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H. R. 5057

IN THE SENATE OF THE UNITED STATES

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Pensions

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Committee discharged; referred to the Committee on the Judiciary

AN ACT

To reauthorize the Debbie Smith DNA Backlog Grant
Program, 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.**

4 This Act may be cited as the “Debbie Smith Reau-
5 thorization Act of 2008”.

1 **SEC. 2. REAUTHORIZATION OF THE DEBBIE SMITH DNA**
2 **BACKLOG GRANT PROGRAM.**

3 (a) AMENDMENTS.—Section 2 of the DNA Analysis
4 Backlog Elimination Act of 2000 (42 U.S.C. 14135) is
5 amended—

6 (1) in subsection (a)—

7 (A) by redesignating paragraphs (3)
8 through (5) as paragraphs (4) through (6), re-
9 spectively;

10 (B) by inserting after paragraph (2) the
11 following new paragraph:

12 “(3) To carry out, for inclusion in such Com-
13 bined DNA Index System, DNA analyses of samples
14 from missing or unidentified persons, including sam-
15 ples from the remains, personal effects, or biological
16 relatives of such persons.”;

17 (C) in paragraph (4) (as redesignated by
18 subparagraph (A)), by striking “paragraph (1)
19 or (2)” and inserting “paragraph (1), (2), or
20 (3)”; and

21 (D) in paragraph (5) (as so redesignated),
22 by striking “in paragraph (1)” and inserting
23 “in paragraphs (1) and (3)”;

24 (2) in subsection (b)—

25 (A) in paragraph (6), by striking “and”
26 after the semicolon;

1 (B) in paragraph (7), by striking the pe-
2 riod and inserting “; and”; and

3 (C) by adding at the end the following new
4 paragraph:

5 “(8) provide assurances that the State or unit
6 of local government has implemented, or will imple-
7 ment not later than 2 years after the date of such
8 application, a process under which the State or unit,
9 respectively, provides for the collection, for purposes
10 of inclusion in the Combined DNA Index System of
11 the Federal Bureau of Investigation, of DNA sam-
12 ples from all felons who are imprisoned in a prison
13 of such State or unit, respectively, (including all fel-
14 ons imprisoned in such prison or unit, respectively,
15 as of the date of the enactment of the Debbie Smith
16 Reauthorization Act of 2008).”;

17 (3) in subsection (c)(3)—

18 (A) by striking subparagraphs (A) through
19 (D);

20 (B) by redesignating subparagraph (E) as
21 subparagraph (A); and

22 (C) by inserting after subparagraph (A)
23 (as so redesignated) the following new subpara-
24 graph:

1 “(B) For each of the fiscal years 2010
2 through 2014, not less than 40 percent of the
3 grant amounts shall be awarded for purposes
4 under subsection (a)(2) of this section.”; and
5 (4) by amending subsection (j) to read as fol-
6 lows:

7 “(j) AUTHORIZATION OF APPROPRIATIONS.—There
8 is authorized to be appropriated to the Attorney General
9 for grants under subsection (a)—
10 “(1) \$151,000,000 for fiscal year 2009; and
11 “(2) \$200,000,000 for each of the fiscal years
12 2010 through 2014.”.

13 (b) EFFECTIVE DATE.—The amendments made by
14 paragraph (2) of subsection (a) shall apply to grants made
15 on or after January 1, 2009.

16 **SEC. 3. STUDY TO ASSESS THE DNA ANALYSIS BACKLOG.**

17 (a) SENSE OF CONGRESS.—It is the sense of Con-
18 gress that—

19 (1) despite the funding provided for more than
20 5 fiscal years by the Federal Government to assist
21 in the reduction of the DNA analysis backlog, the
22 backlog continues to exist in many crime labora-
23 tories around the country;

24 (2) as a consequence of the continuance of the
25 DNA analysis backlog, many violent crimes that

1 could be solved remain unsolved, and individuals who
2 have been wrongfully convicted who could be deter-
3 mined to be innocent through DNA testing remain
4 in prison; and

5 (3) the causes of the DNA analysis backlog are
6 complex and require a thorough and detailed study.

7 (b) STUDY REQUIRED.—The National Academy of
8 Sciences shall, in consultation with no fewer than 3 foren-
9 sic science practitioners from States and units of local gov-
10 ernment, conduct a study to determine the resources and
11 other requirements necessary to eliminate the DNA anal-
12 ysis backlog and to prevent such a backlog from reoccur-
13 ring after it has been eliminated.

14 (c) REPORT.—Not later than one year after the date
15 of the enactment of this Act, the National Academy of
16 Sciences shall submit to the Attorney General and to Con-
17 gress a report on the results of the study conducted under
18 subsection (b).

19 (d) AUTHORIZATION OF APPROPRIATIONS.—There is
20 authorized to be appropriated to carry out this section
21 \$2,000,000 for fiscal year 2009.

22 **SEC. 4. INCENTIVES FOR PERMANENT STATE-GENERATED**
23 **DNA FUNDING STREAMS.**

24 (a) MATCHING FUNDS.—For each fiscal year begin-
25 ning after the date of the enactment of this Act, each eligi-

1 ble DNA funding State, with respect to a funding mecha-
 2 nism described in subsection (b) implemented by such
 3 State, shall be eligible for Federal matching funds to carry
 4 out such mechanism in an amount determined to be ap-
 5 propriate by the Attorney General.

6 (b) ELIGIBLE DNA FUNDING STATES DE-
 7 SCRIBED.—For purposes of this section, the term “eligible
 8 DNA funding State” means a State that demonstrates to
 9 the satisfaction of the Attorney General that the State has
 10 implemented (and applies) a permanent funding mecha-
 11 nism that generates funds, whether by fees or penalties,
 12 that are allocated by the State only for purposes of the
 13 analysis of DNA samples for law enforcement purposes.

14 (c) AUTHORIZATION OF APPROPRIATIONS.—There is
 15 authorized to be appropriated to carry out this section
 16 such sums as may be necessary for each of the fiscal years
 17 2009 through 2013.

18 **SEC. 5. EVALUATION OF DNA INTEGRITY AND SECURITY.**

19 (a) EVALUATION.—Not later than one year after the
 20 date of the enactment of this Act, and annually thereafter,
 21 the Attorney General shall evaluate the integrity and secu-
 22 rity of DNA collection and storage practices and proce-
 23 dures at a sample of crime laboratories in the United
 24 States to determine the extent to which DNA samples are
 25 tampered with or are otherwise contaminated in crime lab-

1 oratories. Such sample shall be a representative sample
2 of crime laboratories in the United States.

3 (b) REPORT.—The Attorney General shall annually
4 report to Congress the findings of the evaluation con-
5 ducted under subsection (a).

6 (c) AUTHORIZATION OF APPROPRIATIONS.—There is
7 authorized to be appropriated to carry out this section
8 \$10,000,000 for each of the fiscal years 2009 through
9 2015.

10 **SEC. 6. INCENTIVES FOR STATES TO COLLECT DNA SAM-**
11 **PLES FROM INDIVIDUALS ARRESTED FOR OR**
12 **CHARGED WITH MURDER AND SEX CRIMES.**

13 (a) IN GENERAL.—In the case of a State that re-
14 ceives funds for a fiscal year under subpart 1 of part E
15 of title I of the Omnibus Crime Control and Safe Streets
16 Act of 1968 and that has an implemented enhanced State
17 DNA collection process for such year, the amount of funds
18 that would otherwise be allocated for that fiscal year to
19 the State under such subpart shall be increased by 10 per-
20 cent.

21 (b) ENHANCED STATE DNA COLLECTION PROCESS
22 DEFINED.—For purposes of this section, the term “en-
23 hanced State DNA collection process” means, with respect
24 to a State, a process under which the State provides for
25 the collection, for purposes of inclusion in the Combined

1 DNA Index System of the Federal Bureau of Investiga-
2 tion, of DNA samples from the following individuals who
3 are at least 18 years of age:

4 (1) Such individuals who are arrested for or
5 charged with a criminal offense under State law that
6 consists of murder or voluntary manslaughter or any
7 attempt to commit murder or voluntary man-
8 slaughter.

9 (2) Such individuals who are arrested for or
10 charged with a criminal offense under State law that
11 has an element involving a sexual act or sexual con-
12 tact with another and that is punishable by impris-
13 onment for more than 1 year, or an attempt to com-
14 mit such an offense.

15 (3) Such individuals who are arrested for or
16 charged with a criminal offense under State law that
17 consists of a specified offense against a minor (as
18 defined in section 111(7) of the Sex Offender Reg-
19 istration and Notification Act (42 U.S.C.
20 16911(7))), or an attempt to commit such an of-
21 fense.

22 The expungement requirements under section 210304(d)
23 of the DNA Identification Act of 1994 (42 U.S.C.
24 14132(d)) shall apply to any samples collected pursuant

1 to this section for purposes of inclusion in the Combined
2 DNA Index System.

3 (c) EFFECTIVE DATE.—The provisions of this section
4 shall apply to grants made on or after the date of the
5 enactment of this Act.

6 (d) AUTHORIZATION OF APPROPRIATIONS.—There is
7 authorized to be appropriated, in addition to funds made
8 available under section 508 of the Omnibus Crime Control
9 and Safe Streets Act of 1968 (42 U.S.C. 3758), such sums
10 as may be necessary to carry out this section for each of
11 the fiscal years 2009 through 2013.

12 **SEC. 7. ADDITIONAL STUDY AND REPORT ON INVESTIGA-**
13 **TIONS AND PROSECUTIONS RELATED TO**
14 **CODIS “HITS”.**

15 (a) STUDY.—The Inspector General of the Depart-
16 ment of Justice shall carry out a study on—

17 (1) the number of instances in which DNA
18 samples that are matched with samples included in
19 the Combined DNA Index System database of the
20 Federal Bureau of Investigation that are followed up
21 on by appropriate law enforcement entities;

22 (2) the number of such matches described in
23 paragraph (1) that are brought to the attention of
24 a prosecutor;

1 (3) the number of the investigations described
2 in paragraph (2) that result in a trial; and

3 (4) in the case of matches described in para-
4 graph (1) that were not followed up on by appro-
5 priate law enforcement entities, were not brought to
6 the attention of a prosecutor, or did not result in a
7 trial—

8 (A) the reasons why such matches were
9 not pursued accordingly; and

10 (B) the resulting impact on the criminal
11 justice system, including whether other crimes
12 were committed that could have been prevented
13 if such matches had been pursued accordingly.

14 (b) REPORT.—Not later than one year after the date
15 of the enactment of this Act, the Inspector General shall
16 submit to Congress a report on the study under subsection
17 (a).

18 **SEC. 8. NATIONAL DNA INDEX SYSTEM ADVISORY BOARD.**

19 (a) ESTABLISHMENT.—The Attorney General shall
20 establish the National DNA Index System Advisory Board
21 (in this section referred to as the “NDIS Advisory Board”
22 to develop and, if appropriate, periodically revise stand-
23 ards and requirements for the use of and access to the
24 index described in section 210304(a) of the DNA Identi-
25 fication Act of 1994 (42 U.S.C. 14132(a)).

1 (b) MEMBERSHIP.—Not later than 30 days after the
2 date of the enactment of this Act, the Director of the Fed-
3 eral Bureau of Investigation shall appoint members to the
4 NDIS Advisory Board as follows:

5 (1) At least 4 directors of State or local foren-
6 sic laboratories.

7 (2) One representative from the Federal Bu-
8 reau of Investigation.

9 (3) One representative from the Scientific
10 Working Group on DNA Analysis Methods.

11 (4) One representative from the Office of Legal
12 Policy of the Department of Justice.

13 (5) One representative from the National Insti-
14 tute of Justice.

15 (6) One representative from the National Acad-
16 emies of Science.

17 (7) One State or local prosecutor.

18 (8) One criminal defense attorney.

19 (9) One representative from the National Insti-
20 tute of Standards and Technology.

21 (10) One member of the academic community
22 who specializes in DNA privacy issues.

23 (11) One crime victim or crime victim advocate.

24 (12) One representative of a State police agen-
25 cy.

1 (13) One representative of a local police agency.

2 (c) APPLICATION OF FACA.—The Federal Advisory
3 Committee Act (5 U.S.C. App.), other than section 14 of
4 such Act, shall apply to the NDIS Advisory Board.

5 (d) NOTICE, COMMENT, AND PUBLICATION.—The
6 Attorney General shall provide for public notice and com-
7 ment for each standard developed under this section and
8 for publication of each such standard.

9 (e) PAY AND REIMBURSEMENT.—

10 (1) NO COMPENSATION FOR MEMBERS OF NDIS
11 ADVISORY BOARD.—Except as provided in paragraph
12 (2), a member of the NDIS Advisory Board may not
13 receive pay, allowances, or benefits by reason of
14 their service on the Board.

15 (2) TRAVEL EXPENSES.—Each member shall
16 receive travel expenses, including per diem in lieu of
17 subsistence under subchapter I of chapter 57 of title
18 5, United States Code.

19 (f) QUALITY ASSURANCE STANDARDS.—

20 (1) IN GENERAL.—Not later than 180 days
21 after the date of the enactment of this Act, the
22 NDIS Advisory Board shall develop (and provide
23 recommendations to the Director of the Federal Bu-
24 reau of Investigation on) standards governing the
25 use of and access to the index described in sub-

1 section (a). The NDIS Advisory Board shall periodi-
2 cally update such standards as appropriate. The
3 standards shall provide for the expedited uploading
4 into such index by State and local forensic labora-
5 tories of DNA analyses of samples obtained from
6 persons convicted of crimes, including such analyses
7 processed by private forensic laboratories.

8 (2) CONSIDERATION OF ADDITIONAL PRO-
9 POSALS TO EXPEDITE PROCESSING AND UPLOADING
10 OF DNA SAMPLES.—Not later than one year after
11 the date of the enactment of this Act, the NDIS Ad-
12 visory Board shall also provide recommendations to
13 the Director of the Federal Bureau of Investigation
14 on the following:

15 (A) The feasibility and desirability of en-
16 tering into agreements with private forensic lab-
17 oratories to enable direct access to the Com-
18 bined DNA Index System of the Federal Bu-
19 reau of Investigation for the purpose of
20 uploading DNA analyses of samples obtained
21 from persons convicted of crimes.

22 (B) The feasibility and desirability of pro-
23 viding for more limited technical review audits
24 of DNA analyses of samples prior to uploading

1 such data into the Combined DNA Index Sys-
2 tem.

3 (C) The feasibility and desirability of per-
4 mitting greater participation in the technical re-
5 view of DNA analyses of samples by contractor
6 personnel.

7 (D) The feasibility and desirability of al-
8 lowing immediate upload of DNA profiles ob-
9 tained from crime scene samples and rape kits.

10 (3) ISSUANCE OF POLICIES, PROCEDURES, AND
11 STANDARDS.—The Director of the Federal Bureau
12 of Investigation, with the approval of the Attorney
13 General, after taking into consideration the rec-
14 ommended policies, procedures, and standards rec-
15 ommended by the NDIS Advisory Board under this
16 section shall issue (and revise from time to time)
17 policies, procedures, and standards relating to the
18 administration of the National DNA Index System
19 including, standards for quality assurance, testing
20 the proficiency of forensic laboratories, and forensic
21 analysts, in conducting analyses of DNA.

22 (g) EXCLUSIVITY OF POLICIES, PROCEDURES, AND
23 STANDARDS.—The policies, procedures, and standards
24 issued under subsection (f)(3) shall be the exclusive poli-
25 cies, procedures, and standards issued with respect to

1 State, local, and private laboratories that participate in
2 the National DNA Index System. Policies, procedures, lab-
3 oratory audit requirements, standards, and any other
4 manner of regulation or control (other than any condition
5 imposed pursuant to a grant awarded through the Depart-
6 ment of Justice) may not be inconsistent with, or expand
7 upon provisions contained in such approved policies, proce-
8 dures, or standards.

9 **SEC. 9. DNA TECHNOLOGY ENHANCEMENT GRANTS.**

10 (a) IN GENERAL.—The Attorney General shall estab-
11 lish a grant program under which the Attorney General
12 may make grants to States and units of local government
13 to purchase forensic DNA technology or to improve such
14 technology.

15 (b) AUTHORIZATION OF APPROPRIATIONS.—There is
16 authorized to be appropriated \$50,000,000 for each of the
17 fiscal years 2009 through 2013 to carry out subsection
18 (a).

19 **SEC. 10. REAUTHORIZATIONS OF CERTAIN DNA-RELATED**
20 **GRANT PROGRAMS.**

21 (a) DNA TRAINING AND EDUCATION FOR LAW EN-
22 FORCEMENT, CORRECTIONAL PERSONNEL, AND COURT
23 OFFICERS.—Section 303(b) of the Justice For All Act of
24 2004 (42 U.S.C. 14136(b)) is amended by striking
25 “2009” and inserting “2014”.

Attest: LORRAINE C. MILLER,
Clerk.

By ROBERT F. REEVES,
Deputy Clerk.