee on the Constitution that—unlike her daughter's killers—she had no rights to be informed, no rights to attend the trial, and no rights to be heard before sentencing.

Her experience, and that of many others like her, have led victims' rights advocates to push for a victims' rights statute to counterbalance the rights provided to the accused under the Constitution.

The victims' rights portion of this bill originated with S. 2329, which passed the Senate on April 22, 2004 by a vote of 96 to 1. Like S. 2329, this bill contains eight enumerated rights for the victim, including the right to be reasonably protected from the accused, the right to timely notice of public court proceedings involving the crime, the right not to be excluded from such public court proceedings, the right to be reasonably heard at certain proceedings, the reasonable right to confer with the prosecutor, the right to restitution, the right to proceedings free from unreasonable delay, and the right to be treated with fairness and respect.

Each of these rights is enforceable by both the prosecutor and the crime victim. A crime victim or the prosecutor may assert the crime victims' rights, and, if necessary, seek a stay of any proceeding in which the victims' rights are being denied.

The government or the crime victim can then seek a writ of mandamus from the appropriate court of appeals to ensure that the crime victims' rights are protected.

In addition, the Justice for All Act contains important provisions to ensure that the criminal justice system will continue to operate in an efficient manner and that

there will be an appropriate level of finality to proceedings. Additionally, this legislation will provide funds for victims' assistance programs both at the Federal and state level.

The bill is not identical to the Senate bill, but it is close. Since Senate passage, the Committee has worked with many interested parties on these issues. I believe that this bill, which is the product of that process, is a very good bill that meets many of the concerns expressed. We will continue to work on this bill as it goes to the floor to make it the best bill possible.

The second important element of the Justice for All Act pertains to the use of DNA technology. These provisions come from H.R. 3214, which passed the House by the wide margin of 357 to 67 on November 5, 2003, but continues to await action in the Senate. The DNA portion of the Justice for All Act is identical to the version of HR 3214 passed by the House.

It seeks to resolve another problem that victims face: frustration and depression over the length of time it takes to track down and apprehend their attacker. DNA samples can help to quickly apprehend offenders and solve crimes if law enforcement agencies have access to the most up-to-date testing capabilities. Additionally, DNA technology is increasingly vital to ensuring accuracy and fairness in the criminal justice system. DNA can be used to identify criminals with incredible accuracy when biological evidence exists, and DNA can be used to clear suspects and exonerate persons mistakenly accused or convicted of crimes.

The current federal and state DNA collection and analysis system needs improvement. The Justice for All Act will provide the necessary funding to ensure that these critical programs have access to the necessary equipment and training. It will also provide funds to eliminate the backlog of DNA samples in need of testing and provide greater access to potentially exculpatory evidence to those who may have been wrongfully convicted of a crime.

As with the victims portion of the bill, we will also continue to work on this portion of the bill as we go to the floor to make it the best bill possible.

I would like to thank Congressman Chabot, who has been a tireless advocate for victims' rights, for his support of the Justice For All Act. I would also like to thank Ranking Member Conyers and Congressman Delahunt and all of the other cosponsors for their support of this important bill. I urge all of my colleagues to support it.

Chairman SENSENBRENNER. And, without objection, I would like to include a letter addressed to the gentleman from Michigan Mr. Conyers and myself, dated today, supporting this legislation from the National Center for Victims of Crime.

[The information referred to follows:]

THE NATIONAL CENTER FOR
Victims of Crime

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September 22, 2004

The Honorable Jim Sensenbrenner, Jr.
Chairman
Committee on the Judiciary
United States House of Representatives
Washington, DC 20515-6216

The Honorable John Conyers, Jr.
Ranking Minority Member
Committee on the Judiciary
United States House of Representatives
Washington, DC 20515-6216

Dear Chairman Sensenbrenner and Ranking Member Conyers:

The National Center for Victims of Crime wishes to express our strong support for H.R. 5107, the Justice for All Act of 2004. This landmark piece of legislation would strengthen the rights of crime victims and support the interests of justice by capitalizing on the use of DNA testing and technology.

The Justice for All Act would provide clear and enforceable legal rights to all direct victims of crime at the federal level. The bill would set a new standard for federal victims' rights compliance, giving victims and prosecutors the legal standing to assert victims' rights; clearly authorizing victims and the government to seek judicial review when rights are denied; and calling on the Attorney General to develop regulations to promote victims' rights through training, disciplinary sanctions for violations of rights, and the designation of an office to receive and investigate crime victim complaints.

By making new funding available to jurisdictions with laws substantially equivalent to those established in this bill, this legislation will promote a strengthening of victims' rights across the country. By providing funding to promote victim notification and compliance with victims' rights at the state level, this bill will improve the implementation of victims' rights nationwide.

We also applaud you for including the Debbie Smith Act and the DNA Sexual Assault Justice Act in H.R. 5107. These bi-partisan measures would provide more than $1 billion in funding to eliminate the nation's DNA backlog and significantly improve the collection and processing of DNA evidence through training grants for sexual assault nurse examiner (SANE) programs, law enforcement officials, and victim service providers. These initiatives would bring relief to countless victims of sexual assault and other crimes and have been a National Center priority for almost two years.

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page two

This legislation represents strong congressional commitment to improve our nation's response to victims of crime and to improve our criminal justice system through the expanded use of DNA technology. The National Center for Victims of Crime commends you for your hard work and dedication to these issues, and we look forward to working with you to enact the Justice for All Act of 2004.

Sincerely,

Susan Herman

Susan Herman
Executive Director

Chairman SENSENBRENNER. Who would like to give the Democratic opening statement? Gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman. I have a fairly lengthy statement and I understand the gentleman from Massachusetts wants to make a statement, so let me just say that I would like to say something about the advancing-justice-through-forensic-DNA-technology portion of the bill and acknowledge that Virginia has been a leader in DNA technology.

Just yesterday we received a grant to help us expand our facilities. Debbie Smith, who is a resident of Virginia, was there at the press conference. And I would like unanimous consent to revise and extend my remarks.

Chairman SENSENBRENNER. Without objection.

Mr. SCOTT. And yield to the gentleman from Massachusetts.

Mr. DELAHUNT. I thank my friend for yielding. And let me begin by acknowledging the fine work of many Members of this panel: Anthony Weiner, Adam Schiff, my colleague to my immediate right here, Mark Green; obviously the Ranking Member of the Subcommittee on Crime, Mr. Scott as, well as Mr. Conyers. And I also want to acknowledge, as the Chairman has, the commitment and work of Mr. Chabot in terms of the protection of victims of crime.

I would be remiss, however, if I did not underscore the work by our distinguished Chairman, and particularly his chief counsel. Oftentimes those of us who sit in these chairs are acknowledged for things that others do. Well, in this case, Phil Kiko has been an extraordinary resource for both Democrats and Republicans in terms of crafting an omnibus bill, if you will, that is appropriately entitled Justice for All, because that is exactly what it does do.

So from both sides of the aisle and the political spectrum, we come together on this bipartisan legislation, because there is unanimous agreement that the criminal justice system is about the search—or a search for the truth. We will never know whether innocent people have been executed since the death penalty was reinstated in 1976. We do know, however, that there have been some very close calls. Since 1976, 116 people in 25 States have been released after spending years on death row for crimes they did not commit. Some of them came within days, hours, of being put to death. Imagine the potential miscarriage of justice if these individuals could not have accessed DNA tests.

Mr. CONYERS. Could the gentleman from Massachusetts yield very briefly to me?

Mr. DELAHUNT. Certainly.

Mr. CONYERS. I thank you and commend you for the work you have done in the DNA part of these negotiations. I want to congratulate all that worked with us on the Subcommittee, and other Members. We have got the most delicate compromise that I have seen in quite a long time come before the Committee. No one needs to know that I regret that the Federal death penalty had to be included, but we all gave up something in this compromise. It brings together the most important DNA considerations that have come out of the Congress. I commend the Chairman of this Committee, Mr. Sensenbrenner, for his steadfast leadership across the years on this, and I yield back. And I thank the gentleman for yielding.

Mr. DELAHUNT. Yes. And I ask unanimous consent to have an additional 2 minutes.

Chairman SENSENBRENNER. The Chair is always disinclined to do this in opening statements. Would the gentleman like to withdraw his unanimous consent?

Mr. DELAHUNT. I withdraw my unanimous consent request.

Let me go further here. DNA was responsible for exonerating 12 of the people freed from death row and another 126 who were wrongfully convicted of serious crimes. The same test that exonerated an innocent person led to the apprehension of the real perpetrator. I think that probably the case that comes to mind of those——

Chairman SENSENBRENNER. Time of the gentleman from Virginia has expired. Without objection, all Members may put opening statements in the record at this point. Hearing none, so ordered. Are there amendments?

[The prepared statement of Mr. Conyers follows:]

PREPARED STATEMENT OF THE HONORABLE JOHN CONYERS, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN, AND RANKING MEMBER, COMMITTEE ON THE JUDICIARY

I want to thank Chairman Sensenbrenner, Representative Delahunt and other Members of the Judiciary Committee for their hard work in developing this bipartisan compromise. H.R. 5107 takes a giant step towards improving the integrity of our criminal justice system.

This bill combines two separate initiatives that we've been working on for a long time. Title 1 addresses the rights of crime victims in criminal proceedings. These rights are established in both pretrial and trial proceedings, and include the right to be notified of any proceeding involving the crime, the right not to be excluded from such proceeding, and the right to testify at certain proceedings.

Titles 2, 3, and 4 contain the substance of a bill we passed last year, the Advancing Justice Through DNA Technology Act. That bill provides federal inmates with access to DNA testing, thereby enabling them to establish their innocence after being subjected to a wrongful conviction. As many of you know, over the past few years, more than 110 innocent Americans have already been exonerated thanks to post-conviction DNA testing. This provision will ensure that others wrongfully convicted will also have an equal chance at obtaining justice.

The DNA bill also authorizes grants to be awarded to States with the express purpose of improving the quality of legal representation afforded indigent defendants in capital cases. Experts have indicated that many of the most egregious cases in which an innocent person was wrongfully convicted involved attorneys who were incompetent, ill-trained or simply ineffective. These grants will dramatically alter this situation by providing defendants with defense counsel that meet a minimum standard of competency.

Finally, the DNA bill contains a provision—not often mentioned—but of extreme importance to those that have been subjected to a wrongful conviction. I'm speaking of the provision in the bill that increases the maximum amount of damages an individual may be awarded for being wrongfully imprisoned from $5,000 to $50,000 per year in non-capital cases and up to $100,000 per year in capital cases.

Having pointed out the many virtues of both pieces of this legislation, I must admit this bill remains far from perfect. With respect to victims' rights, this bill has not resolved the concern that the writ of mandamus procedure allows victims to be a third party to the criminal justice system and gives victims the ability to assert the denial of their rights as an error on appeal. If this bill is enacted as it is currently drafted, it could change the complexion of criminal justice system as we know it from a two party adversarial system to a three party system.

In addition, drafting of the bill could be tightened in several places. One example is in Section 3771(b), which addresses victims who are witnesses but are excluded from the proceedings. The legislation places an enormous burden on courts to figure out a way to allow victims to attend proceedings. In my view, we should focus more on whether the victim testifies during the proceeding, and the presumption should be for exclusion for victim/witnesses.

With respect to the DNA bill, I would prefer the legislation to include an outright ban on the use of the federal death penalty. I also think the bill would have been considerably better if it addressed some of the many factors that contribute to the unacceptably high rate of wrongful convictions, including eyewitness error, perjury, false confessions and police torture.

Nevertheless, I strongly support the delicate compromise that has been reached today. And, I urge my colleagues to support this worthwhile initiative.

[The prepared statement of Mr. Scott follows:]

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

DNA Technology has revolutionized criminal justice. Effectiveness has been increased exponentially by DNA technology, not only for investigating and prosecuting crime, but also for exonerating innocent suspects, and many who were wrongly convicted because the technology was not available or otherwise not applied.

DNA technology has proven so effective and so much in demand that one of the problems we have been struggling with is providing the funding and the expertise and structural support necessary to take advantage of it. Not only have we seen huge backlogs in DNA samples of already convicted offenders waiting to be processed for addition to CODIS, the database for convicted offenders, but we have also incurred huge backlogs in rape kits and other crime scene samples awaiting processing in order to take dangerous offenders off the streets. This is something we must not only prioritize, but must adequately fund as a matter of immediate public safety.

And there can be no greater calling for this committee than the call to protect innocent people from unjust convictions and even execution. Our system of criminal law and procedure is premised upon "the golden thread" of the criminal justice system, the presumption of innocence. Its origin is in common law traditions dating back to the Romans. In *Coffin* v. *U.S.* (156 U.S. 432 [1895]), the Court quoted a Roman official who wrote: "it is better to let the crime of a guilty person go unpunished than to condemn the innocent."

In recent years, the advent of DNA evidence has shown us, unequivocally, that we have been violating this principle with astounding frequency. We are now up to 108 convicted and sentenced individuals who have been exonerated by DNA evidence, including 13 who were on death row. And the numbers are even greater on exclusions at the outset of criminal investigations. FBI data reveals that about 25% of suspects who are DNA tested are exonerated.

While DNA is incontrovertible proof that innocent people are sentenced to death in this country despite our reverence for the presumption of innocence, DNA evidence is simply a way of revealing the there are fatal flaws in the system. The real question we have to answer, Mr. Chairman, is what is wrong with a system where BUT FOR DNA evidence, innocent people would be put to death.

A 23-year study conducted by Professor James Liebman of Columbia University, involving over 4,500 capital cases in 34 states revealed that the courts found serious, reversible error in 68 percent of the capital cases. Of these, 82% were not sentenced to death upon retrial, including 7% who were found to be innocent of the capital charge. I understand that the Innocence Project finds that in a third of the cases it handles in which DNA evidence is still available, convicted defendants are found to be outright innocent. When we consider that the reason they were convicted is due to flaws in our criminal justice system, there is every reason to believe that the percentage of erroneous conviction is the same in cases where DNA evidence is not available.

The notion that the flaws in the system can be addressed through a governor's clemency powers is clearly an inadequate response to a serious problem. Our criminal justice principles are designed to ensure a fair trial for all accused persons. Ultimate questions of life, death or freedom should not depend upon the politics of the moment or the popularity of the defendant, or whether the governor is in an election campaign, or any such vagary. Furthermore, the governor's office is an inappropriate forum to decide such cases. The governor has no subpoena power, no right or opportunity to cross examine key witnesses or to observe witnesses subjected to cross examination by advocates familiar with the case. Nor does the governor have other investigatory power necessary to ensure fairness. The forum for testing the reliability of evidence is the trial, not the political forum of the governor's office.

Mr. Chairman, I believe it is our responsibility to ensure that crime is efficiently and accurately investigated and prosecuted, and that people are not mistakenly convicted and deprived of their freedom on account of preventable errors or flaws in our system of justice administration. We can do a lot to prevent and address such errors and flaws.

Last Congress, the "Innocence Protection Act," which provides for funding and standards for DNA testing, safeguards to assure adequate counsel and other system supports crucial to protecting innocence, was cosponsored by 250 members. The Debbie Smith Act, which provides for funding and system supports to address the

backlog in DNA sample processing, also has broad bi-partisan support. So these would be good efforts to start with. I realize, Mr. Chairman, that you and Mr. Delahunt, and other members, have been working with Chairman Coble to craft bills that we can all support to accomplish these ends.

I cannot stress the importance of these programs enough. My home state of Virginia happens to be home of the oldest and most comprehensive DNA data bank in the country. It now contains the genetic profiles of more than 191,000 convicted felons. Today, the database is part of the Combined DNA Index System (CODIS), a system of computer databases designed by the FBI to store DNA profiles from convicted offenders as well as crime scene evidence. Through the work of Dr. Paul Ferrara, Ph.D., Director, Virginia Division of Forensic Science and Dr. Marcella Fiero, Chief Medical Examiner for the state of Virginia, hundreds of crimes have been solved not only in Virginia, but other states. And just yesterday, the importance of funding such programs was recognized when DOJ announced $201 million in grants to help eliminate the DNA backlog.

This Victim's Rights bill is a partisan bill in the Senate and in the House bill to assure that victims are accorded respect and input into the trial processes of the accused offender we have come up with the current bi-partisan bill. I applaud your efforts and look forward to working with you as we move forward on markup of historic legislation in this Congress. Thank you.

[The prepared statement of Mr. Delahunt follows:]

PREPARED STATEMENT OF THE HONORABLE WILLIAM D. DELAHUNT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS

Thank you, Mr. Chairman.

This bill is the culmination of years of diligent bicameral, bipartisan efforts toward a common goal. The bill's supporters want to use all the tools we can to solve crimes. And protect the innocent. In doing so, crime victims will have access to a justice system that is fair and truthful. I'd like to thank Chairman Hatch and Senator Leahy for working with us throughout this process.

I would also like to pay tribute to the distinguished Chairman of this Committee and his Chief Counsel. Without their good faith and commitment thus far, we would not be where we are today.

From both sides of the aisle and political spectrum, we come together on this bipartisan legislation. Because we agree the criminal justice system is about a search for the truth.

We will never know whether innocent people have been executed since the death penalty was reinstated in 1976. We do know that there have been some very close calls. Since 1976, 116 people in 25 States have been released after spending years on death row for crimes they did not commit. Some of them came within days or hours of being put to death. Imagine the potential miscarriage of justice if these innocent individuals could not access a DNA test.

I oppose any time limits on DNA testing because there should not be any time limits on justice. And there should not be any time limits on innocence.

DNA was responsible for exonerating 12 of the people freed from death row, and another 126 who were wrongfully convicted of serious crimes. In at least 34 of these cases, the same test that exonerated an innocent person led to the apprehension of the real perpetrator.

With this bill, we must ensure that innocent people do not face arbitrary time limits on DNA tests. There is no significant governmental interest in denying DNA testing. DNA is the ultimate tool in a search for truth. To advance justice, we must allow DNA testing in every appropriate case.

I am pleased with the new legislation before the Committee today because it seeks to repair the two sides of injustice when mistakes happen. As a district attorney for more than 20 years, I remember the mistakes more than the victories. And I remember the victims. Victims of the criminal justice system don't all look alike. They just get caught in the system in different ways.

Think of victims like Debbie Smith. She is a courageous advocate who has done so much to help her fellow survivors of sexual assault. Yet it took six years for the DNA evidence to be tested in her case—evidence that ultimately led to the capture of her rapist. Only then was she free from what she has called an "emotional prison."

Those charged with false accusations and imprisoned based on wrongful convictions are also victims. Like Kirk Bloodsworth, the first death row inmate to be exonerated by DNA testing. After 10 years on death row, Kirk had to convince his lawyer to get the test. DNA established Kirk's innocence. DNA also led to the identification and conviction of the true perpetrator within the past year.

We have the means at our disposal to minimize the possibility of error—and, where lives are at stake, we must use them. We must also ensure the rights of crime victims are reasonably and adequately protected in our federal courts. Why would any Member of the House or Senate oppose these goals?

Ultimately, this bill is not about the death penalty. It's not about DNA backlogs. It's about restoring public confidence in the integrity of the American justice system. It's about justice for all victims. And it's about innocent people like Debbie Smith and Kirk Bloodsworth. That is a goal on which we stand united, and I look forward to working closely with my colleagues to see that this important initiative is signed into law.

Mr. FLAKE. Mr. Chairman.

Chairman SENSENBRENNER. Gentleman from Arizona.

Mr. FLAKE. Thank you, Mr. Chairman. In lieu of amendments, I move to strike the last word and make a very brief statement. I feel compelled to note some concerns that I have about this bill. My understanding is that some of these concerns are going to be worked on before it passes. In order for it to pass the Senate, certain changes have to be made with regard to reasonable doubt standards and some other things that need to be worked on. But I will insert my statement for the record.

Chairman SENSENBRENNER. Without objection.

[The prepared statement of Mr. Flake follows:]

PREPARED STATEMENT OF THE HONORABLE JEFF FLAKE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Mr. Chairman, I am compelled to note my concerns about H.R. 5107, the "Justice for All Act of 2004."

As I stated during the mark-up of this bill's predecessor, H.R. 3214, there are many worthwhile parts of this bill, and the goal of protecting the innocent is indeed important.

However, the concerns that I and some of my colleagues share about H.R. 3214 have not been addressed in the bill before us today. The content of H.R. 3214 has been completely transferred into this bill. To mention *just a few of the problematic area of the bill:*

H.R. 5107 contains a problematic "reasonable doubt" standard for ordering new trials. Under H.R. 5107, a federal court would have to order a new trial if DNA-test results "establish by a preponderance of the evidence that a new trial would result in an acquittal." In many circumstances this would *allow the defendant to walk free, regardless of his or her innocence.* A test result would not have to demonstrate actual innocence in order to force a new trial; it would only need to conflict with other evidence of guilt, so as to undermine a jury's ability to convict *beyond a reasonable doubt.*

H.R. 5107 contains a provision permitting post-conviction DNA testing of convicts who had pleaded guilty, and *even if they had failed to seek available DNA testing before trial.* This will permit defendants to reopen cases, re-traumatize victims, and waste resources even if there is *no reason to think that testing will change the outcome of the case.*

H.R. 5107 contains *no limitation at all on the duration* of its proposed post-conviction DNA testing remedy, or *on how long a convict may wait* before seeking post-conviction DNA testing once this bill becomes law. *Other post-conviction federal remedies are subject to time limits,* and there is no reason to adopt a uniquely open-ended approach for post-conviction DNA testing. To do *invites abuse*. A person who is actually innocent has every reason to seek relief promptly, while a person who is guilty would probably seek to *delay* until it's *impossible* for the government to retry his case.

The bill also grants *$100 million in federal funds to operate state programs.* The National District Attorneys Association has expressed concern that the bill attempts to re-establish the old "death penalty resource centers," even though *Congress abolished funding for such centers because they devolved into organizations dedicated solely to the abolition of the death penalty and were staffed and controlled by those dedicated to the disruption of the criminal justice system by whatever means available, ethical or otherwise.*

H.R. 5107 also does *not give the states adequate discretion* in determining the details of their DNA testing system. Even those states with existing procedures for

post-conviction DNA testing would be *ineligible for federal grants if they employed reasonable provisions in their DNA testing systems.*

The Department of Justice shares many of these concerns, and *I would like to request unanimous consent to insert into the record a copy of a letter* from Assistant Attorney General William Moschella to Senator Hatch that outlines their concerns with the "Innocence Protection" portion of the bill.

I know that Chairman Sensenbrenner and his staff are open to making changes to this bill, and I also know that, without signification modifications to this bill, it is not going anywhere on the Senate side. In the interest of giving the Chairman's negotiations with the Justice Department and other interested Members a fair chance, I will not offer any amendments to the bill, as I had originally planned.

I yield back the remainder of my time.

Mr. FLAKE. And also ask unanimous consent to insert into the record a copy of a letter from Assistant Attorney General William Moschella to Senator Hatch.

Chairman SENSENBRENNER. Without objection, so ordered.

[The information referred to follows:]

U.S. Department of Justice

Office of Legislative Affairs

Washington, D.C. 20530

April 28, 2004

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 H.R. 3214, the "Advancing Justice Through DNA Technology Act of 2003," as passed by the House of Representatives. 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 H.R. 3214, but not the problematic provisions of title III.

We have stated our views and recommendations with respect to most matters addressed in H.R. 3214 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 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 State and local forensic laboratory capacity for DNA analysis, (ii) DNA-

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

related training for criminal justice and medical personnel, (iii) DNA research and development, (iv) use of 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 H.R. 3214 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 unjustified provisos that would exclude DNA profiles of unindicted arrestees and DNA profiles submitted for "elimination purposes" from the Combined DNA Index System (CODIS). These restrictions are regressive in relation to existing law – prohibiting States from databasing DNA profiles they are <u>now</u> allowed to include in CODIS – and should be stricken.

- Section 103, in subsection (d), also has new provisions regarding keyboard searches of the national DNA index. These provisions are unnecessary in light of the existing procedures for conducting keyboard searches, and counterproductive in that their formulation conflicts with features of the existing system that are necessary for orderly, reliable, and effective searches.

- Section 106, relating to outsourcing of DNA analysis to private laboratories, section 203, concerning DNA-related training of criminal justice personnel, and section 208, relating to DNA identification of missing persons, require technical corrections to ensure that they will achieve their intended objectives.

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[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 – DEBBIE SMITH 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 certain unjustified exceptions 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 arrestees who have not been indicted and DNA samples that are voluntarily submitted solely for elimination purposes shall not be included in the Combined DNA Index System." A later proviso in section 103(d) further prohibits even keyboard searches against the national index of "a DNA sample voluntarily submitted solely for elimination purposes."

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 categories 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. 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. The creation of such a prohibition would be detrimental to the prompt solution of other crimes committed by such arrestees through database matching to crime scene fingerprint evidence. There is no better reason to adopt a new Federal policy against States promptly including DNA profiles of arrestees in State or Federal DNA databases, and adopting such a negative policy – as H.R. 3214 proposes – would similarly be detrimental to effective law enforcement without furthering any legitimate purpose. We note that a number of States already provide for the collection and analysis of DNA samples from certain categories of unindicted arrestees, *see* La. Rev. Stat. § 15:609(A)(1); Tex. Gov't Code § 411.1471(a)(2), (b), (d); Va. Code § 19.2-310.2:1, and that H.R. 3214's proposed exclusion of unindicted arrestee DNA profiles from CODIS is in conflict with these States' policies.

With respect to section 103(a)'s proposed exclusion of samples submitted for elimination purposes, it should be noted that 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.

The harm arising from these arbitrary prohibitions would be compounded by the fact that individual States may prosecute most or all offenses by information rather than indictment. In such States, it would rarely or never be possible to include DNA profiles of arrestees in CODIS

prior to conviction, in light of the bill's prohibition of including profiles "from arrestees who have not been indicted."

Section 103 of H.R. 3214 compounds the harmfulness of its exclusions in another way by augmenting existing expungement provisions in 42 U.S.C. 14132(d). The existing 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. The amendments in section 103(a)(2) of the bill add language that is apparently intended to require that arrestees' DNA profiles as well be removed from the national index if the arrestee is not ultimately convicted.

These amendments march in the wrong direction and should not be included in the bill. Instead, section 103 should simply strike the current expungement provisions in 42 U.S.C. 14132(d). By way of comparison, 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 or expansion 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 whether the DNA profiles they have generated are left in, or removed from, the national index in cases where arrestees are not convicted or convictions are overturned. Striking 42 U.S.C. 14132(d) would

have the salutary effect of enabling the States to effectuate their own policies regarding expungement in these cases.[3]

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 H.R. 3214.

Finally, subsection (d) of section 103 contains new provisions (proposed 42 U.S.C. 14132(e)) relating to keyboard searches, defined essentially as searches in which a DNA profile is compared to DNA information in the national index without being included in the national index. (This means that searches by other requesters against the national index will not result in comparison to this DNA profile.) The new provisions would require that "any person" authorized to access the national DNA index for purposes of including DNA information must also be allowed to carry out against the index a keyboard search "on information obtained from any DNA sample lawfully collected for a criminal justice purpose," except a sample voluntarily submitted solely for elimination purposes.

The proviso relating to samples voluntarily submitted for elimination purposes is unsound for reasons discussed earlier. The more fundamental problems with this provision are that it serves no purpose, given the existing procedures for keyboard searches, and that it would entail major departures from existing statutory and administrative requirements that ensure orderly, reliable, and effective searches against the national index.

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[3] Beyond the unsoundness in principle of attempting to prescribe any uniform Federal policy regarding the expungement of DNA records, the specific expungement provisions relating to DNA records of non-convicts proposed in section 103(a)(2) of the bill are even more extreme than the existing provisions in 42 U.S.C. 14132(d)(2) for expungement of the DNA records of convicts whose convictions are overturned. The existing provisions in 42 U.S.C. 14132(d)(2) require expungement where the responsible officials are presented with "a certified copy of a final court order establishing that such conviction has been overturned." In contrast, the proposed new language relating to non-convict DNA records simply requires expungement where charges have been dismissed or there was an acquittal – as if the persons responsible for the administration of the DNA records system will somehow automatically be aware if this has occurred. This requirement is unworkable because the forensic laboratory personnel responsible for the system normally will have no information concerning the disposition of a criminal charge. Hence, if expungement provisions for non-convict DNA records were adopted, the appropriate formulation would be to require expungement only on the presentation of documentation establishing that the charges were dismissed or an acquittal resulted, parallel to the formulation of the current provisions in 42 U.S.C. 14132(d)(2).

Proposed 42 U.S.C. 14132(e) may be intended to address the problem of jurisdictions that maintain non-convict DNA profiles in their DNA databases – such as DNA profiles of arrestees or adjudicated juvenile delinquents – but cannot search such profiles against the national DNA index because of the current limitation of the national index to DNA profiles of convicts contained in 42 U.S.C. 14132(a)(1). However, earlier provisions in section 103 of the bill would largely eliminate this limitation, and these provisions should be strengthened to allow States to include DNA profiles from all categories of persons from whom they lawfully collect DNA samples in the national index, as discussed earlier in our comments. Such a statutory change would allow DNA profiles from persons in these additional categories (arrestees, adjudicated delinquents, etc.) to be fully included in the national DNA index – not just to be the subject of one-time keyboard searches. Moreover, this statutory change would be reflected in corresponding adjustments of the existing keyboard search procedures to allow States to request keyboard searches of DNA profiles from persons in these additional categories against the national index. Hence, in the presence of sound modifications of 42 U.S.C. 14132(a) concerning the scope of information allowed in the national DNA index, proposed 42 U.S.C. 14132(e) in the bill is a solution in search of a problem.

The affirmative harm threatened by proposed 42 U.S.C. 14132(e) is that the new provision is missing, and could readily be interpreted to supersede, critical features of the current system, including: (i) the quality assurance and proficiency testing requirements that now apply to all DNA information that is included in or searched against the national index, (ii) requirements that DNA profiles included in or searched against the national index contain a sufficient number of the thirteen core loci to provide meaningful search results, and (iii) requirements that keyboard search requests be routed through the appropriate CODIS administrators in State and local participating laboratories. In contrast, the existing keyboard search procedures incorporate these salutary requirements, and differ from the uploading of DNA data to the national index primarily in that: (i) keyboard requests are searched against the national index on a one-time basis and are not retained in the national index, and (ii) the administrator for the national index system may waive certain data acceptance standards in keyboard searches – such as allowing searches involving DNA profiles in which only 8 loci were obtained and the analysis consumed all of the evidence, as opposed to the normal requirement of a minimum of 10 loci for profiles that are included in the national index. Hence, the existing procedures provide sufficient flexibility to meet law enforcement needs without compromising the features of the system needed to ensure the integrity, reliability, and effectiveness of searches against the national DNA index.

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 making 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 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. As formulated in H.R. 3214, section 203 correctly identifies types of personnel for whom such training and information is to be made available under the President's DNA initiative, but it inappropriately limits potential grantees to professional associations of such personnel and similar entities ("organization[s] consisting of, comprised of, or representing" such personnel). There is no reason why grantees for the purpose of providing training, technical assistance, etc., to such personnel should be limited by statute in this manner. A correct formulation of these provisions, which is not so limited, appears in section 203 of S. 1828.

Section 208 – 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 of this section appears in S. 1828, as section 207 of that bill.

TITLE III – INNOCENCE PROTECTION ACT OF 2003

Section 313 – Incentive Grants 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

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[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, 208, and 312 – because of inconsistencies in drafting. Only section 203 is like section 313 in

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 and DNA demonstration projects under section 205; DNA identification of missing persons under section 208;[5] 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 such 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,[6] 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

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referring expressly to potential grantees as "eligible entities." Section 205 does not restrict potential grantees, and sections 208 and 312 refer to grants to State and local governments or to States.

[5] The references in section 313 to section 207, which authorizes funding for FBI DNA programs, are evidently meant to refer to section 208. The mistake results from failing to make conforming changes in section 313 following the renumbering of several sections in title II in the House-passed version of H.R. 3214.

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

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 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, 208, 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 and demonstration projects ($15 million annually); and section 208 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 will 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 at a private university or institution who are capable of, and best-suited to carry out, research for this purpose, solely on the ground that the university or institution happens to be located in a State that does 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 208 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 H.R. 3214 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 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.[7]

The postconviction DNA testing provisions in section 311 of H.R. 3214 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 turned around 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

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

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.

However, no such reasonable limitation is found in the postconviction DNA testing standards of H.R. 3214. 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 H.R. 3214, 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 H.R. 3214, 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 H.R. 3214:

1. No requirement of unavailability of DNA testing before conviction

In contrast to most State postconviction DNA testing provisions, there is no requirement in section 311 of H.R. 3214 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. No requirement of any realistic likelihood that testing will be exonerative

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 H.R. 3214 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 H.R. 3214 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 that 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, and it 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 H.R. 3214, there is no linkage in S. 1828 of positive DNA proposals to controversial proposals relating to the death penalty.

Subtitle B of title III in the bill includes a series of special provisions and provisos that are apparently designed to exempt Texas from the capital defense requirements that would apply to all other States under the bill's standards, and would instead allow Texas to continue uniquely with the capital defense system it now has. *See* sections 321(d)(1)(C), (2)(C), (F)(i),

323(b)(2)(D), (E)(ii), 324(b)(2)(A), (B), (3), 325(a)(3), (f), 326(b). Putting aside the bill's efforts to create an unprincipled exception for one State to standards that the bill deems necessary for all other States, the bill's requirements (section 321) include vesting responsibility for the 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 existing budgetary limitations. 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.

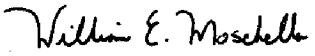
Beyond the illegality inherent in this scheme, the requirements of section 325 raise serious practical concerns. The process set up by the bill, involving consideration of comments submitted by "any person" concerning State capital counsel systems (section 325(a)(1)(A), (2)), would predictably be exploited 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, and the Department's Inspector General 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's 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. Please do not hesitate to call upon us if we may be of further assistance. 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

Chairman SENSENBRENNER. Are there amendments? The gentleman from Wisconsin, Mr. Green.

Mr. GREEN. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman. I wish to commend the Chairman for his outstanding hard work on the whole issue of crime victims' rights and DNA testing. I think we are on the verge of doing something historic and very special.

I would like to ask unanimous consent to insert into the record a letter from Debbie Smith to Chairman Sensenbrenner in strong support of this legislation, and strong support in particular of the DNA provisions that are in it, and commending the Chairman for his work.

Chairman SENSENBRENNER. Without objection.

[The information referred to follows:]

September 21, 2004

Chairman Sensenbrenner
2449 Rayburn HOB
Washington, DC 20515-4904

Dear Mr. Chairman,

I am writing this letter to thank you for all of the hard work you have put in assisting victims of crime. I was raped in 1989 in Virginia and it took 6 ½ years to finally complete all the testing on my case. The reason that I have been so passionate to get a bill passed to provide more funding for DNA is to help other victims to avoid the delay that I went through. I also want to help prevent others from even becoming victims. As a citizen and as a victim, I strongly support your efforts to pass either H.R.3214 or the Justice for All Act of 2004. I think that including the victim's bill of rights with the "Debbie Smith Act" and the "Innocence Protection Act" can only enhance services provided to the citizens of this country who are affected by crime, making this a totally comprehensive bill. I have personally spoken in conferences and other forums all across this great country and the overwhelming consensus is that we need this funding to eliminate the unforgivable backlog of samples waiting to be tested. The training that would be provided to first responders would not only provide the labs with more usable evidence, but it would provide them with evidence that was both collected and preserved properly. Using DNA to free the innocent shows the "two way street" value of this technology. Thank you for remaining diligent in this struggle to assist victims everywhere.

Sincerely,

Debbie Smith
9900 Willow Bank Road
Charles City, VA 23030
(804)829-6555

Mr. GREEN. And I would like to yield the balance of my time to Mr. Delahunt.

Mr. DELAHUNT. I thank my friend for yielding and I will try to wrap this up so we can move this, as you say, this historic piece of legislation.

As I indicated, the case that particularly comes to my mind when an individual is falsely accused is the case of Kurt Bloodsworth who is the first death row inmate to be exonerated by DNA testing. After spending 10 years on death row, Kurt had to convince his lawyer to get the test. The test established Kurt's innocence. And just recently, subsequently, that DNA—the access to the DNA technology also finally led to the identification and conviction of the true perpetrator, sometime within this past year.

I think that sums it up rather well. Again, this new legislation before the Committee today to me repairs the two sides of injustice when mistakes happen. I served as a district attorney for more than 20 years and I remember the mistakes more than I do the wins. And I remember the victims. And victims of the criminal justice system don't all look alike. They just get caught in the system in different ways.

And with that, I yield back to the gentleman.

Chairman SENSENBRENNER. Gentleman from Wisconsin yield back?

Mr. GREEN. I do.

Chairman SENSENBRENNER. Are there amendments? If there are no amendments, a reporting quorum is present.

The question occurs on the motion to report the bill H.R. 5107 favorably.

All in favor say aye. Opposed, no.

The ayes appear to have it. The ayes have it and the motion to report favorably is agreed to.

Without objection, the Chairman is authorized to move to go to conference pursuant to House rules. Without objection, the staff is directed to make any technical and conforming changes and all Members will be given 2 days, as provided by House rules, in which to submit additional dissenting, supplemental or minority views.

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