

Union Calendar No. 434

108TH CONGRESS
2^D SESSION

H. R. 5107

[Report No. 108-711]

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

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 21, 2004

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

SEPTEMBER 30, 2004

Committed to the Committee of the Whole House on the State of the Union
and ordered to be printed

A BILL

To protect crime victims' rights, to eliminate the substantial backlog of DNA samples collected from crime scenes and convicted offenders, to improve and expand the DNA testing capacity of Federal, State, and local labora-

tories, to increase research and development of new DNA testing technologies, to develop new training programs regarding the collection and use of DNA evidence, to provide post-conviction testing of DNA evidence to exonerate the innocent, to improve the performance of counsel in State capital cases, and for other purposes.

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

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

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

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

Sec. 1. Short title; table of contents.

TITLE I—SCOTT CAMBELL, STEPHANIE ROPER, WENDY PRES-
 TON, 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 per-
 sonnel, 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 Bloodworth 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 CAMBELL,**
 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”.

1 **SEC. 102. CRIME VICTIMS' RIGHTS.**

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

5 **“CHAPTER 237—CRIME VICTIMS' RIGHTS**

“Sec.

“3771. Crime victims' rights.

6 **“§ 3771. Crime victims' rights**

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

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

11 “(2) The right to reasonable, accurate, and
12 timely notice of any public court proceeding involv-
13 ing the crime or of any release or escape of the ac-
14 cused.

15 “(3) The right not to be excluded from any
16 such public court proceeding, unless the court deter-
17 mines that testimony by the victim would be materi-
18 ally affected if the victim heard other testimony at
19 that proceeding.

20 “(4) The right to be reasonably heard at any
21 public proceeding involving release, plea, or sen-
22 tencing.

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

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

3 “(7) The right to proceedings free from unrea-
4 sonable delay.

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

7 “(b) RIGHTS AFFORDED.—In any court proceeding
8 involving an offense against a crime victim, the court shall
9 ensure that the crime victim is afforded the rights de-
10 scribed in subsection (a). Before denying a crime victim
11 the right described in subsection (a)(3), the court shall
12 make every effort to permit the fullest attendance possible
13 by the victim and shall consider reasonable alternatives
14 to the exclusion of the victim from the criminal pro-
15 ceeding. The reasons for any decision denying relief under
16 this chapter shall be clearly stated on the record.

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

18 “(1) GOVERNMENT.—Officers and employees of
19 the Department of Justice and other departments
20 and agencies of the United States engaged in the de-
21 tection, investigation, or prosecution of crime shall
22 make their best efforts to see that crime victims are
23 notified of, and accorded, the rights described in
24 subsection (a).

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

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

8 “(d) ENFORCEMENT AND LIMITATIONS.—

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

14 “(2) MULTIPLE CRIME VICTIMS.—In a case
15 where the court finds that the number of crime vic-
16 tims makes it impracticable to accord all of the
17 crime victims the rights described in subsection (a),
18 the court shall fashion a reasonable procedure to
19 give effect to this chapter that does not unduly com-
20 plicate or prolong the proceedings.

21 “(3) MOTION FOR RELIEF AND WRIT OF MAN-
22 DAMUS.—The rights described in subsection (a) shall
23 be asserted in the district court in which a defend-
24 ant is being prosecuted for the crime or, if no pros-
25 ecution is underway, in the district court in the dis-

1 trict in which the crime occurred. The district court
2 shall take up and decide such motion forthwith. If
3 the district court denies the relief sought, the mov-
4 ant may petition the court of appeals for a writ of
5 mandamus. The court of appeals may issue the writ
6 on the order of a single judge pursuant to circuit
7 rule or the Federal Rules of Appellate Procedure.
8 The court of appeals shall take up and decide such
9 application forthwith within 72 hours after the peti-
10 tion has been filed. In no event shall proceedings be
11 stayed or subject to a continuance of more than five
12 day, or affect the defendant’s right to a speedy trial,
13 for purposes of enforcing this chapter.

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

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

23 “(6) NO CAUSE OF ACTION.—Nothing in this
24 chapter shall be construed to authorize a cause of
25 action for damages or to create, to enlarge, or to

1 imply any duty or obligation to any victim or other
2 person for the breach of which the United States or
3 any of its officers or employees could be held liable
4 in damages. Nothing in this chapter shall be con-
5 strued to impair the prosecutorial discretion of the
6 Attorney General or any officer under his direction.

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

19 “(f) PROCEDURES TO PROMOTE COMPLIANCE.—

20 “(1) REGULATIONS.—Not later than 1 year
21 after the date of enactment of this chapter, the At-
22 torney General of the United States shall promul-
23 gate regulations to enforce the rights of crime vic-
24 tims and to ensure compliance by responsible offi-

1 cials with the obligations described in law respecting
2 crime victims.

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

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

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

16 “(C) contain disciplinary sanctions, includ-
17 ing suspension or termination from employ-
18 ment, for employees of the Department of Jus-
19 tice who willfully or wantonly fail to comply
20 with provisions of Federal law pertaining to the
21 treatment of crime victims; and

22 “(D) provide that the Attorney General, or
23 the designee of the Attorney General, shall be
24 the final arbiter of the complaint, and that
25 there shall be no judicial review of the final de-

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

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

10 (1) \$2,000,000 for fiscal year 2005 and
11 \$5,000,000 for each of fiscal years 2006, 2007,
12 2008, and 2009 to United States Attorneys Offices
13 for Victim/Witnesses Assistance Programs;

14 (2) \$2,000,000 for fiscal year 2005 and
15 \$5,000,000 in each of the fiscal years 2006, 2007,
16 2008, and 2009, to the Office for Victims of Crime
17 of the Department of Justice for enhancement of the
18 Victim Notification System;

19 (3) \$300,000 in fiscal year 2005 and \$500,000
20 for each of the fiscal years 2006, 2007, 2008, and
21 2009, to the Office for Victims of Crime of the De-
22 partment of Justice for staff to administer the ap-
23 propriation for the support of organizations as des-
24 ignated under paragraph (4);

1 (4) \$7,000,000 for fiscal year 2005 and
2 \$11,000,000 for each of the fiscal years 2006, 2007,
3 2008, and 2009, to the Office for Victims of Crime
4 of the Department of Justice, for the support of or-
5 ganizations that provide legal counsel and support
6 services for victims in criminal cases for the enforce-
7 ment of crime victims' rights in Federal jurisdic-
8 tions, and in States and tribal governments that
9 have laws substantially equivalent to the provisions
10 of chapter 237 of title 18, United States Code; and

11 (5) \$5,000,000 for fiscal year 2005 and
12 \$7,000,000 for each of fiscal years 2006, 2007,
13 2008, and 2009, to the Office for Victims of Crime
14 of the Department of Justice, for the support of—

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

18 (B) training and technical assistance to
19 States and tribal jurisdictions to design a vari-
20 ety of compliance systems, which shall include
21 an evaluation component.

22 (c) INCREASED RESOURCES TO DEVELOP STATE-OF-
23 THE-ART SYSTEMS FOR NOTIFYING CRIME VICTIMS OF
24 IMPORTANT DATES AND DEVELOPMENTS.—The Victims

1 of Crime Act of 1984 (42 U.S.C. 10601 et seq.) is amend-
2 ed by inserting after section 1404D the following:

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

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

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

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

23 “(1) \$5,000,000 for fiscal year 2005; and

24 “(2) \$5,000,000 for each of the fiscal years
25 2006, 2007, 2008, and 2009.

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

6 **SEC. 104. REPORTS.**

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

18 (b) GOVERNMENT ACCOUNTABILITY OFFICE.—

19 (1) STUDY.—The Comptroller General shall
20 conduct a study that evaluates the effect and effi-
21 cacy of the implementation of the amendments made
22 by this title on the treatment of crime victims in the
23 Federal system.

24 (2) REPORT.—Not later than 4 years after the
25 date of enactment of this Act, the Comptroller Gen-

1 eral shall prepare and submit to the appropriate
2 committees a report containing the results of the
3 study conducted under subsection (a).

4 **TITLE II—DEBBIE SMITH ACT OF**
5 **2004**

6 **SEC. 201. SHORT TITLE.**

7 This title may be cited as the “Debbie Smith Act of
8 2004”.

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

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

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

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

17 (2) in subsection (a)—

18 (A) in the matter preceding paragraph

19 (1)—

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

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

24 (B) in paragraph (2), by inserting before
25 the period at the end the following: “, including

1 samples from rape kits, samples from other sex-
2 ual assault evidence, and samples taken in cases
3 without an identified suspect”; and

4 (C) in paragraph (3), by striking “within
5 the State”;

6 (3) in subsection (b)—

7 (A) in the matter preceding paragraph
8 (1)—

9 (i) by inserting “or unit of local gov-
10 ernment” after “State” both places that
11 term appears; and

12 (ii) by inserting “, as required by the
13 Attorney General” after “application
14 shall”;

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

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

20 (D) in paragraph (4)—

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

23 (ii) by striking “and” at the end;

24 (E) in paragraph (5)—

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

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

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

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

13 (4) in subsection (d)—

14 (A) in paragraph (1)—

15 (i) in the matter preceding subpara-
16 graph (A), by striking “The plan” and in-
17 sserting “A plan pursuant to subsection
18 (b)(1)”;

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

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

23 (B) in paragraph (2)(A), by inserting “and
24 units of local government” after “States”;

25 (5) in subsection (e)—

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

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

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

9 (7) in subsection (g)—

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

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

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

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

20 (1) in subsection (a)—

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

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

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

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

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

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

10 (3) by amending subsection (c) to read as fol-
11 lows:

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

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

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

22 “(B) allocates grants among eligible enti-
23 ties fairly and efficiently to address jurisdic-
24 tions in which significant backlogs exist, by con-
25 sidering—

1 “(i) the number of offender and case-
2 work samples awaiting DNA analysis in a
3 jurisdiction;

4 “(ii) the population in the jurisdiction;
5 and

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

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

15 “(3) LIMITATION.—Grant amounts distributed
16 under paragraph (1) shall be awarded to conduct
17 DNA analyses of samples from casework or from
18 victims of crime under subsection (a)(2) in accord-
19 ance with the following limitations:

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

23 “(B) For fiscal year 2006, not less than
24 50 percent of the grant amounts shall be
25 awarded for purposes under subsection (a)(2).

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

4 “(D) For fiscal year 2008, not less than
5 40 percent of the grant amounts shall be
6 awarded for purposes under subsection (a)(2).

7 “(E) For fiscal year 2009, not less than 40
8 percent of the grant amounts shall be awarded
9 for purposes under subsection (a)(2).”;
10 (4) in subsection (g)—

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

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

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

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

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

23 “(1) \$151,000,000 for fiscal year 2005;

24 “(2) \$151,000,000 for fiscal year 2006;

25 “(3) \$151,000,000 for fiscal year 2007;

1 “(4) \$151,000,000 for fiscal year 2008; and
2 “(5) \$151,000,000 for fiscal year 2009.”; and
3 (6) by adding at the end the following:

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

8 “(1) to States or units of local government to
9 defray the costs incurred by laboratories operated by
10 each such State or unit of local government in pre-
11 paring for accreditation or reaccreditation;

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

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

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

1 or units of local government under this Act;
2 and

3 “(C) to support future capacity building
4 efforts; and

5 “(3) in the form of additional grants to non-
6 profit professional associations actively involved in
7 forensic science and nationally recognized within the
8 forensic science community to defray the costs of
9 training persons who conduct external audits of lab-
10 oratories operated by States and units of local gov-
11 ernment and which participate in the National DNA
12 Index System.

13 “(1) EXTERNAL AUDITS AND REMEDIAL EFFORTS.—
14 In the event that a laboratory operated by a State or unit
15 of local government which has received funds under this
16 Act has undergone an external audit conducted to deter-
17 mine whether the laboratory is in compliance with stand-
18 ards established by the Director of the Federal Bureau
19 of Investigation, and, as a result of such audit, identifies
20 measures to remedy deficiencies with respect to the com-
21 pliance by the laboratory with such standards, the State
22 or unit of local government shall implement any such re-
23 mediation as soon as practicable.”.

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

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

5 (1) in subsection (a)(1), by striking “of persons
6 convicted of crimes;” and inserting the following:

7 “of—

8 “(A) persons convicted of crimes;

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

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

18 (2) in subsection (d)(2)—

19 (A) by striking “if the responsible agency”
20 and inserting “if—

21 “(i) the responsible agency”;

22 (B) by striking the period at the end and
23 inserting “; or”; and

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

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

1 was or could have been included in the index,
2 and all charges for which the analysis was or
3 could have been included in the index have been
4 dismissed or resulted in acquittal.”.

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

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

13 “(1) Any felony.

14 “(2) Any offense under chapter 109A of title
15 18, United States Code.

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

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

20 (c) MILITARY OFFENSES.—Section 1565(d) of title
21 10, United States Code, is amended to read as follows:

22 “(d) QUALIFYING MILITARY OFFENSES.—The of-
23 fenses that shall be treated for purposes of this section
24 as qualifying military offenses are the following offenses,

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

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

6 “(2) Any other offense under the Uniform Code
7 of Military Justice that is comparable to a qualifying
8 Federal offense (as determined under section 3(d) of
9 the DNA Analysis Backlog Elimination Act of 2000
10 (42 U.S.C. 14135a(d))).”.

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

15 “(e) **AUTHORITY FOR KEYBOARD SEARCHES.**—

16 “(1) **IN GENERAL.**—The Director shall ensure
17 that any person who is authorized to access the
18 index described in subsection (a) for purposes of in-
19 cluding information on DNA identification records
20 or DNA analyses in that index may also access that
21 index for purposes of carrying out a one-time key-
22 board search on information obtained from any
23 DNA sample lawfully collected for a criminal justice
24 purpose except for a DNA sample voluntarily sub-
25 mitted solely for elimination purposes.

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

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

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

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

13 **“§ 3297. Cases involving DNA evidence**

14 “In a case in which DNA testing implicates an identi-
15 fied person in the commission of a felony, no statute of
16 limitations that would otherwise preclude prosecution of
17 the offense shall preclude such prosecution until a period
18 of time following the implication of the person by DNA
19 testing has elapsed that is equal to the otherwise applica-
20 ble limitation period.”.

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

“3297. Cases involving DNA evidence.”.

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

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

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

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

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

9 (2) in subsection (b)—

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

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

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

22 “(A) the length of the relationship;

23 “(B) the type of relationship; and

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

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 purposes specified in paragraph (1), (2), or (5) of
11 subsection (a) may be made in the form of a
12 voucher or contract for laboratory services.
13

14 “(B) REDEMPTION.—A voucher or contract under subparagraph (A) may be redeemed
15 at a laboratory operated by a private entity that
16 satisfies quality assurance standards and has
17 been approved by the Attorney General.
18

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

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 eligible entities to provide training, technical as-
6 sistance, education, and information relating to the identi-
7 fication, collection, preservation, analysis, and use of DNA
8 samples and DNA evidence.

9 (b) **ELIGIBLE ENTITY.**—For purposes of subsection
10 (a), an eligible entity is an organization consisting of, com-
11 prised of, or representing—

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

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

18 (3) forensic science professionals; and

19 (4) corrections personnel, including prison and
20 jail personnel, and probation, parole, and other offi-
21 cers involved in supervision.

22 (c) **AUTHORIZATION OF APPROPRIATIONS.**—There
23 are authorized to be appropriated \$12,500,000 for each
24 of fiscal years 2005 through 2009 to carry out this sec-
25 tion.

1 **SEC. 304. SEXUAL ASSAULT FORENSIC EXAM PROGRAM**
2 **GRANTS.**

3 (a) **IN GENERAL.**—The Attorney General shall make
4 grants to eligible entities to provide training, technical as-
5 sistance, education, equipment, and information relating
6 to the identification, collection, preservation, analysis, and
7 use of DNA samples and DNA evidence by medical per-
8 sonnel and other personnel, including doctors, medical ex-
9 aminers, coroners, nurses, victim service providers, and
10 other professionals involved in treating victims of sexual
11 assault and sexual assault examination programs, includ-
12 ing SANE (Sexual Assault Nurse Examiner), SAFE (Sex-
13 ual Assault Forensic Examiner), and SART (Sexual As-
14 sault Response Team).

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

17 (1) States;

18 (2) units of local government; and

19 (3) sexual assault examination programs, in-
20 cluding—

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

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

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

1 (D) State sexual assault coalitions;

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

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

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

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

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

17 (b) DEMONSTRATION PROJECTS.—The Attorney
18 General shall make grants to appropriate entities under
19 which research is carried out through demonstration
20 projects involving coordinated training and commitment of
21 resources to law enforcement agencies and key criminal
22 justice participants to demonstrate and evaluate the use
23 of forensic DNA technology in conjunction with other fo-
24 rensic tools. The demonstration projects shall include sci-
25 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 States and units of local government to promote
16 the use of forensic DNA technology to identify missing
17 persons and unidentified human remains.

18 (b) AUTHORIZATION OF APPROPRIATIONS.—There
19 are authorized to be appropriated \$2,000,000 for each of
20 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 \$100,000. Each in-
12 stance of disclosure, obtaining, or use shall constitute a
13 separate offense under this subsection.”.

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

15 (a) **IN GENERAL.**—Section 2001 of title I of the Om-
16 nibus Crime Control and Safe Streets Act of 1968 (42
17 U.S.C. 3796gg) is amended by adding at the end the fol-
18 lowing:

19 “(d) **TRIBAL COALITION GRANTS.**—

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

23 “(A) increasing awareness of domestic vio-
24 lence and sexual assault against Indian women;

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

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

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

12 “(A) established nonprofit, nongovern-
13 mental tribal coalitions addressing domestic vio-
14 lence and sexual assault against Indian women;
15 and

16 “(B) individuals or organizations that pro-
17 pose to incorporate as nonprofit, nongovern-
18 mental tribal coalitions to address domestic vio-
19 lence and sexual assault against Indian women.

20 “(3) ELIGIBILITY FOR OTHER GRANTS.—Re-
21 ceipt of an award under this subsection by tribal do-
22 mestic violence and sexual assault coalitions shall
23 not preclude the coalition from receiving additional
24 grants under this title to carry out the purposes de-
25 scribed in subsection (b).”.

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

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

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

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

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

18 (1) in subsection (a)—

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

22 “(1) To carry out”; and

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

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

1 ination, latent prints, toxicology, controlled sub-
2 stances, forensic pathology, questionable documents,
3 and trace evidence.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 **SEC. 312. REPORT TO CONGRESS.**

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

10 (b) CONTENTS.—The report submitted under sub-
11 section (a) shall include a description of—

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

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

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

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

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

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

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

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

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

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

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

5 (9) grants awarded and the use of such grants
6 by eligible entities to eliminate forensic science back-
7 logs under the amendments made by section 311;

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

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

12 **TITLE IV—INNOCENCE**
13 **PROTECTION ACT OF 2004**

14 **SEC. 401. SHORT TITLE.**

15 This title may be cited as the “Innocence Protection
16 Act of 2004”.

17 **Subtitle A—Exonerating the**
18 **Innocent Through DNA Testing**

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

20 (a) **FEDERAL CRIMINAL PROCEDURE.—**

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

1 hearing and exoneration of such offense
2 would entitle the applicant to a reduced
3 sentence or new sentencing hearing; and

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

5 “(I) the applicant demonstrates
6 that there is no adequate remedy
7 under State law to permit DNA test-
8 ing of the specified evidence relating
9 to the State offense; and

10 “(II) to the extent available, the
11 applicant has exhausted all remedies
12 available under State law for request-
13 ing DNA testing of specified evidence
14 relating to the State offense;

15 “(2) the specific evidence to be tested was se-
16 cured in relation to the investigation or prosecution
17 of the Federal or State offense referenced in the ap-
18 plicant’s assertion under paragraph (1);

19 “(3) the specific evidence to be tested—

20 “(A) was not previously subjected to DNA
21 testing and the applicant did not knowingly and
22 voluntarily waive the right to request DNA test-
23 ing of that evidence in a court proceeding after
24 the date of enactment of the Innocence Protec-
25 tion Act of 2004; or

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

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

13 “(5) the proposed DNA testing is reasonable in
14 scope, uses scientifically sound methods, and is con-
15 sistent with accepted forensic practices;

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

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

20 “(B) would establish the actual innocence
21 of the applicant of the Federal or State offense
22 referenced in the applicant’s assertion under
23 paragraph (1);

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

4 “(8) the proposed DNA testing of the specific
5 evidence—

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

9 “(B) assuming the DNA test result ex-
10 cludes the applicant, would raise a reasonable
11 probability that the applicant did not commit
12 the offense;

13 “(9) the applicant certifies that the applicant
14 will provide a DNA sample for purposes of compari-
15 son; and

16 “(10) the applicant’s motion is filed for the
17 purpose of demonstrating the applicant’s actual in-
18 nocence of the Federal or State offense, and not to
19 delay the execution of the sentence or the adminis-
20 tration of justice.

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

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

25 “(A) notify the Government; and

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

3 “(2) PRESERVATION ORDER.—To the extent
4 necessary to carry out proceedings under this sec-
5 tion, the court shall direct the Government to pre-
6 serve the specific evidence relating to a motion under
7 subsection (a).

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

12 “(c) TESTING PROCEDURES.—

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

16 “(2) EXCEPTION.—Notwithstanding paragraph
17 (1), the court may order DNA testing by another
18 qualified laboratory if the court makes all necessary
19 orders to ensure the integrity of the specific evidence
20 and the reliability of the testing process and test re-
21 sults.

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

24 “(A) by the applicant; or

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

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

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

9 “(2) not later than 120 days after the date on
10 which the DNA testing ordered under this section is
11 completed, the court shall order any post-testing
12 procedures under subsection (f) or (g), as appro-
13 priate.

14 “(e) REPORTING OF TEST RESULTS.—

15 “(1) IN GENERAL.—The results of any DNA
16 testing ordered under this section shall be simulta-
17 neously disclosed to the court, the applicant, and the
18 Government.

19 “(2) NDIS.—The Government shall submit any
20 test results relating to the DNA of the applicant to
21 the National DNA Index System (referred to in this
22 subsection as ‘NDIS’).

23 “(3) RETENTION OF DNA SAMPLE.—

24 “(A) ENTRY INTO NDIS.—If the DNA test
25 results obtained under this section are inconclu-

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

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

13 “(C) NO MATCH.—If the DNA test results
14 obtained under this section exclude the appli-
15 cant as the source of the DNA evidence, and a
16 comparison of the DNA sample of the applicant
17 does not result in a match between the DNA
18 sample of the applicant and another offense,
19 the Attorney General shall destroy the DNA
20 sample of the applicant and ensure that such
21 information is not retained in NDIS if there is
22 no other legal authority to retain the DNA
23 sample of the applicant in NDIS.

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

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

5 “(2) INCULPATORY RESULTS.—If DNA test re-
6 sults obtained under this section show that the ap-
7 plicant was the source of the DNA evidence, the
8 court shall—

9 “(A) deny the applicant relief; and

10 “(B) on motion of the Government—

11 “(i) make a determination whether
12 the applicant’s assertion of actual inno-
13 cence was false, and, if the court makes
14 such a finding, the court may hold the ap-
15 plicant in contempt;

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

19 “(iii) forward the finding to the Direc-
20 tor of the Bureau of Prisons, who, upon
21 receipt of such a finding, may deny, wholly
22 or in part, the good conduct credit author-
23 ized under section 3632 on the basis of
24 that finding;

1 “(iv) if the applicant is subject to the
2 jurisdiction of the United States Parole
3 Commission, forward the finding to the
4 Commission so that the Commission may
5 deny parole on the basis of that finding;
6 and

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

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

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

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

1 applicant to file such a motion and for the Govern-
2 ment to respond to the motion.

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

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

16 “(B) in the case of a motion for resen-
17 tencing, another Federal or State offense, if—

18 “(i) such offense was legally necessary
19 to make the applicant eligible for a sen-
20 tence as a career offender under section
21 3559(e) or an armed career offender under
22 section 924(e), and exoneration of such of-
23 fense would entitle the applicant to a re-
24 duced sentence; or

1 “(ii) evidence of such offense was ad-
2 mitted during a Federal death sentencing
3 hearing and exoneration of such offense
4 would entitle the applicant to a reduced
5 sentence or a new sentencing proceeding.

6 “(h) OTHER LAWS UNAFFECTED.—

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

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

14 “(3) APPLICATION NOT A MOTION.—An appli-
15 cation under this section shall not be considered to
16 be a motion under section 2255 for purposes of de-
17 termining whether the application or any other mo-
18 tion is a second or successive motion under section
19 2255.

20 **“§ 3600A. Preservation of biological evidence**

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

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

3 “(1) a sexual assault forensic examination kit;

4 or

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

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

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

13 “(2) the defendant knowingly and voluntarily
14 waived the right to request DNA testing of such evi-
15 dence in a court proceeding conducted after the date
16 of enactment of the Innocence Protection Act of
17 2004;

18 “(3) the defendant is notified after conviction
19 that the biological evidence may be destroyed and
20 the defendant does not file a motion under section
21 3600 within 180 days of receipt of the notice; or

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

1 “(B) the Government takes reasonable meas-
2 ures to remove and preserve portions of the material
3 evidence sufficient to permit future DNA testing.

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

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

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

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

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 Act, 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, 307, and 412
14 shall be reserved for grants to eligible entities that—

15 (1) meet the requirements under section 303,
16 305, 307, 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 any person convicted after trial and under
25 a sentence of imprisonment or death for a

1 State offense, in a manner that ensures a
2 meaningful process for resolving a claim of
3 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 any person under a sentence of impris-
8 onment or death for a State offense, in a
9 manner comparable to section 3600(a) of
10 title 18, United States Code (provided that
11 the State statute, rule, regulation, or prac-
12 tice may make post-conviction DNA test-
13 ing available in cases in which such testing
14 is not required by such section), and if the
15 results of such testing exclude the appli-
16 cant, permits the applicant to apply for
17 post-conviction relief, notwithstanding any
18 provision of law that would otherwise bar
19 such application as untimely; and

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

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

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

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

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

15 (II) such jurisdictions may pre-
16 serve such evidence for longer than
17 the period of time that such evidence
18 would be required to be preserved
19 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) EFFECTIVE SYSTEM.—As used in subsection
7 (c)(1), an effective system for providing competent legal
8 representation is a system that—

9 (1) invests the responsibility for appointing
10 qualified attorneys to represent indigents in capital
11 cases—

12 (A) in a public defender program that re-
13 lies on staff attorneys, members of the private
14 bar, or both, to provide representation in cap-
15 ital cases;

16 (B) in an entity established by statute or
17 by the highest State court with jurisdiction in
18 criminal cases, which is composed of individuals
19 with demonstrated knowledge and expertise in
20 capital representation; or

21 (C) pursuant to a statutory procedure en-
22 acted before the date of the enactment of this
23 Act under which the trial judge is required to
24 appoint qualified attorneys from a roster main-

1 tained by a State or regional selection com-
2 mittee or similar entity; and

3 (2) requires the program described in para-
4 graph (1)(A), the entity described in paragraph
5 (1)(B), or an appropriate entity designated pursuant
6 to the statutory procedure described in paragraph
7 (1)(C), as applicable, to—

8 (A) establish qualifications for attorneys
9 who may be appointed to represent indigents in
10 capital cases;

11 (B) establish and maintain a roster of
12 qualified attorneys;

13 (C) except in the case of a selection com-
14 mittee or similar entity described in paragraph
15 (1)(C), assign 2 attorneys from the roster to
16 represent an indigent in a capital case, or pro-
17 vide the trial judge a list of not more than 2
18 pairs of attorneys from the roster, from which
19 1 pair shall be assigned, provided that, in any
20 case in which the State elects not to seek the
21 death penalty, a court may find, subject to any
22 requirement of State law, that a second attor-
23 ney need not remain assigned to represent the
24 indigent to ensure competent representation;

1 (D) conduct, sponsor, or approve special-
2 ized training programs for attorneys rep-
3 resenting defendants in capital cases;

4 (E) monitor the performance of attorneys
5 who are appointed and their attendance at
6 training programs, and remove from the roster
7 attorneys who fail to deliver effective represen-
8 tation or who fail to comply with such require-
9 ments as such program, entity, or selection
10 committee or similar entity may establish re-
11 garding participation in training programs; and

12 (F) ensure funding for the full cost of
13 competent legal representation by the defense
14 team and outside experts selected by counsel,
15 who shall be compensated—

16 (i) in the case of a State that employs
17 a statutory procedure described in para-
18 graph (1)(C), in accordance with the re-
19 quirements of that statutory procedure;
20 and

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

22 (I) Attorneys employed by a pub-
23 lic defender program shall be com-
24 pensated according to a salary scale
25 that is commensurate with the salary

1 scale of the prosecutor's office in the
2 jurisdiction.

3 (II) Appointed attorneys shall be
4 compensated for actual time and serv-
5 ice, computed on an hourly basis and
6 at a reasonable hourly rate in light of
7 the qualifications and experience of
8 the attorney and the local market for
9 legal representation in cases reflecting
10 the complexity and responsibility of
11 capital cases.

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

20 (IV) Attorney and non-attorney
21 members of the defense team shall be
22 reimbursed for reasonable incidental
23 expenses.

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

2 (a) IN GENERAL.—The Attorney General shall award
3 grants to States for the purpose of enhancing the ability
4 of prosecutors to effectively represent the public in State
5 capital cases.

6 (b) USE OF FUNDS.—

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

10 (A) To design and implement training pro-
11 grams for State and local prosecutors to ensure
12 effective representation in State capital cases.

13 (B) To develop and implement appropriate
14 standards and qualifications for State and local
15 prosecutors who litigate State capital cases.

16 (C) To assess the performance of State
17 and local prosecutors who litigate State capital
18 cases, provided that such assessment shall not
19 include participation by the assessor in the trial
20 of any specific capital case.

21 (D) To identify and implement any poten-
22 tial legal reforms that may be appropriate to
23 minimize the potential for error in the trial of
24 capital cases.

25 (E) To establish a program under which
26 State and local prosecutors conduct a system-

1 atic review of cases in which a death sentence
2 was imposed in order to identify cases in which
3 post-conviction DNA testing may be appro-
4 priate.

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

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

10 **SEC. 423. APPLICATIONS.**

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

14 (b) APPLICATION.—

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

20 (2) CONTENTS.—Each application submitted
21 under paragraph (1) shall contain—

22 (A) a certification by an appropriate offi-
23 cer of the State that the State authorizes cap-
24 ital punishment under its laws and conducts, or

1 will conduct, prosecutions in which capital pun-
2 ishment is sought;

3 (B) a description of the communities to be
4 served by the grant, including the nature of ex-
5 isting capital defender services and capital pros-
6 ecution programs within such communities;

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

9 (i) reflects consultation with the judi-
10 ciary, the organized bar, and State and
11 local prosecutor and defender organiza-
12 tions; and

13 (ii) establishes as a priority improve-
14 ment in the quality of trial-level represen-
15 tation of indigents charged with capital
16 crimes and trial-level prosecution of capital
17 crimes;

18 (D) in the case of a State that employs a
19 statutory procedure described in section
20 421(d)(1)(C), a certification by an appropriate
21 officer of the State that the State is in substan-
22 tial compliance with the requirements of the ap-
23 plicable State statute; and

24 (E) assurances that Federal funds received
25 under this subtitle shall be—

- 1 (i) used to supplement and not sup-
2 plant non-Federal funds that would other-
3 wise be available for activities funded
4 under this subtitle; and
- 5 (ii) allocated in accordance with sec-
6 tion 426(b).

7 **SEC. 424. STATE REPORTS.**

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

- 11 (1) identifies the activities carried out with such
12 funds; and
- 13 (2) explains how each activity complies with the
14 terms and conditions of the grant.

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

- 18 (1) an accounting of all amounts expended;
- 19 (2) an explanation of the means by which the
20 State—
- 21 (A) invests the responsibility for identi-
22 fying and appointing qualified attorneys to rep-
23 resent indigents in capital cases in a program
24 described in section 421(d)(1)(A), an entity de-
25 scribed in section 421(d)(1)(B), or selection

1 committee or similar entity described in section
2 421(d)(1)(C); and

3 (B) requires such program, entity, or selec-
4 tion committee or similar entity, or other appro-
5 priate entity designated pursuant to the statu-
6 tory procedure described in section
7 421(d)(1)(C), to—

8 (i) establish qualifications for attor-
9 neys who may be appointed to represent
10 indigents in capital cases in accordance
11 with section 421(d)(2)(A);

12 (ii) establish and maintain a roster of
13 qualified attorneys in accordance with sec-
14 tion 421(d)(2)(B);

15 (iii) assign attorneys from the roster
16 in accordance with section 421(d)(2)(C);

17 (iv) conduct, sponsor, or approve spe-
18 cialized training programs for attorneys
19 representing defendants in capital cases in
20 accordance with section 421(d)(2)(D);

21 (v) monitor the performance and
22 training program attendance of appointed
23 attorneys, and remove from the roster at-
24 torneys who fail to deliver effective rep-
25 resentation or fail to comply with such re-

1 requirements as such program, entity, or se-
2 lection committee or similar entity may es-
3 tablish regarding participation in training
4 programs, in accordance with section
5 421(d)(2)(E); and

6 (vi) ensure funding for the full cost of
7 competent legal representation by the de-
8 fense team and outside experts selected by
9 counsel, in accordance with section
10 421(d)(2)(F), including a statement set-
11 ting forth—

12 (I) if the State employs a public
13 defender program under section
14 421(d)(1)(A), the salaries received by
15 the attorneys employed by such pro-
16 gram and the salaries received by at-
17 torneys in the prosecutor’s office in
18 the jurisdiction;

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

1 (III) the amounts paid to non-at-
2 torney members of the defense team,
3 and the basis on which such amounts
4 were determined; and

5 (IV) the amounts for which at-
6 torney and non-attorney members of
7 the defense team were reimbursed for
8 reasonable incidental expenses;

9 (3) in the case of a State that employs a statu-
10 tory procedure described in section 421(d)(1)(C), an
11 assessment of the extent to which the State is in
12 compliance with the requirements of the applicable
13 State statute; and

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

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

20 (1) an accounting of all amounts expended;

21 (2) a description of the means by which the
22 State has—

23 (A) designed and established training pro-
24 grams for State and local prosecutors to ensure

1 effective representation in State capital cases in
2 accordance with section 422(b)(1)(A);

3 (B) developed and implemented appro-
4 priate standards and qualifications for State
5 and local prosecutors who litigate State capital
6 cases in accordance with section 422(b)(1)(B);

7 (C) assessed the performance of State and
8 local prosecutors who litigate State capital cases
9 in accordance with section 422(b)(1)(C);

10 (D) identified and implemented any poten-
11 tial legal reforms that may be appropriate to
12 minimize the potential for error in the trial of
13 capital cases in accordance with section
14 422(b)(1)(D);

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

22 (F) provided support and assistance to the
23 families of murder victims; and

1 ciencies and make recommendations for correc-
2 tive action.

3 (2) PRIORITY.—In conducting evaluations
4 under this subsection, the Inspector General shall
5 give priority to States that the Inspector General de-
6 termines, based on information submitted by the
7 State and other comments provided by any other
8 person, to be at the highest risk of noncompliance.

9 (3) DETERMINATION FOR STATUTORY PROCE-
10 DURE STATES.—For each State that employs a stat-
11 utory procedure described in section 421(d)(1)(C),
12 the Inspector General shall submit to Congress and
13 to the Attorney General, not later than the end of
14 the first fiscal year for which such State receives
15 funds, after affording an opportunity for any person
16 to provide comments on a certification submitted
17 under section 423(b)(2)(D), a determination as to
18 whether the State is in substantial compliance with
19 the requirements of the applicable State statute.

20 (b) ADMINISTRATIVE REVIEW.—

21 (1) COMMENT.—Upon receiving the report
22 under subsection (a)(1) or the determination under
23 subsection (a)(3), the Attorney General shall provide
24 the State with an opportunity to comment regarding

1 the findings and conclusions of the report or the de-
2 termination.

3 (2) CORRECTIVE ACTION PLAN.—If the Attor-
4 ney General, after reviewing the report under sub-
5 section (a)(1) or the determination under subsection
6 (a)(3), determines that a State is not in compliance
7 with the terms and conditions of the grant, the At-
8 torney General shall consult with the appropriate
9 State authorities to enter into a plan for corrective
10 action. If the State does not agree to a plan for cor-
11 rective action that has been approved by the Attor-
12 ney General within 90 days after the submission of
13 the report under subsection (a)(1) or the determina-
14 tion under subsection (a)(3), the Attorney General
15 shall, within 30 days, direct the State to take correc-
16 tive action to bring the State into compliance.

17 (3) REPORT TO CONGRESS.—Not later than 90
18 days after the earlier of the implementation of a cor-
19 rective action plan or a directive to implement such
20 a plan under paragraph (2), the Attorney General
21 shall submit a report to Congress as to whether the
22 State has taken corrective action and is in compli-
23 ance with the terms and conditions of the grant.

24 (c) PENALTIES FOR NONCOMPLIANCE.—If the State
25 fails to take the prescribed corrective action under sub-

1 section (b) and is not in compliance with the terms and
2 conditions of the grant, the Attorney General shall dis-
3 continue all further funding under sections 421 and 422
4 and require the State to return the funds granted under
5 such sections for that fiscal year. Nothing in this para-
6 graph shall prevent a State which has been subject to pen-
7 alties for noncompliance from reapplying for a grant under
8 this subtitle in another fiscal year.

9 (d) PERIODIC REPORTS.—During the grant period,
10 the Inspector General shall periodically review the compli-
11 ance of each State with the terms and conditions of the
12 grant.

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

19 (f) SPECIAL RULE FOR “STATUTORY PROCEDURE”
20 STATES NOT IN SUBSTANTIAL COMPLIANCE WITH STAT-
21 UTORY PROCEDURES.—

22 (1) IN GENERAL.—In the case of a State that
23 employs a statutory procedure described in section
24 421(d)(1)(C), if the Inspector General submits a de-
25 termination under subsection (a)(3) that the State is

1 not in substantial compliance with the requirements
2 of the applicable State statute, then for the period
3 beginning with the date on which that determination
4 was submitted and ending on the date on which the
5 Inspector General determines that the State is in
6 substantial compliance with the requirements of that
7 statute, the funds awarded under this subtitle shall
8 be allocated solely for the uses described in section
9 421.

10 (2) **RULE OF CONSTRUCTION.**—The require-
11 ments of this subsection apply in addition to, and
12 not instead of, the other requirements of this sec-
13 tion.

14 **SEC. 426. AUTHORIZATION OF APPROPRIATIONS.**

15 (a) **AUTHORIZATION FOR GRANTS.**—There are au-
16 thorized to be appropriated \$100,000,000 for each of fis-
17 cal years 2005 through 2009 to carry out this subtitle.

18 (b) **RESTRICTION ON USE OF FUNDS TO ENSURE**
19 **EQUAL ALLOCATION.**—Each State receiving a grant
20 under this subtitle shall allocate the funds equally between
21 the uses described in section 421 and the uses described
22 in section 422, except as provided in section 425(f).

1 **Subtitle C—Compensation for the**
2 **Wrongfully Convicted**

3 **SEC. 431. INCREASED COMPENSATION IN FEDERAL CASES**
4 **FOR THE WRONGFULLY CONVICTED.**

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

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

13 It is the sense of Congress that States should provide
14 reasonable compensation to any person found to have been
15 unjustly convicted of an offense against the State and sen-
16 tenced to death.

Union Calendar No. 434

108TH CONGRESS
2^D SESSION

H. R. 5107

[Report No. 108-711]

A BILL

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

SEPTEMBER 30, 2004

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed