

108TH CONGRESS
2D SESSION

H. R. 5107

IN THE SENATE OF THE UNITED STATES

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Received

AN ACT

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

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

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

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Justice for All Act of 2004”.

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

Sec. 1. Short title; table of contents.

**TITLE I—SCOTT CAMPBELL, STEPHANIE ROPER, WENDY PRESTON,
LOUARNA GILLIS, AND NILA LYNN CRIME VICTIMS’
RIGHTS ACT**

Sec. 101. Short title.

Sec. 102. Crime victims’ rights.

Sec. 103. Increased resources for enforcement of crime victims’ rights.

Sec. 104. Reports.

TITLE II—DEBBIE SMITH ACT OF 2004

Sec. 201. Short title.

Sec. 202. Debbie Smith DNA Backlog Grant Program.

Sec. 203. Expansion of Combined DNA Index System.

Sec. 204. Tolling of statute of limitations.

Sec. 205. Legal assistance for victims of violence.

Sec. 206. Ensuring private laboratory assistance in eliminating DNA backlog.

TITLE III—DNA SEXUAL ASSAULT JUSTICE ACT OF 2004

Sec. 301. Short title.

Sec. 302. Ensuring public crime laboratory compliance with Federal standards.

Sec. 303. DNA training and education for law enforcement, correctional personnel, and court officers.

Sec. 304. Sexual assault forensic exam program grants.

Sec. 305. DNA research and development.

Sec. 306. National Forensic Science Commission.

Sec. 307. FBI DNA programs.

Sec. 308. DNA identification of missing persons.

Sec. 309. Enhanced criminal penalties for unauthorized disclosure or use of DNA information.

Sec. 310. Tribal coalition grants.

Sec. 311. Expansion of Paul Coverdell Forensic Sciences Improvement Grant Program.

Sec. 312. Report to Congress.

TITLE IV—INNOCENCE PROTECTION ACT OF 2004

Sec. 401. Short title.

Subtitle A—Exonerating the innocent through DNA testing

Sec. 411. Federal post-conviction DNA testing.

Sec. 412. Kirk Bloodsworth Post-Conviction DNA Testing Grant Program.

Sec. 413. Incentive grants to States to ensure consideration of claims of actual innocence.

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

Sec. 421. Capital representation improvement grants.

Sec. 422. Capital prosecution improvement grants.

Sec. 423. Applications.

Sec. 424. State reports.

Sec. 425. Evaluations by Inspector General and administrative remedies.

Sec. 426. Authorization of appropriations.

Subtitle C—Compensation for the wrongfully convicted

Sec. 431. Increased compensation in Federal cases for the wrongfully convicted.

Sec. 432. Sense of Congress regarding compensation in State death penalty cases.

1 **TITLE I—SCOTT CAMPBELL,**
 2 **STEPHANIE ROPER, WENDY**
 3 **PRESTON, LOUARNA GILLIS,**
 4 **AND NILA LYNN CRIME VIC-**
 5 **TIMS’ RIGHTS ACT**

6 **SEC. 101. SHORT TITLE.**

7 This title may be cited as the “Scott Campbell,
 8 Stephanie Roper, Wendy Preston, Louarna Gillis, and
 9 Nila Lynn Crime Victims’ Rights Act”.

10 **SEC. 102. CRIME VICTIMS’ RIGHTS.**

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

14 **“CHAPTER 237—CRIME VICTIMS’ RIGHTS**

“Sec.

“3771. Crime victims’ rights.

1 **“§ 3771. Crime victims’ rights**

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

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

6 “(2) The right to reasonable, accurate, and
7 timely notice of any public court proceeding, or any
8 parole proceeding, involving the crime or of any re-
9 lease or escape of the accused.

10 “(3) The right not to be excluded from any
11 such public court proceeding, unless the court, after
12 receiving clear and convincing evidence, determines
13 that testimony by the victim would be materially al-
14 tered if the victim heard other testimony at that pro-
15 ceeding.

16 “(4) The right to be reasonably heard at any
17 public proceeding in the district court involving re-
18 lease, plea, sentencing, or any parole proceeding.

19 “(5) The reasonable right to confer with the at-
20 torney for the Government in the case.

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

23 “(7) The right to proceedings free from unrea-
24 sonable delay.

25 “(8) The right to be treated with fairness and
26 with respect for the victim’s dignity and privacy.

1 “(b) RIGHTS AFFORDED.—In any court proceeding
2 involving an offense against a crime victim, the court shall
3 ensure that the crime victim is afforded the rights de-
4 scribed in subsection (a). Before making a determination
5 described in subsection (a)(3), the court shall make every
6 effort to permit the fullest attendance possible by the vic-
7 tim and shall consider reasonable alternatives to the exclu-
8 sion of the victim from the criminal proceeding. The rea-
9 sons for any decision denying relief under this chapter
10 shall be clearly stated on the record.

11 “(c) BEST EFFORTS TO ACCORD RIGHTS.—

12 “(1) GOVERNMENT.—Officers and employees of
13 the Department of Justice and other departments
14 and agencies of the United States engaged in the de-
15 tection, investigation, or prosecution of crime shall
16 make their best efforts to see that crime victims are
17 notified of, and accorded, the rights described in
18 subsection (a).

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

23 “(3) NOTICE.—Notice of release otherwise re-
24 quired pursuant to this chapter shall not be given if
25 such notice may endanger the safety of any person.

1 “(d) ENFORCEMENT AND LIMITATIONS.—

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

7 “(2) MULTIPLE CRIME VICTIMS.—In a case
8 where the court finds that the number of crime vic-
9 tims makes it impracticable to accord all of the
10 crime victims the rights described in subsection (a),
11 the court shall fashion a reasonable procedure to
12 give effect to this chapter that does not unduly com-
13 plicate or prolong the proceedings.

14 “(3) MOTION FOR RELIEF AND WRIT OF MAN-
15 DAMUS.—The rights described in subsection (a) shall
16 be asserted in the district court in which a defend-
17 ant is being prosecuted for the crime or, if no pros-
18 ecution is underway, in the district court in the dis-
19 trict in which the crime occurred. The district court
20 shall take up and decide any motion asserting a vic-
21 tim’s right forthwith. If the district court denies the
22 relief sought, the movant may petition the court of
23 appeals for a writ of mandamus. The court of ap-
24 peals may issue the writ on the order of a single
25 judge pursuant to circuit rule or the Federal Rules

1 of Appellate Procedure. The court of appeals shall
2 take up and decide such application forthwith within
3 72 hours after the petition has been filed. In no
4 event shall proceedings be stayed or subject to a
5 continuance of more than five days for purposes of
6 enforcing this chapter. If the court of appeals denies
7 the relief sought, the reasons for the denial shall be
8 clearly stated on the record in a written opinion.

9 “(4) ERROR.—In any appeal in a criminal case,
10 the Government may assert as error the district
11 court’s denial of any crime victim’s right in the pro-
12 ceeding to which the appeal relates.

13 “(5) LIMITATION ON RELIEF.—In no case shall
14 a failure to afford a right under this chapter provide
15 grounds for a new trial. A victim may make a mo-
16 tion to re-open a plea or sentence only if—

17 “(A) the victim has asserted the right to
18 be heard before or during the proceeding at
19 issue and such right was denied;

20 “(B) the victim petitions the court of ap-
21 peals for a writ of mandamus within 10 days;
22 and

23 “(C) in the case of a plea, the accused has
24 not pled to the highest offense charged.

1 This paragraph does not affect the victim’s right to
2 restitution as provided in title 18, United States
3 Code.”.

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

13 “(e) DEFINITIONS.—For the purposes of this chap-
14 ter, the term ‘crime victim’ means a person directly and
15 proximately harmed as a result of the commission of a
16 Federal offense or an offense in the District of Columbia.
17 In the case of a crime victim who is under 18 years of
18 age, incompetent, incapacitated, or deceased, the legal
19 guardians of the crime victim or the representatives of the
20 crime victim’s estate, family members, or any other per-
21 sons appointed as suitable by the court, may assume the
22 crime victim’s rights under this chapter, but in no event
23 shall the defendant be named as such guardian or rep-
24 resentative.

25 “(f) PROCEDURES TO PROMOTE COMPLIANCE.—

1 “(1) REGULATIONS.—Not later than 1 year
2 after the date of enactment of this chapter, the At-
3 torney General of the United States shall promul-
4 gate regulations to enforce the rights of crime vic-
5 tims and to ensure compliance by responsible offi-
6 cials with the obligations described in law respecting
7 crime victims.

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

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

14 “(B) require a course of training for em-
15 ployees and offices of the Department of Jus-
16 tice that fail to comply with provisions of Fed-
17 eral law pertaining to the treatment of crime
18 victims, and otherwise assist such employees
19 and offices in responding more effectively to the
20 needs of crime victims;

21 “(C) contain disciplinary sanctions, includ-
22 ing suspension or termination from employ-
23 ment, for employees of the Department of Jus-
24 tice who willfully or wantonly fail to comply

1 with provisions of Federal law pertaining to the
 2 treatment of crime victims; and

3 “(D) provide that the Attorney General, or
 4 the designee of the Attorney General, shall be
 5 the final arbiter of the complaint, and that
 6 there shall be no judicial review of the final de-
 7 cision of the Attorney General by a complain-
 8 ant.”.

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

“237. Crime victims’ rights 3771”.

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

14 **SEC. 103. INCREASED RESOURCES FOR ENFORCEMENT OF**
 15 **CRIME VICTIMS’ RIGHTS.**

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

20 **“SEC. 1404D. CRIME VICTIMS LEGAL ASSISTANCE GRANTS.**

21 “(a) IN GENERAL.—The Director may make grants
 22 as provided in section 1404(c)(1)(A) to State, tribal, and
 23 local prosecutors’ offices, law enforcement agencies,
 24 courts, jails, and correctional institutions, and to qualified
 25 public and private entities, to develop, establish, and main-

tain programs for the enforcement of crime victims' rights
as provided in law.

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

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

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

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

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

(3) \$300,000 in fiscal year 2005 and \$500,000 for each of the fiscal years 2006, 2007, 2008, and

2009, to the Office for Victims of Crime of the Department of Justice for staff to administer the appropriation for the support of organizations as designated under paragraph (4);

(4) \$7,000,000 for fiscal year 2005 and \$11,000,000 for each of the fiscal years 2006, 2007, 2008, and 2009, to the Office for Victims of Crime of the Department of Justice, for the support of organizations that provide legal counsel and support services for victims in criminal cases for the enforcement of crime victims' rights in Federal jurisdictions, and in States and tribal governments that have laws substantially equivalent to the provisions of chapter 237 of title 18, United States Code; and

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

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

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

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

6 **“SEC. 1404E. CRIME VICTIMS NOTIFICATION GRANTS.**

7 “(a) IN GENERAL.—The Director may make grants
8 as provided in section 1404(c)(1)(A) to State, tribal, and
9 local prosecutors’ offices, law enforcement agencies,
10 courts, jails, and correctional institutions, and to qualified
11 public or private entities, to develop and implement state-
12 of-the-art systems for notifying victims of crime of impor-
13 tant dates and developments relating to the criminal pro-
14 ceedings at issue in a timely and efficient manner, pro-
15 vided that the jurisdiction has laws substantially equiva-
16 lent to the provisions of chapter 237 of title 18, United
17 States Code.

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

22 “(c) AUTHORIZATION OF APPROPRIATIONS.—In ad-
23 dition to funds made available under section 1402(d),
24 there are authorized to be appropriated to carry out this
25 section—

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

2 “(2) \$5,000,000 for each of the fiscal years
3 2006, 2007, 2008, and 2009.

4 “(d) FALSE CLAIMS ACT.—Notwithstanding any
5 other provision of law, amounts collected pursuant to sec-
6 tions 3729 through 3731 of title 31, United States Code
7 (commonly known as the ‘False Claims Act’), may be used
8 for grants under this section, subject to appropriation.”.

9 **SEC. 104. REPORTS.**

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

21 (b) GOVERNMENT ACCOUNTABILITY OFFICE.—

22 (1) STUDY.—The Comptroller General shall
23 conduct a study that evaluates the effect and effi-
24 cacy of the implementation of the amendments made

1 by this title on the treatment of crime victims in the
2 Federal system.

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

8 **TITLE II—DEBBIE SMITH ACT OF** 9 **2004**

10 **SEC. 201. SHORT TITLE.**

11 This title may be cited as the “Debbie Smith Act of
12 2004”.

13 **SEC. 202. DEBBIE SMITH DNA BACKLOG GRANT PROGRAM.**

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

18 (1) by amending the heading to read as follows:

19 **“SEC. 2. THE DEBBIE SMITH DNA BACKLOG GRANT PRO-**
20 **GRAM.”;**

21 (2) in subsection (a)—

22 (A) in the matter preceding paragraph

23 (1)—

24 (i) by inserting “or units of local gov-
25 ernment” after “eligible States”; and

1 (ii) by inserting “or unit of local gov-
2 ernment” after “State”;

3 (B) in paragraph (2), by inserting before
4 the period at the end the following: “, including
5 samples from rape kits, samples from other sex-
6 ual assault evidence, and samples taken in cases
7 without an identified suspect”; and

8 (C) in paragraph (3), by striking “within
9 the State”;
10 (3) in subsection (b)—

11 (A) in the matter preceding paragraph
12 (1)—

13 (i) by inserting “or unit of local gov-
14 ernment” after “State” both places that
15 term appears; and

16 (ii) by inserting “, as required by the
17 Attorney General” after “application
18 shall”;

19 (B) in paragraph (1), by inserting “or unit
20 of local government” after “State”;

21 (C) in paragraph (3), by inserting “or unit
22 of local government” after “State” the first
23 place that term appears;

24 (D) in paragraph (4)—

1 (i) by inserting “or unit of local gov-
2 ernment” after “State”; and

3 (ii) by striking “and” at the end;

4 (E) in paragraph (5)—

5 (i) by inserting “or unit of local gov-
6 ernment” after “State”; and

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

9 (F) by adding at the end the following:

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

17 (4) in subsection (d)—

18 (A) in paragraph (1)—

19 (i) in the matter preceding subpara-
20 graph (A), by striking “The plan” and in-
21 serting “A plan pursuant to subsection
22 (b)(1)”;

23 (ii) in subparagraph (A), by striking
24 “within the State”; and

1 (iii) in subparagraph (B), by striking
2 “within the State”; and

3 (B) in paragraph (2)(A), by inserting “and
4 units of local government” after “States”;
5 (5) in subsection (e)—

6 (A) in paragraph (1), by inserting “or local
7 government” after “State” both places that
8 term appears; and

9 (B) in paragraph (2), by inserting “or unit
10 of local government” after “State”;

11 (6) in subsection (f), in the matter preceding
12 paragraph (1), by inserting “or unit of local govern-
13 ment” after “State”;

14 (7) in subsection (g)—

15 (A) in paragraph (1), by inserting “or unit
16 of local government” after “State”; and

17 (B) in paragraph (2), by inserting “or
18 units of local government” after “States”; and

19 (8) in subsection (h), by inserting “or unit of
20 local government” after “State” both places that
21 term appears.

22 (b) REAUTHORIZATION AND EXPANSION OF PRO-
23 GRAM.—Section 2 of the DNA Analysis Backlog Elimini-
24 nation Act of 2000 (42 U.S.C. 14135) is amended—

25 (1) in subsection (a)—

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

3 (B) by inserting at the end the following:

4 “(4) To collect DNA samples specified in para-
5 graph (1).

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

10 (2) in subsection (b), as amended by this sec-
11 tion, by inserting at the end the following:

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

15 (3) by amending subsection (c) to read as fol-
16 lows:

17 “(c) FORMULA FOR DISTRIBUTION OF GRANTS.—

18 “(1) IN GENERAL.—The Attorney General shall
19 distribute grant amounts, and establish appropriate
20 grant conditions under this section, in conformity
21 with a formula or formulas that are designed to ef-
22 fectuate a distribution of funds among eligible
23 States and units of local government that—

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

4 “(B) allocates grants among eligible enti-
5 ties fairly and efficiently to address jurisdic-
6 tions in which significant backlogs exist, by con-
7 sidering—

8 “(i) the number of offender and case-
9 work samples awaiting DNA analysis in a
10 jurisdiction;

11 “(ii) the population in the jurisdiction;
12 and

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

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

22 “(3) LIMITATION.—Grant amounts distributed
23 under paragraph (1) shall be awarded to conduct
24 DNA analyses of samples from casework or from

1 victims of crime under subsection (a)(2) in accord-
2 ance with the following limitations:

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

6 “(B) For fiscal year 2006, not less than
7 50 percent of the grant amounts shall be
8 awarded for purposes under subsection (a)(2).

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

12 “(D) For fiscal year 2008, not less than
13 40 percent of the grant amounts shall be
14 awarded for purposes under subsection (a)(2).

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

18 (4) in subsection (g)—

19 (A) in paragraph (1), by striking “and” at
20 the end;

21 (B) in paragraph (2), by striking the pe-
22 riod at the end and inserting “; and”; and

23 (C) by adding at the end the following:

24 “(3) a description of the priorities and plan for
25 awarding grants among eligible States and units of

1 local government, and how such plan will ensure the
2 effective use of DNA technology to solve crimes and
3 protect public safety.”;

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

6 “(1) \$151,000,000 for fiscal year 2005;

7 “(2) \$151,000,000 for fiscal year 2006;

8 “(3) \$151,000,000 for fiscal year 2007;

9 “(4) \$151,000,000 for fiscal year 2008; and

10 “(5) \$151,000,000 for fiscal year 2009.”; and

11 “(6) by adding at the end the following:

12 “(k) USE OF FUNDS FOR ACCREDITATION AND AU-
13 DITS.—The Attorney General may distribute not more
14 than 1 percent of the grant amounts under subsection
15 (j)—

16 “(1) to States or units of local government to
17 defray the costs incurred by laboratories operated by
18 each such State or unit of local government in pre-
19 paring for accreditation or reaccreditation;

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

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

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

12 “(C) to support future capacity building
13 efforts; and

14 “(3) in the form of additional grants to non-
15 profit professional associations actively involved in
16 forensic science and nationally recognized within the
17 forensic science community to defray the costs of
18 training persons who conduct external audits of lab-
19 oratories operated by States and units of local gov-
20 ernment and which participate in the National DNA
21 Index System.

22 “(l) USE OF FUNDS FOR OTHER FORENSIC
23 SCIENCES.—The Attorney General may award a grant
24 under this section to a State or unit of local government
25 to alleviate a backlog of cases with respect to a forensic

1 science other than DNA analysis if the State or unit of
2 local government—

3 “(1) certifies to the Attorney General that in
4 such State or unit—

5 “(A) all of the purposes set forth in sub-
6 section (a) have been met;

7 “(B) a significant backlog of casework is
8 not waiting for DNA analysis; and

9 “(C) there is no need for significant lab-
10 oratory equipment, supplies, or additional per-
11 sonnel for timely DNA processing of casework
12 or offender samples; and

13 “(2) demonstrates to the Attorney General that
14 such State or unit requires assistance in alleviating
15 a backlog of cases involving a forensic science other
16 than DNA analysis.

17 “(m) EXTERNAL AUDITS AND REMEDIAL EF-
18 FORTS.—In the event that a laboratory operated by a
19 State or unit of local government which has received funds
20 under this Act has undergone an external audit conducted
21 to determine whether the laboratory is in compliance with
22 standards established by the Director of the Federal Bu-
23 reau of Investigation, and, as a result of such audit, iden-
24 tifies measures to remedy deficiencies with respect to the
25 compliance by the laboratory with such standards, the

1 State or unit of local government shall implement any
2 such remediation as soon as practicable.”.

3 **SEC. 203. EXPANSION OF COMBINED DNA INDEX SYSTEM.**

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

7 (1) in subsection (a)(1), by striking “of persons
8 convicted of crimes;” and inserting the following:
9 “of—

10 “(A) persons convicted of crimes;

11 “(B) persons who have been charged in an
12 indictment or information with a crime; and

13 “(C) other persons whose DNA samples
14 are collected under applicable legal authorities,
15 provided that DNA profiles from arrestees who
16 have not been charged in an indictment or in-
17 formation with a crime, and DNA samples that
18 are voluntarily submitted solely for elimination
19 purposes shall not be included in the National
20 DNA Index System;”; and

21 (2) in subsection (d)(2)—

22 (A) by striking “if the responsible agency”
23 and inserting “if—

24 “(i) the responsible agency”;

1 (B) by striking the period at the end and
2 inserting “; or”; and

3 (C) by adding at the end the following:

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

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

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

18 “(1) Any felony.

19 “(2) Any offense under chapter 109A of title
20 18, United States Code.

21 “(3) Any crime of violence (as that term is de-
22 fined in section 16 of title 18, United States Code).

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

1 (c) MILITARY OFFENSES.—Section 1565(d) of title
2 10, United States Code, is amended to read as follows:

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

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

11 “(2) Any other offense under the Uniform Code
12 of Military Justice that is comparable to a qualifying
13 Federal offense (as determined under section 3(d) of
14 the DNA Analysis Backlog Elimination Act of 2000
15 (42 U.S.C. 14135a(d))).”.

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

20 “(e) AUTHORITY FOR KEYBOARD SEARCHES.—

21 “(1) IN GENERAL.—The Director shall ensure
22 that any person who is authorized to access the
23 index described in subsection (a) for purposes of in-
24 cluding information on DNA identification records
25 or DNA analyses in that index may also access that

1 index for purposes of carrying out a one-time key-
2 board search on information obtained from any
3 DNA sample lawfully collected for a criminal justice
4 purpose except for a DNA sample voluntarily sub-
5 mitted solely for elimination purposes.

6 “(2) DEFINITION.—For purposes of paragraph
7 (1), the term ‘keyboard search’ means a search
8 under which information obtained from a DNA sam-
9 ple is compared with information in the index with-
10 out resulting in the information obtained from a
11 DNA sample being included in the index.

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

14 (e) INCREASED PENALTIES FOR MISUSE OF DNA
15 ANALYSES.—(1) Section 210305(c)(2) of the DNA Identi-
16 fication Act of 1994 (42 U.S.C. 14133(c)(2)) is amended
17 by striking “\$100,000” and inserting “\$250,000, or im-
18 prisoned for a period of not more than one year, or both”.

19 (2) Section 10(c) of the DNA Analysis Backlog
20 Elimination Act of 2000 (42 U.S.C. 14135e(c)) is amend-
21 ed by striking “\$100,000” and inserting “\$250,000, or
22 imprisoned for a period of not more than one year, or
23 both”.

24 (f) REPORT TO CONGRESS.—If the Department of
25 Justice plans to modify or supplement the core genetic

1 markers needed for compatibility with the CODIS system,
2 it shall notify the Judiciary Committee of the Senate and
3 the Judiciary Committee of the House of Representatives
4 in writing not later than 180 days before any change is
5 made and explain the reasons for such change.

6 **SEC. 204. TOLLING OF STATUTE OF LIMITATIONS.**

7 (a) IN GENERAL.—Chapter 213 of title 18, United
8 States Code, is amended by adding at the end the fol-
9 lowing:

10 **“§ 3297. Cases involving DNA evidence**

11 “In a case in which DNA testing implicates an identi-
12 fied person in the commission of a felony, except for a
13 felony offense under chapter 109A, no statute of limita-
14 tions that would otherwise preclude prosecution of the of-
15 fense shall preclude such prosecution until a period of time
16 following the implication of the person by DNA testing
17 has elapsed that is equal to the otherwise applicable limi-
18 tation period.”.

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

“3297. Cases involving DNA evidence.”.

22 (c) APPLICATION.—The amendments made by this
23 section shall apply to the prosecution of any offense com-
24 mitted before, on, or after the date of the enactment of

1 this section if the applicable limitation period has not yet
2 expired.

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

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

6 (1) in subsection (a), by inserting “dating vio-
7 lence,” after “domestic violence,”;

8 (2) in subsection (b)—

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

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

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

21 “(A) the length of the relationship;

22 “(B) the type of relationship; and

23 “(C) the frequency of interaction between
24 the persons involved in the relationship.”; and

1 (C) in paragraph (3), as redesignated by
2 subparagraph (A), by inserting “dating vio-
3 lence,” after “domestic violence,”;

4 (3) in subsection (c)—

5 (A) in paragraph (1)—

6 (i) by inserting “, dating violence,”
7 after “between domestic violence”; and

8 (ii) by inserting “dating violence,”
9 after “victims of domestic violence,”;

10 (B) in paragraph (2), by inserting “dating
11 violence,” after “domestic violence,”; and

12 (C) in paragraph (3), by inserting “dating
13 violence,” after “domestic violence,”;

14 (4) in subsection (d)—

15 (A) in paragraph (1), by inserting “, dat-
16 ing violence,” after “domestic violence”;

17 (B) in paragraph (2), by inserting “, dat-
18 ing violence,” after “domestic violence”;

19 (C) in paragraph (3), by inserting “, dat-
20 ing violence,” after “domestic violence”; and

21 (D) in paragraph (4), by inserting “dating
22 violence,” after “domestic violence,”;

23 (5) in subsection (e), by inserting “dating vio-
24 lence,” after “domestic violence,”; and

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

3 **SEC. 206. ENSURING PRIVATE LABORATORY ASSISTANCE IN**
4 **ELIMINATING DNA BACKLOG.**

5 Section 2(d)(3) of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135(d)(3)) is amended
6 to read as follows:
7

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

10 “(A) IN GENERAL.—A grant for the pur-
11 poses specified in paragraph (1), (2), or (5) of
12 subsection (a) may be made in the form of a
13 voucher or contract for laboratory services, even
14 if the laboratory makes a reasonable profit for
15 the services.

16 “(B) REDEMPTION.—A voucher or con-
17 tract under subparagraph (A) may be redeemed
18 at a laboratory operated on a nonprofit or for-
19 profit basis, by a private entity that satisfies
20 quality assurance standards and has been ap-
21 proved by the Attorney General.

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

1 **TITLE III—DNA SEXUAL**
2 **ASSAULT JUSTICE ACT OF 2004**

3 **SEC. 301. SHORT TITLE.**

4 This title may be cited as the “DNA Sexual Assault
5 Justice Act of 2004”.

6 **SEC. 302. ENSURING PUBLIC CRIME LABORATORY COMPLI-**
7 **ANCE WITH FEDERAL STANDARDS.**

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

11 “(2) prepared by laboratories that—

12 “(A) not later than 2 years after the date
13 of enactment of the DNA Sexual Assault Jus-
14 tice Act of 2004, have been accredited by a
15 nonprofit professional association of persons ac-
16 tively involved in forensic science that is nation-
17 ally recognized within the forensic science com-
18 munity; and

19 “(B) undergo external audits, not less than
20 once every 2 years, that demonstrate compli-
21 ance with standards established by the Director
22 of the Federal Bureau of Investigation; and”.

1 **SEC. 303. DNA TRAINING AND EDUCATION FOR LAW EN-**
2 **FORCEMENT, CORRECTIONAL PERSONNEL,**
3 **AND COURT OFFICERS.**

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

9 (1) law enforcement personnel, including police
10 officers and other first responders, evidence techni-
11 cians, investigators, and others who collect or exam-
12 ine evidence of crime;

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

15 (3) forensic science professionals; and

16 (4) corrections personnel, including prison and
17 jail personnel, and probation, parole, and other offi-
18 cers involved in supervision.

19 (b) AUTHORIZATION OF APPROPRIATIONS.—There
20 are authorized to be appropriated \$12,500,000 for each
21 of fiscal years 2005 through 2009 to carry out this sec-
22 tion.

23 **SEC. 304. SEXUAL ASSAULT FORENSIC EXAM PROGRAM**
24 **GRANTS.**

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

1 sistance, education, equipment, and information relating
2 to the identification, collection, preservation, analysis, and
3 use of DNA samples and DNA evidence by medical per-
4 sonnel and other personnel, including doctors, medical ex-
5 aminers, coroners, nurses, victim service providers, and
6 other professionals involved in treating victims of sexual
7 assault and sexual assault examination programs, includ-
8 ing SANE (Sexual Assault Nurse Examiner), SAFE (Sex-
9 ual Assault Forensic Examiner), and SART (Sexual As-
10 sault Response Team).

11 (b) ELIGIBLE ENTITY.—For purposes of this section,
12 the term “eligible entity” includes—

13 (1) States;

14 (2) units of local government; and

15 (3) sexual assault examination programs, in-
16 cluding—

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

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

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

23 (D) State sexual assault coalitions;

1 (E) medical personnel, including doctors,
2 medical examiners, coroners, and nurses, in-
3 volved in treating victims of sexual assault; and

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

6 (c) AUTHORIZATION OF APPROPRIATIONS.—There
7 are authorized to be appropriated \$30,000,000 for each
8 of fiscal years 2005 through 2009 to carry out this sec-
9 tion.

10 **SEC. 305. DNA RESEARCH AND DEVELOPMENT.**

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

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

1 ments to law enforcement operations, and cost-effective-
2 ness of increased collection and use of DNA evidence.

3 (c) AUTHORIZATION OF APPROPRIATIONS.—There
4 are authorized to be appropriated \$15,000,000 for each
5 of fiscal years 2005 through 2009 to carry out this sec-
6 tion.

7 **SEC. 306. NATIONAL FORENSIC SCIENCE COMMISSION.**

8 (a) APPOINTMENT.—The Attorney General shall ap-
9 point a National Forensic Science Commission (in this
10 section referred to as the “Commission”), composed of
11 persons experienced in criminal justice issues, including
12 persons from the forensic science and criminal justice
13 communities, to carry out the responsibilities under sub-
14 section (b).

15 (b) RESPONSIBILITIES.—The Commission shall—

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

18 (2) make recommendations to the Attorney
19 General for maximizing the use of forensic tech-
20 nologies and techniques to solve crimes and protect
21 the public;

22 (3) identify potential scientific advances that
23 may assist law enforcement in using forensic tech-
24 nologies and techniques to protect the public;

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

5 (5) disseminate, through the National Institute
6 of Justice, best practices concerning the collection
7 and analyses of forensic evidence to help ensure
8 quality and consistency in the use of forensic tech-
9 nologies and techniques to solve crimes and protect
10 the public;

11 (6) examine additional issues pertaining to fo-
12 rensic science as requested by the Attorney General;

13 (7) examine Federal, State, and local privacy
14 protection statutes, regulations, and practices relat-
15 ing to access to, or use of, stored DNA samples or
16 DNA analyses, to determine whether such protec-
17 tions are sufficient;

18 (8) make specific recommendations to the At-
19 torney General, as necessary, to enhance the protec-
20 tions described in paragraph (7) to ensure—

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

23 (B) the accuracy, security, and confiden-
24 tiality of DNA information;

1 (C) the timely removal and destruction of
2 obsolete, expunged, or inaccurate DNA infor-
3 mation; and

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

6 (9) provide a forum for the exchange and dis-
7 semination of ideas and information in furtherance
8 of the objectives described in paragraphs (1) through
9 (8).

10 (c) PERSONNEL; PROCEDURES.—The Attorney Gen-
11 eral shall—

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

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

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

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

21 **SEC. 307. FBI DNA PROGRAMS.**

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

1 through 2009 to carry out the DNA programs and activi-
2 ties described under subsection (b).

3 (b) PROGRAMS AND ACTIVITIES.—The Federal Bu-
4 reau of Investigation may use any amounts appropriated
5 pursuant to subsection (a) for—

6 (1) nuclear DNA analysis;

7 (2) mitochondrial DNA analysis;

8 (3) regional mitochondrial DNA laboratories;

9 (4) the Combined DNA Index System;

10 (5) the Federal Convicted Offender DNA Pro-
11 gram; and

12 (6) DNA research and development.

13 **SEC. 308. DNA IDENTIFICATION OF MISSING PERSONS.**

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

17 (b) REQUIREMENT.—Each State or unit of local gov-
18 ernment that receives funding under this section shall be
19 required to submit the DNA profiles of such missing per-
20 sons and unidentified human remains to the National
21 Missing Persons DNA Database of the Federal Bureau
22 of Investigation.

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

1 **SEC. 309. ENHANCED CRIMINAL PENALTIES FOR UNAU-**
2 **THORIZED DISCLOSURE OR USE OF DNA IN-**
3 **FORMATION.**

4 Section 10(c) of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135e(c)) is amended to
5 read as follows:
6

7 “(c) CRIMINAL PENALTY.—A person who knowingly
8 discloses a sample or result described in subsection (a) in
9 any manner to any person not authorized to receive it,
10 or obtains or uses, without authorization, such sample or
11 result, shall be fined not more than \$250,000, or imprisoned for a period of not more than one year. Each instance
12 of disclosure, obtaining, or use shall constitute a separate
13 offense under this subsection.”.

14
15 **SEC. 310. TRIBAL COALITION GRANTS.**

16 (a) IN GENERAL.—Section 2001 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42
17 U.S.C. 3796gg) is amended by adding at the end the following:
18
19

20 “(d) TRIBAL COALITION GRANTS.—

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

24 “(A) increasing awareness of domestic violence and sexual assault against American Indian and Alaska Native women;
25
26

1 “(B) enhancing the response to violence
2 against American Indian and Alaska Native
3 women at the tribal, Federal, and State levels;
4 and

5 “(C) identifying and providing technical
6 assistance to coalition membership and tribal
7 communities to enhance access to essential serv-
8 ices to American Indian women victimized by
9 domestic and sexual violence.

10 “(2) GRANTS TO TRIBAL COALITIONS.—The At-
11 torney General shall award grants under paragraph
12 (1) to—

13 “(A) established nonprofit, nongovern-
14 mental tribal coalitions addressing domestic vio-
15 lence and sexual assault against American In-
16 dian and Alaska Native women; and

17 “(B) individuals or organizations that pro-
18 pose to incorporate as nonprofit, nongovern-
19 mental tribal coalitions to address domestic vio-
20 lence and sexual assault against American In-
21 dian and Alaska Native women.

22 “(3) ELIGIBILITY FOR OTHER GRANTS.—Re-
23 ceipt of an award under this subsection by tribal do-
24 mestic violence and sexual assault coalitions shall
25 not preclude the coalition from receiving additional

1 grants under this title to carry out the purposes de-
 2 scribed in subsection (b).”.

3 (b) TECHNICAL AMENDMENT.—Effective as of No-
 4 vember 2, 2002, and as if included therein as enacted,
 5 Public Law 107–273 (116 Stat. 1789) is amended in sec-
 6 tion 402(2) by striking “sections 2006 through 2011” and
 7 inserting “sections 2007 through 2011”.

8 (c) AMOUNTS.—Section 2007 of the Omnibus Crime
 9 Control and Safe Streets Act of 1968 (as redesignated by
 10 section 402(2) of Public Law 107–273, as amended by
 11 subsection (b)) is amended by amending subsection (b)(4)
 12 (42 U.S.C. 3796gg–1(b)(4)) to read as follows:

13 “(4) $\frac{1}{54}$ shall be available for grants under sec-
 14 tion 2001(d);”.

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

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

20 (1) in subsection (a)—

21 (A) by striking “shall use the grant to
 22 carry out” and inserting “shall use the grant to
 23 do any one or more of the following:

24 “(1) To carry out”; and

25 (B) by adding at the end the following:

1 “(2) To eliminate a backlog in the analysis of
2 forensic science evidence, including firearms exam-
3 ination, latent prints, toxicology, controlled sub-
4 stances, forensic pathology, questionable documents,
5 and trace evidence.

6 “(3) To train, assist, and employ forensic lab-
7 oratory personnel, as needed, to eliminate such a
8 backlog.”;

9 (2) in subsection (b), by striking “under this
10 part” and inserting “for the purpose set forth in
11 subsection (a)(1)”; and

12 (3) by adding at the end the following:

13 “(e) BACKLOG DEFINED.—For purposes of this sec-
14 tion, a backlog in the analysis of forensic science evidence
15 exists if such evidence—

16 “(1) has been stored in a laboratory, medical
17 examiner’s office, coroner’s office, law enforcement
18 storage facility, or medical facility; and

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

22 (b) EXTERNAL AUDITS.—Section 2802 of the Omni-
23 bus Crime Control and Safe Streets Act of 1968 (42
24 U.S.C. 3797k) is amended—

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

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

5 (3) by adding at the end the following:

6 “(4) a certification that a government entity ex-
7 ists and an appropriate process is in place to con-
8 duct independent external investigations into allega-
9 tions of serious negligence or misconduct substan-
10 tially affecting the integrity of the forensic results
11 committed by employees or contractors of any foren-
12 sic laboratory system, medical examiner’s office,
13 coroner’s office, law enforcement storage facility, or
14 medical facility in the State that will receive a por-
15 tion of the grant amount.”.

16 (c) THREE-YEAR EXTENSION OF AUTHORIZATION OF
17 APPROPRIATIONS.—Section 1001(a)(24) of the Omnibus
18 Crime Control and Safe Streets Act of 1968 (42 U.S.C.
19 3793(a)(24)) is amended—

20 (1) in subparagraph (E), by striking “and” at
21 the end;

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

24 (3) by adding at the end the following:

25 “(G) \$20,000,000 for fiscal year 2007;

1 “(H) \$20,000,000 for fiscal year 2008; and

2 “(I) \$20,000,000 for fiscal year 2009.”.

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

7 **SEC. 312. REPORT TO CONGRESS.**

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

12 (b) **CONTENTS.**—The report submitted under sub-
13 section (a) shall include a description of—

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

16 (A) collecting and entering DNA samples
17 from offenders convicted of qualifying offenses
18 for inclusion in the Combined DNA Index Sys-
19 tem (referred to in this subsection as
20 “CODIS”);

21 (B) analyzing samples from crime scenes,
22 including evidence collected from sexual as-
23 saults and other serious violent crimes, and en-
24 tering such DNA analyses in CODIS; and

1 (C) increasing the capacity of forensic lab-
2 oratories to conduct DNA analyses;

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

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

12 (4) grants awarded and the use of such grants
13 by eligible entities for DNA training and education
14 programs for law enforcement, correctional per-
15 sonnel, court officers, medical personnel, victim serv-
16 ice providers, and other personnel authorized under
17 sections 303 and 304;

18 (5) grants awarded and the use of such grants
19 by eligible entities to conduct DNA research and de-
20 velopment programs to improve forensic DNA tech-
21 nology, and implement demonstration projects under
22 section 305;

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

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

3 (8) grants awarded and the use of such grants
4 by eligible entities to promote the use of forensic
5 DNA technology to identify missing persons and un-
6 identified human remains under section 308;

7 (9) grants awarded and the use of such grants
8 by eligible entities to eliminate forensic science back-
9 logs under the amendments made by section 202;

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

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

14 **TITLE IV—INNOCENCE**
15 **PROTECTION ACT OF 2004**

16 **SEC. 401. SHORT TITLE.**

17 This title may be cited as the “Innocence Protection
18 Act of 2004”.

19 **Subtitle A—Exonerating the**
20 **Innocent Through DNA Testing**

21 **SEC. 411. FEDERAL POST-CONVICTION DNA TESTING.**

22 (a) FEDERAL CRIMINAL PROCEDURE.—

23 (1) IN GENERAL.—Part II of title 18, United
24 States Code, is amended by inserting after chapter
25 228 the following:

1 **“CHAPTER 228A—POST-CONVICTION DNA**
 2 **TESTING**

“Sec.

“3600. DNA testing.

“3600A. Preservation of biological evidence.

3 **“§ 3600. DNA testing**

4 “(a) IN GENERAL.—Upon a written motion by an in-
 5 dividual under a sentence of imprisonment or death pursu-
 6 ant to a conviction for a Federal offense (referred to in
 7 this section as the ‘applicant’), the court that entered the
 8 judgment of conviction shall order DNA testing of specific
 9 evidence if the court finds that all of the following apply:

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

12 “(A) the Federal offense for which the ap-
 13 plicant is under a sentence of imprisonment or
 14 death; or

15 “(B) another Federal or State offense, if—

16 “(i) evidence of such offense was ad-
 17 mitted during a Federal death sentencing
 18 hearing and exoneration of such offense
 19 would entitle the applicant to a reduced
 20 sentence or new sentencing hearing; and

21 “(ii) in the case of a State offense—

22 “(I) the applicant demonstrates
 23 that there is no adequate remedy
 24 under State law to permit DNA test-

1 ing of the specified evidence relating
2 to the State offense; and

3 “(II) to the extent available, the
4 applicant has exhausted all remedies
5 available under State law for request-
6 ing DNA testing of specified evidence
7 relating to the State offense.

8 “(2) The specific evidence to be tested was se-
9 cured in relation to the investigation or prosecution
10 of the Federal or State offense referenced in the ap-
11 plicant’s assertion under paragraph (1).

12 “(3) The specific evidence to be tested—

13 “(A) was not previously subjected to DNA
14 testing and the applicant did not—

15 “(i) knowingly and voluntarily waive
16 the right to request DNA testing of that
17 evidence in a court proceeding after the
18 date of enactment of the Innocence Protec-
19 tion Act of 2004; or

20 “(ii) knowingly fail to request DNA
21 testing of that evidence in a prior motion
22 for postconviction DNA testing; or

23 “(B) was previously subjected to DNA
24 testing and the applicant is requesting DNA
25 testing using a new method or technology that

1 is substantially more probative than the prior
2 DNA testing.

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

10 “(5) The proposed DNA testing is reasonable in
11 scope, uses scientifically sound methods, and is con-
12 sistent with accepted forensic practices.

13 “(6) The applicant identifies a theory of de-
14 fense that—

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

17 “(B) would establish the actual innocence
18 of the applicant of the Federal or State offense
19 referenced in the applicant’s assertion under
20 paragraph (1).

21 “(7) If the applicant was convicted following a
22 trial, the identity of the perpetrator was at issue in
23 the trial.

1 “(8) The proposed DNA testing of the specific
2 evidence may produce new material evidence that
3 would—

4 “(A) support the theory of defense ref-
5 erenced in paragraph (6); and

6 “(B) raise a reasonable probability that
7 the applicant did not commit the offense.

8 “(9) The applicant certifies that the applicant
9 will provide a DNA sample for purposes of compari-
10 son.

11 “(10) The motion is made in a timely fashion,
12 subject to the following conditions:

13 “(A) There shall be a rebuttable presump-
14 tion of timeliness if the motion is made within
15 60 months of enactment of the Justice For All
16 Act of 2004 or within 36 months of conviction,
17 whichever comes later. Such presumption may
18 be rebutted upon a showing—

19 “(i) that the applicant’s motion for a
20 DNA test is based solely upon information
21 used in a previously denied motion; or

22 “(ii) of clear and convincing evidence
23 that applicant’s filing is done solely to
24 cause delay or harass.

1 “(B) There shall be a rebuttable presump-
2 tion against timeliness for any motion not satis-
3 fying subparagraph (A) above. Such presump-
4 tion may be rebutted upon the court’s finding—

5 “(i) that the applicant was or is in-
6 competent and such incompetence substan-
7 tially contributed to the delay in the appli-
8 cant’s motion for a DNA test;

9 “(ii) the evidence to be tested is newly
10 discovered DNA evidence;

11 “(iii) that applicant’s motion is not
12 based solely upon the applicant’s own as-
13 sertion of innocence and, after considering
14 all relevant facts and circumstances sur-
15 rounding the motion, a denial would result
16 in a manifest injustice; or

17 “(iv) upon good cause shown.

18 “(C) For purposes of this paragraph—

19 “(i) the term ‘incompetence’ has the
20 meaning as defined in section 4241 of title
21 18, United States Code;

22 “(ii) the term ‘manifest’ means that
23 which is unmistakable, clear, plain, or in-
24 disputable and requires that the opposite
25 conclusion be clearly evident.

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

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

5 “(A) notify the Government; and

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

8 “(2) PRESERVATION ORDER.—To the extent
9 necessary to carry out proceedings under this sec-
10 tion, the court shall direct the Government to pre-
11 serve the specific evidence relating to a motion under
12 subsection (a).

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

17 “(c) TESTING PROCEDURES.—

18 “(1) IN GENERAL.—The court shall direct that
19 any DNA testing ordered under this section be car-
20 ried out by the Federal Bureau of Investigation.

21 “(2) EXCEPTION.—Notwithstanding paragraph
22 (1), the court may order DNA testing by another
23 qualified laboratory if the court makes all necessary
24 orders to ensure the integrity of the specific evidence

1 and the reliability of the testing process and test re-
2 sults.

3 “(3) COSTS.—The costs of any DNA testing or-
4 dered under this section shall be paid—

5 “(A) by the applicant; or

6 “(B) in the case of an applicant who is in-
7 digent, by the Government.

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

10 “(1) any DNA testing ordered under this sec-
11 tion shall be completed not later than 60 days after
12 the date on which the Government responds to the
13 motion filed under subsection (a); and

14 “(2) not later than 120 days after the date on
15 which the DNA testing ordered under this section is
16 completed, the court shall order any post-testing
17 procedures under subsection (f) or (g), as appro-
18 priate.

19 “(e) REPORTING OF TEST RESULTS.—

20 “(1) IN GENERAL.—The results of any DNA
21 testing ordered under this section shall be simulta-
22 neously disclosed to the court, the applicant, and the
23 Government.

24 “(2) NDIS.—The Government shall submit any
25 test results relating to the DNA of the applicant to

1 the National DNA Index System (referred to in this
2 subsection as ‘NDIS’).

3 “(3) RETENTION OF DNA SAMPLE.—

4 “(A) ENTRY INTO NDIS.—If the DNA test
5 results obtained under this section are inconclu-
6 sive or show that the applicant was the source
7 of the DNA evidence, the DNA sample of the
8 applicant may be retained in NDIS.

9 “(B) MATCH WITH OTHER OFFENSE.—If
10 the DNA test results obtained under this sec-
11 tion exclude the applicant as the source of the
12 DNA evidence, and a comparison of the DNA
13 sample of the applicant results in a match be-
14 tween the DNA sample of the applicant and an-
15 other offense, the Attorney General shall notify
16 the appropriate agency and preserve the DNA
17 sample of the applicant.

18 “(C) NO MATCH.—If the DNA test results
19 obtained under this section exclude the appli-
20 cant as the source of the DNA evidence, and a
21 comparison of the DNA sample of the applicant
22 does not result in a match between the DNA
23 sample of the applicant and another offense,
24 the Attorney General shall destroy the DNA
25 sample of the applicant and ensure that such

1 information is not retained in NDIS if there is
2 no other legal authority to retain the DNA
3 sample of the applicant in NDIS.

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

6 “(1) INCONCLUSIVE RESULTS.—If DNA test re-
7 sults obtained under this section are inconclusive,
8 the court may order further testing, if appropriate,
9 or may deny the applicant relief.

10 “(2) INCULPATORY RESULTS.—If DNA test re-
11 sults obtained under this section show that the ap-
12 plicant was the source of the DNA evidence, the
13 court shall—

14 “(A) deny the applicant relief; and

15 “(B) on motion of the Government—

16 “(i) make a determination whether
17 the applicant’s assertion of actual inno-
18 cence was false, and, if the court makes
19 such a finding, the court may hold the ap-
20 plicant in contempt;

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

24 “(iii) forward the finding to the Direc-
25 tor of the Bureau of Prisons, who, upon

1 receipt of such a finding, may deny, wholly
2 or in part, the good conduct credit author-
3 ized under section 3632 on the basis of
4 that finding;

5 “(iv) if the applicant is subject to the
6 jurisdiction of the United States Parole
7 Commission, forward the finding to the
8 Commission so that the Commission may
9 deny parole on the basis of that finding;
10 and

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

14 “(3) SENTENCE.—In any prosecution of an ap-
15 plicant under chapter 79 for false assertions or other
16 conduct in proceedings under this section, the court,
17 upon conviction of the applicant, shall sentence the
18 applicant to a term of imprisonment of not less than
19 3 years, which shall run consecutively to any other
20 term of imprisonment the applicant is serving.

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

23 “(1) IN GENERAL.—Notwithstanding any law
24 that would bar a motion under this paragraph as
25 untimely, if DNA test results obtained under this

1 section exclude the applicant as the source of the
2 DNA evidence, the applicant may file a motion for
3 a new trial or resentencing, as appropriate. The
4 court shall establish a reasonable schedule for the
5 applicant to file such a motion and for the Govern-
6 ment to respond to the motion.

7 “(2) STANDARD FOR GRANTING MOTION FOR
8 NEW TRIAL OR RESENTENCING.—The court shall
9 grant the motion of the applicant for a new trial or
10 resentencing, as appropriate, if the DNA test re-
11 sults, when considered with all other evidence in the
12 case (regardless of whether such evidence was intro-
13 duced at trial), establish by compelling evidence that
14 a new trial would result in an acquittal of—

15 “(A) in the case of a motion for a new
16 trial, the Federal offense for which the appli-
17 cant is under a sentence of imprisonment or
18 death; and

19 “(B) in the case of a motion for resen-
20 tencing, another Federal or State offense, if evi-
21 dence of such offense was admitted during a
22 Federal death sentencing hearing and exonera-
23 tion of such offense would entitle the applicant
24 to a reduced sentence or a new sentencing pro-
25 ceeding.

1 “(h) OTHER LAWS UNAFFECTED.—

2 “(1) POST-CONVICTION RELIEF.—Nothing in
3 this section shall affect the circumstances under
4 which a person may obtain DNA testing or post-con-
5 viction relief under any other law.

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

9 “(3) NOT A MOTION UNDER SECTION 2255.—A
10 motion under this section shall not be considered to
11 be a motion under section 2255 for purposes of de-
12 termining whether the motion or any other motion
13 is a second or successive motion under section 2255.

14 **“§ 3600A. Preservation of biological evidence**

15 “(a) IN GENERAL.—Notwithstanding any other pro-
16 vision of law, the Government shall preserve biological evi-
17 dence that was secured in the investigation or prosecution
18 of a Federal offense, if a defendant is under a sentence
19 of imprisonment for such offense.

20 “(b) DEFINED TERM.—For purposes of this section,
21 the term ‘biological evidence’ means—

22 “(1) a sexual assault forensic examination kit;
23 or

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

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

3 “(1) a court has denied a request or motion for
4 DNA testing of the biological evidence by the de-
5 fendant under section 3600, and no appeal is pend-
6 ing;

7 “(2) the defendant knowingly and voluntarily
8 waived the right to request DNA testing of the bio-
9 logical evidence in a court proceeding conducted
10 after the date of enactment of the Innocence Protec-
11 tion Act of 2004;

12 “(3) after a conviction becomes final and the
13 defendant has exhausted all opportunities for direct
14 review of the conviction, the defendant is notified
15 that the biological evidence may be destroyed and
16 the defendant does not file a motion under section
17 3600 within 180 days of receipt of the notice;

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

21 “(B) the Government takes reasonable meas-
22 ures to remove and preserve portions of the material
23 evidence sufficient to permit future DNA testing; or

24 “(5) the biological evidence has already been
25 subjected to DNA testing under section 3600 and

1 the results included the defendant as the source of
2 such evidence.

3 “(d) OTHER PRESERVATION REQUIREMENT.—Noth-
4 ing in this section shall preempt or supersede any statute,
5 regulation, court order, or other provision of law that may
6 require evidence, including biological evidence, to be pre-
7 served.

8 “(e) REGULATIONS.—Not later than 180 days after
9 the date of enactment of the Innocence Protection Act of
10 2004, the Attorney General shall promulgate regulations
11 to implement and enforce this section, including appro-
12 priate disciplinary sanctions to ensure that employees
13 comply with such regulations.

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

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

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

“228A. Post-conviction DNA testing 3600”.

5 (b) SYSTEM FOR REPORTING MOTIONS.—

6 (1) ESTABLISHMENT.—The Attorney General
 7 shall establish a system for reporting and tracking
 8 motions filed in accordance with section 3600 of title
 9 18, United States Code.

10 (2) OPERATION.—In operating the system es-
 11 tablished under paragraph (1), the Federal courts
 12 shall provide to the Attorney General any requested
 13 assistance in operating such a system and in ensur-
 14 ing the accuracy and completeness of information in-
 15 cluded in that system.

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

19 (A) a list of motions filed under section
 20 3600 of title 18, United States Code, as added
 21 by this title;

22 (B) whether DNA testing was ordered pur-
 23 suant to such a motion;

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

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

4 (4) ADDITIONAL INFORMATION.—The report re-
5 quired to be submitted under paragraph (3) may in-
6 clude any other information the Attorney General
7 determines to be relevant in assessing the operation,
8 utility, or costs of section 3600 of title 18, United
9 States Code, as added by this title, and any rec-
10 ommendations the Attorney General may have relat-
11 ing to future legislative action concerning that sec-
12 tion.

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

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

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

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

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

9 **SEC. 413. INCENTIVE GRANTS TO STATES TO ENSURE CON-**
10 **SIDERATION OF CLAIMS OF ACTUAL INNO-**
11 **CENCE.**

12 For each of fiscal years 2005 through 2009, all funds
13 appropriated to carry out sections 303, 305, 308, and 412
14 shall be reserved for grants to eligible entities that—

15 (1) meet the requirements under section 303,
16 305, 308, or 412, as appropriate; and

17 (2) demonstrate that the State in which the eli-
18 gible entity operates—

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

21 (i) under a State statute enacted be-
22 fore the date of enactment of this Act (or
23 extended or renewed after such date), to
24 persons convicted after trial and under a
25 sentence of imprisonment or death for a

1 State felony offense, in a manner that en-
2 sures a reasonable process for resolving
3 claims of actual innocence; or

4 (ii) under a State statute enacted
5 after the date of enactment of this Act, or
6 under a State rule, regulation, or practice,
7 to persons under a sentence of imprison-
8 ment or death for a State felony offense,
9 in a manner comparable to section 3600(a)
10 of title 18, United States Code (provided
11 that the State statute, rule, regulation, or
12 practice may make post-conviction DNA
13 testing available in cases in which such
14 testing is not required by such section),
15 and if the results of such testing exclude
16 the applicant, permits the applicant to
17 apply for post-conviction relief, notwith-
18 standing any provision of law that would
19 otherwise bar such application as untimely;
20 and

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

24 (i) under a State statute or a State or
25 local rule, regulation, or practice, enacted

1 or adopted before the date of enactment of
2 this Act (or extended or renewed after
3 such date), in a manner that ensures that
4 reasonable measures are taken by all juris-
5 dictions within the State to preserve such
6 evidence; or

7 (ii) under a State statute or a State
8 or local rule, regulation, or practice, en-
9 acted or adopted after the date of enact-
10 ment of this Act, in a manner comparable
11 to section 3600A of title 18, United States
12 Code, if—

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

16 (II) such jurisdictions may pre-
17 serve such evidence for longer than
18 the period of time that such evidence
19 would be required to be preserved
20 under such section 3600A.

1 **Subtitle B—Improving the Quality**
2 **of Representation in State Cap-**
3 **ital Cases**

4 **SEC. 421. CAPITAL REPRESENTATION IMPROVEMENT**
5 **GRANTS.**

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

10 (b) DEFINED TERM.—In this section, the term “legal
11 representation” means legal counsel and investigative, ex-
12 pert, and other services necessary for competent represen-
13 tation.

14 (c) USE OF FUNDS.—Grants awarded under sub-
15 section (a)—

16 (1) shall be used to establish, implement, or im-
17 prove an effective system for providing competent
18 legal representation to—

19 (A) indigents charged with an offense sub-
20 ject to capital punishment;

21 (B) indigents who have been sentenced to
22 death and who seek appellate or collateral relief
23 in State court; and

1 (C) indigents who have been sentenced to
2 death and who seek review in the Supreme
3 Court of the United States; and

4 (2) shall not be used to fund, directly or indi-
5 rectly, representation in specific capital cases.

6 (d) APPORTIONMENT OF FUNDS.—

7 (1) IN GENERAL.—Of the funds awarded under
8 subsection (a)—

9 (A) not less than 75 percent shall be used
10 to carry out the purpose described in subsection
11 (c)(1)(A); and

12 (B) not more than 25 percent shall be
13 used to carry out the purpose described in sub-
14 section (c)(1)(B).

15 (2) WAIVER.—The Attorney General may waive
16 the requirement under this subsection for good cause
17 shown.

18 (e) EFFECTIVE SYSTEM.—As used in subsection
19 (c)(1), an effective system for providing competent legal
20 representation is a system that—

21 (1) invests the responsibility for appointing
22 qualified attorneys to represent indigents in capital
23 cases—

24 (A) in a public defender program that re-
25 lies on staff attorneys, members of the private

1 bar, or both, to provide representation in cap-
2 ital cases;

3 (B) in an entity established by statute or
4 by the highest State court with jurisdiction in
5 criminal cases, which is composed of individuals
6 with demonstrated knowledge and expertise in
7 capital representation; or

8 (C) pursuant to a statutory procedure en-
9 acted before the date of the enactment of this
10 Act under which the trial judge is required to
11 appoint qualified attorneys from a roster main-
12 tained by a State or regional selection com-
13 mittee or similar entity; and

14 (2) requires the program described in para-
15 graph (1)(A), the entity described in paragraph
16 (1)(B), or an appropriate entity designated pursuant
17 to the statutory procedure described in paragraph
18 (1)(C), as applicable, to—

19 (A) establish qualifications for attorneys
20 who may be appointed to represent indigents in
21 capital cases;

22 (B) establish and maintain a roster of
23 qualified attorneys;

24 (C) except in the case of a selection com-
25 mittee or similar entity described in paragraph

(1)(C), assign 2 attorneys from the roster to represent an indigent in a capital case, or provide the trial judge a list of not more than 2 pairs of attorneys from the roster, from which 1 pair shall be assigned, provided that, in any case in which the State elects not to seek the death penalty, a court may find, subject to any requirement of State law, that a second attorney need not remain assigned to represent the indigent to ensure competent representation;

(D) conduct, sponsor, or approve specialized training programs for attorneys representing defendants in capital cases;

(E)(i) monitor the performance of attorneys who are appointed and their attendance at training programs; and

“(ii) remove from the roster attorneys who—

“(I) fail to deliver effective representation or engage in unethical conduct;

“(II) fail to comply with such requirements as such program, entity, or selection committee or similar entity may establish regarding participation in training programs; or

1 “(III) during the past 5 years, have
2 been sanctioned by a bar association or
3 court for ethical misconduct relating to the
4 attorney’s conduct as defense counsel in a
5 criminal case in Federal or State court;
6 and

7 (F) ensure funding for the cost of com-
8 petent legal representation by the defense team
9 and outside experts selected by counsel, who
10 shall be compensated—

11 (i) in the case of a State that employs
12 a statutory procedure described in para-
13 graph (1)(C), in accordance with the re-
14 quirements of that statutory procedure;
15 and

16 (ii) in all other cases, as follows:

17 (I) Attorneys employed by a pub-
18 lic defender program shall be com-
19 pensated according to a salary scale
20 that is commensurate with the salary
21 scale of the prosecutor’s office in the
22 jurisdiction.

23 (II) Appointed attorneys shall be
24 compensated for actual time and serv-
25 ice, computed on an hourly basis and

1 at a reasonable hourly rate in light of
2 the qualifications and experience of
3 the attorney and the local market for
4 legal representation in cases reflecting
5 the complexity and responsibility of
6 capital cases.

7 (III) Non-attorney members of
8 the defense team, including investiga-
9 tors, mitigation specialists, and ex-
10 perts, shall be compensated at a rate
11 that reflects the specialized skills
12 needed by those who assist counsel
13 with the litigation of death penalty
14 cases.

15 (IV) Attorney and non-attorney
16 members of the defense team shall be
17 reimbursed for reasonable incidental
18 expenses.

19 **SEC. 422. CAPITAL PROSECUTION IMPROVEMENT GRANTS.**

20 (a) IN GENERAL.—The Attorney General shall award
21 grants to States for the purpose of enhancing the ability
22 of prosecutors to effectively represent the public in State
23 capital cases.

24 (b) USE OF FUNDS.—

1 (1) PERMITTED USES.—Grants awarded under
2 subsection (a) shall be used for one or more of the
3 following:

4 (A) To design and implement training pro-
5 grams for State and local prosecutors to ensure
6 effective representation in State capital cases.

7 (B) To develop and implement appropriate
8 standards and qualifications for State and local
9 prosecutors who litigate State capital cases.

10 (C) To assess the performance of State
11 and local prosecutors who litigate State capital
12 cases, provided that such assessment shall not
13 include participation by the assessor in the trial
14 of any specific capital case.

15 (D) To identify and implement any poten-
16 tial legal reforms that may be appropriate to
17 minimize the potential for error in the trial of
18 capital cases.

19 (E) To establish a program under which
20 State and local prosecutors conduct a system-
21 atic review of cases in which a death sentence
22 was imposed in order to identify cases in which
23 post-conviction DNA testing may be appro-
24 priate.

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

3 (2) PROHIBITED USE.—Grants awarded under
4 subsection (a) shall not be used to fund, directly or
5 indirectly, the prosecution of specific capital cases.

6 **SEC. 423. APPLICATIONS.**

7 (a) IN GENERAL.—The Attorney General shall estab-
8 lish a process through which a State may apply for a grant
9 under this subtitle.

10 (b) APPLICATION.—

11 (1) IN GENERAL.—A State desiring a grant
12 under this subtitle shall submit an application to the
13 Attorney General at such time, in such manner, and
14 containing such information as the Attorney General
15 may reasonably require.

16 (2) CONTENTS.—Each application submitted
17 under paragraph (1) shall contain—

18 (A) a certification by an appropriate offi-
19 cer of the State that the State authorizes cap-
20 ital punishment under its laws and conducts, or
21 will conduct, prosecutions in which capital pun-
22 ishment is sought;

23 (B) a description of the communities to be
24 served by the grant, including the nature of ex-

1 isting capital defender services and capital pros-
2 ecution programs within such communities;

3 (C) a long-term statewide strategy and de-
4 tailed implementation plan that—

5 (i) reflects consultation with the judi-
6 ciary, the organized bar, and State and
7 local prosecutor and defender organiza-
8 tions; and

9 (ii) establishes as a priority improve-
10 ment in the quality of trial-level represen-
11 tation of indigents charged with capital
12 crimes and trial-level prosecution of capital
13 crimes;

14 (D) in the case of a State that employs a
15 statutory procedure described in section
16 421(e)(1)(C), a certification by an appropriate
17 officer of the State that the State is in substan-
18 tial compliance with the requirements of the ap-
19 plicable State statute; and

20 (E) assurances that Federal funds received
21 under this subtitle shall be—

22 (i) used to supplement and not sup-
23 plant non-Federal funds that would other-
24 wise be available for activities funded
25 under this subtitle; and

1 (ii) allocated in accordance with sec-
2 tion 426(b).

3 **SEC. 424. STATE REPORTS.**

4 (a) IN GENERAL.—Each State receiving funds under
5 this subtitle shall submit an annual report to the Attorney
6 General that—

7 (1) identifies the activities carried out with such
8 funds; and

9 (2) explains how each activity complies with the
10 terms and conditions of the grant.

11 (b) CAPITAL REPRESENTATION IMPROVEMENT
12 GRANTS.—With respect to the funds provided under sec-
13 tion 421, a report under subsection (a) shall include—

14 (1) an accounting of all amounts expended;

15 (2) an explanation of the means by which the
16 State—

17 (A) invests the responsibility for identi-
18 fying and appointing qualified attorneys to rep-
19 resent indigents in capital cases in a program
20 described in section 421(e)(1)(A), an entity de-
21 scribed in section 421(e)(1)(B), or a selection
22 committee or similar entity described in section
23 421(e)(1)(C); and

24 (B) requires such program, entity, or selec-
25 tion committee or similar entity, or other appro-

1 priate entity designated pursuant to the statu-
2 tory procedure described in section
3 421(e)(1)(C), to—

4 (i) establish qualifications for attor-
5 neys who may be appointed to represent
6 indigents in capital cases in accordance
7 with section 421(e)(2)(A);

8 (ii) establish and maintain a roster of
9 qualified attorneys in accordance with sec-
10 tion 421(e)(2)(B);

11 (iii) assign attorneys from the roster
12 in accordance with section 421(e)(2)(C);

13 (iv) conduct, sponsor, or approve spe-
14 cialized training programs for attorneys
15 representing defendants in capital cases in
16 accordance with section 421(e)(2)(D);

17 (v) monitor the performance and
18 training program attendance of appointed
19 attorneys, and remove from the roster at-
20 torneys who fail to deliver effective rep-
21 resentation or fail to comply with such re-
22 quirements as such program, entity, or se-
23 lection committee or similar entity may es-
24 tablish regarding participation in training

1 programs, in accordance with section
2 421(e)(2)(E); and

3 (vi) ensure funding for the cost of
4 competent legal representation by the de-
5 fense team and outside experts selected by
6 counsel, in accordance with section
7 421(e)(2)(F), including a statement setting
8 forth—

9 (I) if the State employs a public
10 defender program under section
11 421(e)(1)(A), the salaries received by
12 the attorneys employed by such pro-
13 gram and the salaries received by at-
14 torneys in the prosecutor's office in
15 the jurisdiction;

16 (II) if the State employs ap-
17 pointed attorneys under section
18 421(e)(1)(B), the hourly fees received
19 by such attorneys for actual time and
20 service and the basis on which the
21 hourly rate was calculated;

22 (III) the amounts paid to non-at-
23 torney members of the defense team,
24 and the basis on which such amounts
25 were determined; and

1 (IV) the amounts for which at-
2 torney and non-attorney members of
3 the defense team were reimbursed for
4 reasonable incidental expenses;

5 (3) in the case of a State that employs a statu-
6 tory procedure described in section 421(e)(1)(C), an
7 assessment of the extent to which the State is in
8 compliance with the requirements of the applicable
9 State statute; and

10 (4) a statement confirming that the funds have
11 not been used to fund representation in specific cap-
12 ital cases or to supplant non-Federal funds.

13 (c) CAPITAL PROSECUTION IMPROVEMENT
14 GRANTS.—With respect to the funds provided under sec-
15 tion 422, a report under subsection (a) shall include—

16 (1) an accounting of all amounts expended;
17 (2) a description of the means by which the
18 State has—

19 (A) designed and established training pro-
20 grams for State and local prosecutors to ensure
21 effective representation in State capital cases in
22 accordance with section 422(b)(1)(A);

23 (B) developed and implemented appro-
24 priate standards and qualifications for State

1 and local prosecutors who litigate State capital
2 cases in accordance with section 422(b)(1)(B);

3 (C) assessed the performance of State and
4 local prosecutors who litigate State capital cases
5 in accordance with section 422(b)(1)(C);

6 (D) identified and implemented any poten-
7 tial legal reforms that may be appropriate to
8 minimize the potential for error in the trial of
9 capital cases in accordance with section
10 422(b)(1)(D);

11 (E) established a program under which
12 State and local prosecutors conduct a system-
13 atic review of cases in which a death sentence
14 was imposed in order to identify cases in which
15 post-conviction DNA testing may be appro-
16 priate in accordance with section 422(b)(1)(E);
17 and

18 (F) provided support and assistance to the
19 families of murder victims; and

20 (3) a statement confirming that the funds have
21 not been used to fund the prosecution of specific
22 capital cases or to supplant non-Federal funds.

23 (d) PUBLIC DISCLOSURE OF ANNUAL STATE RE-
24 PORTS.—The annual reports to the Attorney General sub-

mitted by any State under this section shall be made available to the public.

SEC. 425. EVALUATIONS BY INSPECTOR GENERAL AND ADMINISTRATIVE REMEDIES.

(a) EVALUATION BY INSPECTOR GENERAL.—

(1) IN GENERAL.—As soon as practicable after the end of the first fiscal year for which a State receives funds under a grant made under this subtitle, the Inspector General of the Department of Justice (in this section referred to as the “Inspector General”) shall—

(A) submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate 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 to the Attorney General 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

1 State and other comments provided by any other
2 person, to be at the highest risk of noncompliance.

3 (3) DETERMINATION FOR STATUTORY PROCE-
4 DURE STATES.—For each State that employs a stat-
5 utory procedure described in section 421(e)(1)(C),
6 the Inspector General shall submit to the Committee
7 on the Judiciary of the House of Representatives
8 and the Committee on the Judiciary of the Senate,
9 not later than the end of the first fiscal year for
10 which such State receives funds, a determination as
11 to whether the State is in substantial compliance
12 with the requirements of the applicable State stat-
13 ute.

14 (4) COMMENTS FROM PUBLIC.—The Inspector
15 General shall receive and consider comments from
16 any member of the public regarding any State’s
17 compliance with the terms and conditions of a grant
18 made under this subtitle. To facilitate the receipt of
19 such comments, the Inspector General shall main-
20 tain on its website a form that any member of the
21 public may submit, either electronically or otherwise,
22 providing comments. The Inspector General shall
23 give appropriate consideration to all such public
24 comments in reviewing reports submitted under sec-

1 tion 424 or in establishing the priority for con-
2 ducting evaluations under this section.

3 (b) ADMINISTRATIVE REVIEW.—

4 (1) COMMENT.—Upon the submission of a re-
5 port under subsection (a)(1) or a determination
6 under subsection (a)(3), the Attorney General shall
7 provide the State with an opportunity to comment
8 regarding the findings and conclusions of the report
9 or the determination.

10 (2) CORRECTIVE ACTION PLAN.—If the Attor-
11 ney General, after reviewing a report under sub-
12 section (a)(1) or a determination under subsection
13 (a)(3), determines that a State is not in compliance
14 with the terms and conditions of the grant, the At-
15 torney General shall consult with the appropriate
16 State authorities to enter into a plan for corrective
17 action. If the State does not agree to a plan for cor-
18 rective action that has been approved by the Attor-
19 ney General within 90 days after the submission of
20 the report under subsection (a)(1) or the determina-
21 tion under subsection (a)(3), the Attorney General
22 shall, within 30 days, issue guidance to the State re-
23 garding corrective action to bring the State into
24 compliance.

1 (3) REPORT TO CONGRESS.—Not later than 90
2 days after the earlier of the implementation of a cor-
3 rective action plan or the issuance of guidance under
4 paragraph (2), the Attorney General shall submit a
5 report to the Committee on the Judiciary of the
6 House of Representatives and the Committee on the
7 Judiciary of the Senate as to whether the State has
8 taken corrective action and is in compliance with the
9 terms and conditions of the grant.

10 (c) PENALTIES FOR NONCOMPLIANCE.—If the State
11 fails to take the prescribed corrective action under sub-
12 section (b) and is not in compliance with the terms and
13 conditions of the grant, the Attorney General shall dis-
14 continue all further funding under sections 421 and 422
15 and require the State to return the funds granted under
16 such sections for that fiscal year. Nothing in this para-
17 graph shall prevent a State which has been subject to pen-
18 alties for noncompliance from reapplying for a grant under
19 this subtitle in another fiscal year.

20 (d) PERIODIC REPORTS.—During the grant period,
21 the Inspector General shall periodically review the compli-
22 ance of each State with the terms and conditions of the
23 grant.

24 (e) ADMINISTRATIVE COSTS.—Not less than 2.5 per-
25 cent of the funds appropriated to carry out this subtitle

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

5 (f) SPECIAL RULE FOR “STATUTORY PROCEDURE”
6 STATES NOT IN SUBSTANTIAL COMPLIANCE WITH STAT-
7 UTORY PROCEDURES.—

8 (1) IN GENERAL.—In the case of a State that
9 employs a statutory procedure described in section
10 421(e)(1)(C), if the Inspector General submits a de-
11 termination under subsection (a)(3) that the State is
12 not in substantial compliance with the requirements
13 of the applicable State statute, then for the period
14 beginning with the date on which that determination
15 was submitted and ending on the date on which the
16 Inspector General determines that the State is in
17 substantial compliance with the requirements of that
18 statute, the funds awarded under this subtitle shall
19 be allocated solely for the uses described in section
20 421.

21 (2) RULE OF CONSTRUCTION.—The require-
22 ments of this subsection apply in addition to, and
23 not instead of, the other requirements of this sec-
24 tion.

1 **SEC. 426. AUTHORIZATION OF APPROPRIATIONS.**

2 (a) AUTHORIZATION FOR GRANTS.—There are au-
3 thorized to be appropriated \$75,000,000 for each of fiscal
4 years 2005 through 2009 to carry out this subtitle.

5 (b) RESTRICTION ON USE OF FUNDS TO ENSURE
6 EQUAL ALLOCATION.—Each State receiving a grant
7 under this subtitle shall allocate the funds equally between
8 the uses described in section 421 and the uses described
9 in section 422, except as provided in section 425(f).

10 **Subtitle C—Compensation for the**
11 **Wrongfully Convicted**

12 **SEC. 431. INCREASED COMPENSATION IN FEDERAL CASES**
13 **FOR THE WRONGFULLY CONVICTED.**

14 Section 2513(e) of title 28, United States Code, is
15 amended by striking “exceed the sum of \$5,000” and in-
16 serting “exceed \$100,000 for each 12-month period of in-
17 carceration for any plaintiff who was unjustly sentenced
18 to death and \$50,000 for each 12-month period of incar-
19 ceration for any other plaintiff”.

20 **SEC. 432. SENSE OF CONGRESS REGARDING COMPENSA-**
21 **TION IN STATE DEATH PENALTY CASES.**

22 It is the sense of Congress that States should provide
23 reasonable compensation to any person found to have been

- 1 unjustly convicted of an offense against the State and sen-
- 2 tenced to death.

Passed the House of Representatives October 6,
2004.

Attest:

JEFF TRANDAHL,
Clerk.