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2D SESSION

H. R. 5057

IN THE SENATE OF THE UNITED STATES

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Read twice and referred to the Committee on Health, Education, Labor, and
Pensions

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,*

1 **SECTION 1. SHORT TITLE.**

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

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

6 (a) AMENDMENTS.—Section 2 of the DNA Analysis
7 Backlog Elimination Act of 2000 (42 U.S.C. 14135) is
8 amended—

9 (1) in subsection (a)—

10 (A) by redesignating paragraphs (3)
11 through (5) as paragraphs (4) through (6), re-
12 spectively;

13 (B) by inserting after paragraph (2) the
14 following new paragraph:

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

20 (C) in paragraph (4) (as redesignated by
21 subparagraph (A)), by striking “paragraph (1)
22 or (2)” and inserting “paragraph (1), (2), or
23 (3)”; and

24 (D) in paragraph (5) (as so redesignated),
25 by striking “in paragraph (1)” and inserting
26 “in paragraphs (1) and (3)”;

1 (2) in subsection (b)—

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

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

6 (C) by adding at the end the following new
7 paragraph:

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

20 (3) in subsection (c)(3)—

21 (A) by striking subparagraphs (A) through
22 (D);

23 (B) by redesignating subparagraph (E) as
24 subparagraph (A); and

1 (C) by inserting after subparagraph (A)
2 (as so redesignated) the following new subpara-
3 graph:

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

10 “(j) AUTHORIZATION OF APPROPRIATIONS.—There
11 is authorized to be appropriated to the Attorney General
12 for grants under subsection (a)—

13 “(1) \$151,000,000 for fiscal year 2009; and

14 “(2) \$200,000,000 for each of the fiscal years
15 2010 through 2014.”.

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

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

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

22 (1) despite the funding provided for more than
23 5 fiscal years by the Federal Government to assist
24 in the reduction of the DNA analysis backlog, the

1 backlog continues to exist in many crime labora-
2 tories around the country;

3 (2) as a consequence of the continuance of the
4 DNA analysis backlog, many violent crimes that
5 could be solved remain unsolved, and individuals who
6 have been wrongfully convicted who could be deter-
7 mined to be innocent through DNA testing remain
8 in prison; and

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

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

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

23 (d) AUTHORIZATION OF APPROPRIATIONS.—There is
24 authorized to be appropriated to carry out this section
25 \$2,000,000 for fiscal year 2009.

1 **SEC. 4. INCENTIVES FOR PERMANENT STATE-GENERATED**
2 **DNA FUNDING STREAMS.**

3 (a) MATCHING FUNDS.—For each fiscal year begin-
4 ning after the date of the enactment of this Act, each eligi-
5 ble DNA funding State, with respect to a funding mecha-
6 nism described in subsection (b) implemented by such
7 State, shall be eligible for Federal matching funds to carry
8 out such mechanism in an amount determined to be ap-
9 propriate by the Attorney General.

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

18 (c) AUTHORIZATION OF APPROPRIATIONS.—There is
19 authorized to be appropriated to carry out this section
20 such sums as may be necessary for each of the fiscal years
21 2009 through 2013.

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

23 (a) EVALUATION.—Not later than one year after the
24 date of the enactment of this Act, and annually thereafter,
25 the Attorney General shall evaluate the integrity and secu-
26 rity of DNA collection and storage practices and proce-

1 dures at a sample of crime laboratories in the United
 2 States to determine the extent to which DNA samples are
 3 tampered with or are otherwise contaminated in crime lab-
 4 oratories. Such sample shall be a representative sample
 5 of crime laboratories in the United States.

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

9 (c) AUTHORIZATION OF APPROPRIATIONS.—There is
 10 authorized to be appropriated to carry out this section
 11 \$10,000,000 for each of the fiscal years 2009 through
 12 2015.

13 **SEC. 6. INCENTIVES FOR STATES TO COLLECT DNA SAM-**
 14 **PLES FROM INDIVIDUALS ARRESTED FOR OR**
 15 **CHARGED WITH MURDER AND SEX CRIMES.**

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

24 (b) ENHANCED STATE DNA COLLECTION PROCESS
 25 DEFINED.—For purposes of this section, the term “en-

1 hanced State DNA collection process” means, with respect
2 to a State, a process under which the State provides for
3 the collection, for purposes of inclusion in the Combined
4 DNA Index System of the Federal Bureau of Investiga-
5 tion, of DNA samples from the following individuals who
6 are at least 18 years of age:

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

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

18 (3) Such individuals who are arrested for or
19 charged with a criminal offense under State law that
20 consists of a specified offense against a minor (as
21 defined in section 111(7) of the Sex Offender Reg-
22 istration and Notification Act (42 U.S.C.
23 16911(7))), or an attempt to commit such an of-
24 fense.

1 The expungement requirements under section 210304(d)
2 of the DNA Identification Act of 1994 (42 U.S.C.
3 14132(d)) shall apply to any samples collected pursuant
4 to this section for purposes of inclusion in the Combined
5 DNA Index System.

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

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

15 **SEC. 7. ADDITIONAL STUDY AND REPORT ON INVESTIGA-**
16 **TIONS AND PROSECUTIONS RELATED TO**
17 **CODIS “HITS”.**

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

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

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

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

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

11 (A) the reasons why such matches were
12 not pursued accordingly; and

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

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

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

22 (a) ESTABLISHMENT.—The Attorney General shall
23 establish the National DNA Index System Advisory Board
24 (in this section referred to as the “NDIS Advisory Board”
25 to develop and, if appropriate, periodically revise stand-

1 ards and requirements for the use of and access to the
2 index described in section 210304(a) of the DNA Identi-
3 fication Act of 1994 (42 U.S.C. 14132(a)).

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

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

10 (2) One representative from the Federal Bu-
11 reau of Investigation.

12 (3) One representative from the Scientific
13 Working Group on DNA Analysis Methods.

14 (4) One representative from the Office of Legal
15 Policy of the Department of Justice.

16 (5) One representative from the National Insti-
17 tute of Justice.

18 (6) One representative from the National Acad-
19 emies of Science.

20 (7) One State or local prosecutor.

21 (8) One criminal defense attorney.

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

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

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

2 (12) One representative of a State police agen-
3 cy.

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

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

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

12 (e) PAY AND REIMBURSEMENT.—

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

18 (2) TRAVEL EXPENSES.—Each member shall
19 receive travel expenses, including per diem in lieu of
20 subsistence under subchapter I of chapter 57 of title
21 5, United States Code.

22 (f) QUALITY ASSURANCE STANDARDS.—

23 (1) IN GENERAL.—Not later than 180 days
24 after the date of the enactment of this Act, the
25 NDIS Advisory Board shall develop (and provide

1 recommendations to the Director of the Federal Bu-
2 reau of Investigation on) standards governing the
3 use of and access to the index described in sub-
4 section (a). The NDIS Advisory Board shall periodi-
5 cally update such standards as appropriate. The
6 standards shall provide for the expedited uploading
7 into such index by State and local forensic labora-
8 tories of DNA analyses of samples obtained from
9 persons convicted of crimes, including such analyses
10 processed by private forensic laboratories.

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

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

1 (B) The feasibility and desirability of pro-
2 viding for more limited technical review audits
3 of DNA analyses of samples prior to uploading
4 such data into the Combined DNA Index Sys-
5 tem.

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

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

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

1 (g) EXCLUSIVITY OF POLICIES, PROCEDURES, AND
2 STANDARDS.—The policies, procedures, and standards
3 issued under subsection (f)(3) shall be the exclusive poli-
4 cies, procedures, and standards issued with respect to
5 State, local, and private laboratories that participate in
6 the National DNA Index System. Policies, procedures, lab-
7 oratory audit requirements, standards, and any other
8 manner of regulation or control (other than any condition
9 imposed pursuant to a grant awarded through the Depart-
10 ment of Justice) may not be inconsistent with, or expand
11 upon provisions contained in such approved policies, proce-
12 dures, or standards.

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

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

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

1 **SEC. 10. REAUTHORIZATIONS OF CERTAIN DNA-RELATED**
2 **GRANT PROGRAMS.**

3 (a) DNA TRAINING AND EDUCATION FOR LAW EN-
4 FORCEMENT, CORRECTIONAL PERSONNEL, AND COURT
5 OFFICERS.—Section 303(b) of the Justice For All Act of
6 2004 (42 U.S.C. 14136(b)) is amended by striking
7 “2009” and inserting “2014”.

8 (b) SEXUAL ASSAULT FORENSIC EXAM PROGRAM
9 GRANTS.—Section 304(c) of such Act (42 U.S.C.
10 14136a(c)) is amended by striking “2009” and inserting
11 “2014”.

12 (c) DNA RESEARCH AND DEVELOPMENT.—Section
13 305(c) of such Act (42 U.S.C. 14136b(c)) is amended by
14 striking “2009” and inserting “2014”.

15 (d) DNA IDENTIFICATION OF MISSING PERSONS.—
16 Section 308(c) of such Act (42 U.S.C. 14136d(c)) is
17 amended by striking “2009” and inserting “2014”.

Passed the House of Representatives July 14, 2008.

Attest: LORRAINE C. MILLER,
Clerk.

By ROBERT F. REEVES,
Deputy Clerk.