

108TH CONGRESS
1ST SESSION

S. 1700

To eliminate the substantial backlog of DNA samples collected from crime scenes and convicted offenders, to improve and expand the DNA testing capacity of Federal, State, and local crime laboratories, to increase research and development of new DNA testing technologies, to develop new training programs regarding the collection and use of DNA evidence, to provide post-conviction testing of DNA evidence to exonerate the innocent, to improve the performance of counsel in State capital cases, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 1, 2003

Mr. HATCH (for himself, Mr. BIDEN, Mr. SPECTER, Mr. LEAHY, Mr. DEWINE, Mrs. FEINSTEIN, Mr. SMITH, Mr. KENNEDY, Ms. COLLINS, Mr. SCHUMER, Mr. WARNER, Mr. DURBIN, Mr. CAMPBELL, Mr. KOHL, Mrs. CLINTON, Ms. CANTWELL, Mrs. MURRAY, and Ms. LANDRIEU) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To eliminate the substantial backlog of DNA samples collected from crime scenes and convicted offenders, to improve and expand the DNA testing capacity of Federal, State, and local crime laboratories, to increase research and development of new DNA testing technologies, to develop new training programs regarding the collection and use of DNA evidence, to provide post-conviction testing of DNA evidence to exonerate the innocent, to

improve the performance of counsel in State capital cases, and for other purposes.

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

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
 5 “Advancing Justice Through DNA Technology Act of
 6 2003”.

7 (b) **TABLE OF CONTENTS.**—The table of contents of
 8 this Act is as follows:

Sec. 1. Short title; table of contents.

**TITLE I—RAPE KITS AND DNA EVIDENCE BACKLOG
 ELIMINATION ACT OF 2003**

Sec. 101. Short title.

Sec. 102. Debbie Smith DNA Backlog Grant Program.

Sec. 103. Expansion of Combined DNA Index System.

Sec. 104. Tolling of statute of limitations.

Sec. 105. Legal assistance for victims of violence.

Sec. 106. Ensuring private laboratory assistance in eliminating DNA backlog.

TITLE II—DNA SEXUAL ASSAULT JUSTICE ACT OF 2003

Sec. 201. Short title.

Sec. 202. Ensuring public crime laboratory compliance with Federal standards.

Sec. 203. DNA training and education for law enforcement, correctional personnel, and court officers.

Sec. 204. Sexual assault forensic exam program grants.

Sec. 205. DNA research and development.

Sec. 206. FBI DNA programs.

Sec. 207. DNA identification of missing persons.

Sec. 208. Enhanced criminal penalties for unauthorized disclosure or use of
 DNA information.

Sec. 209. Tribal coalition grants.

Sec. 210. Expansion of Paul Coverdell Forensic Science Improvement Grant
 Program.

Sec. 211. Report to Congress.

TITLE III—INNOCENCE PROTECTION ACT OF 2003

Sec. 301. Short title.

Subtitle A—Exonerating the Innocent Through DNA Testing

- Sec. 311. Federal post-conviction DNA testing.
 Sec. 312. Kirk Bloodsworth Post-Conviction DNA Testing Grant Program.
 Sec. 313. Incentive grants to States to ensure consideration of claims of actual innocence.

Subtitle B—Improving the Quality of Representation in State Capital Cases

- Sec. 321. Capital representation improvement grants.
 Sec. 322. Capital prosecution improvement grants.
 Sec. 323. Applications.
 Sec. 324. State reports.
 Sec. 325. Evaluations by Inspector General and administrative remedies.
 Sec. 326. Authorization of appropriations.

Subtitle C—Compensation for the Wrongfully Convicted

- Sec. 331. Increased compensation in Federal cases for the wrongfully convicted.
 Sec. 332. Sense of Congress regarding compensation in State death penalty cases.

1 **TITLE I—RAPE KITS AND DNA**
 2 **EVIDENCE BACKLOG ELIMI-**
 3 **NATION ACT OF 2003**

4 **SEC. 101. SHORT TITLE.**

5 This title may be cited as the “Rape Kits and DNA
 6 Evidence Backlog Elimination Act of 2003”.

7 **SEC. 102. DEBBIE SMITH DNA BACKLOG GRANT PROGRAM.**

8 (a) DESIGNATION OF PROGRAM; ELIGIBILITY OF
 9 LOCAL GOVERNMENTS AS GRANTEES.—Section 2 of the
 10 DNA Analysis Backlog Elimination Act of 2000 (42
 11 U.S.C. 14135) is amended—

12 (1) by amending the heading to read as follows:

13 **“SEC. 2. THE DEBBIE SMITH DNA BACKLOG GRANT PRO-**
 14 **GRAM.”;**

15 (2) in subsection (a)—

16 (A) in the matter preceding paragraph

17 (1)—

1 (i) by inserting “or units of local gov-
2 ernment” after “eligible States”; and

3 (ii) by inserting “or unit of local gov-
4 ernment” after “State”;

5 (B) in paragraph (2), by inserting before
6 the period at the end the following: “, including
7 samples from rape kits, samples from other sex-
8 ual assault evidence, and samples taken in cases
9 without an identified suspect”; and

10 (C) in paragraph (3), by striking “within
11 the State”;

12 (3) in subsection (b)—

13 (A) in the matter preceding paragraph
14 (1)—

15 (i) by inserting “or unit of local gov-
16 ernment” after “State” both places that
17 term appears; and

18 (ii) by inserting “, as required by the
19 Attorney General” after “application
20 shall”;

21 (B) in paragraph (1), by inserting “or unit
22 of local government” after “State”;

23 (C) in paragraph (3), by inserting “or unit
24 of local government” after “State” the first
25 place that term appears;

1 (D) in paragraph (4)—

2 (i) by inserting “or unit of local gov-
3 ernment” after “State”; and

4 (ii) by striking “and” at the end;

5 (E) in paragraph (5)—

6 (i) by inserting “or unit of local gov-
7 ernment” after “State”; and

8 (ii) by striking the period at the end
9 and inserting a semicolon; and

10 (F) by adding at the end the following:

11 “(6) if submitted by a unit of local government,
12 certify that the unit of local government has taken,
13 or is taking, all necessary steps to ensure that it is
14 eligible to include, directly or through a State law
15 enforcement agency, all analyses of samples for
16 which it has requested funding in the Combined
17 DNA Index System; and”;

18 (4) in subsection (d)—

19 (A) in paragraph (1)—

20 (i) in the matter preceding subpara-
21 graph (A), by striking “The plan” and in-
22 sserting “A plan pursuant to subsection
23 (b)(1)”;

24 (ii) in subparagraph (A), by striking
25 “within the State”; and

1 (iii) in subparagraph (B), by striking
2 “within the State”; and

3 (B) in paragraph (2)(A), by inserting “and
4 units of local government” after “States”;

5 (5) in subsection (e)—

6 (A) in paragraph (1), by inserting “or local
7 government” after “State” both places that
8 term appears; and

9 (B) in paragraph (2), by inserting “or unit
10 of local government” after “State”;

11 (6) in subsection (f), in the matter preceding
12 paragraph (1), by inserting “or unit of local govern-
13 ment” after “State”;

14 (7) in subsection (g)—

15 (A) in paragraph (1), by inserting “or unit
16 of local government” after “State”; and

17 (B) in paragraph (2), by inserting “or
18 units of local government” after “States”; and

19 (8) in subsection (h), by inserting “or unit of
20 local government” after “State” both places that
21 term appears.

22 (b) REAUTHORIZATION AND EXPANSION OF PRO-
23 GRAM.—Section 2 of the DNA Analysis Backlog Elimini-
24 nation Act of 2000 (42 U.S.C. 14135) is amended—

25 (1) in subsection (a)—

1 (A) in paragraph (3), by inserting “(1) or”
2 before “(2)”; and

3 (B) by inserting at the end the following:

4 “(4) To collect DNA samples specified in para-
5 graph (1).

6 “(5) To ensure that DNA testing and analysis
7 of samples from crimes, including sexual assault and
8 other serious violent crimes, are carried out in a
9 timely manner.”;

10 (2) in subsection (b), as amended by this sec-
11 tion, by inserting at the end the following:

12 “(7) specify that portion of grant amounts that
13 the State or unit of local government shall use for
14 the purpose specified in subsection (a)(4).”;

15 (3) by amending subsection (c) to read as fol-
16 lows:

17 “(c) FORMULA FOR DISTRIBUTION OF GRANTS.—

18 “(1) IN GENERAL.—The Attorney General shall
19 distribute grant amounts, and establish appropriate
20 grant conditions under this section, in conformity
21 with a formula or formulas that are designed to ef-
22 fectuate a distribution of funds among eligible
23 States and units of local government that—

1 “(A) maximizes the effective utilization of
2 DNA technology to solve crimes and protect
3 public safety; and

4 “(B) allocates grants among eligible enti-
5 ties fairly and efficiently to address areas where
6 significant backlogs exist, by considering—

7 “(i) the number of offender and case-
8 work samples awaiting DNA analysis in a
9 jurisdiction;

10 “(ii) the population in the jurisdiction;
11 and

12 “(iii) the number of part I violent
13 crimes in the jurisdiction.

14 “(2) MINIMUM AMOUNT.—The Attorney Gen-
15 eral shall allocate to each State not less than 0.50
16 percent of the total amount appropriated in a fiscal
17 year for grants under this section, except that the
18 United States Virgin Islands, American Samoa,
19 Guam, and the Northern Mariana Islands shall each
20 be allocated 0.125 percent of the total appropriation.

21 “(3) LIMITATION.—Grant amounts distributed
22 under paragraph (1) shall be awarded to conduct
23 DNA analyses of samples from casework or from
24 victims of crime under subsection (a)(2) in accord-
25 ance with the following limitations:

1 “(A) For fiscal year 2005, not less than 50
2 percent of the grant amounts shall be awarded
3 for purposes under subsection (a)(2).

4 “(B) For fiscal year 2006, not less than
5 50 percent of the grant amounts shall be
6 awarded for purposes under subsection (a)(2).

7 “(C) For fiscal year 2007, not less than 45
8 percent of the grant amounts shall be awarded
9 for purposes under subsection (a)(2).

10 “(D) For fiscal year 2008, not less than
11 40 percent of the grant amounts shall be
12 awarded for purposes under subsection (a)(2).

13 “(E) For fiscal year 2009, not less than 40
14 percent of the grant amounts shall be awarded
15 for purposes under subsection (a)(2).”;

16 (4) in subsection (g)—

17 (A) in paragraph (1), by striking “and” at
18 the end;

19 (B) in paragraph (2), by striking the pe-
20 riod at the end and inserting “; and”; and

21 (C) by adding at the end the following:

22 “(3) a description of the priorities and plan for
23 awarding grants among eligible States and units of
24 local government, and how such plan will ensure the

1 effective use of DNA technology to solve crimes and
2 protect public safety.”;

3 (5) in subsection (j), by striking paragraphs (1)
4 and (2) and inserting the following:

5 “(1) \$151,000,000 for fiscal year 2005;

6 “(2) \$151,000,000 for fiscal year 2006;

7 “(3) \$151,000,000 for fiscal year 2007;

8 “(4) \$151,000,000 for fiscal year 2008; and

9 “(5) \$151,000,000 for fiscal year 2009.”; and

10 (6) by adding at the end the following:

11 “(k) USE OF FUNDS FOR ACCREDITATION AND AU-
12 DITS.—The Attorney General may distribute not more
13 than 1 percent of the grant amounts under subsection
14 (j)—

15 “(1) to States or units of local government to
16 defray the costs incurred by laboratories operated by
17 each such State or unit of local government in pre-
18 paring for accreditation or reaccreditation;

19 “(2) in the form of additional grants to States,
20 units of local government, or nonprofit professional
21 organizations of persons actively involved in forensic
22 science and nationally recognized within the forensic
23 science community—

24 “(A) to defray the costs of external audits
25 of laboratories operated by such State or unit

1 of local government, which are participating in
2 the National DNA Index System in order to en-
3 sure compliance with quality assurance stand-
4 ards;

5 “(B) to assess compliance with any plans
6 submitted to the National Institute of Justice,
7 which detail the use of funds received by States
8 or units of local government under this Act;
9 and

10 “(C) to support future capacity building
11 efforts; and

12 “(3) in the form of additional grants to non-
13 profit professional associations actively involved in
14 forensic science and nationally recognized within the
15 forensic science community to defray the costs of
16 training persons who conduct external audits of lab-
17 oratories operated by States and units of local gov-
18 ernment and which participate in the National DNA
19 Index System.

20 “(1) EXTERNAL AUDITS AND REMEDIAL EFFORTS.—
21 In the event that a laboratory operated by a State or unit
22 of local government which has received funds under this
23 Act, has undergone an external audit conducted in order
24 to demonstrate compliance with standards established by
25 the Director of the Federal Bureau of Investigation, and,

1 as a result of such audit, identifies measures to remedy
2 deficiencies with respect to the compliance by the labora-
3 tory with such standards, the State or unit of local govern-
4 ment shall implement any such remediation as soon as
5 practicable.”.

6 **SEC. 103. EXPANSION OF COMBINED DNA INDEX SYSTEM.**

7 (a) INCLUSION OF ALL DNA SAMPLES FROM
8 STATES.—Section 210304(a)(1) of the DNA Identifica-
9 tion Act of 1994 (42 U.S.C. 14132(a)(1)) is amended by
10 striking “of persons convicted of crimes;” and inserting
11 the following: “of—

12 (A) persons convicted of crimes; and

13 (B) other persons whose DNA samples
14 are collected under applicable legal authorities,
15 provided that DNA profiles from DNA samples
16 that are voluntarily submitted solely for elimi-
17 nation purposes shall not be included in the
18 Combined DNA Index System;”.

19 (b) FELONS CONVICTED OF FEDERAL CRIMES.—
20 Section 3(d) of the DNA Analysis Backlog Elimination
21 Act of 2000 (42 U.S.C. 14135a(d)) is amended to read
22 as follows:

23 “(d) QUALIFYING FEDERAL OFFENSES.—The of-
24 fenses that shall be treated for purposes of this section

1 as qualifying Federal offenses are the following offenses,
2 as determined by the Attorney General:

3 “(1) Any felony.

4 “(2) Any offense under chapter 109A of title
5 18, United States Code.

6 “(3) Any crime of violence (as that term is de-
7 fined in section 16 of title 18, United States Code).

8 “(4) Any attempt or conspiracy to commit any
9 of the offenses in paragraphs (1) through (3).”.

10 (c) MILITARY OFFENSES.—Section 1565(d) of title
11 10, United States Code, is amended to read as follows:

12 “(d) QUALIFYING MILITARY OFFENSES.—The of-
13 fenses that shall be treated for purposes of this section
14 as qualifying military offenses are the following offenses,
15 as determined by the Secretary of Defense, in consultation
16 with the Attorney General:

17 “(1) Any offense under the Uniform Code of
18 Military Justice for which a sentence of confinement
19 for more than one year may be imposed.

20 “(2) Any other offense under the Uniform Code
21 of Military Justice that is comparable to a qualifying
22 Federal offense (as determined under section 3(d) of
23 the DNA Analysis Backlog Elimination Act of 2000
24 (42 U.S.C. 14135a(d)).”.

1 **SEC. 104. TOLLING OF STATUTE OF LIMITATIONS.**

2 (a) IN GENERAL.—Chapter 213 of title 18, United
3 States Code, is amended by adding at the end the fol-
4 lowing:

5 **“§ 3297. Cases involving DNA evidence**

6 “In a case in which DNA testing implicates an identi-
7 fied person in the commission of a felony, except for a
8 felony offense under chapter 109A, no statute of limita-
9 tions that would otherwise preclude prosecution of the of-
10 fense shall preclude such prosecution until a period of time
11 following the implication of the person by DNA testing
12 has elapsed that is equal to the otherwise applicable limi-
13 tation period.”.

14 (b) CLERICAL AMENDMENT.—The table of sections
15 for chapter 213 of title 18, United States Code, is amend-
16 ed by adding at the end the following:

“3297. Cases involving DNA evidence.”.

17 (c) APPLICATION.—The amendments made by this
18 section shall apply to the prosecution of any offense com-
19 mitted before, on, or after the date of the enactment of
20 this section if the applicable limitation period has not yet
21 expired.

22 **SEC. 105. LEGAL ASSISTANCE FOR VICTIMS OF VIOLENCE.**

23 Section 1201 of the Violence Against Women Act of
24 2000 (42 U.S.C. 3796gg–6) is amended—

1 (1) in subsection (a), by inserting “dating vio-
2 lence,” after “domestic violence,”;

3 (2) in subsection (b)—

4 (A) by redesignating paragraphs (1)
5 through (3) as paragraphs (2) through (4), re-
6 spectively;

7 (B) by inserting before paragraph (2), as
8 redesignated by subparagraph (A), the fol-
9 lowing:

10 “(1) DATING VIOLENCE.—The term ‘dating vio-
11 lence’ means violence committed by a person who is
12 or has been in a social relationship of a romantic or
13 intimate nature with the victim. The existence of
14 such a relationship shall be determined based on a
15 consideration of—

16 “(A) the length of the relationship;

17 “(B) the type of relationship; and

18 “(C) the frequency of interaction between
19 the persons involved in the relationship.”; and

20 (C) in paragraph (3), as redesignated by
21 subparagraph (A), by inserting “dating vio-
22 lence,” after “domestic violence,”;

23 (3) in subsection (c)—

24 (A) in paragraph (1)—

1 (i) by inserting “, dating violence,”
2 after “between domestic violence”; and

3 (ii) by inserting “dating violence,”
4 after “victims of domestic violence,”;

5 (B) in paragraph (2), by inserting “dating
6 violence,” after “domestic violence,”; and

7 (C) in paragraph (3), by inserting “dating
8 violence,” after “domestic violence,”;

9 (4) in subsection (d)—

10 (A) in paragraph (1), by inserting “, dat-
11 ing violence,” after “domestic violence”;

12 (B) in paragraph (2), by inserting “, dat-
13 ing violence,” after “domestic violence”;

14 (C) in paragraph (3), by inserting “, dat-
15 ing violence,” after “domestic violence”; and

16 (D) in paragraph (4), by inserting “dating
17 violence,” after “domestic violence,”;

18 (5) in subsection (e), by inserting “dating vio-
19 lence,” after “domestic violence,”; and

20 (6) in subsection (f)(2)(A), by inserting “dating
21 violence,” after “domestic violence,”.

1 **SEC. 106. ENSURING PRIVATE LABORATORY ASSISTANCE IN**
2 **ELIMINATING DNA BACKLOG.**

3 Section 2(d)(3) of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135(d)(3)) is amended
4 to read as follows:
5

6 “(3) USE OF VOUCHERS OR CONTRACTS FOR
7 CERTAIN PURPOSES.—

8 “(A) IN GENERAL.—A grant for the purposes specified in paragraph (1), (2), or (5) of
9 subsection (a) may be made in the form of a
10 voucher or contract for laboratory services.
11

12 “(B) REDEMPTION.—A voucher or contract under subparagraph (A) may be redeemed
13 at a laboratory operated on a for-profit basis by
14 a private entity that satisfies quality assurance
15 standards and has been approved by the Attorney General.
16
17

18 “(C) PAYMENTS.—The Attorney General
19 may use amounts authorized under subsection
20 (j) to make payments to a laboratory described
21 under subparagraph (B) for the collection of
22 DNA samples or DNA analysis of samples from
23 casework.”.

1 **TITLE II—DNA SEXUAL ASSAULT**
2 **JUSTICE ACT OF 2003**

3 **SEC. 201. SHORT TITLE.**

4 This title may be cited as the “DNA Sexual Assault
5 Justice Act of 2003”.

6 **SEC. 202. ENSURING PUBLIC CRIME LABORATORY COMPLI-**
7 **ANCE WITH FEDERAL STANDARDS.**

8 Section 210304(b)(2) of the DNA Identification Act
9 of 1994 (42 U.S.C. 14132(b)(2)), is amended to read as
10 follows:

11 “(2) prepared by laboratories that—

12 “(A) not later than 2 years after the date
13 of enactment of the DNA Sexual Assault Jus-
14 tice Act of 2003, have been accredited by a
15 nonprofit professional association of persons ac-
16 tively involved in forensic science that is nation-
17 ally recognized within the forensic science com-
18 munity; and

19 “(B) undergo external audits, not less than
20 once every 2 years, that demonstrate compli-
21 ance with standards established by the Director
22 of the Federal Bureau of Investigation; and”.

1 **SEC. 203. DNA TRAINING AND EDUCATION FOR LAW EN-**
2 **FORCEMENT, CORRECTIONAL PERSONNEL,**
3 **AND COURT OFFICERS.**

4 (a) IN GENERAL.—The Attorney General shall make
5 grants to States and units of local government to provide
6 training, technical assistance, education, and information
7 relating to the identification, collection, preservation, anal-
8 ysis, and use of DNA samples and DNA evidence by—

9 (1) law enforcement personnel, including police
10 officers and other first responders, evidence techni-
11 cians, investigators, and others who collect or exam-
12 ine evidence of crime;

13 (2) court officers, including State and local
14 prosecutors, defense lawyers, and judges;

15 (3) forensic science professionals; and

16 (4) corrections personnel, including prison and
17 jail personnel, and probation, parole, and other offi-
18 cers involved in supervision.

19 (b) AUTHORIZATION OF APPROPRIATIONS.—There
20 are authorized to be appropriated \$12,500,000 for each
21 of the fiscal years 2005 through 2009 to carry out this
22 section.

23 **SEC. 204. SEXUAL ASSAULT FORENSIC EXAM PROGRAM**
24 **GRANTS.**

25 (a) IN GENERAL.—The Attorney General shall make
26 grants to eligible entities to provide training, technical as-

1 sistance, education, equipment, and information relating
2 to the identification, collection, preservation, analysis, and
3 use of DNA samples and DNA evidence by medical per-
4 sonnel and other personnel, including doctors, medical ex-
5 aminers, coroners, nurses, victim service providers, and
6 other professionals involved in treating victims of sexual
7 assault and sexual assault examination programs, includ-
8 ing SANE (Sexual Assault Nurse Examiner), SAFE (Sex-
9 ual Assault Forensic Examiner), and SART (Sexual As-
10 sault Response Team).

11 (b) ELIGIBLE ENTITY.—For purposes of this section,
12 the term “eligible entity” includes—

13 (1) States;

14 (2) units of local government; and

15 (3) sexual assault examination programs, in-
16 cluding—

17 (A) sexual assault nurse examiner (SANE)
18 programs;

19 (B) sexual assault forensic examiner
20 (SAFE) programs;

21 (C) sexual assault response team (SART)
22 programs; and

23 (D) State sexual assault coalitions.

24 (c) AUTHORIZATION OF APPROPRIATIONS.—There
25 are authorized to be appropriated \$30,000,000 for each

1 of the fiscal years 2005 through 2009 to carry out this
2 section.

3 **SEC. 205. DNA RESEARCH AND DEVELOPMENT.**

4 (a) IMPROVING DNA TECHNOLOGY.—The Attorney
5 General shall make grants to States and units of local gov-
6 ernment for research and development to improve forensic
7 DNA technology, including increasing the identification
8 accuracy and efficiency of DNA analysis, decreasing time
9 and expense, and increasing portability.

10 (b) DEMONSTRATION PROJECTS.—The Attorney
11 General shall conduct research through grants for dem-
12 onstration projects involving coordinated training and
13 commitment of resources to law enforcement agencies and
14 key criminal justice participants to demonstrate and
15 evaluate the use of forensic DNA technology in conjunc-
16 tion with other forensic tools. The demonstration projects
17 shall include scientific evaluation of the public safety bene-
18 fits, improvements to law enforcement operations, and
19 cost-effectiveness of increased collection and use of DNA
20 evidence.

21 (c) NATIONAL FORENSIC SCIENCE COMMISSION.—

22 (1) APPOINTMENT.—The Attorney General
23 shall appoint a National Forensic Science Commis-
24 sion (in this section referred to as the “Commis-
25 sion”), composed of persons experienced in criminal

1 justice issues, including persons from the forensic
2 science and criminal justice communities, to carry
3 out the responsibilities under paragraph (2).

4 (2) RESPONSIBILITIES.—The Commission
5 shall—

6 (A) assess the present and future resource
7 needs of the forensic science community;

8 (B) make recommendations to the Attor-
9 ney General for maximizing the use of forensic
10 technologies and techniques to solve crimes and
11 protect the public;

12 (C) identify potential scientific advances
13 that may assist law enforcement in using foren-
14 sic technologies and techniques to protect the
15 public;

16 (D) make recommendations to the Attor-
17 ney General for programs that will increase the
18 number of qualified forensic scientists available
19 to work in public crime laboratories;

20 (E) disseminate, through the National In-
21 stitute of Justice, best practices concerning the
22 collection and analyses of forensic evidence to
23 help ensure quality and consistency in the use
24 of forensic technologies and techniques to solve
25 crimes and protect the public;

1 (F) examine additional issues pertaining to
2 forensic science as requested by the Attorney
3 General;

4 (G) examine Federal, State, and local pri-
5 vacy protection statutes, regulations, and prac-
6 tices relating to access to, or use of, stored
7 DNA samples or DNA analyses, to determine
8 whether such protections are sufficient;

9 (H) make specific recommendations to the
10 Attorney General, as necessary, to enhance the
11 protections described in subparagraph (G) to
12 ensure—

13 (i) the appropriate use and dissemina-
14 tion of DNA information;

15 (ii) the accuracy, security, and con-
16 fidentiality of DNA information;

17 (iii) the timely removal and destruc-
18 tion of obsolete, expunged, or inaccurate
19 DNA information; and

20 (iv) that any other necessary meas-
21 ures are taken to protect privacy; and

22 (I) provide a forum for the exchange and
23 dissemination of ideas and information in fur-
24 therance of the objectives described in subpara-
25 graphs (A) through (H).

1 (3) PERSONNEL; PROCEDURES.—The Attorney
2 General shall—

3 (A) designate the Chair of the Commission
4 from among its members;

5 (B) designate any necessary staff to assist
6 in carrying out the functions of the Commis-
7 sion; and

8 (C) establish procedures and guidelines for
9 the operations of the Commission.

10 (d) AUTHORIZATION OF APPROPRIATIONS.—There
11 are authorized to be appropriated \$15,000,000 for each
12 of the fiscal years 2005 through 2009 to carry out this
13 section.

14 **SEC. 206. FBI DNA PROGRAMS.**

15 (a) AUTHORIZATION OF APPROPRIATIONS.—There
16 are authorized to be appropriated to the Federal Bureau
17 of Investigation \$42,100,000 for each of the fiscal years
18 2005 through 2009 to carry out the DNA programs and
19 activities described under subsection (b).

20 (b) PROGRAMS AND ACTIVITIES.—The Federal Bu-
21 reau of Investigation may use any amounts appropriated
22 pursuant to subsection (a) for—

23 (1) nuclear DNA analysis;

24 (2) mitochondrial DNA analysis;

25 (3) regional mitochondrial DNA laboratories;

- 1 (4) the Combined DNA Index System;
- 2 (5) the Federal Convicted Offender DNA Pro-
- 3 gram; and
- 4 (6) DNA research and development.

5 **SEC. 207. DNA IDENTIFICATION OF MISSING PERSONS.**

6 (a) IN GENERAL.—The Attorney General shall make

7 grants to States and units of local government to promote

8 the use of forensic DNA technology to identify missing

9 persons and unidentified human remains.

10 (b) AUTHORIZATION OF APPROPRIATIONS.—There

11 are authorized to be appropriated \$2,000,000 for each of

12 the fiscal years 2005 through 2009 to carry out this sec-

13 tion.

14 **SEC. 208. ENHANCED CRIMINAL PENALTIES FOR UNAU-**

15 **THORIZED DISCLOSURE OR USE OF DNA IN-**

16 **FORMATION.**

17 Section 10(c) of the DNA Analysis Backlog Elimini-

18 nation Act of 2000 (42 U.S.C. 14135e(c)) is amended to

19 read as follows:

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

21 discloses a sample or result described in subsection (a) in

22 any manner to any person not authorized to receive it,

23 or obtains or uses, without authorization, such sample or

24 result, shall be fined not more than \$100,000. Each in-

1 stance of disclosure, obtaining, or use shall constitute a
 2 separate offense under this subsection.”.

3 **SEC. 209. TRIBAL COALITION GRANTS.**

4 Section 2001 of title I of the Omnibus Crime Control
 5 and Safe Streets Act of 1968 (42 U.S.C. 3796gg) is
 6 amended by adding at the end the following:

7 “(d) TRIBAL COALITION GRANTS.—

8 “(1) PURPOSE.—The Attorney General shall
 9 award grants to tribal domestic violence and sexual
 10 assault coalitions for purposes of—

11 “(A) increasing awareness of domestic vio-
 12 lence and sexual assault against Indian women;

13 “(B) enhancing the response to violence
 14 against Indian women at the tribal, Federal,
 15 and State levels; and

16 “(C) identifying and providing technical
 17 assistance to coalition membership and tribal
 18 communities to enhance access to essential serv-
 19 ices to Indian women victimized by domestic
 20 and sexual violence.

21 “(2) GRANTS TO TRIBAL COALITIONS.—The At-
 22 torney General shall award grants under paragraph
 23 (1) to—

24 “(A) established nonprofit, nongovern-
 25 mental tribal coalitions addressing domestic vio-

1 lence and sexual assault against Indian women;
2 and

3 “(B) individuals or organizations that pro-
4 pose to incorporate as nonprofit, nongovern-
5 mental tribal coalitions to address domestic vio-
6 lence and sexual assault against Indian women.

7 “(3) ELIGIBILITY FOR OTHER GRANTS.—Re-
8 ceipt of an award under this subsection by tribal do-
9 mestic violence and sexual assault coalitions shall
10 not preclude the coalition from receiving additional
11 grants under this title to carry out the purposes de-
12 scribed in subsection (b).”.

13 **SEC. 210. EXPANSION OF PAUL COVERDELL FORENSIC**
14 **SCIENCES IMPROVEMENT GRANT PROGRAM.**

15 (a) FORENSIC BACKLOG ELIMINATION GRANTS.—
16 Section 2804 of the Omnibus Crime Control and Safe
17 Streets Act of 1968 (42 U.S.C. 3797m) is amended—

18 (1) in subsection (a)—

19 (A) by striking “shall use the grant to
20 carry out” and inserting “shall use the grant
21 to—

22 “(1) carry out”;

23 (B) by striking the period at the end and
24 inserting a semicolon; and

25 (C) by adding at the end the following:

1 “(2) eliminate a backlog in the analysis of fo-
2 rensic science evidence, including firearms examina-
3 tion, latent prints, toxicology, controlled substances,
4 forensic pathology, questionable documents, and
5 trace evidence; and

6 “(3) train, assist, and employ forensic labora-
7 tory personnel, as needed, to eliminate a forensic
8 evidence backlog.”;

9 (2) in subsection (b), by striking “under this
10 part” and inserting “for the purpose set forth in
11 subsection (a)(1)”;

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

13 “(e) DEFINED TERM.—As used in this section, the
14 term ‘forensic evidence backlog’ means forensic evidence
15 that—

16 “(1) has been stored in a laboratory, medical
17 examiner’s office, or coroner’s office; and

18 “(2) has not been subjected to all appropriate
19 forensic testing because of a lack of resources or
20 personnel.”.

21 (b) EXTERNAL AUDITS.—Section 2802 of the Omni-
22 bus Crime Control and Safe Streets Act of 1968 (42
23 U.S.C. 3797k) is amended—

24 (1) in paragraph (2), by striking the “and” at
25 the end;

1 (2) in paragraph (3), by striking the period at
2 the end and inserting “; and”; and

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

4 “(4) a certification that a government entity ex-
5 ists and an appropriate process is in place to con-
6 duct independent external investigations into allega-
7 tions of serious negligence or misconduct substan-
8 tially affecting the integrity of the forensic results
9 committed by employees or contractors of any foren-
10 sic laboratory system, medical examiner’s office, or
11 coroner’s office in the State that will receive a por-
12 tion of the grant amount.”.

13 (c) **THREE-YEAR EXTENSION OF AUTHORIZATION OF**
14 **APPROPRIATIONS.**—Section 1001(a)(24) of the Omnibus
15 Crime Control and Safe Streets Act of 1968 (42 U.S.C.
16 3793(a)(24)) is amended—

17 (1) in subparagraph (E), by striking the “and”
18 at the end;

19 (2) in subparagraph (F), by striking the period
20 at the end and inserting a semicolon; and

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

22 “(G) \$20,000,000 for fiscal year 2007;

23 “(H) \$20,000,000 for fiscal year 2008; and

24 “(I) \$20,000,000 for fiscal year 2009.”.

1 **SEC. 211. REPORT TO CONGRESS.**

2 (a) IN GENERAL.—Not later than 2 years after the
3 date of enactment of this Act, the Attorney General shall
4 submit to Congress a report on the implementation of this
5 Act.

6 (b) CONTENTS.—The report submitted under sub-
7 section (a) shall include a description of—

8 (1) the progress made by Federal, State, and
9 local entities in—

10 (A) collecting and entering DNA samples
11 from offenders convicted of qualifying offenses
12 for inclusion in the Combined DNA Index Sys-
13 tem (referred to in this subsection as
14 “CODIS”);

15 (B) analyzing samples from crime scenes,
16 including evidence collected from sexual as-
17 saults and other serious violent crimes, and en-
18 tering such DNA analyses in CODIS; and

19 (C) increasing the capacity of forensic lab-
20 oratories to conduct DNA analyses;

21 (2) the priorities and plan for awarding grants
22 among eligible States and units of local government
23 to ensure that the purposes of this Act are carried
24 out;

25 (3) the distribution of grant amounts under this
26 Act among eligible States and local governments,

1 and whether the distribution of such funds has
2 served the purposes of the Debbie Smith DNA
3 Backlog Grant Program;

4 (4) grants awarded and the use of such grants
5 by eligible entities for DNA training and education
6 programs for law enforcement, correctional per-
7 sonnel, court officers, medical personnel, victim serv-
8 ice providers, and other personnel authorized under
9 sections 203 and 204;

10 (5) grants awarded and the use of such grants
11 by eligible entities to conduct DNA research and de-
12 velopment programs to improve forensic DNA tech-
13 nology, and implement demonstration projects under
14 section 205;

15 (6) the steps taken to establish the National
16 Forensic Science Commission, and the activities of
17 the Commission under section 205(c);

18 (7) the use of funds by the Federal Bureau of
19 Investigation under section 206;

20 (8) grants awarded and the use of such grants
21 by eligible entities to promote the use of forensic
22 DNA technology to identify missing persons and un-
23 identified human remains under section 207;

1 (9) grants awarded and the use of such grants
 2 by eligible entities to eliminate forensic science back-
 3 logs under section 210;

4 (10) State compliance with the requirements set
 5 forth in section 313; and

6 (11) any other matters considered relevant by
 7 the Attorney General.

8 **TITLE III—INNOCENCE**
 9 **PROTECTION ACT OF 2003**

10 **SEC. 301. SHORT TITLE.**

11 This title may be cited as the “Innocence Protection
 12 Act of 2003”.

13 **Subtitle A—Exonerating the**
 14 **Innocent Through DNA Testing**

15 **SEC. 311. FEDERAL POST-CONVICTION DNA TESTING.**

16 (a) FEDERAL CRIMINAL PROCEDURE.—

17 (1) IN GENERAL.—Part II of title 18, United
 18 States Code, is amended by inserting after chapter
 19 228 the following:

20 **“CHAPTER 228A—POST-CONVICTION DNA**
 21 **TESTING**

“Sec.

“3600. DNA testing.

“3600A. Prohibition on destruction of biological evidence.

22 **“§ 3600. DNA testing**

23 “(a) IN GENERAL.—Upon a written motion by an in-
 24 dividual under a sentence of imprisonment or death pursu-

1 ant to a conviction for a Federal offense (referred to in
2 this section as the ‘applicant’), the court that entered the
3 judgment of conviction shall order DNA testing of specific
4 evidence if—

5 “(1) the applicant asserts, under penalty of per-
6 jury, that the applicant is actually innocent of—

7 “(A) the Federal offense for which the ap-
8 plicant is under a sentence of imprisonment or
9 death; or

10 “(B) another Federal or State offense, if—

11 “(i)(I) such offense was legally nec-
12 essary to make the applicant eligible for a
13 sentence as a career offender under section
14 3559(e) or an armed career offender under
15 section 924(e), and exoneration of such of-
16 fense would entitle the applicant to a re-
17 duced sentence; or

18 “(II) evidence of such offense was ad-
19 mitted during a Federal death sentencing
20 hearing and exoneration of such offense
21 would entitle the applicant to a reduced
22 sentence or new sentencing hearing; and

23 “(ii) in the case of a State offense—

24 “(I) the applicant demonstrates
25 that there is no adequate remedy

1 under State law to permit DNA test-
2 ing of the specified evidence relating
3 to the State offense; and

4 “(II) to the extent available, the
5 applicant has exhausted all remedies
6 available under State law for request-
7 ing DNA testing of specified evidence
8 relating to the State offense;

9 “(2) the specific evidence to be tested was se-
10 cured in relation to the investigation or prosecution
11 of the Federal or State offense referenced in the ap-
12 plicant’s assertion under paragraph (1);

13 “(3) the specific evidence to be tested—

14 “(A) was not previously subjected to DNA
15 testing and the applicant did not knowingly and
16 voluntarily waive the right to request DNA test-
17 ing of that evidence in a court proceeding after
18 the date of enactment of the Innocence Protec-
19 tion Act of 2003; or

20 “(B) was previously subjected to DNA
21 testing and the applicant is requesting DNA
22 testing using a new method or technology that
23 is substantially more probative than the prior
24 DNA testing;

1 “(4) the specific evidence to be tested is in the
2 possession of the Government and has been subject
3 to a chain of custody and retained under conditions
4 sufficient to ensure that such evidence has not been
5 substituted, contaminated, tampered with, replaced,
6 or altered in any respect material to the proposed
7 DNA testing;

8 “(5) the proposed DNA testing is reasonable in
9 scope, uses scientifically sound methods, and is con-
10 sistent with accepted forensic practices;

11 “(6) the applicant identifies a theory of defense
12 that—

13 “(A) is not inconsistent with an affirmative
14 defense presented at trial; and

15 “(B) would establish the actual innocence
16 of the applicant of the Federal or State offense
17 referenced in the applicant’s assertion under
18 paragraph (1);

19 “(7) if the applicant was convicted following a
20 trial, the identity of the perpetrator was at issue in
21 the trial;

22 “(8) the proposed DNA testing of the specific
23 evidence—

1 “(A) would produce new material evidence
2 to support the theory of defense referenced in
3 paragraph (6); and

4 “(B) assuming the DNA test result ex-
5 cludes the applicant, would raise a reasonable
6 probability that the applicant did not commit
7 the offense;

8 “(9) the applicant certifies that the applicant
9 will provide a DNA sample for purposes of compari-
10 son; and

11 “(10) the applicant’s motion is filed for the
12 purpose of demonstrating the applicant’s actual in-
13 nocence of the Federal or State offense, and not to
14 delay the execution of the sentence or the adminis-
15 tration of justice.

16 “(b) NOTICE TO THE GOVERNMENT; PRESERVATION
17 ORDER; APPOINTMENT OF COUNSEL.—

18 “(1) NOTICE.—Upon the receipt of a motion
19 filed under subsection (a), the court shall—

20 “(A) notify the Government; and

21 “(B) allow the Government a reasonable
22 time period to respond to the motion.

23 “(2) PRESERVATION ORDER.—To the extent
24 necessary to carry out proceedings under this sec-
25 tion, the court shall direct the Government to pre-

1 serve the specific evidence relating to a motion under
2 subsection (a).

3 “(3) APPOINTMENT OF COUNSEL.—The court
4 may appoint counsel for an indigent applicant under
5 this section in the same manner as in a proceeding
6 under section 3006A(a)(2)(B).

7 “(c) TESTING PROCEDURES.—

8 “(1) IN GENERAL.—The court shall direct that
9 any DNA testing ordered under this section be car-
10 ried out by the Federal Bureau of Investigation.

11 “(2) EXCEPTION.—Notwithstanding paragraph
12 (1), the court may order DNA testing by another
13 qualified laboratory if the court makes all necessary
14 orders to ensure the integrity of the specific evidence
15 and the reliability of the testing process and test re-
16 sults.

17 “(3) COSTS.—The costs of any DNA testing or-
18 dered under this section shall be paid—

19 “(A) by the applicant; or

20 “(B) in the case of an applicant who is in-
21 digent, by the Government.

22 “(d) TIME LIMITATION IN CAPITAL CASES.—In any
23 case in which the applicant is sentenced to death—

24 “(1) any DNA testing ordered under this sec-
25 tion shall be completed not later than 60 days after

1 the date on which the Government responds to the
2 motion filed under subsection (a); and

3 “(2) not later than 120 days after the date on
4 which the DNA testing ordered under this section is
5 completed, the court shall order any post-testing
6 procedures under subsection (f) or (g), as appro-
7 priate.

8 “(e) REPORTING OF TEST RESULTS.—

9 “(1) IN GENERAL.—The results of any DNA
10 testing ordered under this section shall be simulta-
11 neously disclosed to the court, the applicant, and the
12 Government.

13 “(2) CODIS.—The Government shall submit
14 any test results relating to the DNA of the applicant
15 to the Combined DNA Index System (referred to in
16 this subsection as ‘CODIS’).

17 “(3) RETENTION OF DNA SAMPLE.—

18 “(A) ENTRY INTO CODIS.—If the DNA
19 test results obtained under this section are in-
20 conclusive or show that the applicant was the
21 source of the DNA evidence, the DNA sample
22 of the applicant may be retained in CODIS.

23 “(B) MATCH WITH OTHER OFFENSE.—If
24 the DNA test results obtained under this sec-
25 tion exclude the applicant as the source of the

1 DNA evidence, and a comparison of the DNA
2 sample of the applicant results in a match be-
3 tween the DNA sample of the applicant and an-
4 other offense, the Attorney General shall notify
5 the appropriate agency and preserve the DNA
6 sample of the applicant.

7 “(C) NO MATCH.—If the DNA test results
8 obtained under this section exclude the appli-
9 cant as the source of the DNA evidence, and a
10 comparison of the DNA sample of the applicant
11 does not result in a match between the DNA
12 sample of the applicant and another offense,
13 the Attorney General shall destroy the DNA
14 sample of the applicant and ensure that such
15 information is not retained in CODIS if there
16 is no other legal authority to retain the DNA
17 sample of the applicant in CODIS.

18 “(f) POST-TESTING PROCEDURES; INCONCLUSIVE
19 AND INCULPATORY RESULTS.—

20 “(1) INCONCLUSIVE RESULTS.—If DNA test re-
21 sults obtained under this section are inconclusive,
22 the court may order further testing, if appropriate,
23 or may deny the applicant relief.

24 “(2) INCULPATORY RESULTS.—If DNA test re-
25 sults obtained under this section show that the ap-

1 applicant was the source of the DNA evidence, the
2 court shall—

3 “(A) deny the applicant relief; and

4 “(B) on motion of the Government—

5 “(i) make a determination whether
6 the applicant’s assertion of actual inno-
7 cence was false, and, if the court makes
8 such a finding, the court may hold the ap-
9 plicant in contempt;

10 “(ii) assess against the applicant the
11 cost of any DNA testing carried out under
12 this section;

13 “(iii) forward the finding to the Direc-
14 tor of the Bureau of Prisons, who, upon
15 receipt of such a finding, may deny, wholly
16 or in part, the good conduct credit author-
17 ized under section 3632 on the basis of
18 that finding;

19 “(iv) if the applicant is subject to the
20 jurisdiction of the United States Parole
21 Commission, forward the finding to the
22 Commission so that the Commission may
23 deny parole on the basis of that finding;
24 and

1 “(v) if the DNA test results relate to
2 a State offense, forward the finding to any
3 appropriate State official.

4 “(3) SENTENCE.—In any prosecution of an ap-
5 plicant under chapter 79 for false assertions or other
6 conduct in proceedings under this section, the court,
7 upon conviction of the applicant, shall sentence the
8 applicant to a term of imprisonment of not less than
9 3 years, which shall run consecutively to any other
10 term of imprisonment the applicant is serving.

11 “(g) POST-TESTING PROCEDURES; MOTION FOR
12 NEW TRIAL OR RESENTENCING.—

13 “(1) IN GENERAL.—Notwithstanding any law
14 that would bar a motion under this paragraph as
15 untimely, if DNA test results obtained under this
16 section exclude the applicant as the source of the
17 DNA evidence, the applicant may file a motion for
18 a new trial or resentencing, as appropriate. The
19 court shall establish a reasonable schedule for the
20 applicant to file such a motion and for the Govern-
21 ment to respond to the motion.

22 “(2) STANDARD FOR GRANTING MOTION FOR
23 NEW TRIAL OR RESENTENCING.—The court shall
24 grant the motion of the applicant for a new trial or
25 resentencing, as appropriate, if the DNA test re-

1 sults, when considered with all other evidence in the
2 case (regardless of whether such evidence was intro-
3 duced at trial), establish by a preponderance of the
4 evidence that a new trial would result in an acquittal
5 of—

6 “(A) in the case of a motion for a new
7 trial, the Federal offense for which the appli-
8 cant is under a sentence of imprisonment or
9 death; and

10 “(B) in the case of a motion for resen-
11 tencing, another Federal or State offense, if—

12 “(i) such offense was legally necessary
13 to make the applicant eligible for a sen-
14 tence as a career offender under section
15 3559(e) or an armed career offender under
16 section 924(e), and exoneration of such of-
17 fense would entitle the applicant to a re-
18 duced sentence; or

19 “(ii) evidence of such offense was ad-
20 mitted during a Federal death sentencing
21 hearing and exoneration of such offense
22 would entitle the applicant to a reduced
23 sentence or a new sentencing proceeding.

24 “(h) OTHER LAWS UNAFFECTED.—

1 “(1) POST-CONVICTION RELIEF.—Nothing in
2 this section shall affect the circumstances under
3 which a person may obtain DNA testing or post-con-
4 viction relief under any other law.

5 “(2) HABEAS CORPUS.—Nothing in this section
6 shall provide a basis for relief in any Federal habeas
7 corpus proceeding.

8 “(3) APPLICATION NOT A MOTION.—An appli-
9 cation under this section shall not be considered to
10 be a motion under section 2255 for purposes of de-
11 termining whether the application or any other mo-
12 tion is a second or successive motion under section
13 2255.

14 **“§ 3600A. Prohibition on destruction of biological evi-**
15 **dence**

16 “(a) IN GENERAL.—Notwithstanding any other pro-
17 vision of law, the Government shall not destroy biological
18 evidence that was secured in the investigation or prosecu-
19 tion of a Federal offense, if a defendant is under a sen-
20 tence of imprisonment for such offense.

21 “(b) DEFINED TERM.—For purposes of this section,
22 the term ‘biological evidence’ means—

23 “(1) a sexual assault forensic examination kit;
24 or

1 “(2) semen, blood, saliva, hair, skin tissue, or
2 other identified biological material.

3 “(c) APPLICABILITY.—The prohibition of the de-
4 struction of biological evidence under subsection (a) shall
5 not apply if—

6 “(1) a court has denied a request or motion for
7 DNA testing of the biological evidence by the de-
8 fendant under section 3600, and no appeal is pend-
9 ing;

10 “(2) the defendant knowingly and voluntarily
11 waived the right to request DNA testing of such evi-
12 dence in a court proceeding conducted after the date
13 of enactment of the Innocence Protection Act of
14 2003;

15 “(3) the defendant is notified after conviction
16 that the biological evidence may be destroyed and
17 the defendant does not file a motion under section
18 3600 within 180 days of receipt of the notice; or

19 “(4)(A) the evidence must be returned to its
20 rightful owner, or is of such a size, bulk, or physical
21 character as to render retention impracticable; and

22 “(B) the Government takes reasonable meas-
23 ures to remove and preserve portions of the material
24 evidence sufficient to permit future DNA testing.

1 “(d) OTHER PRESERVATION REQUIREMENT.—Noth-
 2 ing in this section shall preempt or supersede any statute,
 3 regulation, court order, or other provision of law that may
 4 require evidence, including biological evidence, to be pre-
 5 served.

6 “(e) REGULATIONS.—The Attorney General shall
 7 promulgate regulations to implement and enforce this sec-
 8 tion, including appropriate disciplinary sanctions to ensure
 9 that employees comply with such regulations.

10 “(f) CRIMINAL PENALTY.—Whoever knowingly and
 11 intentionally destroys, alters, or tampers with biological
 12 evidence that is required to be preserved under this section
 13 with the intent to prevent that evidence from being sub-
 14 jected to DNA testing or prevent the production or use
 15 of that evidence in an official proceeding, shall be fined
 16 under this title, imprisoned for not more than 5 years,
 17 or both.”

18 (2) CLERICAL AMENDMENT.—The chapter anal-
 19 ysis for part II of title 18, United States Code, is
 20 amended by inserting after the item relating to
 21 chapter 228 the following:

“228A. Post-conviction DNA testing 3600”.

22 (b) SYSTEM FOR REPORTING MOTIONS.—

23 (1) ESTABLISHMENT.—The Attorney General
 24 shall establish a system for reporting and tracking

1 motions filed in accordance with section 3600 of title
2 18, United States Code.

3 (2) OPERATION.—In operating the system es-
4 tablished under paragraph (1), the courts shall pro-
5 vide to the Attorney General any requested assist-
6 ance in operating such a system and in ensuring the
7 accuracy and completeness of information included
8 in that system.

9 (3) REPORT.—Not later than 2 years after the
10 date of enactment of this Act, the Attorney General
11 shall submit a report to Congress that contains—

12 (A) a list of motions filed under section
13 3600 of title 18, United States Code, as added
14 by this Act;

15 (B) whether DNA testing was ordered pur-
16 suant to such a motion;

17 (C) whether the applicant obtained relief
18 on the basis of DNA test results; and

19 (D) whether further proceedings occurred
20 following a granting of relief and the outcome
21 of such proceedings.

22 (4) ADDITIONAL INFORMATION.—The report re-
23 quired to be submitted under paragraph (3) may in-
24 clude any other information the Attorney General
25 determines to be relevant in assessing the operation,

1 utility, or costs of section 3600 of title 18, United
2 States Code, as added by this Act, and any rec-
3 ommendations the Attorney General may have relat-
4 ing to future legislative action concerning that sec-
5 tion.

6 (c) EFFECTIVE DATE; APPLICABILITY.—This section
7 and the amendments made by this section shall take effect
8 on the date of enactment of this Act and shall apply with
9 respect to any offense committed, and to any judgment
10 of conviction entered, before, on, or after that date of en-
11 actment.

12 **SEC. 312. KIRK BLOODSWORTH POST-CONVICTION DNA**
13 **TESTING GRANT PROGRAM.**

14 (a) IN GENERAL.—The Attorney General shall estab-
15 lish the Kirk Bloodsworth Post-Conviction DNA Testing
16 Grant Program to award grants to States to help defray
17 the costs of post-conviction DNA testing.

18 (b) AUTHORIZATION OF APPROPRIATIONS.—There
19 are authorized to be appropriated \$5,000,000 for each of
20 the fiscal years 2005 through 2009 to carry out this sec-
21 tion.

22 (c) STATES.—For purposes of this section, the term
23 “States” means the States of the United States, the Dis-
24 trict of Columbia, the Commonwealth of Puerto Rico, the

1 United States Virgin Islands, American Samoa, Guam,
2 and the Northern Mariana Islands.

3 **SEC. 313. INCENTIVE GRANTS TO STATES TO ENSURE CON-**
4 **SIDERATION OF CLAIMS OF ACTUAL INNO-**
5 **CENCE.**

6 For each of the fiscal years 2005 through 2009, all
7 funds appropriated to carry out sections 203, 205, 207,
8 and 312 shall be reserved for grants eligible entities
9 that—

10 (1) meet the requirements under section 203,
11 205, 207, or 312, as appropriate; and

12 (2) demonstrate that the State in which the eli-
13 gible entity operates—

14 (A) provides post-conviction DNA testing
15 of specified evidence—

16 (i) under a State statute enacted be-
17 fore the date of enactment of this Act (or
18 extended or renewed after such date), to
19 any person convicted after trial and under
20 a sentence of imprisonment or death for a
21 State offense, in a manner that ensures a
22 meaningful process for resolving a claim of
23 actual innocence; or

24 (ii) under a State statute enacted
25 after the date of enactment of this Act, or

1 under a State rule, regulation, or practice,
2 to any person under a sentence of impris-
3 onment or death for a State offense, in a
4 manner comparable to section 3600(a) of
5 title 18, United States Code (provided that
6 the State statute, rule, regulation, or prac-
7 tice may make post-conviction DNA test-
8 ing available in cases in which such testing
9 is not required by such section), and if the
10 results of such testing exclude the appli-
11 cant, permits the applicant to apply for
12 post-conviction relief, notwithstanding any
13 provision of law that would otherwise bar
14 such application as untimely; and

15 (B) preserves biological evidence secured in
16 relation to the investigation or prosecution of a
17 State offense—

18 (i) under a State statute or a State or
19 local rule, regulation, or practice, enacted
20 or adopted before the date of enactment of
21 this Act (or extended or renewed after
22 such date), in a manner that ensures that
23 reasonable measures are taken by all juris-
24 dictions within the State to preserve such
25 evidence; or

1 (ii) under a State statute or a State
 2 or local rule, regulation, or practice, en-
 3 acted or adopted after the date of enact-
 4 ment of this Act, in a manner comparable
 5 to section 3600A of title 18, United States
 6 Code, if—

7 (I) all jurisdictions within the
 8 State comply with this requirement;
 9 and

10 (II) such jurisdictions may pre-
 11 serve such evidence for longer than
 12 the period of time that such evidence
 13 would be required to be preserved
 14 under such section 3600A.

15 **Subtitle B—Improving the Quality**
 16 **of Representation in State Cap-**
 17 **ital Cases**

18 **SEC. 321. CAPITAL REPRESENTATION IMPROVEMENT**
 19 **GRANTS.**

20 (a) **IN GENERAL.**—The Attorney General shall award
 21 grants to States for the purpose of improving the quality
 22 of legal representation provided to indigent defendants in
 23 State capital cases.

24 (b) **DEFINED TERM.**—In this section, the term “legal
 25 representation” means legal counsel and investigative, ex-

1 pert, and other services necessary for competent represen-
2 tation.

3 (c) USE OF FUNDS.—Grants awarded under sub-
4 section (a)—

5 (1) shall be used to establish, implement, or im-
6 prove an effective system for providing competent
7 legal representation to—

8 (A) indigents charged with an offense sub-
9 ject to capital punishment;

10 (B) indigents who have been sentenced to
11 death and who seek appellate or collateral relief
12 in State court; and

13 (C) indigents who have been sentenced to
14 death and who seek review in the Supreme
15 Court of the United States; and

16 (2) shall not be used to fund representation in
17 specific capital cases.

18 (d) EFFECTIVE SYSTEM.—As used in subsection
19 (c)(1), an effective system for providing competent legal
20 representation is a system that—

21 (1) invests the responsibility for identifying and
22 appointing qualified attorneys to represent indigents
23 in capital cases in—

24 (A) a public defender program that relies
25 on staff attorneys, members of the private bar,

1 or both, to provide representation in capital
2 cases; or

3 (B) an entity established by statute or by
4 the highest State court with jurisdiction in
5 criminal cases, which is composed of individuals
6 with demonstrated knowledge and expertise in
7 capital representation; and

8 (2) requires the entity described in paragraph
9 (1) to—

10 (A) establish qualifications for attorneys
11 who may be appointed to represent indigents in
12 capital cases;

13 (B) establish and maintain a roster of
14 qualified attorneys;

15 (C) assign 2 attorneys from the roster to
16 represent an indigent in a capital case, or pro-
17 vide the trial judge a list of not more than 2
18 pairs of attorneys from the roster, from which
19 1 pair shall be assigned, provided that, in any
20 case in which the State elects not to seek the
21 death penalty, a court may find, subject to any
22 requirement of State law, that a second attor-
23 ney need not remain assigned to represent the
24 indigent to ensure competent representation;

1 (D) conduct, sponsor, or approve special-
2 ized training programs for attorneys rep-
3 resenting defendants in capital cases;

4 (E) monitor the performance of attorneys
5 who are appointed and their attendance at
6 training programs, and remove from the roster
7 attorneys who fail to deliver effective represen-
8 tation or who fail to comply with such require-
9 ments as the entity may establish regarding
10 participation in training programs; and

11 (F) ensure funding for the full cost of
12 competent legal representation by the defense
13 team and outside experts selected by counsel,
14 who shall be compensated as follows:

15 (i) Attorneys employed by a public de-
16 fender program shall be compensated ac-
17 cording to a salary scale that is commensu-
18 rate with the salary scale of the prosecu-
19 tor's office in the jurisdiction.

20 (ii) Appointed attorneys shall be com-
21 pensated for actual time and service, com-
22 puted on an hourly basis and at a reason-
23 able hourly rate in light of the qualifica-
24 tions and experience of the attorney and
25 the local market for legal representation in

1 cases reflecting the complexity and respon-
2 sibility of capital cases.

3 (iii) Non-attorney members of the de-
4 fense team, including investigators, mitiga-
5 tion specialists, and experts, shall be com-
6 pensated at a rate that reflects the special-
7 ized skills needed by those who assist coun-
8 sel with the litigation of death penalty
9 cases.

10 (iv) Attorney and non-attorney mem-
11 bers of the defense team shall be reim-
12 bursed for reasonable incidental expenses.

13 **SEC. 322. CAPITAL PROSECUTION IMPROVEMENT GRANTS.**

14 (a) IN GENERAL.—The Attorney General shall award
15 grants to States for the purpose of improving the rep-
16 resentation of the public in State capital cases.

17 (b) USE OF FUNDS.—

18 (1) PERMITTED USES.—Grants awarded under
19 subsection (a) shall be used to—

20 (A) design and implement training pro-
21 grams for State and local prosecutors to ensure
22 effective representation in State capital cases;

23 (B) develop and implement appropriate
24 standards and qualifications for State and local
25 prosecutors who litigate State capital cases;

1 (C) assess the performance of State and
2 local prosecutors who litigate State capital
3 cases, provided that such assessment shall not
4 include participation by the assessor in the trial
5 of any specific capital case;

6 (D) identify and implement any potential
7 legal reforms that may be appropriate to mini-
8 mize the potential for error in the trial of cap-
9 ital cases;

10 (E) establish a program under which State
11 and local prosecutors conduct a systematic re-
12 view of cases in which a death sentence was im-
13 posed in order to identify cases in which post-
14 conviction DNA testing may be appropriate;
15 and

16 (F) provide support and assistance to the
17 families of murder victims.

18 (2) PROHIBITED USE.—Grants awarded under
19 subsection (a) shall not be used to fund the prosecu-
20 tion of specific capital cases.

21 **SEC. 323. APPLICATIONS.**

22 (a) IN GENERAL.—The Attorney General shall estab-
23 lish a process through which a State may apply for a grant
24 under this subtitle.

25 (b) APPLICATION.—

1 (1) IN GENERAL.—A State desiring a grant
2 under this subtitle shall submit an application to the
3 Attorney General at such time, in such manner, and
4 containing such information as the Attorney General
5 may reasonably require.

6 (2) CONTENTS.—Each application submitted
7 under paragraph (1) shall contain—

8 (A) a certification by an appropriate offi-
9 cer of the State that the State authorizes cap-
10 ital punishment under its laws and conducts, or
11 will conduct, prosecutions in which capital pun-
12 ishment is sought;

13 (B) a description of the communities to be
14 served by the grant, including the nature of ex-
15 isting capital defender services and capital pros-
16 ecution programs within such communities;

17 (C) a long-term statewide strategy and de-
18 tailed implementation plan that—

19 (i) reflects consultation with the judi-
20 ciary, the organized bar, and State and
21 local prosecutor and defender organiza-
22 tions; and

23 (ii) establishes as a priority improve-
24 ment in the quality of trial-level represen-
25 tation of indigents charged with capital

1 crimes and trial-level prosecution of capital
2 crimes; and

3 (D) assurances that Federal funds received
4 under this subtitle shall be—

5 (i) used to supplement and not sup-
6 plant non-Federal funds that would other-
7 wise be available for activities funded
8 under this subtitle; and

9 (ii) allocated equally between the uses
10 described in section 321 and the uses de-
11 scribed in section 322.

12 **SEC. 324. STATE REPORTS.**

13 (a) IN GENERAL.—Each State receiving funds under
14 this subtitle shall submit an annual report to the Attorney
15 General that—

16 (1) identifies the activities carried out with such
17 funds; and

18 (2) explains how each activity complies with the
19 terms and conditions of the grant.

20 (b) CAPITAL REPRESENTATION IMPROVEMENT
21 GRANTS.—With respect to the funds provided under sec-
22 tion 321, a report under subsection (a) shall include—

23 (1) an accounting of all amounts expended;

24 (2) an explanation of the means by which the
25 State—

1 (A) invests the responsibility for identi-
2 fying and appointing qualified attorneys to rep-
3 resent indigents in capital cases in an entity de-
4 scribed in section 321(d)(1); and

5 (B) requires the entity described in section
6 321(d)(1) to—

7 (i) establish qualifications for attor-
8 neys who may be appointed to represent
9 indigents in capital cases in accordance
10 with section 321(d)(2)(A);

11 (ii) establish and maintain a roster of
12 qualified attorneys in accordance with sec-
13 tion 321(d)(2)(B);

14 (iii) assign attorneys from the roster
15 in accordance with section 321(d)(2)(C);

16 (iv) conduct, sponsor, or approve spe-
17 cialized training programs for attorneys
18 representing defendants in capital cases in
19 accordance with section 321(d)(2)(D);

20 (v) monitor the performance and
21 training program attendance of appointed
22 attorneys, and remove from the roster at-
23 torneys who fail to deliver effective rep-
24 resentation or fail to comply with such re-
25 quirements as the entity may establish re-

1 garding participation in training programs,
2 in accordance with section 321(d)(2)(E);
3 and

4 (vi) ensure funding for the full cost of
5 competent legal representation by the de-
6 fense team and outside experts selected by
7 counsel, in accordance with section
8 321(d)(2)(F), including a statement set-
9 ting forth—

10 (I) if the State employs a public
11 defender program under section
12 321(d)(1)(A), the salaries received by
13 the attorneys employed by such pro-
14 gram and the salaries received by at-
15 torneys in the prosecutor's office in
16 the jurisdiction;

17 (II) if the State employs ap-
18 pointed attorneys under section
19 321(d)(1)(B), the hourly fees received
20 by such attorneys for actual time and
21 service and the basis on which the
22 hourly rate was calculated;

23 (III) the amounts paid to non-
24 attorney members of the defense

1 team, and the basis on which such
2 amounts were determined; and

3 (IV) the amounts for which at-
4 torney and non-attorney members of
5 the defense team were reimbursed for
6 reasonable incidental expenses; and

7 (3) a statement confirming that the funds have
8 not been used to fund representation in specific cap-
9 ital cases or to supplant non-Federal funds.

10 (c) CAPITAL PROSECUTION IMPROVEMENT

11 GRANTS.—With respect to the funds provided under sec-
12 tion 322, a report under subsection (a) shall include—

13 (1) an accounting of all amounts expended;

14 (2) a description of the means by which the
15 State has—

16 (A) designed and established training pro-
17 grams for State and local prosecutors to ensure
18 effective representation in State capital cases in
19 accordance with section 322(b)(1)(A);

20 (B) developed and implemented appro-
21 priate standards and qualifications for State
22 and local prosecutors who litigate State capital
23 cases in accordance with section 322(b)(1)(B);

1 (C) assessed the performance of State and
2 local prosecutors who litigate State capital cases
3 in accordance with section 322(b)(1)(C);

4 (D) identified and implemented any poten-
5 tial legal reforms that may be appropriate to
6 minimize the potential for error in the trial of
7 capital cases in accordance with section
8 322(b)(1)(D);

9 (E) established a program under which
10 State and local prosecutors conduct a system-
11 atic review of cases in which a death sentence
12 was imposed in order to identify cases in which
13 post-conviction DNA testing may be appro-
14 priate in accordance with section 322(b)(1)(E);
15 and

16 (F) provided support and assistance to the
17 families of murder victims; and

18 (3) a statement confirming that the funds have
19 not been used to fund the prosecution of specific
20 capital cases or to supplant non-Federal funds.

21 (d) PUBLIC DISCLOSURE OF ANNUAL STATE RE-
22 PORTS.—The annual reports to the Attorney General sub-
23 mitted by any State under this section shall be made avail-
24 able to the public.

1 **SEC. 325. EVALUATIONS BY INSPECTOR GENERAL AND AD-**
2 **MINISTRATIVE REMEDIES.**

3 (a) **EVALUATION BY INSPECTOR GENERAL.—**

4 (1) **IN GENERAL.—**As soon as practicable after
5 the end of the first fiscal year for which a State re-
6 ceives funds under a grant made under this title, the
7 Inspector General of the Department of Justice (in
8 this section referred to as the “Inspector General”)
9 shall—

10 (A) after affording an opportunity for any
11 person to provide comments on a report sub-
12 mitted under section 324, submit to Congress
13 and to the Attorney General a report evaluating
14 the compliance by the State with the terms and
15 conditions of the grant; and

16 (B) if the Inspector General concludes that
17 the State is not in compliance with the terms
18 and conditions of the grant, specify any defi-
19 ciencies and make recommendations for correc-
20 tive action.

21 (2) **PRIORITY.—**In conducting evaluations
22 under this subsection, the Inspector General shall
23 give priority to States that the Inspector General de-
24 termines, based on information submitted by the
25 State and other comments provided by any other
26 person, to be at the highest risk of noncompliance.

1 (b) ADMINISTRATIVE REVIEW.—

2 (1) COMMENT.—Upon receiving the report
3 under subsection (a)(1), the Attorney General shall
4 provide the State with an opportunity to comment
5 regarding the findings and conclusions of the report.

6 (2) CORRECTIVE ACTION PLAN.—If the Attor-
7 ney General, after reviewing the report under sub-
8 section (a)(1), determines that a State is not in com-
9 pliance with the terms and conditions of the grant,
10 the Attorney General shall consult with the appro-
11 priate State authorities to enter into a plan for cor-
12 rective action. If the State does not agree to a plan
13 for corrective action that has been approved by the
14 Attorney General within 90 days after the submis-
15 sion of the report under subsection (a)(1), the Attor-
16 ney General shall, within 30 days, direct the State
17 to take corrective action to bring the State into com-
18 pliance.

19 (3) REPORT TO CONGRESS.—Not later than 90
20 days after the earlier of the implementation of a cor-
21 rective action plan or a directive to implement such
22 a plan under paragraph (2), the Attorney General
23 shall submit a report to Congress as to whether the
24 State has taken corrective action and is in compli-
25 ance with the terms and conditions of the grant.

1 (c) PENALTIES FOR NONCOMPLIANCE.—If the State
2 fails to take the prescribed corrective action under sub-
3 section (b) and is not in compliance with the terms and
4 conditions of the grant, the Attorney General shall dis-
5 continue all further funding under sections 321 and 322
6 and require the State to return the funds granted under
7 such sections for that fiscal year. Nothing in this para-
8 graph shall prevent a State which has been subject to pen-
9 alties for noncompliance from reapplying for a grant under
10 this subtitle in another fiscal year.

11 (d) PERIODIC REPORTS.—During the grant period,
12 the Inspector General shall periodically review the compli-
13 ance of each State with the terms and conditions of the
14 grant.

15 (e) ADMINISTRATIVE COSTS.—Not less than 2.5 per-
16 cent of the funds appropriated to carry out this subtitle
17 for each of the fiscal years 2005 through 2009 shall be
18 made available to the Inspector General for purposes of
19 carrying out this section. Such sums shall remain available
20 until expended.

21 **SEC. 326. AUTHORIZATION OF APPROPRIATIONS.**

22 (a) AUTHORIZATION FOR GRANTS.—There are au-
23 thorized to be appropriated \$100,000,000 for each of the
24 fiscal years 2005 through 2009 to carry out this subtitle.

1 (b) RESTRICTION ON USE OF FUNDS TO ENSURE
 2 EQUAL ALLOCATION.—Each State receiving a grant
 3 under this subtitle shall allocate the funds equally between
 4 the uses described in section 321 and the uses described
 5 in section 322.

6 **Subtitle C—Compensation for the**
 7 **Wrongfully Convicted**

8 **SEC. 331. INCREASED COMPENSATION IN FEDERAL CASES**
 9 **FOR THE WRONGFULLY CONVICTED.**

10 Section 2513(e) of title 28, United States Code, is
 11 amended by striking “exceed the sum of \$5,000” and in-
 12 serting “exceed \$100,000 for each 12-month period of in-
 13 carceration for any plaintiff who was unjustly sentenced
 14 to death and \$50,000 for each 12-month period of incar-
 15 ceration for any other plaintiff.”.

16 **SEC. 332. SENSE OF CONGRESS REGARDING COMPENSA-**
 17 **TION IN STATE DEATH PENALTY CASES.**

18 It is the sense of Congress that States should provide
 19 reasonable compensation to any person found to have been
 20 unjustly convicted of an offense against the State and sen-
 21 tenced to death.

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