

has violated subparagraph (A), the Attorney General shall—

“(i) require the grant recipient to repay the grant in full; and

“(ii) prohibit the grant recipient from receiving another grant under this title for not less than 5 years.”

SENSE OF CONGRESS REGARDING THE OBLIGATION OF GRANTEE STATES TO ENSURE ACCESS TO POST-CONVICTION DNA TESTING AND COMPETENT COUNSEL IN CAPITAL CASES

Pub. L. 106-561, §4, Dec. 21, 2000, 114 Stat. 2791, provided that:

“(a) FINDINGS.—Congress finds that—

“(1) over the past decade, deoxyribonucleic acid testing (referred to in this section as ‘DNA testing’) has emerged as the most reliable forensic technique for identifying criminals when biological material is left at a crime scene;

“(2) because of its scientific precision, DNA testing can, in some cases, conclusively establish the guilt or innocence of a criminal defendant;

“(3) in other cases, DNA testing may not conclusively establish guilt or innocence, but may have significant probative value to a finder of fact;

“(4) DNA testing was not widely available in cases tried prior to 1994;

“(5) new forensic DNA testing procedures have made it possible to get results from minute samples that could not previously be tested, and to obtain more informative and accurate results than earlier forms of forensic DNA testing could produce, resulting in some cases of convicted inmates being exonerated by new DNA tests after earlier tests had failed to produce definitive results;

“(6) DNA testing can and has resulted in the post-conviction exoneration of more than 75 innocent men and women, including some under sentence of death;

“(7) in more than a dozen cases, post-conviction DNA testing that has exonerated an innocent person has also enhanced public safety by providing evidence that led to the apprehension of the actual perpetrator;

“(8) experience has shown that it is not unduly burdensome to make DNA testing available to inmates in appropriate cases;

“(9) under current Federal and State law, it is difficult to obtain post-conviction DNA testing because of time limits on introducing newly discovered evidence;

“(10) the National Commission on the Future of DNA Evidence, a Federal panel established by the Department of Justice and comprised of law enforcement, judicial, and scientific experts, has urged that post-conviction DNA testing be permitted in the relatively small number of cases in which it is appropriate, notwithstanding procedural rules that could be invoked to preclude such testing, and notwithstanding the inability of an inmate to pay for the testing;

“(11) only a few States have adopted post-conviction DNA testing procedures;

“(12) States have received millions of dollars in DNA-related grants, and more funding is needed to improve State forensic facilities and to reduce the nationwide backlog of DNA samples from convicted offenders and crime scenes that need to be tested or retested using upgraded methods;

“(13) States that accept such financial assistance should not deny the promise of truth and justice for both sides of our adversarial system that DNA testing offers;

“(14) post-conviction DNA testing and other post-conviction investigative techniques have shown that innocent people have been sentenced to death in this country;

“(15) a constitutional error in capital cases is incompetent defense lawyers who fail to present important evidence that the defendant may have been innocent or does not deserve to be sentenced to death; and

“(16) providing quality representation to defendants facing loss of liberty or life is essential to fundamental due process and the speedy final resolution of judicial proceedings.

“(b) SENSE OF CONGRESS.—It is the sense of Congress that—

“(1) Congress should condition forensic science-related grants to a State or State forensic facility on the State’s agreement to ensure post-conviction DNA testing in appropriate cases; and

“(2) Congress should work with the States to improve the quality of legal representation in capital cases through the establishment of standards that will assure the timely appointment of competent counsel with adequate resources to represent defendants in capital cases at each stage of the proceedings.”

Pub. L. 106-546, §11, Dec. 19, 2000, 114 Stat. 2735, enacted provisions substantially identical to those enacted by Pub. L. 106-561, §4, set out above.

**§ 40702. Collection and use of DNA identification information from certain Federal offenders**

**(a) Collection of DNA samples**

**(1) From individuals in custody**

(A) The Attorney General may, as prescribed by the Attorney General in regulation, collect DNA samples from individuals who are arrested, facing charges, or convicted or from non-United States persons who are detained under the authority of the United States. The Attorney General may delegate this function within the Department of Justice as provided in section 510 of title 28 and may also authorize and direct any other agency of the United States that arrests or detains individuals or supervises individuals facing charges to carry out any function and exercise any power of the Attorney General under this section.

(B) 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.

**(2) From individuals on release, parole, or probation**

The probation office responsible for the supervision under Federal law of an individual on probation, parole, or supervised release shall collect a DNA sample from each such individual 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.

**(3) Individuals already in CODIS**

For each individual described in paragraph (1) or (2), if the Combined DNA Index System (in this section referred to as “CODIS”) of the Federal Bureau of Investigation contains a DNA analysis with respect to that individual, or if a DNA sample has been collected from that individual under section 1565 of title 10, the Attorney General, the Director of the Bureau of Prisons, or the probation office responsible (as applicable) may (but need not) collect a DNA sample from that individual.

**(4) Collection procedures**

(A) The Attorney General, the Director of the Bureau of Prisons, or the probation office

responsible (as applicable) may use or authorize the use of such means as are reasonably necessary to detain, restrain, and collect a DNA sample from an individual who refuses to cooperate in the collection of the sample.

(B) The Attorney General, the Director of the Bureau of Prisons, or the probation office, as appropriate, may enter into agreements with units of State or local government or with private entities to provide for the collection of the samples described in paragraph (1) or (2).

**(5) Criminal penalty**

An individual from whom the collection of a DNA sample is authorized under this subsection who fails to cooperate in the collection of that sample shall be—

- (A) guilty of a class A misdemeanor; and
- (B) punished in accordance with title 18.

**(b) Analysis and use of samples**

The Attorney General, the Director of the Bureau of Prisons, or the probation office responsible (as applicable) shall furnish each DNA sample collected under subsection (a) to the Director of the Federal Bureau of Investigation, who shall carry out a DNA analysis on each such DNA sample and include the results in CODIS. The Director of the Federal Bureau of Investigation may waive the requirements under this subsection if DNA samples are analyzed by means of Rapid DNA instruments and the results are included in CODIS.

**(c) Definitions**

In this section:

- (1) The term “DNA sample” means a tissue, fluid, or other bodily sample of an individual on which a DNA analysis can be carried out.
- (2) The term “DNA analysis” means analysis of the deoxyribonucleic acid (DNA) identification information in a bodily sample.
- (3) The term “Rapid DNA instruments” means instrumentation that carries out a fully automated process to derive a DNA analysis from a DNA sample.

**(d) Qualifying Federal offenses**

The offenses that shall be treated for purposes of this section as qualifying Federal offenses are the following offenses, as determined by the Attorney General:

- (1) Any felony.
- (2) Any offense under chapter 109A of title 18.
- (3) Any crime of violence (as that term is defined in section 16 of title 18).
- (4) Any attempt or conspiracy to commit any of the offenses in paragraphs (1) through (3).

**(e) Regulations**

**(1) In general**

Except as provided in paragraph (2), this section shall be carried out under regulations prescribed by the Attorney General.

**(2) Probation officers**

The Director of the Administrative Office of the United States Courts shall make available model procedures for the activities of probation officers in carrying out this section.

**(f) Commencement of collection**

Collection of DNA samples under subsection (a) shall, subject to the availability of appro-

priations, commence not later than the date that is 180 days after December 19, 2000.

(Pub. L. 106-546, §3, Dec. 19, 2000, 114 Stat. 2728; Pub. L. 107-56, title V, §503, Oct. 26, 2001, 115 Stat. 364; Pub. L. 108-405, title II, §203(b), Oct. 30, 2004, 118 Stat. 2270; Pub. L. 109-162, title X, §1004(a), Jan. 5, 2006, 119 Stat. 3085; Pub. L. 109-248, title I, §155, July 27, 2006, 120 Stat. 611; Pub. L. 115-50, §3(a), Aug. 18, 2017, 131 Stat. 1001.)

**Editorial Notes**

**CODIFICATION**

Section was formerly classified to section 14135a of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

**AMENDMENTS**

2017—Subsec. (b). Pub. L. 115-50, §3(a)(1), inserted at end “The Director of the Federal Bureau of Investigation may waive the requirements under this subsection if DNA samples are analyzed by means of Rapid DNA instruments and the results are included in CODIS.”

Subsec. (c)(3). Pub. L. 115-50, §3(a)(2), added par. (3).

2006—Subsec. (a)(1). Pub. L. 109-162, §1004(a)(1), added subpar. (A) and designated existing provisions as subpar. (B).

Subsec. (a)(1)(A). Pub. L. 109-248 substituted “arrested, facing charges, or convicted” for “arrested”.

Subsec. (a)(3), (4). Pub. L. 109-162, §1004(a)(1)(B), substituted “Attorney General, the Director of the Bureau of Prisons,” for “Director of the Bureau of Prisons” in par. (3) and subpars. (A) and (B) of par. (4).

Subsec. (b). Pub. L. 109-162, §1004(a)(2), substituted “Attorney General, the Director of the Bureau of Prisons,” for “Director of the Bureau of Prisons”.

2004—Subsec. (d). Pub. L. 108-405 reenacted heading without change and amended text generally, substituting pars. (1) to (4) for former pars. (1) and (2) with multiple subpars. listing specific offenses.

2001—Subsec. (d)(2). Pub. L. 107-56 amended par. (2) generally. Prior to amendment, par. (2) read as follows: “The initial determination of qualifying Federal offenses shall be made not later than 120 days after December 19, 2000.”

**§ 40703. Collection and use of DNA identification information from certain District of Columbia 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 District of Columbia offense (as determined under subsection (d)).

**(2) From individuals on release, parole, or probation**

The Director of the Court Services and Offender Supervision Agency for the District of Columbia shall collect a DNA sample from each individual under the supervision of the Agency who is on supervised release, parole, or probation who is, or has been, convicted of a qualifying District of Columbia offense (as determined under subsection (d)).

**(3) Individuals already in CODIS**

For each individual described in paragraph (1) or (2), if the Combined DNA Index System (in this section referred to as “CODIS”) of the Federal Bureau of Investigation contains a