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HOUSE OF REPRESENTATIVES
REPT. 108–321
Part 1

ADVANCING JUSTICE THROUGH DNA TECHNOLOGY ACT OF 2003

OCTOBER 16, 2003.—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. 3214]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3214) 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, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

29–006

THE AMENDMENT

The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Advancing Justice Through DNA Technology Act of 2003".

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

TITLE I—RAPE KITS AND DNA EVIDENCE BACKLOG ELIMINATION ACT OF 2003

SEC. 101. SHORT TITLE.

This title may be cited as the "Rape Kits and DNA Evidence Backlog Elimination Act of 2003".

SEC. 102. 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. 103. EXPANSION OF COMBINED DNA INDEX SYSTEM.

(a) INCLUSION OF ALL DNA SAMPLES FROM STATES.—Section 210304(a)(1) of the DNA Identification Act of 1994 (42 U.S.C. 14132(a)(1)) is amended by striking "of persons convicted of crimes;" and inserting the following: "of—

"(A) persons convicted of crimes; and

"(B) other persons whose DNA samples are collected under applicable legal authorities, provided that DNA profiles from DNA samples that are voluntarily submitted solely for elimination purposes shall not be included in the Combined DNA Index System;".

(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 keyboard search.

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

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

SEC. 104. 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, except for a felony offense under chapter 109A, 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 committed before, on, or after the date of the enactment of this section if the applicable limitation period has not yet expired.

SEC. 105. LEGAL ASSISTANCE FOR VICTIMS OF VIOLENCE.

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

(1) in subsection (a), by inserting "dating violence," after "domestic violence,";

(2) in subsection (b)—

(A) by redesignating paragraphs (1) through (3) as paragraphs (2) through (4), respectively;

(B) by inserting before paragraph (2), as redesignated by subparagraph (A), the following:

"(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."; 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. 106. 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 II—DNA SEXUAL ASSAULT JUSTICE ACT OF 2003

SEC. 201. SHORT TITLE.

This title may be cited as the "DNA Sexual Assault Justice Act of 2003".

SEC. 202. 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 2003, 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. 203. DNA TRAINING AND EDUCATION FOR LAW ENFORCEMENT, CORRECTIONAL PERSONNEL, AND COURT OFFICERS.

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

(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.

(b) 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. 204. 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. 205. 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, improvements to law enforcement operations, and cost-effectiveness of increased collection and use of DNA evidence.

(c) NATIONAL FORENSIC SCIENCE COMMISSION.—

(1) 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 paragraph (2).

(2) RESPONSIBILITIES.—The Commission shall—

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

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

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

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

(E) 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;

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

(G) 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;

(H) make specific recommendations to the Attorney General, as necessary, to enhance the protections described in subparagraph (G) to ensure—

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

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

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

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

(I) provide a forum for the exchange and dissemination of ideas and information in furtherance of the objectives described in subparagraphs (A) through (H).

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

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

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

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

(d) 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. 206. 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. 207. 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. 208. 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. 209. TRIBAL COALITION GRANTS.

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).".

SEC. 210. 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 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.";

(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, or coroner's office; 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, or coroner's office 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. 211. 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 203 and 204;

(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 205;

(6) the steps taken to establish the National Forensic Science Commission, and the activities of the Commission under section 205(c);

(7) the use of funds by the Federal Bureau of Investigation under section 206;

(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 207;

(9) grants awarded and the use of such grants by eligible entities to eliminate forensic science backlogs under the amendments made by section 210;

(10) State compliance with the requirements set forth in section 313; and

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

TITLE III—INNOCENCE PROTECTION ACT OF 2003

SEC. 301. SHORT TITLE.

This title may be cited as the "Innocence Protection Act of 2003".

Subtitle A—Exonerating the Innocent Through DNA Testing

SEC. 311. 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

"(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 2003; 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 2003;

"(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 2003, 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. 312. 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. 313. 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 203, 205, 207, and 312 shall be reserved for grants to eligible entities that—

(1) meet the requirements under section 203, 205, 207, or 312, 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. 321. 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 identifying and appointing qualified attorneys to represent indigents in capital cases in—

(A) a public defender program that relies on staff attorneys, members of the private bar, or both, to provide representation in capital cases; or

(B) 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; and

(2) requires the entity described in paragraph (1) 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) 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 the 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 as follows:

(i) Attorneys employed by a public defender program shall be compensated according to a salary scale that is commensurate with the salary scale of the prosecutor's office in the jurisdiction.

(ii) Appointed attorneys shall be compensated for actual time and service, computed on an hourly basis and at a reasonable hourly rate in light of the qualifications and experience of the attorney and the local market for legal representation in cases reflecting the complexity and responsibility of capital cases.

(iii) Non-attorney members of the defense team, including investigators, mitigation specialists, and experts, shall be compensated at a rate that reflects the specialized skills needed by those who assist counsel with the litigation of death penalty cases.

(iv) Attorney and non-attorney members of the defense team shall be reimbursed for reasonable incidental expenses.

SEC. 322. CAPITAL PROSECUTION IMPROVEMENT GRANTS.

(a) IN GENERAL.—The Attorney General shall award grants to States for the purpose of improving the representation of 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 systematic 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. 323. 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; and

(D) 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 equally between the uses described in section 321 and the uses described in section 322.

SEC. 324. 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 321, 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 an entity described in section 321(d)(1); and

(B) requires the entity described in section 321(d)(1) to—

(i) establish qualifications for attorneys who may be appointed to represent indigents in capital cases in accordance with section 321(d)(2)(A);

(ii) establish and maintain a roster of qualified attorneys in accordance with section 321(d)(2)(B);

(iii) assign attorneys from the roster in accordance with section 321(d)(2)(C);

(iv) conduct, sponsor, or approve specialized training programs for attorneys representing defendants in capital cases in accordance with section 321(d)(2)(D);

(v) monitor the performance and training program attendance of appointed attorneys, and remove from the roster attorneys who fail to deliver effective representation or fail to comply with such requirements as the entity may establish regarding participation in training programs, in accordance with section 321(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 321(d)(2)(F), including a statement setting forth—

(I) if the State employs a public defender program under section 321(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 321(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; and

(3) 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 322, 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 effective representation in State capital cases in accordance with section 322(b)(1)(A);

(B) developed and implemented appropriate standards and qualifications for State and local prosecutors who litigate State capital cases in accordance with section 322(b)(1)(B);

(C) assessed the performance of State and local prosecutors who litigate State capital cases in accordance with section 322(b)(1)(C);

(D) identified and implemented any potential legal reforms that may be appropriate to minimize the potential for error in the trial of capital cases in accordance with section 322(b)(1)(D);

(E) established a program under which State and local prosecutors conduct a systematic review of cases in which a death sentence was imposed in order to identify cases in which post-conviction DNA testing may be appropriate in accordance with section 322(b)(1)(E); and

(F) provided support and assistance to the 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. 325. 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 324, 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 deficiencies 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.

(b) ADMINISTRATIVE REVIEW.—

(1) COMMENT.—Upon receiving the report under subsection (a)(1), the Attorney General shall provide the State with an opportunity to comment regarding the findings and conclusions of the report.

(2) CORRECTIVE ACTION PLAN.—If the Attorney General, after reviewing the report under subsection (a)(1), 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), 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 subsection (b) and is not in compliance with the terms and conditions of the grant, the Attorney General shall discontinue all further funding under sections 321 and 322 and require the State to return the funds granted under such sections for that fiscal year. Nothing in this paragraph shall prevent a State which has been subject to penalties for noncompliance from reapplying for a grant under this subtitle in another fiscal year.

(d) PERIODIC REPORTS.—During the grant period, the Inspector General shall periodically review the compliance of each State with the terms and conditions of the grant.

(e) ADMINISTRATIVE COSTS.—Not less than 2.5 percent of the funds appropriated to carry out this subtitle for each of fiscal years 2005 through 2009 shall be made available to the Inspector General for purposes of carrying out this section. Such sums shall remain available until expended.

SEC. 326. 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 321 and the uses described in section 322.

Subtitle C—Compensation for the Wrongfully Convicted

SEC. 331. 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 incarcer-

ation for any plaintiff who was unjustly sentenced to death and $50,000 for each 12-month period of incarceration for any other plaintiff".

SEC. 332. 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.

PURPOSE AND SUMMARY

H.R. 3214 addresses three interrelated problems: the elimination of backlogs of DNA evidence that has not been analyzed, the lack of training, equipment, technology, and standards for handling DNA and other forensic evidence, and the conviction of innocent persons. Title I addresses the backlogs 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 five years. Title II authorizes funding for training for law enforcement, correctional, court, and medical personnel on the use of DNA evidence. Title II 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. Title II provides funds to the FBI for the administration of its DNA programs.

Title III 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. The legislation 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

A. BACKGROUND

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 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 is generally used to solve crimes in one of two ways. In cases where 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. In cases where 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 1980s, the federal government laid the groundwork for a system of national, 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 1980s and early 1990s, 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 national 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.

B. NEED FOR THE LEGISLATION

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 in order 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 examinations, 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

also revealed wrongful convictions around the country; however, DNA alone will not eliminate wrongful convictions. However, greater access to DNA testing is essential. 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

The Committee's Subcommittee on Crime, Terrorism and Homeland Security held one day of hearings on DNA issues on July 17, 2003. Testimony was received from four witnesses, representing three organizations, with additional material submitted by several other individuals and organizations. In the 107th Congress, the Subcommittee held a hearing on H.R. 912, the "Innocence Protection Act of 2001" on June 18, 2002. This hearing addressed many of the issues addressed in Title III of H.R. 3214. Testimony was received from four witnesses.

COMMITTEE CONSIDERATION

On October 8, 2003, the Committee met in open session and ordered favorably reported the bill H.R. 3214 with an amendment by a recorded vote of 28 to 1, 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 the following rollcall vote occurred during the committee's consideration of H.R. 3214. The motion to report H.R. 3214 favorably as amended passed by a rollcall vote of 28 to 1:

ROLL CALL NO. 1

DATE:10-08-2003

COMMITTEE ON THE JUDICIARY
U.S. HOUSE OF REPRESENTATIVES
108th CONGRESS 1st SESSION

SUBJECT: Motion to report H.R. 3214, as amended. By a roll call vote of 28 yeas to 1 nay, the motion was agreed to.

	Ayes	Nays	Present
Mr. Hyde			
Mr. Coble	X		
Mr. Smith	X		
Mr. Gallegly			
Mr. Goodlatte	X		
Mr. Chabot	X		
Mr. Jenkins	X		
Mr. Cannon	X		
Mr. Bachus			
Mr. Hostettler	X		
Mr. Green	X		
Mr. Keller	X		
Ms. Hart			
Mr. Flake		X	
Mr. Pence	X		
Mr. Forbes	X		
Mr. King	X		
Mr. Carter	X		
Mr. Feeney	X		
Mrs. Blackburn			
Mr. Conyers	X		
Mr. Berman	X		
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren			
Ms. Jackson Lee	X		
Ms. Waters	X		
Mr. Meehan	X		
Mr. Delahunt	X		
Mr. Wexler			
Ms. Baldwin	X		
Mr. Weiner	X		
Mr. Schiff	X		
Ms. Sánchez	X		
Mr. Sensenbrenner, Chairman	X		
Total	28	1	

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

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because H.R. 3214 does not provide new budgetary authority or increased tax expenditures.

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. 3214, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

OCTOBER 16, 2003.

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. 3214, the Advancing Justice Through DNA Technology Act of 2003.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz.

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director.

Enclosure.

H.R. 3214—Advancing Justice Through DNA Technology Act of 2003

Summary: H.R. 3214 would authorize the appropriation of $1.85 billion over the 2005–2009 period to expand the use of DNA analysis in the criminal justice system. The bill would establish six new grant programs and extend 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 also would authorize appropriations for the Federal Bureau of Investigation to carry out its DNA programs, including the Combined DNA Index System (CODIS), and would require the collection of DNA samples from persons convicted of felonies.

Assuming appropriation of the necessary amounts, CBO estimates that implementing H.R. 3214 would cost about $1.1 billion over the 2005–2008 period (with additional amounts spent after 2008). This legislation could affect direct spending, but CBO estimates that any such effects would not be significant.

H.R. 3214 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would benefit state, local, and tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 3214 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—					
	2003	2004	2005	2006	2007	2008
SPENDING SUBJECT TO APPROPRIATION [1]						
Spending under current law for the programs that would be authorized by H.R. 3214:						
Budget authority/authorization level [2]	82	153	57	42	0	0
Estimated outlays	78	113	92	74	27	11
Proposed changes:						
Estimated authorization level	0	10	360	360	380	380
Estimated outlays	0	9	106	234	349	372
Spending under H.R. 3214:						
Estimated authorization level	82	163	417	402	380	380
Estimated outlays	78	122	198	308	376	383

[1] In addition to the discretionary costs, enacting H.R. 3214 could affect direct spending, but CBO estimates that any such effects would be less than $500,000 annually.

[2] The 2003 level is the total amount appropriated for that year for the programs that would be authorized by H.R. 3214. The 2004 through 2006 levels are the total amounts authorized in current law for those programs. (A full-year appropriation for fiscal year 2004 for those programs has not yet been enacted.)

Basis of estimate: Assuming appropriations of the necessary amounts, CBO estimates that implementing H.R. 3214 would cost $1.1 billion over the 2005–2008 period. This legislation could affect direct spending, but CBO estimates that any such effects would not be significant.

Spending subject to appropriation

H.R. 3214 would authorize the appropriation of $358 million for 2005 and for 2006, and $378 million for each of 2007, 2008, and 2009. For this estimate, CBO assumes that the authorized amounts 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. 3214 would require the federal gvernment to collect DNA samples from each person in federal custody or on federally supervised release who has been convicted of a felony. 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. 3214 would require the collection of roughly 160,000 additional samples in 2004 and about 40,000 samples in each subsequent year. We expect that it would cost about $60 to take each DNA sample, so collection costs would total $10 million in fiscal year 2004 and nearly $3 million a year for the 2005–2008 period, assuming appropriation of the necessary amounts.

Direct spending

Enacting H.R. 3214 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. CBO does not expect the number of such cases or any increase in payments for this purpose to be significant.

Intergovernmental and private-sector impact: H.R. 3214 contains no intergovernmental or private-sector mandates as defined in UMRA and would benefit state, local, and tribal governments by authorizing the appropriation of over $1.5 billion in grants to those governments over fiscal years 2005–2009. It would create six new grant programs and reauthorize and expand two existing grants under the DNA Analysis Backlog Elimination Act of 2000. Any costs to grant recipients would be incurred voluntarily as conditions of receiving federal aid.

Estimate prepared by: Federal Costs: Mark Grabowicz. Impact on State, Local and Tribal Governments: Melissa Merrell. Impact on the Private Sector: Paige Piper/Bach.

Estimated approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

PERFORMANCE GOALS AND OBJECTIVES

H.R. 3214 authorizes a variety of grants to State and local governments to combat crimes with DNA and other forensic technology and provides safeguards to prevent wrongful convictions and executions.

Titles I and II of the bill include the Debbie Smith DNA Backlog Grant Program, which authorizes $755 million over five 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 III 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 five 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, section 8, of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

TITLE I—RAPE KITS AND DNA EVIDENCE BACKLOG ELIMINATION ACT

Sec. 101. Short title

Section 101 provides that this title may be cited as the "Rape Kits and DNA Evidence Backlog Elimination Act of 2003."

Sec. 102. The Debbie Smith DNA Backlog Grant program

Section 102 renames the Backlog Elimination Act grant program in honor of Debbie Smith, a rape survivor and leader in promoting the use of the DNA technology to solve crimes. It amends and expands the DNA Backlog Elimination Act of 2000 in a variety of ways. It expands the program to allow grants to units of local governments as well as states. It clarifies that grants should go toward timely analyses of DNA samples including samples from rape kits, samples from other sexual assault evidence and samples taken in cases without an identified suspect.

This section also converts the DNA Backlog Elimination grant program to a formula grant program. The Attorney General will develop a formula that maximizes the effective use of DNA technology to solve crimes and protect public safety and that addresses areas where significant backlogs exist. A minimum grant amount of 0.50 percent is to be awarded to each State, and a specified percentage of funds will be awarded to conduct DNA analyses of samples from casework or victims of crime.

Conversion of the program into a formula grant program will ensure that funds will be fairly distributed among all eligible jurisdictions. The Committee expects that the formula will consider the following factors: the magnitude and nature of the DNA backlogs and current DNA work demands in the jurisdiction; deficits in public laboratory capacity for the analysis of DNA samples in the jurisdiction and cost requirements for remedying these deficits; and the ability of the jurisdiction to use the funds to increase DNA analysis and public laboratory capacity for such analysis. The Committee further expects that the formula will direct funding to solve the most serious violent crimes, including rapes and murders, thereby getting the greatest return in promoting public safety.

This section 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 laboratories. Additionally, recognizing the importance of obtaining quality DNA samples and the requirement for auditing and accreditation in section 202 of this Act, this section allows 1% of the funds to be used by 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 for these purposes for each year from FY 2005 through FY 2009.

Sec. 103. Expansion of Combined DNA Index System

Section 103 amends the statute governing the Combined DNA Index System (CODIS) to allow states to include in CODIS the DNA profiles of all persons whose DNA samples have been col-

lected under applicable legal authorities, including those authorized by State law, all felons convicted of Federal crimes, and all persons convicted of qualifying military offenses.

An amendment to this section was adopted at markup. This provision would allow a State or the Federal government to search the National DNA Index System (NDIS) for a match to any DNA sample that was lawfully obtained by the State. Currently, a search can be made only when the sample can be lawfully loaded into NDIS. However, some States allow lawful collection of a broader group of samples, which should be able to be searched for matches. This amendment would not change the rules for loading samples into NDIS, and when a search is conducted, the sample will only be loaded into NDIS if it otherwise qualifies under the NDIS rules.

Sec. 104. Tolling of statute of limitations

Section 104 provides that, in a case where 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 limitations period has elapsed from the date of identification of the perpetrator.

Sec. 105. Legal assistance for victims of violence

Section 105 expands the Violence Against Women Act to allow the grant programs to be used to provide legal assistance for victims of dating violence. "Dating violence," is defined as violence committed by a person: (1) Who is or has been in a romantic or intimate relationship with the victim; and (2) where the existence of such relationship is determined based upon consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved.

Sec. 106. Ensuring private laboratory assistance in eliminating DNA backlog

Section 106 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 or non-profit companies to expedite DNA collection, analyses of DNA from crime scenes, and elimination of any backlog.

TITLE II—DNA SEXUAL ASSAULT JUSTICE ACT OF 2003

Sec. 201. Short title

Section 201 provides that this title may be cited as the "DNA Sexual Assault Justice Act of 2003."

Sec. 202. Ensuring public crime laboratory compliance with federal standards

Section 202 requires that State and local government crime laboratories undergo accreditation within two years after enactment. It further requires that laboratories undergo auditing at least every two years to ensure compliance with federal standards that will be established by the Federal Bureau of Investigation.

Sec. 203. DNA training and education for law enforcement, correctional personnel, and court officers

Section 203 authorizes $12.5 million per year for five years to provide grants for training and education relating to DNA evidence for law enforcement personnel; correctional personnel; court officers, including prosecutors, defense lawyers and judges; and forensic scientists.

Sec. 204. Sexual Assault Forensic Exam Program grants

Section 204 authorizes $30 million per year for five years to create a grant program to provide training, technical assistance, education, equipment, and information to medical personnel including doctors, medical examiners, coroners, nurses, victim service providers, and other medical professionals, including existing sexual assault and sexual assault examination programs (Sexual Assault Nurse Examiner or SANE, Sexual Assault Forensic Examiner or SAFE, and Sexual Assault Response Team or SART) relating to the identification, collection, preservation, analysis, and use of DNA samples and evidence.

Sec. 205. DNA research and development

Section 205 authorizes $15 million per year for five years for grants for research and development to improve forensic DNA technology, including funding of demonstration projects involving law enforcement agencies and criminal justice participants to evaluate the use of forensic DNA technology. The section also authorizes the Attorney General to establish a new Forensic Science Commission, composed of members from the forensic science and criminal justice communities, which will be responsible for examining various issues, including: (1) Use of forensic sciences to solve crimes and protect public safety; (2) increasing the number of qualified forensic scientists; (3) disseminating best practices concerning the collection and analyses of forensic evidence; and (4) assessing Federal, State and local privacy protection statutes, regulations and practices relating to DNA samples and DNA analyses.

Sec. 206. FBI DNA programs

Section 206 authorizes $42.1 million per year for five years 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.

Sec. 207. DNA identification of missing persons

Section 207 authorizes $2 million per year for five years for grants to State and local governments for DNA identification of missing persons and unidentified human remains.

Sec. 208. Enhanced criminal penalties for unauthorized disclosure or use of DNA information

Section 208 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.

Sec. 209. Tribal coalition grants

Section 209 authorizes grants to nonprofit, nongovernmental tribal domestic violence and sexual assault coalitions in Indian country for domestic violence and sexual assault awareness programs under the Violence Against Women Act.

Sec. 210. Expansion of Paul Coverdell Forensic Science Improvement Grant Program

Section 210 extends the Paul Coverdell Forensic Science Improvement Grant Program by authorizing $20 million per year for fiscal years 2007–09. This money will be used for grants to states, units of local governments, and tribal governments to eliminate forensic science backlogs including backlogs in the analysis of firearms examinations, latent prints, toxicology, controlled substances, forensic pathology, questionable documents, and trace evidence. It also requires that the laboratories have a process for investigating serious negligence or misconduct affecting the integrity of forensic results.

Sec. 211. Report to Congress

Section 211 requires the Attorney General to provide a report to Congress within two years of the date of enactment on the implementation of this Act.

TITLE III—INNOCENCE PROTECTION ACT

Sec. 301. Short title

Section 301 provides that this title may be cited as the "Innocence Protection Act of 2003."

Subtitle A—Exonerating the Innocent Through DNA Testing

Sec. 311. Federal post conviction DNA testing

Section 311 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 an applicant for testing asserts that he or she is actually innocent of a qualifying offense, that the proposed DNA testing would produce new material evidence that would support such an assertion and create a reasonable probability that the applicant did not commit the offense, and meets various other requirements. Criminal penalties are established in the event that testing inculpates the applicant. If 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 prohibits the destruction of biological evidence in a federal criminal case while a defendant remains incarcerated, without a waiver by the defendant or prior notification to the defendant that the evidence may be destroyed. Knowing and intentional violations of this section to prevent evidence from being tested or used in court are subject to criminal penalties.

This section further requires the Attorney General to establish a system for reporting and tracking motions under this section and to report to Congress on their use within two years. Finally, this

section specifies that it applies to any offense committed, or judgment entered, before, on, or after the date of enactment.

Sec. 312. The Kirk Bloodsworth Post Conviction DNA Testing Grant Program

Section 312 authorizes $5 million per year for five years to provide grants to states for post conviction DNA testing.

Sec. 313. Incentive grants to states to ensure consideration of claims of actual innocence

This section reserves the grant funds in sections 203, 205, 207, and 303 of this bill for States that do the following: (1) Make post-conviction DNA testing available to persons convicted of a State crime; (2) allow post conviction relief if DNA testing excludes the defendant; and (3) preserve biological evidence in relation to State criminal cases.

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

Sec. 321. Capital representation improvement grants

Section 321 establishes a grant program to ensure effective representation in state capital cases. Grants under this section shall be used to establish, implement, or improve an effective system for providing competent legal representation in capital cases. An effective system is one in which a public defender program or other entity establishes qualifications for attorneys who may be appointed to represent indigents; establishes and maintains a roster of qualified attorneys and assigns such attorneys in cases (or provides the trial judge with a choice of such attorneys to assign); trains and monitors the performance of such attorneys; and ensures funding for the full cost of competent legal representation by the defense team and any outside experts that may be employed.

Grants provided under this program may not be used to fund representation in specific cases. The Committee further intends that they should not be used to create or fund death penalty resource centers or to fund public advocacy.

Sec. 322. Capital prosecution improvement grants

Section 322 authorizes grants to improve the representation of the public by prosecutors in state capital cases by establishing training programs for capital prosecutors; developing, implementing, and enforcing appropriate standards and qualifications for such prosecutors and assessing their performance; establishing 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 assisting the families of murder victims. Grants provided under this program may not be used for individual cases. The Committee further intends that they should not be used to fund public advocacy.

Sec. 323. Applications

Section 323 requires States applying for grants under this subtitle, to provide a long-term strategy and detailed implementation

plan that reflects consultation with the judiciary, the organized bar, and State and local prosecutor and defender organizations. It further 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 in order 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.

Sec. 324. State reports

Section 324 requires states receiving funds under this subtitle to provide an annual report to the Attorney General explaining the activities funded under the grant and their relationship to the grant program.

Sec. 325. Evaluations by Inspector General and administrative remedies

Section 325 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.

Sec. 326. Authorization of appropriations

Section 326 authorizes $100 million per year for five years to provide grants under this subsection.

Subtitle C—Compensation for the Wrongfully Convicted

Sec. 331. Increased compensation in federal cases for the wrongfully convicted

Section 331 increases the maximum amount of damages an individual may be awarded for being wrongfully imprisoned by the Federal Government from $5,000 to $50,000 per year in non-capital cases and $100,000 per year in capital cases.

Sec. 332. Sense of Congress regarding compensation in State death penalty cases

Section 332 states that 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.

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 italic, existing law in which no change is proposed is shown in roman):

DNA ANALYSIS BACKLOG ELIMINATION ACT OF 2000

* * * * * * *

[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.

* * * * * * *

[(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 sec-

tion 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; and

(B) other persons whose DNA samples are collected under applicable legal authorities, provided that DNA profiles from DNA samples that are voluntarily submitted solely for

elimination purposes shall not be included in the Combined DNA Index System;

* * * * * * *

(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 2003, 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

* * * * * * *

(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 keyboard search.

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

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

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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))).

* * * * * * *

TITLE 18, UNITED STATES CODE

* * * * * * *

PART II—CRIMINAL PROCEDURE

* * * * * * *

CHAPTER 213—LIMITATIONS

* * * * * * *

§ 3297. Cases involving DNA evidence

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 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

§ 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 2003; 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 2003;

(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 2003, 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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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 organizations 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.

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OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968

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TITLE I—JUSTICE SYSTEM IMPROVEMENT

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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.

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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).

* * * * * * *

PART BB—PAUL COVERDELL FORENSIC SCIENCES IMPROVEMENT GRANTS

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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, or coroner's office 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) * * *

* * * * * * *

(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, or coroner's office; and

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

* * * * * * *

SECTION 2513 OF TITLE 28, UNITED STATES CODE

§ 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.*

COMMITTEE JURISDICTIONAL LETTERS

COMMITTEE ON ARMED SERVICES,
HOUSE OF REPRESENTATIVES,
Washington, DC, October 15, 2003.

Hon. F. JAMES SENSENBRENNER, Jr.,
Chairman, House Judiciary Committee,
Rayburn HOB, Washington, DC.

DEAR CHAIRMAN SENSENBRENNER: I am writing to you concerning the jurisdictional interest of the Committee on Armed Services in matters being considered in H.R. 3214, Advancing Justice through the DNA Technology Act of 2003. Section 103(c) of H.R. 3214, as ordered reported by your committee amends section 1565 of title 10, United States Code. This amendment to title 10, United States Code, addresses military criminal offenses, and thus falls within the jurisdiction of the Committee on Armed Services.

Under current law, a DNA sample must be collected from each member of the armed forces who is or has been convicted of a qualifying military offense (QMO). At the present time, the Secretary of Defense in consultation with the Attorney General determines those felony and sexual offenses under the Uniform Code of Military Justice (UCMJ) that are to be treated as qualifying military offense. In making that determination, "comparable" federal offenses are considered as qualifying military offenses under the UCMJ.

The amendment made by your committee in section 103 of H.R. 3214 would expand the Department of Defense qualifying military offense list by requiring the Department to include all offenses with maximum confinement over a year without regard to comparability with a federal QMO. I have reviewed the provision as ordered reported by your committee on October 8, 2003 and find it acceptable.

I recognize the importance of H.R. 3214 and the need for this legislation to move expeditiously. Therefore, at this time I will waive further consideration of this provision by the Committee on Armed Services. However, the Committee on Armed Services asks that you support our request to be conferees on the provision over which we have jurisdiction during any House-Senate conference. Additionally, I request that you include this letter as part of your committee's report on H.R. 3214.

Thank you for your cooperation in this matter.

With best wishes.
Sincerely,

DUNCAN HUNTER,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC, October 15, 2003.

Hon. DUNCAN HUNTER,
Chairman, Committee on Armed Services,
House of Representatives, Washington, DC.

DEAR CHAIRMAN HUNTER: This letter responds to your letter concerning H.R. 3214, the "Advancing Justice through DNA Technology Act of 2001."

I agree that the bill contains matters within the Armed Services Committee's jurisdiction and appreciate your willingness to be discharged from further consideration of H.R. 3214 so we may proceed to the floor. I acknowledge that by being discharged, your committee in no way waives its jurisdiction over these matters. I will also support your request for conferees on the parts of the bill over which the Committee on Armed Services has jurisdiction should this matter go to conference.

Pursuant to your request, a copy of your letter and this letter will be included in the Committee on the Judiciary's report on H.R. 3214 and in the Congressional Record during House floor consideration of the bill. I appreciate your attention to this matter.

Sincerely,

F. JAMES SENSENBRENNER, Jr.,
Chairman.

MARKUP TRANSCRIPT

The committee met, pursuant to notice, at 10:02 a.m., in room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner (chairman of the committee) presiding.

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

Pursuant to notice, I now call up the bill H.R. 3214, the Advancing Justice Through DNA Technology Act of 2003 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 five minutes to explain the bill.

Through my years in Congress on the Judiciary and Science Committees I have seen the potential for DNA testing to improve our criminal justice system. DNA can identify criminals with pinpoint accuracy. It can clear suspects and exonerate persons mistakenly convicted of crime. DNA technology ensures accuracy and fairness in the criminal justice system. However, if DNA samples are not tested that potential is wasted. Sadly, the reality is that many samples are not being tested. To have this tool available and not to fully use it is tragic. Many crimes could be solved, many guilty people could be taken off the streets, and many victims could be spared from future crimes.

The current Federal and State DNA collection and analysis systems need improvement. Public crime labs are overwhelmed by backlogs of unanalyzed DNA samples that could solve violent crimes if the States had the funds to process them. Experts have estimated that DNA evidence from more than 180,000 rape crime scenes have been collected but never analyzed.

In addition, many of the labs are ill-equipped. Backlogs and the lack of equipment significantly delay the administration of justice. Faster methods for analyzing DNA evidence are needed. Criminal justice professionals need additional training and assistance to ensure the optimal use of DNA evidence. In appropriate circumstances, individuals who may have been wrongly convicted need the means to get DNA tests.

This bill, which 31 members of this Committee have co-sponsored will help fix these problems. This bipartisan, bicameral legislation authorizes $755 million over five years to eliminate the current backlog of rape kits and other crime scene evidence awaiting DNA analysis in crime labs. It authorizes funding for training for law enforcement, correctional, court, and medical personnel on the use of DNA evidence. The bill funds research to improve forensic technology and authorizes $10 million per year in grants to States, local governments and tribal governments to eliminate forensic backlogs.

It also authorizes funding for the use of forensic DNA technology to identify missing persons and unidentified human remains. Most of these provisions are part of the President's DNA initiative.

H.R. 3214 also addresses those who may wrongly be convicted. The Innocents Protection Act provisions of H.R. 3214, which are also the result of bipartisan and bicameral negotiations, will ensure that our justice system is working. They establish rules for post-conviction DNA testing of Federal prison inmates and require the preservation of biological evidence in Federal criminal cases while the defendant remains incarcerated. The Innocents Protection Act provisions authorize funding to help States provide competent legal services for both the prosecution and defense in capital cases, and they provide funds for post-conviction DNA testing.

Additionally, the provisions provide bonus grants to States that adopt adequate procedures for providing post-conviction DNA testing and preserving biological evidence.

I also wish to note that I will be offering a manager's amendment which has been worked out on both sides of the aisle in both Houses which I will describe when I offer it. I am pleased that so many of my colleagues on this Committee have recognized the benefits of this legislation and are co-sponsors, and I urge the Committee to pass the manager's amendment and to pass the bill.

The gentleman from Virginia, Mr. Scott, is the ranking member on the subcommittee. Do you have an opening statement?

I

108TH CONGRESS
1ST SESSION

H. R. 3214

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

OCTOBER 1, 2003

Mr. SENSENBRENNER (for himself, Mr. DELAHUNT, Mr. LAHOOD, Mr. CONYERS, Mr. COBLE, Mr. SCOTT of Virginia, Mr. GREEN of Wisconsin, Mr. WEINER, Mr. SCHIFF, Mr. HYDE, Mr. CANNON, Mr. CHABOT, Mr. SMITH of Texas, Mr. BACHUS, Mr. CARTER, Mr. FEENEY, Mr. FORBES, Mr. GALLEGLY, Mr. GOODLATTE, Ms. HART, Ms. JACKSON-LEE of Texas, Mr. JENKINS, Mr. KELLER, Mr. KING of Iowa, Ms. LOFGREN, Mr. MEEHAN, Mr. PENCE, Ms. WATERS, Mr. WATT, Mr. WEXLER, Ms. PRYCE of Ohio, Mr. ABERCROMBIE, Mr. BASS, Mr. BERMAN, Mr. BLUMENAUER, Mr. BOEHNER, Mr. BROWN of Ohio, Mr. CALVERT, Mr. CAMP, Mr. CASE, Mr. CANNON, Mrs. CHRISTENSEN, Mr. CROWLEY, Mr. CUMMINGS, Mr. DOOLEY of California, Mr. EMANUEL, Mr. ENGEL, Mr. ENGLISH, Mr. EVANS, Mr. FARR, Mr. FILNER, Mr. GEPHARDT, Mr. GIBBONS, Mr. GILCHREST, Mr. GREENWOOD, Mr. HOEFFEL, Mr. HILL, Mr. HINCHEY, Mr. HOLDEN, Mr. HOLT, Mr. JACKSON of Illinois, Mr. KENNEDY of Rhode Island, Mr. KILDEE, Mr. KING of New York, Mrs. MALONEY, Ms. MCCARTHY of Missouri, Mr. MCGOVERN, Mr. MCINNIS, Mr. MCNULTY, Mr. OBERSTAR, Mr. OLVER, Mr. PETRI, Mr. QUINN, Mr. RODRIGUEZ, Mr. RUSH, Mr. SANDERS, Mr. SANDLIN, Mr. SERRANO, Mr. SHERMAN, Mr. SMITH of Washington, Ms. SOLIS, Mr. SPRATT, Mr. STARK, Mr. STRICKLAND, Mrs. TAUSCHER, Mr. UDALL of Colorado, Mr. WALSH, Mr. WOLF, Ms. WOOLSEY, Mr. STUPAK, Ms. VELÁZQUEZ, Ms. CARSON of Indiana, Mr. GREEN of Texas, Mr. NADLER, Mrs. NAPOLITANO, Mr. SHIMKUS, Ms. CORRINE BROWN of Florida, Mr. LANGEVIN, Mr. MORAN of Virginia, and Mr. MCDERMOTT) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Armed Services, for a period to be subsequently deter-

mined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Advancing Justice Through DNA Technology Act of 2003".

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

TITLE I—RAPE KITS AND DNA EVIDENCE BACKLOG ELIMINATION ACT OF 2003

SEC. 101. SHORT TITLE.

This title may be cited as the "Rape Kits and DNA Evidence Backlog Elimination Act of 2003".

SEC. 102. 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 areas where 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 I 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 are participating in the National DNA Index System in order to ensure 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 lab-

oratories 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 in order to demonstrate 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. 103. EXPANSION OF COMBINED DNA INDEX SYSTEM.

(a) INCLUSION OF ALL DNA SAMPLES FROM STATES.—Section 210304(a)(1) of the DNA Identification Act of 1994 (42 U.S.C. 14132(a)(1)) is amended by striking "of persons convicted of crimes;" and inserting the following: "of—

"(A) persons convicted of crimes; and

"(B) other persons whose DNA samples are collected under applicable legal authorities, provided that DNA profiles from DNA samples that are voluntarily submitted solely for elimi-

nation purposes shall not be included in the Combined DNA Index System;".

(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)).".

SEC. 104. 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, except for a felony offense under chapter 109A, 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 committed before, on, or after the date of the enactment of this section if the applicable limitation period has not yet expired.

SEC. 105. LEGAL ASSISTANCE FOR VICTIMS OF VIOLENCE.

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

(1) in subsection (a), by inserting "dating violence," after "domestic violence,";

(2) in subsection (b)—

(A) by redesignating paragraphs (1) through (3) as paragraphs (2) through (4), respectively;

(B) by inserting before paragraph (2), as redesignated by subparagraph (A), the following:

"(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."; 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. 106. 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 on a for-profit basis 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) for the collection of

DNA samples or DNA analysis of samples from casework."

TITLE II—DNA SEXUAL ASSAULT JUSTICE ACT OF 2003

SEC. 201. SHORT TITLE.

This title may be cited as the "DNA Sexual Assault Justice Act of 2003".

SEC. 202. 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 2003, 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. 203. DNA TRAINING AND EDUCATION FOR LAW ENFORCEMENT, CORRECTIONAL PERSONNEL, AND COURT OFFICERS.

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

(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.

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

SEC. 204. SEXUAL ASSAULT FORENSIC EXAM PROGRAM GRANTS.

(a) IN GENERAL.—The Attorney General shall make grants to eligible entities to provide training, technical as-

sistance, 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; and

(D) State sexual assault coalitions.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $30,000,000 for each

of the fiscal years 2005 through 2009 to carry out this section.

SEC. 205. DNA RESEARCH AND DEVELOPMENT.

(a) IMPROVING DNA TECHNOLOGY.—The Attorney General shall make grants to States and units of local government 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 conduct research through grants for 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, improvements to law enforcement operations, and cost-effectiveness of increased collection and use of DNA evidence.

(c) NATIONAL FORENSIC SCIENCE COMMISSION.—

(1) 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 paragraph (2).

(2) RESPONSIBILITIES.—The Commission shall—

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

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

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

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

(E) 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;

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

(G) 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;

(H) make specific recommendations to the Attorney General, as necessary, to enhance the protections described in subparagraph (G) to ensure—

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

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

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

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

(I) provide a forum for the exchange and dissemination of ideas and information in furtherance of the objectives described in subparagraphs (A) through (H).

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

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

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

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

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

SEC. 206. 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 the 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. 207. 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 the fiscal years 2005 through 2009 to carry out this section.

SEC. 208. 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 in-

stance of disclosure, obtaining, or use shall constitute a separate offense under this subsection.".

SEC. 209. TRIBAL COALITION GRANTS.

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 vio-

lence 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. 210. 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—

"(1) carry out";

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

(C) by adding at the end the following:

"(2) 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; and

"(3) train, assist, and employ forensic laboratory personnel, as needed, to eliminate a forensic evidence 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) DEFINED TERM.—As used in this section, the term 'forensic evidence backlog' means forensic evidence that—

"(1) has been stored in a laboratory, medical examiner's office, or coroner's office; 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 the "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, or coroner's office 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 the "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.".

SEC. 211. 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.

(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 203 and 204;

(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 205;

(6) the steps taken to establish the National Forensic Science Commission, and the activities of the Commission under section 205(c);

(7) the use of funds by the Federal Bureau of Investigation under section 206;

(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 207;

(9) grants awarded and the use of such grants by eligible entities to eliminate forensic science backlogs under section 210;

(10) State compliance with the requirements set forth in section 313; and

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

TITLE III—INNOCENCE PROTECTION ACT OF 2003

SEC. 301. SHORT TITLE.

This title may be cited as the "Innocence Protection Act of 2003".

Subtitle A—Exonerating the Innocent Through DNA Testing

SEC. 311. 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

"§ 3600. DNA testing

"(a) IN GENERAL.—Upon a written motion by an individual under a sentence of imprisonment or death pursu-

ant 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 2003; 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) CODIS.—The Government shall submit any test results relating to the DNA of the applicant to the Combined DNA Index System (referred to in this subsection as 'CODIS').

"(3) RETENTION OF DNA SAMPLE.—

"(A) ENTRY INTO CODIS.—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 CODIS.

"(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 be-

tween 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 CODIS if there is no other legal authority to retain the DNA sample of the applicant in CODIS.

"(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 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. Prohibition on destruction of biological evidence

"(a) IN GENERAL.—Notwithstanding any other provision of law, the Government shall not destroy 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 evidence that was secured in the investigation or prosecution of a Federal offense and preserved until the time of conviction, and which the Government knows is—

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

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

"(c) APPLICABILITY.—The prohibition of the destruction of biological evidence under 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 2003;

"(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.—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.".

(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 courts shall pro-

vide 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 relat-

ing 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. 312. 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 the fiscal years 2005 through 2009 to carry out this section.

(c) STATES.—For purposes of this section, the term "States" means the States 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. 313. INCENTIVE GRANTS TO STATES TO ENSURE CONSIDERATION OF CLAIMS OF ACTUAL INNOCENCE.

(a) FUNDING.—For each of the fiscal years 2005 through 2009, all funds appropriated to carry out sections 203, 205, 207, and 312 shall be reserved for grants eligible entities that—

(1) meet the requirements under section 203, 205, 207, or 312, 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 enact-

ment 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.

(b) CERTIFICATION.—For fiscal year 2005, an eligible entity shall be deemed to comply with the requirements of this section if an authorized officer of the State in which the eligible entity operates certifies that the State will comply with such requirements within 1 year of the certification.

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

SEC. 321. 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 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 identifying and appointing qualified attorneys to represent indigents in capital cases in—

(A) a public defender program that relies on staff attorneys, members of the private bar, or both, to provide representation in capital cases; or

(B) 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; and

(2) requires the entity described in paragraph (1) 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) 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 the 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 as follows:

(i) Attorneys employed by a public defender program shall be compensated according to a salary scale that is commensurate with the salary scale of the prosecutor's office in the jurisdiction.

(ii) Appointed attorneys shall be compensated for actual time and service, com-

puted on an hourly basis and at a reasonable hourly rate in light of the qualifications and experience of the attorney and the local market for legal representation in cases reflecting the complexity and responsibility of capital cases.

(iii) Non-attorney members of the defense team, including investigators, mitigation specialists, and experts, shall be compensated at a rate that reflects the specialized skills needed by those who assist counsel with the litigation of death penalty cases.

(iv) Attorney and non-attorney members of the defense team shall be reimbursed for reasonable incidental expenses.

SEC. 322. CAPITAL PROSECUTION IMPROVEMENT GRANTS.

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

(b) USE OF FUNDS.—

(1) PERMITTED USES.—Grants awarded under subsection (a) shall be used to—

(A) design and implement training programs for State and local prosecutors to ensure effective representation in State capital cases;

(B) develop and implement appropriate standards and qualifications for State and local prosecutors who litigate State capital cases;

(C) 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) identify and implement any potential legal reforms that may be appropriate to minimize the potential for error in the trial of capital cases;

(E) establish a program under which State and local prosecutors conduct a systematic review of cases in which a death sentence was imposed in order to identify cases in which post-conviction DNA testing may be appropriate; and

(F) provide support and assistance to the families of murder victims.

(2) PROHIBITED USE.—Grants awarded under subsection (a) shall not be used to fund the prosecution of specific capital cases.

SEC. 323. 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; and

(D) 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 equally between the uses described in section 321 and the uses described in section 322.

SEC. 324. 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 321, 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 an entity described in section 321(d)(1); and

(B) requires the entity described in section 321(d)(1) to—

(i) establish qualifications for attorneys who may be appointed to represent indigents in capital cases in accordance with section 321(d)(2)(A);

(ii) establish and maintain a roster of qualified attorneys in accordance with section 321(d)(2)(B);

(iii) assign attorneys from the roster in accordance with section 321(d)(2)(C);

(iv) conduct, sponsor, or approve specialized training programs for attorneys representing defendants in capital cases in accordance with section 321(d)(2)(D);

(v) monitor the performance and training program attendance of appointed attorneys, and remove from the roster attorneys who fail to deliver effective representation or fail to comply with such requirements as the entity may establish regarding participation in training programs, in accordance with section 321(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 321(d)(2)(F), including a statement setting forth—

(I) if the State employs a public defender program under section 321(d)(1)(A), the salaries received by the attorneys employed by such program and the salaries received by at-

torneys in the prosecutor's office in the jurisdiction;

(II) if the State employs appointed attorneys under section 321(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; and

(3) 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 322, 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 effective representation in State capital cases in accordance with section 322(b)(1)(A);

(B) developed and implemented appropriate standards and qualifications for State and local prosecutors who litigate State capital cases in accordance with section 322(b)(1)(B);

(C) assessed the performance of State and local prosecutors who litigate State capital cases in accordance with section 322(b)(1)(C);

(D) identified and implemented any potential legal reforms that may be appropriate to minimize the potential for error in the trial of capital cases in accordance with section 322(b)(1)(D);

(E) established a program under which State and local prosecutors conduct a systematic review of cases in which a death sentence was imposed in order to identify cases in which post-conviction DNA testing may be appropriate in accordance with section 322(b)(1)(E); and

(F) provided support and assistance to the 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. 325. 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 324, 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.

(b) ADMINISTRATIVE REVIEW.—

(1) COMMENT.—Upon receiving the report under subsection (a)(1), the Attorney General shall provide the State with an opportunity to comment regarding the findings and conclusions of the report.

(2) CORRECTIVE ACTION PLAN.—If the Attorney General, after reviewing the report under subsection (a)(1), 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), 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 subsection (b) and is not in compliance with the terms and conditions of the grant, the Attorney General shall discontinue all further funding under sections 321 and 322 and require the State to return the funds granted under such sections for that fiscal year. Nothing in this paragraph shall prevent a State which has been subject to penalties for noncompliance from reapplying for a grant under this subtitle in another fiscal year.

(d) PERIODIC REPORTS.—During the grant period, the Inspector General shall periodically review the compliance of each State with the terms and conditions of the grant.

(e) ADMINISTRATIVE COSTS.—Not less than 2.5 percent of the funds appropriated to carry out this subtitle

for each of the fiscal years 2005 through 2009 shall be made available to the Inspector General for purposes of carrying out this section. Such sums shall remain available until expended.

SEC. 326. AUTHORIZATION OF APPROPRIATIONS.

(a) AUTHORIZATION FOR GRANTS.—There are authorized to be appropriated $100,000,000 for each of the 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 321 and the uses described in section 322.

Subtitle C—Compensation for the Wrongfully Convicted

SEC. 331. 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. 332. 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.

○

Mr. SCOTT. Thank you, Mr. Chairman. For the reasons you have outlined, and to help convict the guilty and exonerate the innocent, I would hope we would pass the bill. I will yield the balance of my time to the gentleman from Massachusetts.

Mr. DELAHUNT. I thank the gentleman for yielding and I will be very brief.

I just want to note that this particular proposal before us is really the culmination of many months, actually years now, of discussion, negotiations, as the Chairman indicated, on a bipartisan, bicameral basis. I particularly want to acknowledge the efforts of Chairman Coble, my friend from Wisconsin, Mr. Green, Mr. Weiner. Also I want to acknowledge the ranking member of the full Committee, Mr. Conyers, for allowing me to represent the minority in those discussions.

But it would be remiss if I did not note the efforts, and time and patience of the staff on both sides, particularly on our side my own legislative director. I am looking for him now. I do not see him here—but Mark Agrast. And in terms of the majority side, the chief of staff, chief counsel, et cetera, Phil Kiko, is an extraordinary example of what can happen when folks sit down with good intentions to come up with a product that I believe we can all be extremely proud of and look back upon as one of the best efforts that this Committee has put forth.

Again, I would be remiss not to acknowledge that we clearly would not have this bill before us today without the leadership of Jim Sensenbrenner. Mr. Chairman, I believe that anyone interested in the integrity of the justice system of the United States owes you a debt of gratitude. With that I will yield back.

Mr. SCOTT. Mr. Chairman, reclaiming my time. I would like to ask unanimous consent that my full statement be inserted in the record.

Chairman SENSENBRENNER. Without objection. And without objection, all members, opening statements will be placed in the record, as well as any extraneous material. Hearing none, so ordered.

STATEMENT OF HON. JOHN CONYERS, JR.

I want to thank Chairman Sensenbrenner, Representative Delahunt and Members on both sides of the aisle for their hard work in developing this bipartisan, bicameral compromise. H.R. 3214 takes the first of hopefully many steps towards improving the integrity of our criminal justice system.

First and foremost, the 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.

Second, the bill 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 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 the bill, I must admit this bill remains far from perfect. 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 worthy initiative, so that we can move this legislation to the House floor for its ultimate passage.

STATEMENT OF HON. LAMAR SMITH

I am an original cosponsor of H.R. 3214, the "Advancing Justice Through DNA Technology Act of 2003."

In recent years, we have seen the vital role that DNA testing can play in criminal justice. DNA offers us more certainty in convicting the guilty and acquitting the innocent.

This bill would increase the availability of DNA testing both in the state and federal criminal justice systems. It would also help crime labs reduce the backlogs of unanalyzed DNA samples, and provide enhancements in the way that DNA data is shared in the law enforcement community.

This Committee has worked for several years on passing a bill that would improve the use of DNA technology in the criminal justice system. I was a part of those negotiations during the last Congress and am pleased that we have a bill that many of us can support.

STATEMENT OF HON. JERROLD NADLER

Mr. Chairman, I strongly support this legislation, and this amendment.

I want particularly to congratulate Mr. Delahunt who first introduced the Innocence Protection Act several years ago, and has worked tirelessly on this matter ever since. I want to thank the Chairman and the Members of the Committee from both sides of the aisle for working together to put politics and sound bites aside and to pass meaningful legislation to fight crime and advance the cause of justice.

I am pleased that this bill includes the modified Innocence Protection Act that aims to reduce the possibility that innocent people will be put to death. I understand this is a delicate compromise, but I must say that this bill is only a first step, not a final step, in our efforts to reform our nation's capital punishment laws. These laws are broken and major reform and full funding of this legislation is necessary to prevent the innocent from being wrongfully convicted and executed.

It is imperative that we eliminate the shameful backlog of untested rape kits, and this bill will go a long way towards that goal. On the issue of rape kits, again, let me say, "It's about time." Many Members have been personally involved in the fight to test rape kits for the past 19 months. I have worked with NOW, RAINN, and Lifetime Television to raise awareness of this issue and to build consensus for decisive action. Together, we have pushed, prodded, and demanded that federal funding be provided to test these kits right away. Today, we are one step closer to our goal.

But we are not there yet. These programs will need to be funded, and I am hopeful that the members of this Committee who support this bill now, will join me in asking that the bill be fully funded by the Appropriations Committee.

It is too important an issue to ignore. Police Departments must have the resources they need to solve crimes and put criminals behind bars.

I am pleased that this bill includes a provision similar to the "Rape Kit DNA Analysis Backlog Elimination Act" which I introduced back in March of 2002, which would have provided $250 million to eliminate the rape kit backlog two years ago. The bill before us today acknowledges that we were right back then when we requested major increases in funding, since this bill offers even more funding for this task. In addition, I am pleased to see that the phrase "rape kits" has been specifically added to our current law to further underscore the need for this funding to address rape crimes in particular. These heinous crimes deserve our full attention and the victims of these crimes deserve the certainty that DNA evidence can bring to them.

Once again, I am pleased to support this bill because it represents a serious effort to combat crime, locate and apprehend rapists, and use powerful evidence to put them in prison.

I am for unanimous consent to insert extraneous material into the record.

TIMELINE OF ACTIONS TAKEN BY REPRESENTATIVE NADLER TO PROMOTE THIS LEGISLATION

In February of 2002, Representative Nadler fought for an amendment that was adopted to the Judiciary Committee's Budget Views and Estimates that put the Committee on the record of fully supporting funding to eliminate the backlog of DNA evidence that have not yet been analyzed.

In March of 2002, Nadler introduced the Rape Kit DNA Analysis Backlog Elimination Act, which would provide $250 million in funding to eliminate the backlog of rape kits that have not been analyzed by police departments nationwide. The announcement was made at a Capitol Hill press conference, where the Congressman was joined by Kim Gandy, President of the National Organization for Women and Scott Berkowitz of the Rape, Abuse and Incest National Network.

In April of 2002, shortly after Representative Nadler introduced the legislation in the House, Senator Hillary Clinton introduced the Senate version of the bill and the bill earned the endorsement of the New York Times and Lifetime television.

In May of 2002, with pressure mounting for action to be taken, the Chair of the Senate Judiciary Committee on Crime and Drugs, Senator Biden, held hearings on DNA evidence and rape kits. The House, which was still controlled by the Republicans, did not hold hearings on the rape kit issue. Senator Biden then pushed comprehensive sexual assault legislation forward, and he was able to get the bill to pass the Senate by unanimous consent in September.

Representative Nadler immediately seized the opportunity to urge Majority Leader Armey to bring up the Senate passed bill for consideration in the House. He organized a dear colleague letter to the entire House urging them to join him in pushing for the bill and got more than 20 Members of Congress to sign on to his letter to Armey. Armey never acted on the legislation. Congress failed to act before the end of 2002.

In 2003, with Republican majorities in both the House and the Senate, Representative Nadler joined forces with his House colleagues to push for a bipartisan solution to the problem. In March, Representative Nadler was an original cosponsor of H.R. 1046, "To assess the extent of the backlog in DNA analysis of rape kit samples, and to improve investigation and prosecution of sexual assault cases with DNA evidence," which was similar to the Biden bill passed by the Senate the year before. In October, Representative Nadler joined his colleagues to introduce the latest version of the bill, which has the greatest chance of becoming law.

"This issue is too important not to pursue, because everyone knows that DNA evidence is essential to solving crimes. It can lead to punishment of the guilty and the freeing of the innocent. We must commit the necessary resources to empower law enforcement to analyze all of the DNA evidence they collect, so that they can solve cases and bring justice to American families," concluded Representative Nadler.

STATEMENT OF HON. SHEILA JACKSON LEE

Mr. Chairman and Ranking member, I do support of H.R. 3214, "Advancing Justice Through DNA Technology Act," of which I am a co-sponsor. We of the Judiciary Committee's Subcommittee on Crime, Terrorism, and Homeland Security had the opportunity to examine this bill in an Oversight Hearing in July of this year. As I expressed at that time, once this technological tool is improved as to the areas that I discuss below, it will play such a key role in streamlining and expediting our criminal justice system. As evidenced by the testimony given at the oversight hearing, our law enforcement agencies are becoming increasingly more adept at analyzing deoxyribonucleic acid (DNA) to verify or rule out the identity of a suspect or a charged individual in processing a criminal case. The more adept we become, the closer we get to having a fair and accurate system. We must, however, significantly raise the bar of our standards of review for DNA and ballistics crime lab accreditation.

CRIME LAB ACCREDITATION

The certification of our crime labs for conformance to our accepted standards is done by groups such as the American Society of Crime Laboratory Directors (ASCLD). The Crime Laboratory Accreditation Program of the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB) is a voluntary program in which any crime laboratory may participate to demonstrate that its management, operations, personnel, procedures, equipment, physical plant, security, and personnel safety procedures meet established standards. The accreditation process is part of a laboratory's quality assurance program that should also include proficiency testing, continuing education and other programs to help the laboratory

give better overall service to the criminal justice system. Certification and accreditation are done via a process of self-evaluation led by individual crime laboratory directors. Our labs are not functioning at optimum levels, and this sub-par performance translates to the potential miscarriage of justice and prosecution of innocent people. Improvement of lab performance begins with tighter employment policies for the lab staff. For example, the ASCLD's Credential Review Committee has a DNA Advisory Board and codified standards for its technical staff. The following was taken from its website:

"DNA Advisory Board Standard 5.2.1.1 provides a mechanism for waiving the educational requirements for current technical leaders/technical managers who do not meet the degree requirements of section 5.2.1 but who otherwise qualify based on knowledge and experience. Consequently ASCLD has established this procedure for obtaining a waiver.

"One waiver is available per laboratory if the current technical leader/technical manager does not meet the degree requirements of DAB Standard 5.2.1. Waivers are available only to current technical leaders/technical managers. Waivers are permanent and portable for the recipient individual. A laboratory may request a second waiver if the first recipient leaves the employ of the laboratory."

Although experience is quite important in selecting staff, formal education is vital when it comes to technical performance and the legal implications of that performance. We are in desperate need of appropriate legislation to set forth and maintain the standards of DNA/ballistics lab accreditation.

TEXAS LAW AND CRIME LAB ACCREDITATION

In 2001, Texas passed a law formalizing a process for post-conviction access to DNA testing. The Texas Court of Criminal Appeals, however, has not applied the law as it was designed to work and has denied access to testing in a number of cases. The version of this bill that passed is HB 1011 by Scott Hochberg (D-Houston).

The Texas House passed a bill in April of this year requiring crime laboratories that test DNA to meet accreditation standards, a law designed to prevent future scandals like the one that recently plagued the Houston Police Department. State Rep. Kevin Bailey and other members of the House Committee on General Investigating wrote State HB 2703, which will require the Department of Public Safety to develop accreditation standards and a timetable for police labs to meet them. It will also ban the use of forensic evidence from unaccredited laboratories. Our work ethic in establishing and maintaining high standards of performance in the labs must be as technical and tenacious as we would like the overall performance.

In Texas, polls have shown strong public support for DNA testing. In June a 2000 Scripps-Howard Texas Poll, 87 percent of Texans surveyed supported giving inmates the right to free DNA testing to try to prove their innocence if the genetic evidence exists, and 76 percent supported a moratorium on death sentences for inmates whose cases might be affected by DNA testing. Ninety-two percent of Americans surveyed for a March 2000 Gallup Poll said that prisoners convicted before the availability of DNA tests should be allowed to obtain the tests now if they were innocent.

However, oftentimes the hoopla of new technology causes our work ethic and our sense of duty to fall by the wayside to the detriment of innocent individuals. In fact, one of the panelists featured in today's Oversight Hearing, Peter Neufeld, Esquire of Innocent Project at the Cardozo School of Law, spoke out regarding the case of Josiah Sutton in my Houston District, Harris County. The Houston Court convicted Sutton in 1998 for the rape of a woman whose body was dumped in a Fort Bend County field. But the Court eventually granted him bail in March after an independent lab determined that he was sentenced to 25 years in prison for a rape he didn't commit. An audit and an ongoing series of retesting of DNA samples by the Texas Department of Public Safety and a crime lab professional from Tarrant County revealed potential contamination problems at the subject lab as well as poor working conditions and inadequate training. Attorney Neufeld remarked that "[t]he most important question for the people of Houston and the people of Texas is, 'What went wrong that allowed this young man to be convicted for a crime he didn't commit? And it is absolutely clear that what you have going on is a system of malpractice by the Houston crime laboratory that allows its criminalists to distort and conceal evidence.'" What I fear about the dangers of poor training and placement of checks may be summed up by what Neufeld added, "One of the biggest problems of * * * [crime labs] is that they [are] much more concerned with being a servant to the police and prosecutors than they [are] to science * * * [a]nd if people want to pursue a career in science, the word science has to come before law enforcement." The objectivity that is required to make forensic science effective must be divorced from the latitude exercised by some of our law enforcement personnel. Therefore,

in fashioning and considering a bill that proposes the implementation of a comprehensive and aggressive DNA forensic criminal justice plan, we must include adequate control mechanisms to prevent injustice and the ruination of young lives like the young Houston man, Josiah Sutton.

Furthermore, other problems with DNA testing in criminal cases affect the inmate directly. The discretion with which the decision whether to use DNA testing leaves room for inconsistent adjudication and differential treatment of convicted persons. Statutory guidelines regarding when to order the test would exclude some cases that might not meet the standards but still might deserve testing. Moreover, some inmates who seek exoneration may request executive clemency. In addition to requiring very difficult measures to achieve justice, some argue that the tests administered are inadequate because they do not provide specific, clear, and fair procedures for inmates to bring claim of innocence.

In addition to negligent handling or unskilled analysis of DNA evidence, the backlog of cases causes our criminal justice system to crumble despite the level of sophistication of our technology. Houston police have turned over about 525 case files involving DNA testing to the Harris County district attorney's office, which has said that at least 25 cases warrant re-testing, including those of seven people on Death Row. The numbers will grow significantly as more files are collected and analyzed, according to the assistant district attorney supervising the project.

The Fort Worth police crime lab's serology/DNA unit has been criticized recently for a backlog that was slowing down court cases. The unit's performance suffers from understaffing and overworking.

I commend the Committee on its work to include the important provisions of the Innocence Protection Act of 2003 in Title III of this bill. It will protect the rights of an incarcerated defendant who maintains his/her innocence. This provision is extremely important in terms of preserving individual's due process rights.

Overall, my concern as to the prospect of using these DNA tests is that the inmates' civil liberties and rights to due process will be in jeopardy or subject to excessive law enforcement and judicial discretion. Furthermore, our own human error threatens to undermine the boons of technology. Mr. Chairman and Ranking Member, I advocate the use of DNA tests in criminal procedure; however, the use of these tests must achieve justice for all. I do support H.R. 3214.

OPENING STATEMENT OF HON. STEVE KING

Mr. Chairman, I would like to commend you and your staff for the work you have done to negotiate a bipartisan compromise in the Advancing Justice Through DNA Technology Act of 2003, H.R. 3214. I am pleased to be able to cosponsor this legislation.

As a State Senator in Iowa, I helped to improve Iowa's DNA data collection and database capability. I firmly believe that the use of technology and information sharing in this legislation will help us find criminals and bring them to justice. Science can also exonerate the innocent once and for all. Every criminal that is taken off the street as a result of DNA evidence will make our communities safer. Crime imposes significant personal, emotional and financial costs on victims. We must do all we can to give law enforcement the tools they need to solve these crimes and bring criminals to justice. I believe the information sharing encouraged by H.R. 3214 will help law enforcement to track down serial criminals. We must all work together to fight crime and secure justice for victims.

Thank you, Mr. Chairman.

STATEMENT OF HON. LINDA T. SÁNCHEZ

Thank you, Mr. Chairman and Mr. Ranking Member for convening this markup today and for your collaborative efforts, as well as the efforts of Mr. Delahunt, to bring this important legislation before the Committee.

We cannot overstate the importance of improving the use of DNA technology in our criminal justice system. High rates of crime continue to be a problem nationally, as well as in my district of Southeast Los Angeles County. While we all want to see a national reduction in crime, it doesn't help if the wrong person is convicted and jailed. DNA technology is crucial to ensuring that criminal cases are processed accurately, and that innocent citizens are not prosecuted and incarcerated for crimes they did not commit.

This is particularly true in capital cases where there continues to be debate on how fairly our capital punishment system is applied. In September of 2000, the Department of Justice reported that African Americans, Hispanics and other minorities were considered for the federal death penalty more often than whites. At the time of the study, of 682 defendants charged with federal capital offenses between 1995 and 2000, 80 percent were minorities and 20 percent were white. During the

same period of time, 20 federal defendants were sentenced to death, of which again, 80 percent were minorities and 20 percent were white.

This bill is an important first step in improving the accuracy and reliability of our criminal justice system, and reducing the impact of racial bias, unreliable witnesses, or poor legal representation that cause innocent people to be convicted. DNA evidence has been used over 100 times to exonerate innocent Americans wrongly accused of crimes, and will no doubt be used to exonerate many more.

Once again, I than the Chairman, Ranking Member, and Mr. Delahunt, for their efforts to introduce the very important bill that will make significant improvements to our criminal justice system.

[For Immediate Release, Oct. 8, 2003]

WASHINGTON, DC.—Today, The National Center for Victims of Crime, The Rape, Abuse & Incest National Network (RAINN), and Lifetime Television released the following statement on the mark-up of H.R. 3214, "The Advancing Justice Through DNA Technology Act of 2003," in the House Judiciary Committee: "For more than a year, we have been working together, along with rape survivor Debbie Smith, to raise awareness about the staggering number of rape kits in this country waiting to be tested. We are honored to stand with you as you work to pass this critical legislation that will provide $1 billion in funding to eliminate the DNA backlog and significantly improve the collection and processing of DNA evidence, bringing relief to countless victims of sexual assault and putting more rapists behind bars where they belong. On behalf of our organizations, our members and on behalf of the nearly 100,000 Lifetime Television viewers who have signed an online petition in support of this legislation, we commend you for your commitment to this new bill and urge swift passage."

The Rape, Abuse & Incest National Network is the nation's largest anti-sexual assault organization, RAINN operates the National Sexual Assault Hotline. At 1.800.656.HOPE, the hotline has helped more than half a million victims of sexual assault since 1994. RAINN also carries out extensive education and outreach programs to ensure that more than 100 million Americans each year receive vital information about sexual assault prevention, prosecution and recovery. After researching the nation's 819,000 charities, Worth Magazine selected RAINN as one of "America's 100 Best Charities." Additional information is at www.rainn.org.

The National Center is the nation's leading resource and advocacy organization for victims of crime. Since its founding in 1985, the National Center has worked with local, state, and federal organizations and agencies across the country, and provided information, support, and assistance to hundreds of thousands of victims, victim service providers, allied professionals, and advocates. The National Center's toll-free helpline, 1–800–FYI–CALL, offers supportive counseling, practical information about crime and victimization, referrals to local community resources, as well as skilled advocacy in the criminal justice and social service systems.

LIFETIME is the leader in women's television and has been the #1 cable television network in primetime for the last two years. LIFETIME is committed to offering the highest quality entertainment and information programming, and advocating a wide range of issues affecting women and their families. Launched in 1984, LIFETIME serves over 86 million households nationwide. In 1998 LIFETIME launched a 24-hour sister service, the Lifetime Movie Network, now in 37 million homes, and a second sister service, Lifetime Real Women, launched in August 2001. On the web, Lifetime Online (www.lifetimetv.com) features informational resources and interactive entertainment. Lifetime magazine, a new women's lifestyle title, launched in April 2003. LIFETIME Television, Lifetime Movie Network, Lifetime Real Women and Lifetime Online, are part of LIFETIME Entertainment Services, a 50/50 joint venture of The Hearst Corporation and The Walt Disney Company, as is Lifetime magazine.

Mr. SCOTT. I yield back.

Chairman SENSENBRENNER. The Chair has a manager's amendment at the desk and the clerk will report the amendment.

The CLERK. Amendment to H.R. 3214 offered by Chairman Sensenbrenner.

AMENDMENT TO H.R. 3214 OFFERED BY MR. SENSENBRENNER

Page 8, line 14, strike "areas where" and insert "jurisdictions in which".

Page 8, lines 21–22, strike "part I violent crimes" and insert "part 1 violent crimes".

Page 11, line 10, strike "are participating" and insert "participates".
Page 11, line 11, insert a comma after "System".
Page 12, line 7, strike the comma.
Page 12, lines 7–8, strike "in order to demonstrate compliance" and insert "to determine whether the laboratory is in compliance".
Page 14, line 8, insert another close parentheses after "(d))".
Page 14, after line 8, insert the following:
(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 keyboard search.
"(2) DEFINITION.—For purposes of paragraph (1), the term 'keyboard search' means a search under which information held by a person is compared with information in the index without resulting in the information held by the person being included in the index.
"(3) NO PREEMPTION.—This subsection shall not be construed to preempt State law.".
Page 17, line 18, strike "on a for-profit basis".
Page 17, line 25, strike "for the collection" and all that follows through "casework" on page 18, line 2.
Page 18, line 11, strike the comma.
Page 19, line 21, strike "the".
Page 20, line 22, strike "and".
Page 20, line 23, strike the period and insert a semicolon.
Page 20, after line 23, insert the following:
(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.
Page 21, line 1, strike "the".
Page 21, lines 5–6, strike "to States and units of local government".
Page 21, line 11, strike "conduct research through grants for" and insert "make grants to appropriate entities under which research is carried out through".
Page 24, line 12, strike "the".
Page 24, line 17, strike "the".
Page 25, line 12, strike "the".
Page 27, strike lines 21 through 25 and insert the following:
to do any one or more of the following:
"(1) To carry out"; and
(B) by adding at the end the following:
Page 28, line 1, insert "To" before "eliminate".
Page 28, line 5, strike "; and" and insert a period.
Page 28, line 6, insert "To" before "train".
Page 28, lines 7–8, strike "a forensic evidence backlog" and insert "such a backlog".
Page 28, strike lines 13–15 and insert the following:
"(e) BACKLOG DEFINED.—For purposes of this section, a backlog in the analysis of forensic science evidence exists if such evidence—
Page 29, line 17, strike "the".
Page 29, after line 24, insert the following:
(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.
Page 30, line 5, insert before the period at the end "and the amendments made by this Act".
Page 32, line 3, insert "the amendments made by" before "section 210".
Page 32, after line 21, in the item relating to section 3600A, strike "Prohibition on destruction" and insert "Preservation".
Page 34, lines 20–23, realign the indentation so as to conform with lines 14–19.
Page 38, line 11, strike "CODIS" and insert "NDIS".
Page 38, line 13, strike "Combined" and insert "National".
Page 38, line 14, strike "CODIS" and insert "NDIS".
Page 38, line 16, strike "CODIS" and insert "NDIS".
Page 38, line 20, strike "CODIS" and insert "NDIS".
Page 39, line 13, strike "CODIS" and insert "NDIS".
Page 39, line 15, strike "CODIS" and insert "NDIS".

Page 42, line 5, insert "a" before "sentence".
Page 43, line 10, strike "Prohibition on destruction" and insert "Preservation".
Page 43, line 13, strike "not destroy" and insert "preserve".
Page 43, line 18, strike "means" and all that follows through the end of line 21 and insert "means—".
Page 44, line 1, strike "The prohibition" and all that follows through "subsection (a)" on line 2 and insert "Subsection (a)".
Page 45, line 3, strike "The Attorney General" and insert "Not later than 180 days after the date of enactment of the Innocence Protection Act of 2003, the Attorney General".
Page 45, line 14, strike the close quotation mark and period and insert the following:
"(g) HABEAS CORPUS.—Nothing in this section shall provide a basis for relief in any Federal habeas corpus proceeding.".
Page 45, line 25, insert "Federal" before "courts".
Page 47, line 17, strike "the".
Page 47, line 19, strike "STATES" and insert "STATE DEFINED".
Page 47, line 20, strike "'States' means the States" and insert "'State' means a State".
Page 48, line 4, strike "(a) FUNDING.—".
Page 48, line 4, strike "the".
Page 48, line 6, insert "to" after "grants".
Page 50, strike lines 12 through 17.
Page 51, line 20, insert ", directly or indirectly," after "fund".
Page 54, line 23, strike "to—" and insert "for one or more of the following:".
Page 55, lines 1, 4, 7, 12, 16, and 22, capitalize the initial letter of the first word.
Page 55, lines 3, 6, 11, and 15, strike the semicolon and insert a period.
Page 55, lines 20–21, strike "; and" and insert a period.
Page 56, line 2, insert ", directly or indirectly," after "fund".
Page 65, line 1, strike "the".
Page 65, line 7, strike "the".
Page 65, line 23, strike the period after "plaintiff" within the quoted matter.

Chairman SENSENBRENNER. Without objection, the amendment is considered as read and the Chair recognizes himself for five minutes to explain it.

As I have already noted, this bill is the product of bipartisan, bicameral negotiations. The manager's amendment is also the product of these negotiations. The vast majority of this amendment is technical, clarifying, or stylistic in nature and I will not take the time to describe all of those changes now.

However, it does include one substantive provision that has been worked out with the gentleman from California, Mr. Schiff, to address concerns that he has raised. This provision would allow a State or the Federal Government to search the national DNA index system for a match to any DNA sample that was lawfully obtained by the State. Currently, a search can be made only when the sample can be lawfully loaded into the NDIS. However, some States allow the lawful collection of a broader group of samples and they should be able to search for matches to that broader group. This amendment would not change the rules for loading samples into the NDIS, and when a search is conducted the sample will only be loaded into NDIS if it otherwise qualifies under the NDIS rules.

I understand that there may still be concerns about this language and I will work with interested members to reach a consensus on it before we go to the floor. I urge the adoption of the manager's amendment. I yield back the balance of my time.

The gentleman from New York, Mr. Nadler.

Mr. NADLER. Thank you, Mr. Chairman. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for five minutes.

Mr. NADLER. Mr. Chairman, I strongly support this legislation and this amendment. I want to thank the Chairman and the members of the Committee from both sides of the aisle for working together to put politics and sound bites aside and to pass meaningful legislation to advance the cause of justice. I want particularly to congratulate Mr. Delahunt who first introduced the Innocents Protection Act several years ago and has worked tirelessly on this matter ever since.

I am pleased that this bill includes the modified Innocents Protection Act that aims to reduce the possibility that innocent people will be put to death. I understand this is a delicate compromise, but I must say that this bill is only a first step, not a final step, in our efforts to reform our Nation's capital punishment laws. These laws are broken and major reform, and in particular, full funding of this legislation, is necessary to protect the innocent from being wrongfully convicted and executed. It is also necessary to watch to see how many States sign up for this since this bill is all carrot, not stick. Hopefully all the States will sign up for it.

It is imperative, in addition, that we eliminate the shameful backlog of untested rape kits, and this bill will go a long way towards that goal. Let me say that on this issue it is about time. I have personally been involved in the fight to test rape kits for the past 19 months. Many members have worked with NOW, RAIN, and Lifetime Television to raise awareness of this issue and to build consensus for decisive action. Together we have pushed private and demanded that Federal funding be provided to test these kits right away.

Today we are one step closer to our goal. But we are not there yet. These programs still need to be funded and I am hopeful that the members of this Committee who support this bill now will join in asking that the bill be fully funded by the Appropriations Committee. It is too important an issue to ignore. Police departments must have the resources they need to solve crimes and put criminals behind bars.

I am pleased that this bill includes a provision similar to the Rape Kit DNA Analysis Backlog Elimination Act which I introduced in March of last year which would have provided $250 million to eliminate the rape kit backlog two years ago. The bill before us today acknowledges that we were right back then when we requested major increases in funding because it authorizes even more funding for this task. I am pleased also to see that the phrase rape kits has been specifically added to our current law to further underscore the need for this funding to address rape crimes in particular. These heinous crimes deserve our full attention, and the victims of these crimes deserve the certainly that DNA evidence can bring to them.

Once again, I am pleased to support this bill because it represents a serious effort to combat crime, locate and apprehend rapists, and use powerful evidence to put them in prison, as well as, of course, to protect the innocent. Mr. Chairman, I ask for unanimous consent to insert the full statement and extraneous material into the record.

Chairman SENSENBRENNER. Without objection. The other gentleman from—the gentleman from Arizona, Mr. Flake.

Mr. FLAKE. Thank you, Mr. Chairman. I just wanted to voice concerns that I have about the bill. I am opposed in its current form. I would love to be able to vote for this. There are a lot of good parts of it. We certainly want those who are innocent to be protected, and there are a lot of things in this bill which it will help. But unfortunately, there are some things that should concern all of us. They concern the Senate Republicans so much that they opposed the bill last year, and this form from now is not much changed from that.

Of particular concern to me is the granting or the authorization of $100 million in Federal funds to operate State programs. This is a departure from the principle of Federalism that we try to adhere to in this Committee and elsewhere. We earlier in the 1990s actually got rid of some of these capital resource centers. They were de-funded by Congress in 1996 because we know that some of the hard-core death penalty opponents gravitate toward these jobs and it makes it far more difficult to move necessary cases through. We should not force States to turn over their capital defender systems to a new version of these resource centers, and that is what I fear happening with this bill in its current form.

So I just wanted to raise those concerns. I know that it is unlikely to stop this bill but I hope that these concerns get a full airing as this moves through the process.

I yield back.

Chairman SENSENBRENNER. The gentleman from New York, Mr. Weiner.

Mr. WEINER. Mr. Chairman, I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for five minutes.

Mr. WEINER. Mr. Chairman, I thank you for promptly scheduling today's markup and I would like to take a few moments to put today's bill in context.

In 1999, I took a tour of a refrigerated warehouse in Long Island City in New York. What I saw there I will never forget. What I saw there I will never forget. In this warehouse was row after row of small boxes, roughly the size of shoeboxes, 16,000 in total. Each and every one was filled with a rape kit, which is a collection, as you know, of semen, hair, saliva, or any other crime scene evidence that could potentially identify the assailant.

As I stood there I quickly realized this was not just 16,000 boxes. It was not just 16,000 rape kits. It was 16,000 people's lives. It was 16,000 women who were still living in doubt, not knowing if their assailant were still on the loose. It was 16,0000 people like Debbie Smith who were so paralyzed with fear that they found it difficult at times to get out of their car and go inside their house after work. It was 16,000 women who were being denied justice because of a system that was broken.

As anyone familiar with this issue knows, the process for collecting these rape kits is not a pleasant one. But it is one that women are willing to endure because they are willing to do whatever it takes to see that their rapist is brought to justice, and they rightfully assume that this evidence will be analyzed.

But too often this evidence simply sat on a shelf. The primary reason this evidence was neglected was simple. It was money. The more I studied this issue, the more I realized that the New York

example I witnessed was not an isolated one. Consequently, I introduced legislation to provide Federal funding to eliminate the backlog and eventually worked with former Crime Subcommittee chairman McCollum and other members of this Committee to pass the DNA Analysis Backlog Elimination Act. To date, more than $100 million has been provided under the 2000 law to analyze backlog DNA evidence and convicted offender samples. With the help of this funding more than 470,000 offender samples have been analyzed and more than 24,000 casework samples have also been tested.

But this was just a first step. To really address this problem once and for all we needed an accurate assessment of how bad it was. Remarkably, in 2002, all we had was best guesses. Some people thought it might be as many as 180,000 untested DNA rape kits around the country. But no one really knew for certain because we had never bothered to conduct a nationwide survey of all the Nation's law enforcement agencies.

Further compounding the problem is that many of the agencies that held this evidence were reluctant to share the backlog with Federal authorities. That is why we included a provision in last year's DOJ authorization bill requiring Justice to conduct the first-ever nationwide survey of the backlog of DNA evidence. This March the preliminary results came back putting the backlog in early 2003 at roughly 350,000 untested rape kits and other casework samples around the country. This survey gave us the hard data we needed not only to justify reauthorizing our 2000 law but significantly expanding it. I introduced legislation with Representative Green to do so earlier this Congress and shortly thereafter the Bush Administration released its own DNA initiative, which took a number of the proposals in our legislation and built upon them.

Today, we are marking up legislation that contains the best elements of these proposals. In particular, the bill would reauthorize the DNA Backlog Elimination Act of 2000 and triple the annual funding for casework to $75 million a year. It would provide an additional $75 million a year over the next five years to analyze convicted offender samples and enhance the capacity of labs to analyze the DNA evidence. By expanding this lab capacity we hopefully will drive down the price of testing each of these kits, making it easier to test them all.

The bill would also allow cities to receive DNA grant funding directly rather than having to go through their States, expend the Federal DNA offender database to include all lawfully collected samples. It would waive the statute of limitation in cases involving DNA identification. When I stood in that warehouse looking at the 16,000 samples in 1999, it was within 12 months after 4,000 of them would have reached the statute of limitation rendering the information therein moot.

It would provide $30 million a year for five years to support sexual assault nurse examiner programs. These are programs which train nurses in hospital emergency rooms with the special care dealing with those who have been victims of sexual assault and rape. It would amend the Coverdell Forensic Improvement Program to allow funding to be used to clear out the backlog of other forensic evidence like firearms, fingerprints, toxicology and other

controlled substances. And of course, the bill includes a version of Mr. Delahunt's Innocents Protection Act.

Mr. Chairman, I contend that this piece of legislation we will pass today is the most important that this panel will approve all year, because it will not only save lives by getting criminals off the street but help thousands of crime victims reclaim theirs. A lot of people deserve credit for making this bill possible. Mr. Coble and Mr. Scott should be commended for making DNA legislation a priority of their subcommittee. Mr. Green has been a true leader and a great partner on this issue. And of course, Mr. Delahunt has worked for years for the rights of the innocent and this bill is a testimony to his dedication.

The Bush Administration also deserves great praise for proposing an aggressive proposal that will not only eliminate the DNA backlog but will put us in a better position to utilize DNA evidence in the future.

Finally, I would like to thank you, Mr. Chairman, for understanding that we must not only use DNA evidence to put the right people behind bars, but we also need to make sure the wrong people are not incarcerated. I think that your decision to link the DNA backlog elimination legislation to the Innocents Protection Act was wise and necessary to ensure that we will realize the full potential of DNA to solve crimes. I look forward to moving this bill quickly through Committee today and hopefully onto the floor next week, and to the President's desk before the year is out. Thousands of crime victims have waited for too long for justice and with today's action we are one step closer to bringing that wait to an end.

Chairman SENSENBRENNER. The gentleman's time has expired.

Ms. JACKSON LEE. Mr. Chairman.

Chairman SENSENBRENNER. For what purpose does the gentlewoman from Texas seek recognition?

Ms. JACKSON LEE. To strike the last word.

Chairman SENSENBRENNER. The gentlewoman is recognized for five minutes.

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

Let me echo, I think, what has been the general sense of this Committee, and the way that we have proceeded, is to again emphasize that this is a very monumental occasion. It culminates a number of incidents that have occurred over the last couple of years as is related to the death penalty, and a number of them have occurred in the State of Texas. I think Texas has been on the map for a case that involved inefficient counsel, and thereby resulted in the death penalty being given to that individual. Texas has been on the map in the case of Gary Graham when sufficient evidence suggested that there was a necessity for a new trial. And certainly, Texas is on the map for having the largest number of individuals on death row.

I am gratified that in the course of the discussions we had the kind of focus that the former Governor of Illinois gave to the number of individuals on death row that may be there by way of incorrect evidence or insufficient evidence or lack of being able to provide counter-evidence. This legislation that has been brought forward by the Subcommittee on Crime, both in terms of Mr. Scott and Mr. Coble's work, I want to applaud them, as I do Mr.

Delahunt's work and leadership, and of course, his co-sponsor as well.

It is important to note that the work of this legislation will cover more than just finding out whether or not you have been erroneously convicted on death row. To know that women who have suffered the greatest injustice and heinous crime of rape no longer have to wait years and years and years for the determination and/or the prosecution of such is a step in the right direction.

Coming from Houston, Texas, I believe the provision that deals with DNA research and development, that set up a commission of standards—and I wish to review this further—but I support the idea of having compulsory standards for DNA labs across the Nation, particularly those that are governed by local and State jurisdictions. What we faced in Houston, which I think can be indicative of jurisdictions around the Nation, is a lab that was crumbling under its own weight, lack of qualified persons in the lab, and hundreds of cases that had to be reviewed by our prosecutor as to whether or not those convictions were in actuality fair convictions. We saw the release of individuals who had been in prison for six to 10 years who were wrongly convicted.

If anything occurs out of this Committee, I believe that we should be a Committee that has as its highest priority, justice for all. That means justice for the victims, but also justice for those who are ultimately charged. This particular legislation, I think, balances its role by recognizing that there are people who are convicted falsely, but also recognizing that victims can be victimized by not having their cases brought to justice. I cannot say how important it is in a capital prosecution case to have fairness. Nor can I say how important it is to be able to have a DNA lab that you can rely upon.

I hope as we move this legislation forward we will be able to look also at an option that includes a focus on child predators. I believe it is important to focus on child predators because the numbers have been increasing. I have legislation that sets aside a separate DNA bank just for those who have been previously convicted of a child predator act, sexual abuse, so that they can be immediately determined by a national DNA bank. I would hope that as we become more comfortable with legislation like this we will be able to address other issues that confront the fairness of making sure that the victim is responded to and that person who perpetrated the crime is immediately brought to justice.

So I rise to support this legislation on the quality that it brings to DNA labs, the funding that it will allow for improvement of local DNA labs, and I would also like to promote the idea——

Chairman SENSENBRENNER. The gentlewoman's time has expired.

Ms. JACKSON LEE [continuing]. That we have compulsory standards in place. I yield back.

Mr. CONYERS. Mr. Chairman.

Chairman SENSENBRENNER. The gentleman from Michigan, Mr. Conyers.

Mr. CONYERS. I would like to thank a former State prosecutor, Bill Delahunt, in this enterprise. I would like to express appreciation for the Chairman of the full Committee on Judiciary, and the close cooperation that we are enjoying in this measure with the

Chairman of the Senate Judiciary Committee. I think this is very important legislation and I will return my time and put my statement in the record.

Chairman SENSENBRENNER. The gentleman from California, Mr. Schiff.

Mr. SCHIFF. Mr. Chairman, I want to join my colleagues and thank you for your leadership on this along with Mr. Coble, Mr. Smith, Mr. Delahunt, and others.

As a former prosecutor, it really has never been far from my thoughts that here we have one of the most powerful tools for solving crimes and it is also one of the most underutilized. It is as if we have the opportunity to take countless numbers of murderers and rapists off the street but we do not allow ourselves the tools to do that. I am glad the Committee has taken such a strong action today to change that dynamic.

I am pleased to be one of the original co-sponsors of the Advancing Justice Through DNA Technology Act. This is landmark legislation that will assist law enforcement in solving crimes, and also protect the innocent. In 1998, FBI created a system of DNA profile indexes, CODIS, to allow participating forensic laboratories to compare DNA profiles with a goal of matching case evidence to other previously unrelated cases or persons already convicted of specific crimes. The database now contains about 1.5 million DNA samples and has yielded thousands of matches in criminal investigations.

It is hard to really comprehend what an incredible advance this is. We wrestle in this Committee, and State legislatures do the same, with ways of attacking the problem of crime. Often our response has been to increase sentences, too incapacitate people, to deter people. We have also made every effort to rehabilitate those coming out of prison.

But through this legislation today we use yet another, perhaps even more powerful tool, and that is to address the very short terms, the very short sentences, and indeed the nonexistent terms of all those who have committed murder, rape and never been apprehended. That is the most promising sentencing reform of all, to find those that have committed these violent crimes through the use of technology and take them off the street.

It also, at the same time wonderfully, almost symmetrically, helps us with the most persistent fear in the criminal justice system, that is the fear of convicting the wrong person. Mr. Delahunt has really been a great champion of this portion of the bill and I want to add my voice to those who have already congratulated him on his efforts.

So here we have taken some very important and phenomenal steps in changing policies that will allow us to make much greater, more powerful use of DNA profiles. I introduced legislation earlier this year to increase the effectiveness of the DNA database by expanding the national database. This legislation was also aimed at facilitating information-sharing and increasing searching capabilities among State and local law enforcement agencies. I am very pleased that many of these policy changes have been included in the bill before us today.

States have taken the lead in the use of DNA and expanding that use. For example, Virginia, as we heard during the testimony at the subcommittee, has led a tremendous effort making over

1,000 cold hits; finally providing resolution to a great number of unsolved crimes. The legislation before us today makes important changes in Federal law in order to replicate these tremendous successes on a nationwide basis.

In addition, the legislation authorizes much-needed funding to eliminate the current backlog of unanalyzed DNA samples in the Nation's crime labs. And finally, as I alluded earlier, the important innocents protection provisions will help ensure eligible Federal and State inmates access to DNA testing to establish their innocence.

I want to applaud the tremendous bipartisan and bicameral efforts on this legislation and join my colleagues in urging overwhelming support for this reform. I yield back the balance of my time.

Chairman SENSENBRENNER. The question is on the amendment offered by the chair. Those in favor will say aye.

Opposed, no.

The ayes appear to have it. The ayes have it and the amendment is agreed to.

Are there further amendments?

The gentleman from Wisconsin, Mr. Green.

Mr. GREEN. Mr. Chairman, I have an amendment at the desk.

Chairman SENSENBRENNER. The Clerk will report the amendment.

The CLERK. Amendment to H.R. 3214 offered by Mr. Green of Wisconsin. Page 14, lines 15, 16 strike "except for a felony offense under Chapter 109(a.)".

AMENDMENT TO H.R. 3214 OFFERED BY MR. GREEN OF WISCONSIN PAGE 14, LINES 15–16, STRIKE "EXCEPT FOR A FELONY OFFENSE UNDER CHAPTER 109A,".

Chairman SENSENBRENNER. The gentleman from Wisconsin is recognized for five minutes.

Mr. GREEN. Thank you, Mr. Chairman. Let me begin by offering my voice or adding my voice to those of others here in praise for your work, the work of Congressman Delahunt and Congressman Weiner and so many others who have worked on this legislation.

The Debbie Smith grants in this bill will help eliminate the rape kit backlog and will help put hundreds of thousands of criminals behind bars. We can bolster that effort by giving prosecutors the best tools available and removing impediments in good cases that prevent those cases from being indicted and prosecuted. In my original bill, the Debbie Smith Act, we included a provision for John Doe indictments that allows prosecutors to indict a DNA sample instead of an actual person in a sexual assault case. This provision was enacted into law as part of the Protect Act earlier this year. It is a great measure that can help prosecutors build strong cases against the assailant.

Now as referenced by my friend and colleague Mr. Weiner, the legislation before us properly tolls the statute of limitations for crimes with a DNA sample until that sample is matched to a person. Once the sample is matched to a person, the statute begins to run. However, it exempts sexual assault crimes like aggrevated sexual abuse, abuse of a minor, and abusive sexual contact from this important reform.

We should give prosecutors the ability to charge the true perpetrator in these types of cases as well whenever he is accurately identified through DNA. My amendment will allow Chapter 109(a) crimes, along with all other crimes, to be eligible for DNA matching before the statute of limitations would run.

Mr. Chairman, I know that you are sympathetic to the issue that I have raised in this amendment. If you would be willing to work with me to try to address this matter as this bill leaves the Committee and moves to the floor, I would be willing to——

Chairman SENSENBRENNER. Will the gentleman yield?

Mr. GREEN. Yes, I would.

Chairman SENSENBRENNER. I will be happy to work with the gentleman on this. I think he has identified an important issue.

Mr. GREEN. Thank you, Mr. Chairman. With that I would ask unanimous consent to withdraw my amendment.

Chairman SENSENBRENNER. Without objection, the amendment is withdrawn.

Are there further amendments?

If there are no further amendments, the chair notes the presence of a reporting quorum. The question occurs on the motion to report the bill H.R. 3214 favorably, as amended. All in favor will say aye.

Opposed, no?

I think everybody would like a roll call on this. The clerk will call the roll.

The CLERK. Mr. Hyde.

[No response.]

The CLERK. Mr. Coble.

Mr. COBLE. Aye.

The CLERK. Mr. Coble, aye. Mr. Smith.

Mr. SMITH. Aye.

The CLERK. Mr. Smith, aye. Mr. Gallegly.

[No response.]

The CLERK. Mr. Goodlatte.

Mr. GOODLATTE. Aye.

The CLERK. Mr. Goodlatte, aye. Mr. Chabot.

Mr. CHABOT. Aye.

The CLERK. Mr. Chabot, aye. Mr. Jenkins.

Mr. JENKINS. Aye.

The CLERK. Mr. Jenkins, aye. Mr. Cannon.

Mr. CANNON. Aye.

The CLERK. Mr. Cannon, aye. Mr. Bachus.

[No response.]

The CLERK. Mr. Hostettler.

Mr. HOSTETTLER. Aye.

The CLERK. Mr. Hostettler, aye. Mr. Green.

Mr. GREEN. Aye.

The CLERK. Mr. Green, aye. Mr. Keller.

Mr. KELLER. Aye.

The CLERK. Mr. Keller, aye. Ms. Hart.

[No response.]

The CLERK. Mr. Flake.

Mr. FLAKE. No.

The CLERK. Mr. Flake, no. Mr. Pence.

Mr. PENCE. Aye.

The CLERK. Mr. Pence, aye. Mr. Forbes.

Mr. FORBES. Aye.
The CLERK. Mr. Forbes, aye. Mr. King.
Mr. KING. Aye.
The CLERK. Mr. King, aye. Mr. Carter.
Mr. CARTER. Aye.
The CLERK. Mr. Carter, aye. Mr. Feeney.
Mr. FEENEY. Aye.
The CLERK. Mr. Feeney, aye. Mrs. Blackburn.
[No response.]
The CLERK. Mr. Conyers.
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye. Mr. Berman.
[No response.]
The CLERK. Mr. Boucher.
[No response.]
The CLERK. Mr. Nadler.
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye. Mr. Scott.
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye. Mr. Watt.
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye. Ms. Lofgren.
[No response.]
The CLERK. Ms. Jackson Lee.
Ms. JACKSON LEE. Aye.
The CLERK. Ms. Jackson Lee, aye. Ms. Waters.
[No response.]
The CLERK. Mr. Meehan.
Mr. MEEHAN. Aye.
The CLERK. Mr. Meehan, aye. Mr. Delahunt.
Mr. DELAHUNT. Aye.
The CLERK. Mr. Delahunt, aye. Mr. Wexler.
[No response.]
The CLERK. Ms. Baldwin.
Ms. BALDWIN. Aye.
The CLERK. Ms. Baldwin, aye. Mr. Weiner.
Mr. WEINER. Aye.
The CLERK. Mr. Weiner, aye. Mr. Schiff.
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye. Ms. Sánchez.
Ms. SÁNCHEZ. Aye.
The CLERK. Ms. Sánchez, aye. Mr. Chairman.
Chairman SENSENBRENNER. Aye.
The CLERK. Mr. Chairman, aye.

Chairman SENSENBRENNER. Are there members in the chamber who wish to cast or change their votes? The gentleman from California, Mr. Berman.

Mr. BERMAN. Aye.
The CLERK. Mr. Berman, aye.

Chairman SENSENBRENNER. Further members who wish to cast or change their votes? The gentlewoman from California, Ms. Waters.

Ms. WATERS. Aye.

Chairman SENSENBRENNER. Further members who wish to cast or change their votes? If not, the clerk will report.

Ms. JACKSON LEE. Mr. Chairman, how am I recorded?

The CLERK. Mr. Chairman, Ms. Jackson Lee is recorded as aye.

Ms. JACKSON LEE. Thank you.

Chairman SENSENBRENNER. The Clerk will report.

The CLERK. Mr. Chairman, there are 28 ayes and one no.

Chairman SENSENBRENNER. The motion to report favorably is agreed to. Without objection, the bill will be reported favorably to the House in the form of a single amendment in the nature of a substitute incorporating the amendment offered and adopted here today. 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 two days, as provided by the House rules, in which to submit additional dissenting supplemental or minority views.

Let me quote Ronald Reagan before shutting this meeting down. One of the more wise sayings that President Reagan made during his term of office is that you really do not know how much you can accomplish around here if you do not care who takes credit for it. This piece of legislation, I think that every member of this Committee can take credit for because of the hard work that was done in reaching a compromise. Thank you for being so prompt and I am hopeful that we can get to the floor very promptly on this piece of legislation because it does have the potential of really revolutionizing and making more accurate our criminal justice system.

Mr. CONYERS. Thank you, Mr. Chairman. Could you have quoted someone that was not from California this morning? [Laughter.]

Chairman SENSENBRENNER. I like California a lot better today.

The committee stands adjourned.

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