

JUSTICE FOR ALL ACT

• Mr. BIDEN. Mr. President, I rise today to commend the Senate for its actions yesterday in passing the Justice for All Act of 2004, bipartisan, bicameral legislation I sponsored along with Senator HATCH and others. And I commend the other body for swiftly acting in passing the same legislation last evening. I hope the bill will now be signed into law without delay. This is one of the most important pieces of legislation I have ever introduced and one of the most important things the Senate will consider during the 108th Congress.

As I have said many times, DNA has become the guilty man's worst enemy and the innocent man's best friend. It is a two-edged sword which we must use to both put criminals behind bars and exonerate anyone who has been wrongfully convicted. I started looking at the issue of improved prosecution of sexual assault crimes almost two decades ago when I began drafting the Violence Against Women Act. This legislation is the next step, a way to connect the dots between the extraordinary strides in DNA technology and my commitment to ending violence against women. We must ensure that justice delayed is not justice denied.

For 3 years now, I have called on Congress to enact this important legislation. In 2002, I introduced with Senator SPECTER, S. 2513, the DNA Sexual Assault Justice Act of 2002. That Senate unanimously passed that bill during the 107th Congress, but the House failed to act. That bill grew out of a series of hearing I chaired in the Judiciary Committee which focused on the crisis involving untested rape kits sitting in police evidence bins around the country, each one containing the key to solving a sexual assault crime and putting a rapist behind bars. My hearings included testimony estimating that there were 300,000 to 500,000 untested rape kits nationwide.

In some of the most moving testimony I have heard in my 32 years in this body, we listened to Debbie Smith describe the horror of being the victim of sexual assault, followed by an additional 6 years of terror while awaiting the apprehension of her rapist. As I will discuss in a moment, the key to Debbie's road to recovery lay in an untested rape kit connected to her assault. Finally, that rape kit was tested, her assailant was identified and convicted, and she began to find closure.

In followup to the Senate's passage of S. 2513, I introduced at the start of the 108th Congress with Senator SPECTER S. 152, the DNA Sexual Assault Justice Act of 2003. That legislation built upon S. 2513 from the prior Congress and was again joined by over 20 bipartisan cosponsors. The DNA Sexual Assault Justice Act of 2003 provided the hundreds of millions of Federal dollars desperately needed by state and local crime labs around the country to clear out the backlog of hundreds of thousands of untested DNA evidence kits

from sexual assaults and other violent crimes.

An important provision of S. 152 allowed the Justice Department to bring "John Doe/DNA" indictments against an unknown or unnamed perpetrator of sexual assault in any case where a DNA sample from the suspect was recovered from a crime scene. This innovative procedure would allow prosecutors to investigate and indict sex crimes, even where the victim could not identify her assailant, thus preventing the statute of limitations from expiring before the perpetrator could be identified and charged. My "John Doe/DNA" indictment provision became law in 2003 as part of the Protect Act/Amber Alert Act, S. 151/H.R. 1104.

Last year, Senator HATCH and I introduced S. 1700, the Advancing Justice Through DNA Technology Act of 2003, which contained most of the key elements of S. 152. We were joined by Senators SPECTER, LEAHY, DEWINE and FEINSTEIN and dozens of other cosponsors in this legislation. For the last year, disagreements over a specific title of S. 1700, the Innocence Protection Act, held up consideration of the bill. Members from both sides of the aisle were supportive of my DNA Sexual Assault Justice Act, which was included in other titles of the bill. I am pleased that we finally reached a compromise on the very important title addressing post-conviction DNA testing, which cleared the way to consider the entire bill. We have also added into the legislation important victims' right provisions, resulting in the newly named Justice for All Act of 2004.

The bill we passed yesterday, a combination of the Advancing Justice Through DNA Technology and the victims' rights legislation, harnesses the power of DNA to give prompt justice to victims of sexual assault crimes and to free the wrongly convicted. This bill takes every component of DNA technology and makes it accessible and more useful to Federal, State and local law enforcement, to prosecutors and defense attorneys, to medical personnel and to victims of crime.

Promoting and supporting DNA technology as a crime-fighting tool is not a new endeavor for me. A provision of my 1994 Crime Bill created the Combined DNA Index System, CODIS, which is an electronic database of DNA profiles, much like the FBI's fingerprint database. CODIS includes two kinds of DNA information—convicted offender DNA samples and DNA from crime scenes. CODIS uses the two indexes to generate investigative leads in crimes where biological evidence is recovered from the scene. In essence, CODIS facilitates the DNA match. And once that match is made, a crime is solved because of the incredible accuracy and durability of DNA evidence.

Mr. President, 99.9 percent—that is how accurate DNA evidence is. Mr. President, 1 in 30 billion—those are the odds someone else committed a crime if a suspect's DNA matches evidence at

the crime scene. Twenty or 30 years—that is how long DNA evidence from a crime scene lasts. Just ten years ago DNA analysis of evidence could have cost thousands of dollars and taken months; now testing one sample costs \$40 and can take days. Ten years ago forensic scientists needed blood the size of a bottle cap, now DNA testing can be done on a sample the size of a pinhead. The changes in DNA technology are remarkable, and mark a sea change in how we can fight crime, particularly sexual assault crimes.

The FBI reports that since 1998 the national DNA database has helped put away violent criminals in over 9,000 investigations in 50 states. How? By matching the DNA crime evidence to the DNA profiles of offenders. Individual success stories of DNA "cold hits" in sexual assault cases make these numbers all too real. During just the last several months, DNA evidence pinpointed a suspect in 3 rapes in Miami, Florida, caused a man to be charged in a 20-year-old Missouri rape case, proved critical in convicting a New York man accused of committing 9 rapes over a decade, helped charge a man in a 28-year-old San Francisco rape and homicide case, and resulted in the charges against a Virginia man in a 23-year-old rape case. All across this country, rapists and murderers are getting caught for crimes which are often years or even decades old. Crime solved, streets safer.

Undoubtedly, DNA matching by comparing evidence gathered at the crime scene with offender samples entered on the national DNA database has proven to be the deciding factor in solving stranger sexual assault cases—it has revolutionized the criminal justice system, and brought closure and justice for victims. A laboratory expert testified that Virginia has a 48 percent hit rate because the State collects samples from all convicted felons and aggressively analyzes crime scene evidence with no backlog. This means that almost 1 out of every 2 violent crimes could be solved by the national DNA database.

In light of the past successes and the future potential of DNA evidence, the reported number of untested rape kits and other crime scene evidence waiting in police warehouses are simply shocking—the Justice Department recently estimated the number to be as many as 500,000. One woman in particular has reminded State and Federal lawmakers that we cannot ignore even one rape kit sitting on a shelf gathering dust. That woman is Debbie Smith. In 1989, Mrs. Smith was taken from her home and brutally raped. There were no known suspects, and Mrs. Smith lived in fear of her attacker's return. Six years later, the Virginia crime laboratory discovered a DNA match between the rape scene evidence and a state prisoner's DNA sample. That "cold hit" gave Mrs. Smith her first moment of real security and closure, and since then she has traveled the country to

advocate on behalf of assault victims and champion the use of DNA to fight sexual assault.

The bill approved yesterday provides over \$755 million over 5 years to eliminate the backlog in rape kits and other crime scene evidence, eliminate the backlog of convicted offender samples awaiting DNA testing, and improve state laboratory capacity to conduct DNA testing. I am pleased that the backlog elimination grant program in this legislation is entitled, "The Debbie Smith DNA Backlog Grants." It is a fitting tribute.

The Justice for All Act of 2004 is a natural extension to the Violence Against Women Act, which required the Attorney General to evaluate and recommend standards for training and practice for licensed health care professionals performing sexual assault forensic exams. So I knew that any DNA bill aimed at ending sexual assault must include resources for sexual forensic examiners. This bill provides \$500 million in training grants to help ensure that nurses, police and paramedics know how to best collect and preserve DNA evidence in sexual assault cases, and to help local law enforcement agencies put the DNA profiles of convicted felons into state and national databases.

The bill also expands the CODIS database by mandating the inclusion of DNA samples from all convicted federal felons, and by permitting states to include the DNA samples from suspects arrested for and charged with a crime. At the same time, our bill retains important provisions to expunge DNA samples from the database for those whose convictions are overturned or against whom criminal charges are dropped. The bill also contains tough new penalties for the improper use or disclosure of DNA samples.

Today's bill also makes two small, but important, amendments to the Violence Against Women Act. First, it amends the law to include legal assistance for victims of dating violence, and it amends the eligibility criteria for discretionary programs so that tribal domestic violence and sexual assault coalitions can directly receive grants funds, including those funds unreleased from past fiscal years.

I am also gratified that this legislation includes the Innocence Protection Act, which I cosponsored last Congress with Senator LEAHY. This section will immeasurably improve the administration of justice in our legal system, particularly where justice is most important, and where we can least afford to make mistakes—imposition of the death penalty. Those who support the death penalty also have a duty to ensure that it is fairly administered. The advent of DNA testing has provided us with a wealth of opportunities to make certain that we are prosecuting the right people. This legislation makes post-conviction testing to federal inmates who assert that they did not commit the crime for which they have

been imprisoned. It also incentivizes States to take similar measures to ensure that individuals have a proper opportunity to prove their innocence. It also mandates proper preservation of DNA evidence so that the DNA can be tested if appropriate.

As for competent counsel in death penalty cases, nobody can look me in the eye and tell me that our system for representation in capital cases works as it should. This bill will take a big step toward fixing that by providing money for grants to States to improve their systems of representation, on both the prosecution and defense side, in capital cases.

In closing, I would be remiss if I did not pause to thank some of the many people who have helped bring about the introduction of this bill. In particular, I wish to thank Senator HATCH, the chairman the Judiciary Committee, for devoting so much time and effort to work with me in developing this legislation, along with his chief counsel Bruce Artim and his counsels Brett Tolman and Mike Volkov. I also commend Senator LEAHY, the distinguished ranking member of the committee, and his chief counsel Bruce Cohen and senior counsel Julie Katzman, who have worked tirelessly on this bill, and is the principal sponsor of the Innocence Protection Act. I also thank our other principal Senate sponsors, including Senator SPECTER and his chief counsel David Brog; Senator DEWINE, and his counsel Rob Steinbuch; and Senator FEINSTEIN and her chief counsel David Hantman.

I also commend our colleagues in the other body who led the fight in the House of Representatives to enact this important legislation. Their efforts were instrumental in achieving the final bill both bodies passed yesterday. Specifically, I commend Representative SENSENBRENNER, the chairman of the House Judiciary Committee, and his staff, including Phil Kiko, Jay Apperson, and Katy Crooks. I also thank Ranking Member CONYERS and his staff, including Perry Applebaum and Bobby Vassar. I also thank Representative DELAHUNT for his leadership, and his counsels Mark Agrast and Christine Leonard.

Finally, I thank my own staff who have worked diligently over the last 3 years to pass this important legislation, including Louisa Terrell, Jonathan Meyer, and Neil MacBride.

Mr. President, yesterday's action by Congress were a long time coming, and I join my cosponsors in thanking our colleagues for passing this legislation. I now hope the President will quickly sign this bill into law, so that we can finally tackle the untested rape kits and start bringing hope and closure to victims of sexual assault.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first

and second times by unanimous consent, and referred as indicated:

By Mr. DeWINE (for himself, Mr. KENNEDY, and Mr. JEFFORDS):

S. 2974. A bill to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products; considered and passed.

By Mr. HARKIN (for himself and Mr. KENNEDY):

S. 2975. A bill to amend the Fair Labor Standards Act of 1938 to clarify regulations relating to overtime compensation; considered and passed.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Ms. MURKOWSKI (for herself, Mr. STEVENS, Mr. GRASSLEY, Mr. CORNYN, Mr. CHAMBLISS, Mr. ALLEN, Mr. CAMPBELL, and Mr. WARNER):

S. Res. 455. A resolution supporting the goals of Red Ribbon Week; considered and agreed to.

By Ms. STABENOW (for herself and Ms. SNOWE):

S. Res. 456. A resolution designating October 14, 2004, as "Lights On Afterschool! Day"; considered and agreed to.

By Mr. REED (for himself, Mr. BOND, Ms. MIKULSKI, Ms. COLLINS, Mr. SARBANES, Mr. BIDEN, Mrs. BOXER, Mr. BREAUX, Mr. CARPER, Mr. CHAFEE, Mrs. CLINTON, Mr. CONRAD, Mr. CORZINE, Mr. DAYTON, Mr. DEWINE, Mr. DODD, Mr. DORGAN, Mr. DURBIN, Mr. FEINGOLD, Mrs. FEINSTEIN, Mr. GRAHAM of Florida, Mr. HAGEL, Mr. JEFFORDS, Mr. KENNEDY, Mr. KOHL, Ms. LANDRIEU, Mr. LAUTENBERG, Mr. LEVIN, Mr. LIEBERMAN, Mrs. LINCOLN, Mr. LUGAR, Mrs. MURRAY, Mr. NELSON of Nebraska, Mr. NICKLES, Mr. SANTORUM, Mr. SCHUMER, Mr. SMITH, Ms. SNOWE, Ms. STABENOW, Mr. REID, Mr. TALENT, and Mr. WYDEN):

S. Res. 457. A resolution designating the week of October 24, 2004, through October 30, 2004, as "National Childhood Lead Poisoning Prevention Week"; considered and agreed to.

By Mr. BINGAMAN (for himself, Mr. MCCAIN, Mr. HOLLINGS, and Mr. BROWNBACK):

S. Res. 458. A resolution congratulating the SpaceShipOne team for achieving a historic milestone in human space flight; considered and agreed to.

By Mr. DURBIN (for himself and Mr. ALEXANDER):

S. Res. 459. A resolution designating November 2004 as "American Music Month" to celebrate and honor music performance, education, and scholarship in the United States; considered and agreed to.

By Mr. SESSIONS (for himself and Mr. SHELBY):

S. Res. 460. A resolution honoring the young victims of the Sixteenth Street Baptist Church bombing recognizing the historical significance of the tragic event, and commending the efforts of law enforcement personnel to bring the perpetrators of this crime to justice on the occasion of its 40th anniversary; considered and agreed to.

By Mr. DOMENICI (for himself, Mr. DODD, Mr. COCHRAN, Mr. DORGAN, Mr. BUNNING, Mr. CONRAD, Mr. CAMPBELL, Mr. ROCKEFELLER, Mr. WARNER, Mr. KERRY, Mr. FITZGERALD, Ms. LANDRIEU, Mr. HAGEL, Mr. KENNEDY, Mr. INHOFE, Mr. BIDEN, Mr. DEWINE, Mr. JOHNSON, Mr. LOTT, Mr. AKAKA,