

106TH CONGRESS
2^D SESSION

S. 2859

To provide assistance to States in reducing the backlog of casework files awaiting DNA analysis and to make DNA testing available in appropriate cases to convicted Federal and State offenders.

IN THE SENATE OF THE UNITED STATES

JULY 13, 2000

Mr. SCHUMER introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To provide assistance to States in reducing the backlog of casework files awaiting DNA analysis and to make DNA testing available in appropriate cases to convicted Federal and State offenders.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “DNA Testing Avail-
5 ability Act”.

6 **SEC. 2. AWARDS TO STATES TO REDUCE DNA CASEWORK**

7 **BACKLOG.**

8 (a) DEVELOPMENT OF PLAN.—

1 (1) IN GENERAL.—Not later than 45 days after
2 the date of enactment of this Act, the Director of
3 the Federal Bureau of Investigation, in coordination
4 with the Assistant Attorney General of the Office of
5 Justice Programs of the Department of Justice, and
6 after consultation with representatives of States and
7 private forensic laboratories, shall develop a plan to
8 grant voluntary awards to States to facilitate DNA
9 analysis of all casework evidence of unsolved crimes.

10 (2) OBJECTIVE.—The objective of the plan de-
11 veloped under paragraph (1) shall be to expedite the
12 analysis of all casework evidence of unsolved crimes
13 in an efficient and effective manner, and to provide
14 for the entry of DNA profiles into the combined
15 DNA Indexing System (“CODIS”).

16 (b) AWARD CRITERIA.—The Federal Bureau of In-
17 vestigation, in coordination with the Assistant Attorney
18 General of the Office of Justice Programs of the Depart-
19 ment of Justice, shall develop criteria for the granting of
20 awards under this section including—

21 (1) the applying State’s number of unsolved
22 crimes awaiting DNA analysis; and

23 (2) the applying State’s development of a com-
24 prehensive plan to collect and analyze DNA evi-
25 dence.

1 (c) GRANTING OF AWARDS.—The Federal Bureau of
2 Investigation, in coordination with the Assistant Attorney
3 General of the Office of Justice Programs of the Depart-
4 ment of Justice, shall develop applications for awards to
5 be granted to States under this section, shall consider all
6 applications submitted by States, and shall disburse all
7 awards under this section.

8 (d) AWARD CONDITIONS.—States receiving awards
9 under this section shall—

10 (1) require that each laboratory performing
11 DNA analysis satisfies quality assurance standards
12 and utilizes state-of-the-art DNA testing methods,
13 as set forth by the Federal Bureau of Investigation
14 in coordination with the Assistant Attorney General
15 of the Office of Justice Programs of the Department
16 of Justice;

17 (2) ensure that each DNA sample collected and
18 analyzed be made available only—

19 (A) to criminal justice agencies for law en-
20 forcement purposes;

21 (B) in judicial proceedings if otherwise ad-
22 missible;

23 (C) for criminal defense purposes, to a
24 criminal defendant, who shall have access to
25 samples and analyses performed in connection

1 with any case in which such defendant is
2 charged; or

3 (D) if personally identifiable information is
4 removed, for a population statistics database,
5 for identification research and protocol develop-
6 ment purposes, or for quality control purposes;
7 and

8 (3) match the award by spending 15 percent of
9 the amount of the award in State funds to facilitate
10 DNA analysis of all casework evidence of unsolved
11 crimes.

12 (e) AUTHORIZATION OF APPROPRIATIONS.—There
13 are authorized to be appropriated to the Department of
14 Justice \$25,000,000 for each of fiscal years 2001, 2002,
15 2003, and 2004, for awards to be granted under this sec-
16 tion.

17 **SEC. 3. DNA TESTING IN FEDERAL CRIMINAL JUSTICE SYS-**
18 **TEM.**

19 (a) IN GENERAL.—Part IV of title 28, United States
20 Code, is amended by inserting after chapter 155 the fol-
21 lowing:

22 **“CHAPTER 156—DNA TESTING**

“Sec.

“2291. DNA testing.

“2292. Preservation of biological material.

1 **“§ 2291. DNA testing**

2 “(a) PETITION FOR TESTING.—Notwithstanding any
3 other provision of law, a person convicted of a crime by
4 any Federal court may, at any time, petition the court
5 that entered the judgment of conviction for forensic DNA
6 testing of biological material in the possession or control
7 of the Government or the court that relates to the prosecu-
8 tion that resulted in conviction.

9 “(b) OPPORTUNITY FOR GOVERNMENT TO RE-
10 SPOND.—The court shall notify the Government of any pe-
11 tition filed under subsection (a) and shall afford the Gov-
12 ernment an opportunity to respond.

13 “(c) MANDATORY TESTING.—After considering the
14 petition and any response, the court shall order testing
15 if it finds that—

16 “(1) a reasonable probability exists that the pe-
17 titioner would not have been prosecuted or convicted
18 if exculpatory results had been obtained through
19 DNA testing;

20 “(2) the evidence petitioner seeks to have tested
21 is still in existence and in such a condition that
22 DNA testing may be conducted;

23 “(3) the evidence was never previously sub-
24 jected to DNA testing or was not subjected to the
25 testing now requested, which can resolve an issue
26 not resolved by previous testing; and

1 “(4) the petition has been filed for the purpose
2 of demonstrating innocence, and not merely to delay
3 the execution of sentence or the administration of
4 justice.

5 “(d) DISCRETIONARY TESTING.—After consideration
6 of the petition and any response, the court may order test-
7 ing if it finds that—

8 “(1) a reasonable probability exists that DNA
9 testing of the evidence would have rendered the out-
10 come of the petitioner’s prosecution or sentencing
11 more favorable had the results been available;

12 “(2) the evidence petitioner seeks to have tested
13 is still in existence and in such a condition that
14 DNA testing may be conducted;

15 “(3) the evidence was never previously sub-
16 jected to DNA testing or was not subjected to the
17 testing now requested, which can resolve an issue
18 not resolved by previous testing; and

19 “(4) the petition has been filed for the purpose
20 of demonstrating innocence, and not merely to delay
21 the execution of sentence or administration of jus-
22 tice.

23 “(e) TESTING PROCEDURES.—

24 “(1) PAYMENT BY PETITIONER.—In the case of
25 an order under subsection (a), the court shall, if

1 necessary, order the test without payment by the pe-
2 titioner. In the case of an order under subsection
3 (b), the court may require the petitioner to pay for
4 the testing.

5 “(2) COUNSEL.—The court may appoint coun-
6 sel for an indigent petitioner at any time during pro-
7 ceedings instituted under this section.

8 “(3) DISCOVERY.—The petitioner and the Gov-
9 ernment shall disclose to all parties and the court
10 the existence of any previous DNA or other biologi-
11 cal evidence testing relating to the prosecution giv-
12 ing rise to the petition. If any evidence in the peti-
13 tioner’s case has previously been subjected to DNA
14 testing, the court may order production of laboratory
15 reports, underlying data and laboratory notes to all
16 parties and the court. If the court grants a petition
17 filed under this section, the court shall order the
18 production of any laboratory reports prepared in
19 connection with the DNA testing and may, in its
20 discretion, order production of the underlying data
21 and laboratory notes.

22 “(4) PRESERVATION ORDER.—Unless the peti-
23 tion is summarily dismissed, the court shall order
24 that all evidence in the possession or control of the
25 Government or the court that could be subjected to

1 DNA testing be preserved during the pendency of
2 the proceeding.

3 “(5) CHOICE OF LABORATORY.—If the court or-
4 ders testing, it shall select a laboratory that meets
5 the standards adopted pursuant to the DNA Identifi-
6 cation Act of 1994.

7 “(6) ADDITIONAL ORDERS.—The court may, in
8 its discretion, issue such other orders as may be ap-
9 propriate.

10 “(f) PROCEDURE AFTER TEST RESULTS ARE OB-
11 TAINED.—

12 “(1) UNFAVORABLE.—If the results of DNA
13 testing ordered under subsection (a) or (b) are unfa-
14 vorable to the petitioner, the court shall dismiss the
15 petition and issue such further orders as shall be ap-
16 propriate.

17 “(2) FAVORABLE.—If the results of DNA test-
18 ing ordered under subsection (a) or (b) are favorable
19 to the petitioner, the court shall—

20 “(A) order a hearing, notwithstanding any
21 provision of law that would bar such a hearing
22 as untimely; and

23 “(B) enter any order that serves the inter-
24 ests of justice, including an order—

1 “(i) vacating and setting aside the
2 judgment of conviction;

3 “(ii) discharging the petitioner if the
4 petitioner is in custody;

5 “(iii) resentencing the petitioner; or

6 “(iv) granting a new trial.

7 “(g) RULE OF CONSTRUCTION.—Nothing in this sec-
8 tion shall be construed to limit the circumstances under
9 which a person may obtain DNA testing or other post-
10 conviction relief under any other provision of law.

11 **“§ 2292. Preservation of biological material**

12 “(a) IN GENERAL.—Notwithstanding any other pro-
13 vision of law and subject to subsection (b), the Govern-
14 ment shall preserve any biological material secured in con-
15 nection with a criminal case for such period of time as
16 any person remains incarcerated in connection with that
17 case.

18 “(b) EXCEPTION.—The Government may destroy bio-
19 logical material before the expiration of the period of time
20 described in subsection (a) if—

21 “(1) the Government notifies any person who
22 remains in custody in connection with the case, and
23 any counsel of record, of the intention of the Gov-
24 ernment to destroy the material, and of the provi-
25 sions of this chapter;

1 “(2) no person files a petition, or files a notice
2 of intention to file a petition as soon as is prac-
3 ticable, within 90 days of receiving notice under
4 paragraph (1); and

5 “(3) no other provision of law requires that
6 such biological material be preserved.”.

7 (c) TECHNICAL AND CONFORMING AMENDMENT.—
8 The analysis for part VI of title 28, United States Code,
9 is amended by inserting after the item relating to chapter
10 155 the following:

“156. DNA Testing 2291”.

11 **SEC. 4. DNA TESTING IN STATE CRIMINAL JUSTICE SYS-**
12 **TEMS.**

13 (a) DNA IDENTIFICATION GRANT PROGRAM.—Sec-
14 tion 2403 of title I of the Omnibus Crime Control and
15 Safe Streets Act of 1968 (42 U.S.C. 3796kk-2) is
16 amended—

17 (1) in paragraph (2)—

18 (A) in the matter preceding subparagraph
19 (A), by striking “shall” and inserting “will”;

20 (B) in subparagraph (C), by striking “is
21 charged” and inserting “was charged or con-
22 victed”; and

23 (C) in subparagraph (D), by striking
24 “and” at the end;

25 (2) in paragraph (3)—

1 (A) by striking “shall” and inserting
2 “will”; and

3 (B) by striking the period at the end and
4 inserting “; and”; and

5 (3) by adding at the end the following:

6 “(4) the State will—

7 “(A) preserve all biological material se-
8 cured in connection with a State criminal case
9 for not less than the period of time that biologi-
10 cal material is required to be preserved under
11 section 2292 of title 28, United States Code, in
12 the case of a person incarcerated in connection
13 with a Federal criminal case; and

14 “(B) make DNA testing available to any
15 person convicted in State court to the same ex-
16 tent, and under the same conditions, that DNA
17 testing is available under section 2291 of title
18 28, United States Code, to any person convicted
19 in a court established by an Act of Congress.”.

20 (b) DRUG CONTROL AND SYSTEM IMPROVEMENT
21 GRANT PROGRAM.—Section 503(a)(12) of title I of the
22 Omnibus Crime Control and Safe Streets Act of 1968 (42
23 U.S.C. 3753(a)(12)) is amended—

24 (1) in subparagraph (B)—

1 (A) in clause (iii), by striking “is charged”
2 and inserting “was charged or convicted”; and

3 (B) in clause (iv), by striking “and” at the
4 end;

5 (2) in subparagraph (C), by striking the period
6 at the end and inserting “; and”; and

7 (3) by adding at the end the following:

8 “(D) the State will—

9 “(i) preserve all biological material se-
10 cured in connection with a State criminal
11 case for not less than the period of time
12 that biological material is required to be
13 preserved under section 2292 of title 28,
14 United States Code, in the case of a per-
15 son incarcerated in connection with a Fed-
16 eral criminal case; and

17 “(ii) make DNA testing available to a
18 person convicted in State court to the
19 same extent, and under the same condi-
20 tions, that DNA testing is available under
21 section 2291 of title 28, United States
22 Code, to a person convicted in a court es-
23 tablished by an Act of Congress.”.

24 (c) PUBLIC SAFETY AND COMMUNITY POLICING
25 GRANT PROGRAM.—Section 1702(c) of title I of the Om-

1 nibus Crime Control and Safe Streets Act of 1968 (42
2 U.S.C. 3796dd–1(e)) is amended—

3 (1) in paragraph (10), by striking “and” at the
4 end;

5 (2) in paragraph (11), by striking the period at
6 the end and inserting “; and”; and

7 (3) by adding at the end the following:

8 “(12) if any part of funds received from a grant
9 made under this subchapter is to be used to develop
10 or improve a DNA analysis capability in a forensic
11 laboratory, or to obtain or analyze DNA samples for
12 inclusion in the Combined DNA Index System
13 (CODIS), certify that—

14 “(A) DNA analyses performed at such lab-
15 oratory will satisfy or exceed the current stand-
16 ards for a quality assurance program for DNA
17 analysis, issued by the Director of the Federal
18 Bureau of Investigation under section 210303
19 of the DNA Identification Act of 1994 (42
20 U.S.C. 14131);

21 “(B) DNA samples and analyses obtained
22 and performed by such laboratory will be acces-
23 sible only—

24 “(i) to criminal justice agencies for
25 law enforcement purposes;

1 “(ii) in judicial proceedings, if other-
2 wise admissible under applicable statutes
3 and rules;

4 “(iii) for criminal defense purposes, to
5 a defendant, who shall have access to sam-
6 ples and analyses performed in connection
7 with the case in which the defendant was
8 charged or convicted; or

9 “(iv) if personally identifiable infor-
10 mation is removed, for a population statis-
11 tics database, for identification research
12 and protocol development purposes, or for
13 quality control purposes;

14 “(C) the laboratory and each analyst per-
15 forming DNA analyses at the laboratory will
16 undergo, at regular intervals not exceeding 180
17 days, external proficiency testing by a DNA
18 proficiency testing program that meets the
19 standards issued under section 210303 of the
20 DNA Identification Act of 1994 (42 U.S.C.
21 14131); and

22 “(D) the State will—

23 “(i) preserve all biological material se-
24 cured in connection with a State criminal
25 case for not less than the period of time

1 that biological material is required to be
2 preserved under section 2292 of title 28,
3 United States Code, in the case of a per-
4 son incarcerated in connection with a Fed-
5 eral criminal case; and

6 “(ii) make DNA testing available to
7 any person convicted in State court to the
8 same extent, and under the same condi-
9 tions, that DNA testing is available under
10 section 2291 of title 28, United States
11 Code, to a person convicted in a court es-
12 tablished by an Act of Congress.”.

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