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*2d Session*

SENATE

REPORT
107–334

# THE DNA SEXUAL ASSAULT JUSTICE ACT OF 2002

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Mr. LEAHY, from the Committee on the Judiciary, submitted the following

# R E P O R T

[To accompany S. 2513]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to which was referred the bill (S. 2513) to assess the extent of the backlog in DNA analysis of rape kit samples, and to improve investigation and prosecution of sexual assault cases with DNA evidence, having considered the same and amendments thereto, reports favorably thereon, with an amendment in the nature of a substitute, and recommends that the bill, as amended, do pass.

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The bill, as amended, is as follows:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "DNA Sexual Assault Justice Act of 2002".

**SEC. 2. ASSESSMENT OF BACKLOG IN DNA ANALYSIS OF SAMPLES.**

(a) ASSESSMENT.—The Attorney General, acting through the Director of the National Institute of Justice, shall sur-

vey Federal, State, local, and tribal law enforcement jurisdictions to assess the amount of DNA evidence contained in rape kits and in other evidence from sexual assault crimes that has not been subjected to testing and analysis.

(b) REPORT.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Attorney General shall submit to Congress a report on the assessment carried out under subsection (a).

(2) CONTENTS.—The report submitted under paragraph (1) shall include—

(A) the results of the assessment carried out under subsection (a);

(B) the number of rape kit samples and other evidence from sexual assault crimes that have not been subjected to DNA testing and analysis; and

(C) a plan for carrying out additional assessments and reports on the backlog in crime scene DNA testing and analysis.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Department of Justice to carry out this section $500,000 for fiscal year 2003.

**SEC. 3. THE DEBBIE SMITH DNA BACKLOG GRANT PROGRAM.**

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

(1) by striking the heading and inserting "**AUTHORIZATION OF DEBBIE SMITH DNA BACKLOG GRANTS.**"; and

(2) in subsection (a)—

(A) in paragraph (2), by inserting "including samples from rape kits and samples from other sexual assault evidence, including samples taken in cases with no identified suspect" after "crime scenes"; and

(B) by adding at the end the following:

"(4) To ensure that DNA testing and analysis of samples from rape kits and nonsuspect cases are carried out in a timely manner.".

**SEC. 4. INCREASED GRANTS FOR ANALYSIS OF DNA SAMPLES FROM CONVICTED OFFENDERS AND CRIME SCENES.**

Section 2(j) of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135(j)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (B), by striking "and" at the end; and

(B) by striking subparagraph (C) and inserting the following:

"(C) $15,000,000 for fiscal year 2003;

"(D) $15,000,000 for fiscal year 2004;

"(E) $15,000,000 for fiscal year 2005;

"(F) $15,000,000 for fiscal year 2006; and

"(G) $15,000,000 for fiscal year 2007.

Amounts made available to carry out the purposes specified in subsection (a)(1) shall remain available until expended."; and

(2) in paragraph (2), by striking subparagraphs (C) and (D) and inserting the following:

"(C) $75,000,000 for fiscal year 2003;
"(D) $75,000,000 for fiscal year 2004;
"(E) $75,000,000 for fiscal year 2005;
"(F) $75,000,000 for fiscal year 2006; and
"(G) $25,000,000 for fiscal year 2007.

Amounts made available to carry out the purposes specified in paragraphs (2) and (3) of subsection (a) shall remain available until expended.".

**SEC. 5. AUTHORITY OF LOCAL GOVERNMENTS TO APPLY FOR AND RECEIVE DNA BACKLOG ELIMINATION GRANTS.**

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

(1) in subsection (a)—

(A) in the matter preceeding paragraph (1)—

(i) by inserting ", units of local government, or Indian tribes" after "eligible States"; and

(ii) by inserting ", unit of local government, or Indian tribe" after "State"; and

(B) in paragraph (3), by striking "or by units of local government" and inserting ", units of local government, or Indian tribes";

(2) in subsection (b)—

(A) in the matter preceding paragraph (1), by inserting "or unit of local government, or the head of the Indian tribe" after "State" each place that term appears;

(B) in paragraph (1), by inserting ", unit of local government, or Indian tribe" after "State";

(C) in paragraph (3), by inserting ", unit of local government, or Indian tribe" after "State" the first time that term appears;

(D) in paragraph (4), by inserting ", unit of local government, or Indian tribe" after "State"; and

(E) in paragraph (5), by inserting ", unit of local government, or Indian tribe" after "State";

(3) in subsection (c), by inserting ", unit of local government, or Indian tribe" after "State";

(4) in subsection (d)—

(A) in paragraph (1)—

(i) in subparagraph (A), by striking "or a unit of local government" and inserting ", a unit of local government, or an Indian tribe"; and

(ii) in subparagraph (B), by striking "or a unit of local government" and inserting ", a unit of local government, or an Indian tribe"; and

(B) in paragraph (2)(A), by inserting ", units of local government, and Indian tribes," after "States";

(5) in subsection (e)—

(A) in paragraph (1), by inserting "or local government" after "State" each place that term appears; and

(B) in paragraph (2), by inserting ", unit of local government, or Indian tribe" after "State";

(6) in subsection (f), in the matter preceeding paragraph (1), by inserting ", unit of local government, or Indian tribe" after "State";

(7) in subsection (g)—

(A) in paragraph (1), by inserting ", unit of local government, or Indian tribe" after "State"; and

(B) in paragraph (2), by inserting ", units of local government, or Indian tribes" after "States"; and

(8) in subsection (h), by inserting ", unit of local government, or Indian tribe" after "State" each place that term appears.

**SEC. 6. IMPROVING ELIGIBILITY CRITERIA FOR BACKLOG GRANTS.**

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

(1) in subsection (b)—

(A) in paragraph (4), by striking "and" after the semicolon;

(B) in paragraph (5), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following:

"(6) if the applicant is a unit of local government, certify that the applicant participates in a State laboratory system;

"(7) provide assurances that, not later than 3 years after the date on which the application is submitted, the State, unit of local government, or Indian tribe will implement a plan for forwarding, not later than 180 days after a DNA evidence sample is obtained, all samples collected in cases of sexual assault to a laboratory that meets the quality assurance standards for testing under subsection (d); and

"(8) upon issuance of the regulations specified in section 10(d), certify that the State, unit of local government, or Indian tribe is in compliance with those regulations."; and

(2) by adding at the end the following:

"(k) PRIORITY.—In awarding grants under this section, the Attorney General shall give priority to a State or unit of local government that has a significant rape kit or nonsuspect case backlog per capita as compared with other applicants.".

**SEC. 7. QUALITY ASSURANCE STANDARDS FOR COLLECTION AND HANDLING OF DNA EVIDENCE.**

(a) NATIONAL PROTOCOL.—

(1) IN GENERAL.—The Attorney General shall review national, State, local, and tribal government protocols, that exist on or before the date of enactment of this Act, on the collection and processing of DNA evidence at crime scenes.

(2) RECOMMENDED PROTOCOL.—Based upon the review described in paragraph (1), the Attorney General shall develop a recommended national protocol for the collection of DNA evidence at crime scenes, including crimes of rape and other sexual assault.

(b) STANDARDS, PRACTICE, AND TRAINING FOR SEXUAL ASSAULT FORENSIC EXAMINATIONS.—Section 1405(a) of the Victims of Trafficking and Violence Protection Act of 2000 (42 U.S.C. 3796gg note) is amended—

(1) in paragraph (2), by inserting "and emergency response personnel" after "health care students"; and

(2) in paragraph (3), by inserting "and DNA evidence collection" after "sexual assault forensic examinations".

**SEC. 8. SEXUAL ASSAULT FORENSIC EXAM PROGRAM GRANTS.**

(a) AUTHORIZATION OF GRANTS.—The Attorney General shall make grants to eligible entities to—

(1) establish and maintain sexual assault examiner programs;

(2) carry out sexual assault examiner training and certification; and

(3) acquire or improve forensic equipment.

(b) ELIGIBLE ENTITY.—For purposes of this section, the term "eligible entity" means—

(1) a State;

(2) a unit of local government;

(3) a college, university, or other institute of higher learning;

(4) an Indian tribe;

(5) sexual assault examination programs, including sexual assault nurse examiner (SANE) programs, sexual assault forensic examiner (SAFE) programs, and sexual assault response team (SART) programs; and

(6) a State sexual assault coalition.

(c) APPLICATION.—To receive a grant under this section—

(1) an eligible entity shall submit to the Attorney General an application in such form and containing such information as the Attorney General may require; and

(2) an existing or proposed sexual assault examination program shall also—

(A) certify that the program complies with the standards and recommended protocol developed by the Attorney General pursuant to section 1405 of the Victims of Trafficking and Violence Protection Act of 2000 (42 U.S.C. 3796gg note); and

(B) certify that the applicant is aware of, and utilizing, uniform protocols and standards issued

by the Department of Justice on the collection and processing of DNA evidence at crime scenes.

(d) PRIORITY.—In awarding grants under this section, the Attorney General shall give priority to proposed or existing sexual assault examination programs that are serving, or will serve, populations currently underserved by existing sexual assault examination programs.

(e) RESTRICTIONS ON USE OF FUNDS.—

(1) SUPPLEMENTAL FUNDS.—Funds made available under this section shall not be used to supplant State funds, but shall be used to increase the amount of funds that would, in the absence of Federal funds, be made available from State sources for the purposes of this section.

(2) ADMINISTRATIVE COSTS.—An eligible entity may not use more than 5 percent of the funds it receives under this section for administrative expenses.

(3) NONEXCLUSIVITY.—Nothing in this section shall be construed to limit or restrict the ability of proposed or existing sexual assault examination programs to apply for and obtain Federal funding from any other agency or department or any other Federal grant program.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Department of Justice, to remain available until expended, $30,000,000 for each of fiscal years 2003 through 2007 to carry out this section.

**SEC. 9. DNA EVIDENCE TRAINING GRANTS.**

(a) AUTHORIZATION OF GRANTS.—The Attorney General shall make grants to eligible entities to—

(1) train law enforcement personnel and all other first responders at crime scenes, including investigators, in the handling of sexual assault cases and the collection and use of DNA samples for use as forensic evidence;

(2) train State and local prosecutors on the use of DNA samples for use as forensic evidence; and

(3) train law enforcement personnel to recognize, detect, report, and respond to drug-facilitated sexual assaults.

(b) ELIGIBLE ENTITY.—For purposes of this section, the term "eligible entity" means—

(1) a State;

(2) a unit of local government;

(3) a college, university, or other institute of higher learning; and

(4) an Indian tribe.

(c) APPLICATION.—To receive a grant under this section, the chief executive officer of a State, unit of local government, or university, or the head of a tribal government that desires a grant under this section shall submit to the Attorney General—

(1) an application in such form and containing such information as the Attorney General may require;

(2) certification that the applicant is aware of, and utilizing, uniform protocols and standards issued by the Department of Justice on the collection and processing of DNA evidence at crime scenes;

(3) certification that the applicant is aware of, and utilizing, the national sexual assault forensic examination training protocols developed under section 1405(a) of the Victims of Trafficking and Violence Protection Act of 2000 (42 U.S.C. 3796gg note); and

(4) if the applicant is a unit of local government, certification that the applicant participates in a State laboratory system.

(d) RESTRICTIONS ON USE OF FUNDS.—

(1) SUPPLEMENTAL FUNDS.—Funds made available under this section shall not be used to supplant State funds, but shall be used to increase the amount of funds that would, in the absence of Federal funds, be made available from State sources for the purposes of this section.

(2) ADMINISTRATIVE COSTS.—An eligible entity may not use more than 5 percent of the funds it receives under this section for administrative expenses.

(3) NONEXCLUSIVITY.—Nothing in this section shall be construed to limit or restrict the ability of an eligible entity to apply for and obtain Federal funding from any other agency or department or any other Federal grant program.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Department of Justice $10,000,000 for each of fiscal years 2003 through 2007 to carry out this section.

**SEC. 10. AUTHORIZING JOHN DOE DNA INDICTMENTS.**

(a) LIMITATIONS.—Section 3282 of title 18, United States Code, is amended—

(1) by striking "Except" and inserting the following: "(a) LIMITATION.—Except"; and

(2) by adding at the end the following:

"(b) DNA PROFILE INDICTMENT.—

"(1) IN GENERAL.—In any indictment found for an offense under chapter 109A, if the identity of the accused is unknown, it shall be sufficient to describe the accused as an individual whose name is unknown, but who has a particular DNA profile.

"(2) EXCEPTION.—Any indictment described in paragraph (1), which is found within 5 years after the offense under chapter 109A shall have been committed, shall not be subject to—

"(A) the limitations period described in subsection (a); and

"(B) the provisions of chapter 208 until the individual is arrested or served with a summons in connection with the charges contained in the indictment.

"(3) DEFINITION.—For purposes of this subsection, the term 'DNA profile' means a set of DNA identification characteristics.".

(b) RULES OF CRIMINAL PROCEDURE.—Rule 7 of the Federal Rules of Criminal Procedure is amended in subdivision (c)(1) by adding at the end the following: "For purposes of an indictment referred to in section 3282 of title 18, United States Code, if the identity of the defendant is unknown, it shall be sufficient to describe the defendant, in the indictment, as an individual whose name is unknown, but who has a particular DNA profile, as defined in that section 3282.".

**SEC. 11. INCREASED GRANTS FOR COMBINED DNA INDEX (CODIS) SYSTEM.**

Section 210306 of the DNA Identification Act of 1994 (42 U.S.C. 14134) is amended—

(1) by striking "There" and inserting the following: "(a) IN GENERAL.—There"; and

(2) by adding at the end the following:

"(b) INCREASED GRANTS FOR CODIS.—There is authorized to be appropriated to the Federal Bureau of Investigation to carry out upgrades to the Combined DNA Index System (CODIS) $9,700,000 for fiscal year 2003.".

**SEC. 12. INCREASED GRANTS FOR FEDERAL CONVICTED OFFENDER PROGRAM (FCOP).**

Section 3 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135a) is amended by adding at the end the following:

"(g) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Federal Bureau of Investigation to carry out this section $500,000 for fiscal year 2003.".

**SEC. 13. PRIVACY REQUIREMENTS FOR HANDLING DNA EVIDENCE AND DNA ANALYSES.**

(a) PRIVACY PROTECTION STANDARD.—Section 10(a) of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135e(a)) is amended by inserting before the period at the end the following: "or in section 3282(b) of title 18, United States Code".

(b) LIMITATION ON ACCESS TO DNA INFORMATION.—Section 10 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135e) is amended by adding at the end the following:

"(d) LIMITATION ON ACCESS TO DNA INFORMATION.—

"(1) IN GENERAL.—The Attorney General shall establish, by regulation, procedures to limit access to, or use of, stored DNA samples or DNA analyses.

"(2) REGULATIONS.—The regulations established under paragraph (1) shall establish conditions for using DNA information to—

"(A) limit the use and dissemination of such information, as provided under subparagraphs (A), (B), and (C) of section 210304(b)(3) of the Violent

Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14132(b)(3));

"(B) limit the redissemination of such information;

"(C) ensure the accuracy, security, and confidentiality of such information;

"(D) protect any privacy rights of individuals who are the subject of such information; and

"(E) provide for the timely removal and destruction of obsolete or inaccurate information, or information required to be expunged.".

(c) CRIMINAL PENALTY.—Section 10(c) of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135e) is amended—

(1) in paragraph (1), by striking "discloses a sample or result" and inserting "discloses or uses a DNA sample or DNA analysis"; and

(2) in paragraph (2), by inserting "per offense" after "$100,000".

## I. PURPOSE

The purpose of S. 2513, the DNA Sexual Assault Justice Act of 2002, is to increase Federal resources available to States and local governments to combat crimes, particularly sexual assault crimes, with DNA technology. In particular, the bill addresses the DNA backlog crisis in the Nation's crime labs, where crime scene evidence (including rape kits) and convicted offender samples wait for DNA testing while rapists and killers remain at large. The bill also provides increased Federal support for sexual assault examiner programs, DNA training of law enforcement personnel and prosecutors, and updating the national DNA database. To ensure that these grants are effective, the bill heightens the standards for DNA collection and maintenance, and requires the Department of Justice to promulgate national privacy guidelines. Finally, the bill authorizes the issuance of "John Doe" DNA indictments for Federal sexual assault crimes, which toll the applicable statute of limitations and permit prosecution whenever a DNA match is made.

Congress began to attack the problem of the DNA backlog two years ago, by passing the DNA Analysis Backlog Elimination Act of 2000, Public Law 106–546. That legislation authorized $170 million over four years for grants to States to increase the capacity of their forensic labs and to carry out DNA testing of backlogged evidence. Despite the new law and some Federal funding, the persistent backlogs nationwide make it plain that more must be done to help the States. The DNA Sexual Assault Justice Act of 2002 takes the next step and provides more comprehensive assistance to States. Recognizing the enormous strides in DNA technology and the interconnection of States through the national DNA database, the DNA Sexual Assault Justice Act of 2002 enhances the infrastructure so that the criminal justice system can harness the power of DNA.

## II. Legislative History

The DNA Sexual Assault Justice Act of 2002 was introduced on May 14, 2002, by Senators Biden and Clinton. That same day, the Subcommittee on Crimes and Drugs held a hearing entitled "Justice for Victims of Sexual Assault: Using DNA Evidence to Combat Crime," chaired by Senator Biden. On the first panel, Sarah J. Hart, Director of the National Institute of Justice, and Dr. Dwight Adams, Assistant Director of the FBI's Laboratory Division, provided an update on the Federal Government's efforts relating to DNA. On the second panel, Debbie Smith of Williamsburg, VA, gave powerful personal testimony about her experience as a rape victim, and explained how DNA identified her attacker six years after the crime; Linda Fairstein, former Chief of the Sex Crimes Unit in the Manhattan District Attorney's Office, testified about how DNA evidence has improved sexual assault prosecutions; Debra Holbrook, a registered nurse and certified sexual assault nurse examiner with the Nanticoke Memorial Hospital in Seaford, DE, testified about sexual assault examiner programs; Susan Narveson, President of the Association of Crime Laboratory Directors in Phoenix, AR, spoke about the laboratory communities' need for more resources; and J. Tom Morgan, District Attorney from Decatur, GA, and Vice President of the National District Attorneys Association (NDAA), testified on behalf of the NDAA about recent State law changes to statutes of limitations for sexual assault crimes.

## III. Vote of the Committee

The Senate Committee on the Judiciary, with a quorum present, met on Thursday, July 18, 2002, to consider the DNA Sexual Assault Justice Act of 2002. The Committee considered and accepted an amendment in the nature of a substitute offered by Senators Biden, Clinton, Cantwell, Carper, Schumer, Hatch, Durbin, Feinstein, Leahy, Jeffords, and Specter. The Committee then approved the bill, as amended, by voice vote, with no objection noted, and ordered the bill to be reported favorably to the Senate, with a recommendation that the bill do pass.

## IV. Discussion

The DNA Sexual Assault Justice Act of 2002, S. 2513, offers a two-pronged attack on sexual assault crime in America. First, it builds upon the DNA Analysis Backlog Elimination Act of 2000 by adding more Federal resources for States (and for the first time, makes those resources directly available to local governments as well) so that they may eliminate the backlog of untested DNA samples—and in particular, the troubling backlog of untested rape kits. Second, because tapping the potential of DNA technology requires more than eliminating existing backlogs, S. 2513 also provides increased grants to upgrade the national DNA database, supports specially trained sexual assault examiner programs, takes steps to ensure that evidence is routinely and promptly sent for DNA testing in the future, and authorizes "John Doe" DNA indictments. In honor of her courage and tireless advocacy on behalf of victims, S. 2513 authorizes that the grant programs for DNA testing be named after Ms. Debbie Smith.

## A. THE RAPE KIT BACKLOG CRISIS

Most sexual assault crimes occur between individuals who know each other; only about 30 percent are stranger rape cases.[1] Thus, in many instances, sexual assault cases do not hinge on DNA evidence. However, in stranger sexual assault cases, DNA matching by comparing evidence gathered at the crime scene with convicted offender samples entered into the national DNA database (typically called a "cold hit") has proven to be the deciding factor in identifying the perpetrator—it has revolutionized the criminal justice system, and brought closure and justice for victims.

For example, through DNA testing, the Baltimore Police recently solved a twelve-year-old case for the rape and murder of a teenager. The DNA evidence matched the profile of a man already serving time for robbery and attempted rape. When confronted with the DNA evidence, the perpetrator confessed. In Florida, Kellie Green was brutally attacked and raped in the laundry room of her apartment complex. Because of lack of funds, her rape kit sat on the shelf for three years until a persistent detective had it analyzed. The evidence matched the profile of a man already incarcerated for beating and raping a woman six weeks before Ms. Green was attacked. Finally, Debbie Smith testified that she was abducted from her home in 1989 and raped in the woods behind her home while her police officer husband was asleep upstairs. Six years later, DNA evidence obtained from the assault matched with DNA from an inmate in a Virginia prison. For the first time since the rape, Debbie knew that her attacker would not return—it was her first moment of peace and security.

As these and many other stories illustrate, solving cold cases through DNA testing is possible, and the technology is at our fingertips. Any backlog in DNA testing of sexual assault evidence is profoundly unfair to victims and dedicated law enforcement alike.

A 1999 study authorized by the National Institute of Justice's National Commission on the Future of DNA Evidence found that there was an overall backlog of 180,000 rape kits sitting on the shelves in State crime labs waiting for DNA analysis. More recent news reports estimate that untested crime scene evidence number to be much more, upwards of 500,000.

Significantly, there is no accurate nationwide count of the current rape kit backlog, just piecemeal media reports. New York City's backlog is particularly dire and, consequently, has drawn recent attention. At one time there were at least 16,000 untested rape kits stored in a police warehouse in Queens—a fact widely publicized by former New York City Commissioner Howard Safir. The Los Angeles Times reported in 2001 that at least 2,600 rape kits were awaiting testing in the Los Angeles area, among the 20,000 untested kits in California. Evidence from nearly 4,000 sexual assault cases in Arizona similarly remain untested in crime labs throughout the State. In April, 2002, a local newspaper reported that more than 5,000 rape kits were sitting on shelves at one of the four DNA labs in Indiana. State officials in Washington estimate that more than 7,000 kits containing rape evidence have

[1] In the year 2000, 62 percent of all rapes of women were committed by persons known to their victims. Bureau of Justice Statistics, "Criminal Victimization 2000," June 2001.

been gathering dust in police evidence rooms, in some cases for decades.

Because there is no current accounting of the backlog, S. 2513 directs the Department of Justice to survey the Nation's law enforcement agencies to determine the precise scope of the rape kit backlog. In addition, S. 2513 requires the Department of Justice to submit a plan for carrying out additional backlog assessments as may be required so that Congress may measure the progress made on this issue.

Basic reasons for the rape kit backlog are woefully inadequate funding and lack of infrastructure. DNA testing for a rape kit costs between $500 and $1,500. Testing costs vary depending on the type and number of samples, economies of scale, the scope and condition of the evidence, and whether the testing is done by a private or public lab. In addition to lack of funds, law enforcement efforts are hampered by a lack of lab infrastructure and forensic analysts to do the actual tests. In recognition of these obstacles, the costs, and the pervasiveness of the problem, S. 2513 significantly increases resources available to States and local enforcement for crime scene testing, from $50 million for 2003 and 2004 under existing law, to $75 million each year from 2003 to 2007.

### B. THE BACKLOG IN DNA TESTING OF CONVICTED OFFENDER SAMPLES

#### *1. The national DNA database*

A provision of the 1994 Crime Bill, the DNA Identification Act of 1994, 42 U.S.C. 14131 et seq., created the Combined DNA Index System ("CODIS")—an electronic database of DNA profiles much like the FBI's fingerprint database. CODIS includes a Convicted Offender Index, which contains DNA profiles taken from samples drawn from certain convicted offenders, and a Forensic Index, which contains DNA profiles developed from crime scene evidence. CODIS software searches these two indices for matching DNA profiles. As of July 2002, 153 crime labs in 49 States have the CODIS system.

Federal law delineates the specific Federal qualifying offenses (murder, sexual assault, kidnapping, burglary, and other crimes of violence) for which a convicted individual must submit DNA samples for inclusion in CODIS. Notably, individuals on parole, release or probation for these offenses, and military and District of Columbia offenders, must also provide samples.

Like Federal authorities, participating States enter the DNA profiles of individuals convicted of certain crimes (e.g., rape, murder, child abuse) into the CODIS system. (See attached chart listing the qualifying offenses for each State as of October, 2002.) In 1998, the FBI set up the National DNA Indexing System ("NDIS"), which links together State and Federal DNA profiles and evidence on the CODIS system. If a State laboratory is not part of NDIS, it can use the CODIS software only to compare DNA samples taken from that particular laboratory. As described above, 153 labs in 49 States participate in CODIS. Of that number, as of August 2002, laboratories in 44 States, the U.S. Army, the FBI, and Puerto Rico participate in NDIS. Non-participating States (South Dakota, Iowa, Mississippi, Alabama, Rhode Island, and Hawaii) are able to access

the national database only in limited "exigent circumstances"-type situations.

The FBI provides CODIS software, installation and user support free of charge to any State or local law enforcement lab. As of August 2002, the FBI reported that there were over 1,119,127 convicted offender DNA profiles and 39,096 case samples in the index. The FBI also concluded that CODIS had assisted in over 5,400 investigations in 34 States.

*2. Convicted offender DNA testing*

With each passing legislative session, States are amending their State laws to expand the number of qualifying offenses for which convicted offenders must submit DNA samples. Passage of State laws requiring all offenders convicted of felonies to submit DNA samples are imposing a significant financial burden on the States at the outset, as samples must be drawn from all those currently incarcerated and then analyzed to develop a DNA profile of each offender. Because the pool of convicted offender samples is constantly growing, it is very difficult for States to eliminate the backlog and keep up with new samples.

In May 2002, the Office of the Inspector General for the Department of Justice issued an audit report on the Office of Justice Programs Convicted Offender DNA Sample Backlog Reduction Grant Program as carried out for fiscal year 2000. The audit report reiterates the challenge of measuring the backlog of untested convicted offender samples because it is constantly fluctuating with the addition of new qualifying offenses at the State level. Nonetheless, the report quotes an FBI estimate of 681,470 untested offender samples as of the end of 2001.

In an earlier report, the Federal Government conducted a survey of the 110 known public forensic DNA labs in 2000. See Bureau of Justice Statistics Bulletin, "Survey of DNA Crime Laboratories," January 2002. Eighty-one percent of the crime labs reported DNA analysis backlogs totaling 16,081 subject cases (evidence from a single crime scene, sometimes called "casework") and 265,329 convicted offender samples.[2] To assist in DNA testing, 45 percent of the crime labs contracted with private labs. It is expected that pursuant to funds received under this legislation, State and local governments will continue to outsource their DNA testing to private labs as needed.

In the fight against sexual assault crimes, the backlog in convicted offender samples is just as debilitating as the rape kit backlog. The national DNA database system is effective only with updated and accurate offender samples with which to compare crime scene evidence. Indeed, the State with the current highest "cold hit" rate using the DNA database—Virginia—attributes its success to the fact that convicted offender samples are widely and frequently uploaded into its system. Accordingly, the DNA Sexual Assault Justice Act of 2002 extends the funding available for offender sample testing through 2007, at $15 million a year.

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[2] The survey defined a case as backlogged when a lab had a complete set of samples ready for testing for more than 15 days, and an offender sample as backlogged when it was in the lab for more than 10 days.

### C. SEXUAL ASSAULT EXAMINER PROGRAMS

A critical improvement in law enforcement's response to sexual assault cases are specially trained sexual assault forensic examiners. These nurses and doctors are specially adept at identifying sexual assault injuries and collecting the evidence. Indeed, studies show evidence collected by specially trained forensic nurses is much more likely to yield reliable DNA profiles.[3] Furthermore, these examiners are particularly sensitive to the trauma of sexual assault and try to ensure that the patient is not revictimized after reporting the crime, allowing victims to avoid waiting for hours in crowded emergency rooms and repeating their story to multiple staff. Forensic nurses and examiners occupy a unique niche between the medical community and law enforcement. Often examiners serve as expert witnesses and typically provide juries with specific and strong evidence to convict. Yet, as Debra Holbrook testified, these services are currently available to only two out of every ten victims of sexual assault.

Since the early 1990s, police departments, victim service providers, advocates, and hospitals have collaborated to create sexual assault examiner teams, ranging from sexual assault nurse examiners (SANEs) to sexual assault forensic examiners (SAFEs) to sexual assault response teams (SARTs). Experts estimate that about 300 SANE programs currently exist. The DNA Sexual Assault Justice Act creates a grant program to expand the availability of sexual assault examiner programs. Ultimately, these programs should be established in every emergency room, and it will be routine for law enforcement and prosecutors to work with sexual assault examiners. Every victim of sexual assault deserves the expert and tailored care of a sexual assault examiner and the certainty that a trained examiner brings to the courtroom. Further, the criminal justice system as a whole will benefit from programs that adeptly collect DNA evidence from victims.

### D. DNA TRAINING GRANTS

Law enforcement and State prosecutors are clamoring for information about DNA evidence—how to collect it, how to maintain it, and how to use it in the courtroom. A well-meaning police officer may irreparably degrade DNA evidence by placing crime scene evidence in the hot trunk of a police car for days. By all accounts, police officers everywhere are eager for information about collecting and processing DNA evidence before it gets to the crime laboratory. When the National Institute of Justice issued a pamphlet called "What Every Law Enforcement Officer Should Know About DNA Evidence," the first printing of one million copies was gone after just five months. Training should be a matter of course for all law enforcement. No rape kit will lead to the perpetrator if the evidence is collected improperly.

Training must also be available for all prosecutors. The subcommittee heard testimony on this topic from the Vice President of the National Association of District Attorneys, who stated:

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[3] In a study comparing 24 sexual assault evidence kits collected by sexual assault nurse examiners (SANEs) to 73 evidence kits collected by untrained personnel, the SANE kits were better documented, more complete and maintained the proper chain of evidence.

> Prosecutors who advise law enforcement agencies and forensic laboratories, as well as actively try cases involving DNA, need to be fully versed in the capabilities, and vulnerabilities of this technology. This is not something you learn in law school nor is it something that most of us can "bone up on" the night before trial. DNA technology is complex. Training in the use of DNA evidence in a criminal investigation or a trial is crucial.

Hearing of May 14, 2002 (statement of J. Tom Morgan).

### E. THE STATUTE OF LIMITATIONS AND THE "JOHN DOE" DNA WARRANT

Rather than discard the statute of limitations entirely for crimes of sexual assault, the DNA Sexual Assault Justice Act of 2002 authorizes the issuance of "John Doe" DNA indictments for Federal sexual assault crimes. When law enforcement does not know the name of the perpetrator but does know his DNA profile, it may seek an indictment that identifies the defendant by that DNA profile. As long as the indictment is returned within the five-year statute of limitations, the prosecution may proceed at any time, without regard to the limitations period.

"John Doe" DNA indictments respond effectively to the profound injustice done to rape victims when delayed DNA testing leads to a "cold hit" after the statute of limitations has expired. For instance, a women was brutally raped in her California home, and for years the police were unable to solve the crime. Seven years later, DNA from the rape matched a man in jail for an unrelated crime. Yet the rapist was never charged, convicted, or sentenced because California's statute of limitations had expired the previous year. In response, California changed its law and now allows prosecution of certain sexual offenses within one year of matching the DNA evidence to the perpetrator. Other States are also changing their laws—some by extending their statute of limitations for sexual offenses from five to ten years, and others by eliminating the limitations period for sexual assault altogether when prosecution is based on DNA evidence.

"John Doe" DNA indictments strike the appropriate balance: they encourage swift and efficient investigations, while recognizing the durability and credibility of DNA evidence and preventing an injustice if a "cold hit" occurs outside the limitations period.

DNA indictments were pioneered by Milwaukee County Assistant District Attorney Norman Gahn in 1999. Since then, they have been used by prosecutors in at least eight other States—New York, Kansas, Utah, Pennsylvania, California, Oklahoma, Texas and North Dakota. For example, in February 2002, the Brooklyn District Attorney's Office charged a parolee with an unsolved rape from 1995 based on a DNA match. The case rests on a "John Doe" DNA warrant filed in October 2000 to comply with the five-year statute of limitations. Thus far, State DNA indictments have been upheld by State courts in Wisconsin and California. As articulated by the court in California, "John Doe" DNA indictments describe the defendant with "reasonable certainty" and so preserve due process rights. In addition, S. 2513 complies with the sixth amendment's speedy trial guarantee by triggering the provisions of the Speedy Trial Act as soon as the defendant is arrested or served

with a summons in connection with the charges contained in the indictment—presumably after a "cold hit" occurs.

Nothing in this provision shall be read to limit or otherwise affect the constitutionality of an indictment that identifies the defendant only by an alleged alias, the fictitious name "John Doe," or other particulars concerning the defendant's race, sex, age, height, weight, hair color, eye color, and/or unique physical characteristics. See e.g., *United States* v. *Doe*, 401 F. Supp. 63 (E.D. Wis. 1975).

## V. SECTION-BY-SECTION ANALYSIS

*Section 1. Short title*

This section provides a short title: the "DNA Sexual Assault Justice Act of 2002."

*Section 2. Assessment of backlog in DNA analysis of samples*

This section requires the Attorney General to survey law enforcement to assess the extent of the backlog of untested rape kits and other sexual assault evidence. Within one year of enactment, the Attorney General shall submit his findings in a report to Congress with a plan for carrying out additional assessments and reports on the backlog as needed. Five hundred thousand dollars is authorized in fiscal year 2003 to carry out this section. The Committee understands that the Attorney General intends to review the backlog consistent with this legislative directive and is in the process of convening a DNA Backlog Working Group that should facilitate compliance with this section.

*Section 3. The Debbie Smith DNA Backlog Grant Program*

This provision names a section of the DNA Backlog Elimination Act after Ms. Debbie Smith, and amends the purpose section of that Act to ensure the timely testing of rape kits and evidence from non-suspect cases.

*Section 4. Increased grants for analysis of DNA samples from convicted offenders and crime scenes*

This provision extends and increases authorizations in the DNA Analysis Backlog Elimination Act, 42 U.S.C. 14135. That Act authorizes $15 million dollars for fiscal year 2003 for DNA testing of convicted offender samples, and $50 million for fiscal years 2003 and 2004 for DNA testing of crime scene evidence (including rape kits) and laboratory improvement. The DNA Sexual Assault Justice Act increases the convicted offender authorization to $15 million for each of fiscal years 2003 through 2007—a total increase of $60 million—and increases the crime scene evidence and laboratory improvement authorizations to $75 million for fiscal years 2003 through 2006, and $25 million for fiscal year 2007—a total increase of $275 million.

Increased Federal resources are necessary to (1) eliminate the extensive State backlog in untested rape kits and other non-suspect case evidence; (2) strengthen insufficient laboratory equipment and woefully inadequate staffing; and (3) keep pace with the ever-expanding amount of offender samples to be tested.

*Section 5. Authority of local governments to apply for and receive DNA Backlog Elimination Grants*

This section authorizes local State governments and Indian tribes to apply directly for Debbie Smith DNA Backlog Grants so that Federal resources can meet local needs more quickly.

*Section 6. Improving eligibility criteria for backlog grants*

To ensure that Debbie Smith DNA Backlog Grants are most productive, this section amends the eligibility requirements to ensure that applicants adhere to certain protocols. Specifically, when a local governmental entity such as a city or county applies for a grant, it must certify that it participates in a State laboratory system (or intends to do so within a reasonable time frame), meaning that it submits its completed DNA analyses for inclusion in the State DNA database system, making them available to be searched nationally. Each applicant must also certify that, within three years after submission of the application, it will implement a plan for forwarding all DNA evidence collected in sexual assault cases to a qualified laboratory within 180 days. This requirement will ensure that States and localities develop the necessary infrastructure to guarantee that DNA testing in sexual assault cases occurs within three months. Finally, applicants must also certify compliance with privacy regulations promulgated by the Attorney General pursuant to section 13 of this act.

Section 6 further provides that in making Debbie Smith DNA Backlog Grants, the Department of Justice shall give priority to applicants with the greatest backlogs per capita. The Committee intends to bring about the largest possible reduction in the national backlog, but at the same time to ensure that small rural jurisdictions that are often the most lacking in financial resources to pay for DNA testing remain eligible for funding.

*Section 7. Quality assurance standards for collection and handling of DNA evidence*

This section requires the Department of Justice to develop a recommended national protocol for the collection of DNA evidence at crime scenes, which will provide guidance to law enforcement and other first responders on appropriate ways to collect and maintain DNA evidence. However, nothing in this provision shall be interpreted as establishing only one acceptable means of attaining DNA evidence, nor shall it be interpreted as creating Federal and/or State standards for the admissibility, reliability or credibility of DNA evidence.

This section also amends the Violence Against Women Act of 2000, 42 U.S.C. 3796gg, to ensure that the recommended national protocol for training individuals in the collection and use of DNA evidence through forensic examination in cases of sexual assault that is mandated by that Act is in fact developed, and to include standards for training of emergency response personnel. Several professional organizations and community advocates have already developed operating procedures, policies and practices for sexual assault examinations; the Committee intends for the Department of Justice to refer to these existing practices when complying with this provision of the act.

*Section 8. Sexual Assault Forensic Exam Program Grants*

This section creates a new grant program to establish and maintain sexual assault examiner programs, carry out sexual assault examiner training and certification, and acquire or improve forensic equipment. Eligible entities are States, local governments, Indian tribal governments, universities, and existing sexual assault examiner programs that comply with standards developed pursuant to the Violence Against Women Act of 2000. The grant program is authorized for fiscal years 2003 through 2007, at $30 million per year. In awarding grants under this section, the Attorney General shall give priority to programs that are serving or will serve communities that are currently underserved by existing sexual assault examiner programs.

*Section 9. DNA Evidence Training Grants*

This section creates a new grant program to train law enforcement and prosecutors in the collection, handling, and courtroom use of DNA evidence, and to train law enforcement in responding to drug-facilitated sexual assaults. Eligible applicants are States, local governments, Indian tribal governments, and universities. Grants are contingent upon adherence to FBI laboratory protocols, use of the collection standards established pursuant to section 7 of this act, and participation in a State laboratory system. The grant program is authorized for fiscal years 2003 through 2007, at $10 million per year.

*Section 10. Authorizing "John Doe" DNA Indictments*

In Federal sexual assault crimes, this provision authorizes the issuance of "John Doe" DNA indictments that identify the defendant by his DNA profile. Such indictments must issue within the applicable statute of limitations; thereafter, the prosecution may commence at any time once the defendant is arrested or served with a summons.

*Section 11. Increased grants for Combined DNA Index (CODIS) System*

This provision appropriates $9.7 million for fiscal year 2003 to upgrade the national DNA database. Improved database software will handle the expected increase in DNA information from the States and produce quicker matches.

*Section 12. Increased grants for Federal convicted offender program*

This provision appropriates $500,000 for fiscal year 2003 to process Federal offender DNA samples and enter that information into the national DNA database. As Congress increases the number of qualifying Federal crimes for the database, this funding will help the Federal Bureau of Investigations handle the 5,000 to 7,500 Federal offender DNA samples entering the system each year.

*Section 13. Privacy requirements for handling DNA evidence and DNA analysis*

This section requires the Department of Justice to promulgate privacy regulations that will limit the use and dissemination of DNA information generated for criminal justice purposes, and ensure the privacy, security, and confidentiality of DNA samples and

analyses. In addition, this section amends the DNA Analysis Backlog Reduction Act of 2000 to increase criminal penalties for disclosing or using a DNA sample or DNA analysis in violation of that act by a fine not to exceed $100,000 per offense.

## VI. COST ESTIMATE

In compliance with paragraph 11(a) of rule XXVI of the standing Rules of the Senate, the Committee sets forth, with respect to the bill, S. 2513, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
*Washington, DC, August 9, 2002.*

Hon. PATRICK J. LEAHY,
*Chairman, Committee on the Judiciary,*
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2513, the DNA Sexual Assault Justice Act of 2002.

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

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

*S. 2513—DNA Sexual Assault Justice Act of 2002*

Summary: S. 2513 would authorize the appropriation of $546 million over the 2003–2007 period, mostly to increase funding for grants to states to improve forensic analysis of crime scenes and collect DNA samples from offenders. The bill also would increase penalties for the unauthorized use of DNA samples.

Assuming appropriation of the authorized amounts, CBO estimates that implementing S. 2513 would cost $425 million over the 2003–2007 period. This legislation would affect direct spending and receipts, so pay-as-you-go procedures would apply, but CBO estimates that any such effects would not be significant.

S. 2513 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). The bill would benefit state, local, and tribal governments; any costs incurred to receive or administer grants would be voluntary.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 2513 is shown in the following table. For the purposes of this estimate, CBO assumes that the authorized amounts will be appropriated by the start of each fiscal year and that spending will follow the historical spending rates for those activities. The cost of this legislation falls within budget function 750 (administration of justice).

In addition, enacting S. 2513 could increase collections of criminal fines for unauthorized use of DNA samples. CBO estimates that any additional collections would not be significant. Criminal

fines are recorded as receipts and deposited in the Crime Victims Fund, then later spent.

| | By fiscal year, in millions of dollars— | | | | | |
|---|---|---|---|---|---|---|
| | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 |
| SPENDING SUBJECT TO APPROPRIATION | | | | | | |
| Spending Under Current Law for the Programs Funded by S. 2513: | | | | | | |
| Authorization Level [1] | 45 | 40 | 25 | 0 | 0 | 0 |
| Estimated Outlays | 12 | 28 | 38 | 24 | 9 | 0 |
| Proposed Changes: | | | | | | |
| Authorization Level | 0 | 101 | 105 | 130 | 130 | 80 |
| Estimated Outlays | 0 | 28 | 59 | 100 | 119 | 118 |
| Spending Under S. 2513: | | | | | | |
| Authorization Level [1] | 45 | 141 | 130 | 130 | 130 | 80 |
| Estimated Outlays | 12 | 56 | 97 | 124 | 128 | 118 |

[1] The 2002 level is the total amount appropriated for that year for the programs authorized by S. 2513. The 2003 and 2004 levels are the total amounts authorized in current law for those programs.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act specifies pay-as-you-go procedures for legislation affecting direct spending and receipts. These procedures would apply to S. 2513 because it would affect both direct spending and receipts, but CBO estimates that the annual amount of such changes would not be significant.

Intergovernmental and private-sector impact: S. 2513 contains no intergovernmental or private-sector mandates as defined in UMRA. The bill would benefit state, local, and tribal governments by creating new grant programs and by reauthorizing and expanding existing grants under the DNA Analysis Backlog Elimination Act of 2000. Any costs incurred to receive or administer grants under these programs would be voluntary.

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

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

## VII. Regulatory Impact Statement

In compliance with paragraph 11(b)(1), rule XXVI of the Standing Rules of the Senate, the Committee, after due consideration, concludes that S. 2513 will not have significant regulatory impact.

## ATTACHMENT

[Source: Smith Alling Lane]

**STATE DNA DATABASE LAWS**
**QUALIFYING OFFENSES**
***(As of October 2002)***

| STATE | Sex Crimes | Murder | All Violent Crimes | Burglary | Drug Crimes | All Felons | Juveniles | Some Misde-meanors | Arrestees/ Suspects | Jailed Offenders | Community Corrections | Retroactive Jail & Prison | Retroactive Probation & Parole |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| ALABAMA | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | ✓ | | ✓ | ✓ | ✓ | |
| ALASKA | ✓ | ✓ | ✓ | ✓ | | | ✓ | | | | | | |
| ARIZONA | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | ✓ | ✓ | ✓ | |
| ARKANSAS | ✓ | ✓ | ✓ | ✓ | | | ✓ | ✓ | | ✓ | ✓ | ✓ | |
| CALIFORNIA | ✓ | ✓ | ✓ | ✓ | | | ✓ | | ✓ | ✓ | ✓ | ✓ | ✓ |
| COLORADO | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | | | | |
| CONNECTICUT | ✓ | | | | | | | | | ✓ | ✓ | | |
| DELAWARE | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | | ✓ | ✓ | | |
| FLORIDA | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | ✓ | ✓ | ✓ | ✓ |
| GEORGIA | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | | ✓ | | |
| HAWAII | ✓ | ✓ | | | | | | | | ✓ | ✓ | ✓ | ✓ |
| IDAHO | ✓ | ✓ | ✓ | | | | ✓ | | | ✓ | ✓ | ✓ | ✓ |
| ILLINOIS | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | ✓ | ✓ | ✓ | |
| INDIANA | ✓ | ✓ | ✓ | ✓ | | | | | | ✓ | ✓ | ✓ | |
| IOWA | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | ✓ | | ✓ | ✓ | | |
| KANSAS | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | ✓ | ✓ | ✓ | ✓ |
| KENTUCKY | ✓ | ✓ | | ✓ | | | ✓ | | | ✓ | ✓ | | |
| LOUISIANA | ✓ | ✓ | | | | | ✓ | | ✓ | ✓ | ✓ | ✓ | |
| MAINE | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | ✓ | | ✓ | | ✓ | |
| MARYLAND | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | ✓ | | ✓ | ✓ | ✓ | |
| MASSACHUSETTS | ✓ | ✓ | ✓ | ✓ | | | ✓ | | | ✓ | ✓ | | |

| STATE | Sex Crimes | Murder | All Violent Crimes | Burglary | Drug Crimes | All Felons | Juveniles | Some Misde-meanors | Arrestees / Suspects | Jailed Offenders | Community Corrections | Retroactive Jail & Prison | Retroactive Probation & Parole |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| MICHIGAN | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | ✓ | ✓ | ✓ | |
| MINNESOTA | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | ✓ | ✓ | | |
| MISSISSIPPI | ✓ | | | | | | | | | ✓ | ✓ | ✓ | |
| MISSOURI | ✓ | ✓ | | | | | | | | ✓ | ✓ | ✓ | ✓ |
| MONTANA | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | ✓ | ✓ | | |
| NEBRASKA | ✓ | ✓ | ✓ | | | | | | | ✓ | ✓ | | |
| NEVADA | ✓ | ✓ | ✓ | ✓ | ✓ | | | ✓ | | ✓ | ✓ | | |
| NEW HAMPSHIRE | ✓ | ✓ | ✓ | ✓ | | | ✓ | | | ✓ | ✓ | ✓ | ✓ |
| NEW JERSEY | ✓ | ✓ | ✓ | | | | ✓ | | | ✓ | ✓ | ✓ | |
| NEW MEXICO | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | ✓ | ✓ | ✓ | ✓ |
| NEW YORK | ✓ | ✓ | ✓ | ✓ | ✓ | | | | | ✓ | ✓ | | |
| NORTH CAROLINA | ✓ | ✓ | ✓ | | | | | | | ✓ | ✓ | ✓ | |
| NORTH DAKOTA | ✓ | ✓ | ✓ | | | | | | | ✓ | ✓ | ✓ | |
| OHIO | ✓ | ✓ | ✓ | ✓ | | | ✓ | ✓ | | ✓ | ✓ | ✓ | ✓ |
| OKLAHOMA | ✓ | ✓ | ✓ | ✓ | | | | | | ✓ | ✓ | ✓ | |
| OREGON | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | ✓ | ✓ | ✓ | ✓ |
| PENNSYLVANIA | ✓ | ✓ | ✓ | ✓ | | | ✓ | ✓ | | ✓ | ✓ | ✓ | |
| RHODE ISLAND | ✓ | ✓ | ✓ | ✓ | ✓ | | | | | ✓ | ✓ | | |
| SOUTH CAROLINA | ✓ | ✓ | ✓ | ✓ | ✓ | | ✓ | | | ✓ | ✓ | ✓ | ✓ |
| SOUTH DAKOTA | ✓ | ✓ | ✓ | ✓ | | | | | | ✓ | ✓ | ✓ | ✓ |
| TENNESSEE | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | ✓ | ✓ | | |
| TEXAS | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | ✓ | | | | |
| UTAH | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | ✓ | ✓ | ✓ | ✓ |

| STATE | Sex Crimes | Murder | All Violent Crimes | Burglary | Drug Crimes | All Felons | Juveniles | Some Misde-meanors | Arrestees / Suspects | Jailed Offenders | Community Corrections | Retroactive Jail & Prison | Retroactive Probation & Parole |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| VERMONT | ✓ | ✓ | ✓ | ✓ | | | | ✓ | | ✓ | ✓ | ✓ | ✓ |
| VIRGINIA | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | ✓ | ✓ | ✓ | ✓ | ✓ |
| WASHINGTON | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | ✓ | ✓ | ✓ | |
| WEST VIRGINIA | ✓ | ✓ | ✓ | ✓ | ✓ | | | ✓ | | ✓ | ✓ | | |
| WISCONSIN | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | ✓ | ✓ | | |
| WYOMING | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | ✓ | ✓ | ✓ | ✓ |
| | | | | | | | | | | | | | |
| TOTALS | 50 | 48 | 44 | 41 | 28 | 23 | 30 | 22 | 4 | 46 | 46 | 31 | 17 |

VIII. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 2513, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman).

# UNITED STATES CODE

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# TITLE 18—CRIMES AND CRIMINAL PROCEDURE



## PART II—CRIMINAL PROCEDURE



### CHAPTER 213—LIMITATIONS



### § 3282. Offenses not capital

[Except] *(a) LIMITATION.—Except as otherwise expressly provided by law, no person shall be prosecuted, tried, or punished for any offense, not capital, unless the indictment is found or the information is instituted within five years next after such offense shall have been committed.*

*(b) DNA PROFILE INDICTMENT.—*

*(1) IN GENERAL.—In any indictment found for an offense under chapter 109A, if the identity of the accused is unknown, it shall be sufficient to describe the accused as an individual whose name is unknown, but who has a particular DNA profile.*

*(2) EXCEPTION.—Any indictment described in paragraph (1), which is found within 5 years after the offense under chapter 109A shall have been committed, shall not be subject to—*

*(A) the limitations period described in subsection (a); and*

*(B) the provisions of chapter 208 until the individual is arrested or served with a summons in connection with the charges contained in the indictment.*

*(3) DEFINITION.—For purposes of this subection, the term "DNA profile" means a set of DNA identification characteristics.*

* * * * * * *

## FEDERAL RULES OF CRIMINAL PROCEDURE

I. SCOPE, PURPOSE AND CONSTRUCTION

Rule
1. Scope.

* * * * * * *

III. INDICTMENT AND INFORMATION

* * * * * * *

7. The Indictment and the Information.
(a) Use of Indictment or Information.
(b) Waiver of Indictment.
(c) Nature and Consents.
(1) In General.

* * * * * * *

Rule 7. The Indictment and the Information.
(a) Use of Indictment or Information. An offense * * *

* * * * * * *

(c) NATURE AND CONTENTS.—

(1) IN GENERAL.—The indictment or the information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged. It shall be signed by the attorney for the government. It need not contain a formal commencement, a formal conclusion or any other matter not necessary to such statement. Allegations made in one count may be incorporated by reference in another count. It may be alleged in a single count that the means by which the defendant committed the offense are unknown or that the defendant committed it by one or more specified means. The indictment or information shall state for each count the official or customary citation of the statute, rule, regulation or other provision of law which the defendant is alleged therein to have violated. *For purposes of an indictment referred to in section 3282 of title 18, United States Code, if the identity of the defendant is unknown, it shall be sufficient to describe the defendant, in the indictment, as an individual whose name is unknown, but who has a particular DNA profile, as defined in that section 3282.*

* * * * * * *

# TITLE 42—THE PUBLIC HEALTH AND WELFARE

## CHAPTER 46—JUSTICE SYSTEM IMPROVEMENT



### Subchapter XII–H—Grants to Combat Violent Crime Against Women

### § 3796gg. Purpose of the program and grants

(a) GENERAL PROGRAM PURPOSE.—The purpose of this subchapter is to assist States, State and local courts (including juvenile courts), Indian tribal governments, tribal courts, and units of local government to develop and strengthen effective law enforcement and prosecution strategies to combat violent crimes against women, and to develop and strengthen victim services in cases involving violent crimes against women.

* * * * * * *

(c) STATE COALITION GRANTS.—

(1) PURPOSE.—The Attorney General shall award grants to each State domestic violence coalition and sexual assault coalition for the purposes of coordinating State victim services activities, and collaborating and coordinating with Federal, State, and local entities engaged in violence against women activities.

* * * * * * *

(3) ELIGIBILITY FOR OTHER GRANTS.—Receipt of an award under this subsection by each State domestic violence and sexual assault coalition shall not preclude the coalition from receiving additional grants under this subchapter to carry out the purposes described in subsection (b).

HISTORICAL AND STATUTORY NOTES

Revision Notes and legislative Reports. 2000 Acts. House Report No. 106–939, see 2000 U.S. Code Cong. and Adm. News, p. 1380.

* * * * * * *

Standards, Practice, and Training for Sexual Assault Forensic Examinations. Pub.L. 106–386, Div. B, Title IV, § 1405, Oct. 28, 2000, 114 Stat. 1515, provided that:

"(a) IN GENERAL.—The Attorney General shall—

"(1) evaluate existing standards of training and practice for licensed health care professionals performing sexual assault forensic examinations and develop a national recommended standard for training;

"(2) recommend sexual assault forensic examination training for all health care students *and emergency response personnel* to improve the recognition of injuries suggestive of rape and

sexual assault and baseline knowledge of appropriate referrals in victim treatment and evidence collection; and

"(3) review existing national, State, tribal, and local protocols on sexual assault forensic examinations *and DNA evidence collection* and based on this review, develop a recommended national protocol and establish a mechanism for its nationwide dissemination.

* * * * * * *

## CHAPTER 136—VIOLENT CRIME CONTROL AND LAW ENFORCEMENT

SUBCHAPTER I—PRISONS

PART A—VIOLENT OFFENDER INCARCERATION AND TRUTH IN SENTENCING INCENTIVE GRANTS



SUBCHAPTER IX—STATE AND LOCAL LAW ENFORCEMENT

PART A—DNA IDENTIFICATION



### § 14134. Authorization of appropriations

**[**There**]** *(a) IN GENERAL.—There* are authorized to be appropriated to the Federal Bureau of Investigation to carry out sections 14131, 14132, and 14133 of this title—

(1) $5,500,000 for fiscal year 1996;
(2) $8,000,000 for fiscal year 1997;
(3) $8,000,000 for fiscal year 1998;
(4) $2,500,000 for fiscal year 1999; and
(5) $1,000,000 for fiscal year 2000.

*(b) INCREASED GRANTS FOR CODIS.—There is authorized to be appropriated to the Federal Bureau of Investigation to carry out upgrades to the Combined DNA Index System (CODIS) $9,700,000 for fiscal year 2003.*

### § 14135. **[**Authorization of grants**]** *Authorization of Debbie Smith DNA Backlog Grants*

(a) AUTHORIZATION OF GRANTS.—The Attorney General may make grants to eligible States*, units of local government, or Indian tribes* for use by the State*, unit of local government, or Indian tribe* for the following purposes:

(1) To carry out, for inclusion in the Combined DNA Index System of the Federal Bureau of Investigation, DNA analyses of samples taken from individuals convicted of a qualifying State offense (as determined under subsection (b)(3)).

(2) To carry out, for inclusion in such Combined DNA Index System, DNA analyses of samples from crime scenes *including samples from rape kits and samples from other sexual assault*

*evidence, including samples taken in cases with no identified suspect*.

(3) To increase the capacity of laboratories owned by the State [or by units of local government]*, units of local government, or Indian tribes* within the State to carry out DNA analyses of samples specified in paragraph (2).

*(4) To ensure that DNA testing and analysis of samples from rape kits and nonsuspect cases are carried out in a timely manner.*

(b) ELIGIBILITY.—For a State *or unit of local government, or the head of the Indian tribe* to be eligible to receive a grant under this section, the chief executive officer of the State *or unit of local government, or the head of the Indian tribe* shall submit to the Attorney General an application in such form and containing such information as the Attorney General may require. The application shall—

(1) provide assurances that the State*, unit of local government, or Indian tribe* has implemented, or will implement not later than 120 days after the date of such application, a comprehensive plan for the expeditious DNA analysis of samples in accordance with this section;

(2) include a certification that each DNA analysis carried out under the plan shall be maintained pursuant to the privacy requirements described in section 14132(b)(3) of this title;

(3) include a certification that the State*, unit of local government, or Indian tribe* has determined, by statute, rule, or regulation, those offenses under State law that shall be treated for purposes of this section as qualifying State offenses;

(4) specify the allocation that the State*, unit of local government, or Indian tribe* shall make, in using grant amounts to carry out DNA analyses of samples, as between samples specified in subsection (a)(1) and samples specified in subsection (a)(2); [and]

(5) specify that portion of grant amounts that the State*, unit of local government, or Indian tribe* shall use for the purpose specified in subsection (a)(3)[.]*;*

*(6) if the applicant is a unit of local government, certify that the applicant participates in a State laboratory system;*

*(7) provide assurances that, not later than 3 years after the date on which the application is submitted, the State, unit of local government, or Indian tribe will implement a plan for forwarding, not later than 180 days after a DNA evidence sample is obtained, all samples collected in cases of sexual assault to a laboratory that meets the quality assurance standards for testing under subsection (d); and*

*(8) upon issuance of the regulations specified in section 10(d), certify that the State, unit of local government, or Indian tribe is in compliance with those regulations.*

(c) CRIMES WITHOUT SUSPECTS.—A State, *unit of local government, or Indian tribe* that proposes to allocate grant amounts under paragraph (4) or (5) of subsection (b) for the purposes specified in paragraph (2 or (3) of subsection (a) shall use such allocated amounts to conduct or facilitate DNA analyses of those samples

that relate to crimes in connection with which there are no suspects.

(d) ANALYSIS OF SAMPLES.—

(1) IN GENERAL.—The plan shall require that, except as provided in paragraph (3), each DNA analysis be carried out in a laboratory that satisfies quality assurance standards and is—

(A) operated by the State [or a unit of local government], *a unit of local government, or an Indian tribe* within the State; or

(B) operated by a private entity pursuant to a contract with the State [or a unit of local government], *a unit of local government, or an Indian tribe* within the State.

(2) QUALITY ASSURANCE STANDARDS.—

(A) The Director of the Federal Bureau of Investigation shall maintain and make available to States*, units of local government, and Indian tribes,* a description of quality assurance protocols and practices that the Director considers adequate to assure the quality of a forensic laboratory.

* * * * * * *

(e) RESTRICTIONS ON USE OF FUNDS.—

(1) NONSUPPLANTING.—Funds made available pursuant to this section shall not be used to supplant State *or local government* funds, but shall be used to increase the amount of funds that would, in the absence of Federal fund, be made available from State *or local government* sources for the purposes of this Act.

(2) ADMINISTRATIVE COSTS.—A State*, unit of local government, or Indian tribe* may not use more than 3 percent of the funds it receives from this section for administrative expenses.

(f) REPORT TO THE ATTORNEY GENERAL.—Each State*, unit of local government, or Indian tribe* which receives a grant under this section shall submit to the Attorney General, for each year in which funds from a grant received under this section is expended, a report at such time and in such manner as the Attorney General may reasonably require, which contains—

* * * * * * *

(g) REPORTS TO CONGRESS.—Not later than 90 days after the end of each fiscal year for which grants are made under this section, the Attorney General shall submit to the Congress a report that includes—

(1) the aggregate amount of grants made under this section to each State*, unit of local government, or Indian tribe* for such fiscal year; and

(2) a summary of the information provided by States, *units of local government, or Indian tribes* receiving grants under this section.

(h) EXPENDITURE RECORDS.—

(1) IN GENERAL.—Each State*, unit of local government, or Indian tribe* which receives a grant under this section shall keep records as the Attorney General may require to facilitate an effective audit of the receipt and use of grant funds received under this section.

(2) ACCESS.—Each State*, unit of local government, or Indian tribe* which receives a grant under this section shall make available, for the purpose of audit and examination, such records as are related to the receipt or use of any such grant.

* * * * * * *

(j) AUTHORIZATION OF APPROPRIATIONS.—Amounts are authorized to be appropriated to the Attorney General for grants under subsection (a) as follows:

(1) For grants for the purposes specified in paragraph (1) of such subsection—

(A) $15,000,000 for fiscal year 2001;
(B) $15,000,000 for fiscal year 2002; [and]
[(C) $15,000,000 for fiscal year 2003;]
*(C) $15,000,000 for fiscal year 2003;*
*(D) $15,000,000 for fiscal year 2004;*
*(E) $15,000,000 for fiscal year 2005;*
*(F) $15,000,000 for fiscal year 2006; and*
*(G) $15,000,000 for fiscal year 2007;*

*Amounts made available to carry out the purposes specified in subsection (a)(1) shall remain available until expended.*

(2) For grants for the purposes specified in paragraphs (2) and (3) of such subsection—

(A) $25,000,000 for fiscal year 2001;
(B) $50,000,000 for fiscal year 2002;
[(C) $25,000,000 for fiscal year 2003; and
[(D) $25,000,000 for fiscal year 2004.]
*(C) $75,000,000 for fiscal year 2003;*
*(D) $75,000,000 for fiscal year 2004;*
*(E) $75,000,000 for fiscal year 2005;*
*(F) $75,000,000 for fiscal year 2006; and*
*(G) $25,000,000 for fiscal year 2007.*

*Amounts made available to carry out the purposes specified in paragraphs (2) and (3) of subsection (a) shall remain available until expended.*

*(k) PRIORITY.—In awarding grants under this section, the Attorney General shall give priority to a State or unit of local government that has a significant rape kit or nonsuspect case backlog per capita as compared with other applicants.*

### § 14135a. Collection and use of DNA identification information from certain Federal offenders

(a) COLLECTION OF DNA SAMPLES.—

(1) FROM INDIVIDUALS IN CUSTODY.—The Director of the Bureau of Prisons shall collect a DNA sample from each individual in the custody of the Bureau of Prisons who is, or has been, convicted of a qualifying Federal offense (as determined under subsection (d)) or a qualifying military offense, as determined under section 1565 of Title 10.

* * * * * * *

(f) COMMENCEMENT OF COLLECTION.—Collection of DNA samples under subsection (a) shall, subject to the availability of appropriations, commence not later than the date that is 180 days after December 18, 2000.

*(g) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Federal Bureau of Investigation to carry out this section $500,000 for fiscal year 2003.*

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**§ 14135e. Privacy protection standards**

(a) IN GENERAL.—Except as provided in subsection (b), any sample collected under, or any result of any analysis carried out under, section 14135, 14135a, or 14135b of this title may be used only for purpose specified in such section *or in section 3282(b) of title 18, United States Code.*

* * * * * * *

(c) CRIMINAL PENALTY.—A person who knowingly—

(1) **[**discloses a sample or result**]** *discloses or uses a DNA sample or DNA analysis* described in subsection (a) in any manner to any person not authorized to receive it; or

(2) obtains, without authorization, a sample or result described in subsection (a), shall be fined not more than $100,000 *per offense*.

*(d) LIMITATION ON ACCESS TO DNA INFORMATION.—*

*(1) IN GENERAL.—The Attorney General shall establish, by regulation, procedures to limit access to, or use of, stored DNA samples or DNA analyses.*

*(2) REGULATIONS.—The regulations established under paragraph (1) shall establish conditions for using DNA information to—*

*(A) limit the use and dissemination of such information, as provided under subparagraphs (A), (B), and (C) of section 210304(b)(3) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14132(b)(3));*

*(B) limit the redissemination of such information;*

*(C) ensure the accuracy, security, and confidentiality of such information;*

*(D) protect any privacy rights of individuals who are the subject of such information; and*

*(E) provide for the timely removal and destruction of obsolete or inaccurate information, or information required to be expunged.*

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