106TH CONGRESS, 2d Session | HOUSE OF REPRESENTATIVES | REPT. 106–900, Part 1

DNA ANALYSIS BACKLOG ELIMINATION ACT OF 2000

SEPTEMBER 26, 2000.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 4640]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 4640) making grants to States for carrying out DNA analyses for use in the Combined DNA Index System of the Federal Bureau of Investigation, to provide for the collection and analysis of DNA samples from certain violent and sexual offenders for use in such system, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "DNA Analysis Backlog Elimination Act of 2000".

SEC. 2. AUTHORIZATION OF GRANTS.

(a) AUTHORIZATION OF GRANTS.—The Attorney General may make grants to eligible States for use by the State for the following purposes:

(1) To carry out, for inclusion in the Combined DNA Index System of the Federal Bureau of Investigation, DNA analyses of samples taken from individuals convicted of a qualifying State offense (as determined under subsection (b)(2)).

(2) To carry out, for inclusion in such Combined DNA Index System, DNA analyses of samples from crime scenes.

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

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

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

(2) include a certification that each DNA analysis carried out under the plan shall be maintained pursuant to the privacy requirements described in section 210304(b)(3) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14132(b)(3));

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

(4) specify the allocation that the State shall make, in using grant amounts to carry out DNA analyses of samples, as between samples specified in subsection (a)(1) and samples specified in subsection (a)(2); and

(5) specify that portion of grant amounts that the State shall use for the purpose specified in subsection (a)(3).

(c) CRIMES WITHOUT SUSPECTS.—A State that proposes to allocate grant amounts under paragraph (4) or (5) of subsection (b) for the purposes specified in paragraph (2) or (3) of subsection (a) shall use such allocated amounts to conduct or facilitate DNA analyses of those samples that relate to crimes in connection with which there are no suspects.

(d) ANALYSIS OF SAMPLES.—

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

(A) operated by the State or a unit of local government within the State; or

(B) operated by a private entity pursuant to a contract with the State or a unit of local government within the State.

(2) QUALITY ASSURANCE STANDARDS.—(A) The Director of the Federal Bureau of Investigation shall maintain and make available to States a description of quality assurance protocols and practices that the Director considers adequate to assure the quality of a forensic laboratory.

(B) For purposes of this section, a laboratory satisfies quality assurance standards if the laboratory satisfies the quality control requirements described in paragraphs (1) and (2) of section 210304(b) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14132(b)).

(3) USE OF VOUCHERS FOR CERTAIN PURPOSES.—A grant for the purposes specified in paragraph (1) or (2) of subsection (a) may be made in the form of a voucher for laboratory services, which may be redeemed at a laboratory operated by a private entity approved by the Attorney General that satisfies quality assurance standards. The Attorney General may make payment to such a lab-

oratory for the analysis of DNA samples using amounts authorized for those purposes under subsection (j).

(e) RESTRICTIONS ON USE OF FUNDS.—

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

(2) ADMINISTRATIVE COSTS.—A State may not use more than three percent of the funds it receives from this section for administrative expenses.

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

(1) a summary of the activities carried out under the grant and an assessment of whether such activities are meeting the needs identified in the application; and

(2) such other information as the Attorney General may require.

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

(1) the aggregate amount of grants made under this section to each State for such fiscal year; and

(2) a summary of the information provided by States receiving grants under this section.

(h) EXPENDITURE RECORDS.—

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

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

(i) DEFINITION.—For purposes of this section, the term "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

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

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

(A) $15,000,000 for fiscal year 2001;

(B) $15,000,000 for fiscal year 2002; and

(C) $15,000,000 for fiscal year 2003.

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

(A) $25,000,000 for fiscal year 2001;

(B) $50,000,000 for fiscal year 2002;

(C) $25,000,000 for fiscal year 2003; and

(D) $25,000,000 for fiscal year 2004.

SEC. 3. COLLECTION AND USE OF DNA IDENTIFICATION INFORMATION FROM CERTAIN FEDERAL OFFENDERS.

(a) COLLECTION OF DNA SAMPLES.—

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

(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, United States Code.

(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, United States Code, 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 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 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, United States Code.

(b) ANALYSIS AND USE OF SAMPLES.—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.

(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.

(d) QUALIFYING FEDERAL OFFENSES.—(1) The offenses that shall be treated for purposes of this section as qualifying Federal offenses are the following offenses under title 18, United States Code, as determined by the Attorney General:

(A) Murder (as described in section 1111 of such title), voluntary manslaughter (as described in section 1112 of such title), or other offense relating to homicide (as described in chapter 51 of such title, sections 1113, 1114, 1116, 1118, 1119, 1120, and 1121).

(B) An offense relating to sexual abuse (as described in chapter 109A of such title, sections 2241 through 2245), to sexual exploitation or other abuse of children (as described in chapter 110 of such title, sections 2251 through 2252A), or to transportation for illegal sexual activity (as described in chapter 117 of such title, sections 2421, 2422, 2423, and 2425).

(C) Kidnapping (as defined in section 3559(c)(2)(E) of such title).

(D) Burglary.

(E) Attempt or conspiracy to commit any of the above offenses.

(2) The initial determination of qualifying Federal offenses shall be made not later than 120 days after the date of the enactment of this Act.

(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 appropriations, commence not later than the date that is 180 days after the date of the enactment of this Act.

SEC. 4. 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 DNA analysis

with respect to that individual, the Director of the Bureau of Prisons or Agency (as applicable) may (but need not) collect a DNA sample from that individual.

(4) COLLECTION PROCEDURES.—(A) The Director of the Bureau of Prisons or Agency (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 Director of the Bureau of Prisons or Agency, 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, United States Code.

(b) ANALYSIS AND USE OF SAMPLES.—The Director of the Bureau of Prisons or Agency (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.

(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.

(d) QUALIFYING DISTRICT OF COLUMBIA OFFENSES.—The Government of the District of Columbia may determine those offenses under the District of Columbia Code that shall be treated for purposes of this section as qualifying District of Columbia offenses.

(e) COMMENCEMENT OF COLLECTION.—Collection of DNA samples under subsection (a) shall, subject to the availability of appropriations, commence not later than the date that is 180 days after the date of the enactment of this Act.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Court Services and Offender Supervision Agency for the District of Columbia to carry out this section such sums as may be necessary for each of fiscal years 2001 through 2005.

SEC. 5. COLLECTION AND USE OF DNA IDENTIFICATION INFORMATION FROM CERTAIN OFFENDERS IN THE ARMED FORCES.

(a) IN GENERAL.—(1) Chapter 80 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 1565. DNA identification information: collection from certain offenders; use

"(a) COLLECTION OF DNA SAMPLES.—(1) The Secretary concerned shall collect a DNA sample from each member of the armed forces under the Secretary's jurisdiction who is, or has been, convicted of a qualifying military offense (as determined under subsection (d)).

"(2) For each member described in paragraph (1), 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 member, or if a DNA sample has been or is to be collected from that member under section 3(a) of the DNA Analysis Backlog Elimination Act of 2000, the Secretary concerned may (but need not) collect a DNA sample from that member.

"(3) The Secretary concerned may enter into agreements with other Federal agencies, units of State or local government, or private entities to provide for the collection of samples described in paragraph (1).

"(b) ANALYSIS AND USE OF SAMPLES.—The Secretary concerned shall furnish each DNA sample collected under subsection (a) to the Secretary of Defense. The Secretary of Defense shall carry out a DNA analysis on each such DNA sample and furnish the results of each such analysis to the Director of the Federal Bureau of Investigation for inclusion 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.

"(d) QUALIFYING MILITARY OFFENSES.—(1) Subject to paragraph (2), the Secretary of Defense, in consultation with the Attorney General, shall determine those felony or sexual offenses under the Uniform Code of Military Justice that shall be treated for purposes of this section as qualifying military offenses.

"(2) An offense under the Uniform Code of Military Justice that is comparable to a qualifying Federal offense (as determined under section 3(d) of the DNA Analysis Backlog Elimination Act of 2000), as determined by the Secretary in consultation with the Attorney General, shall be treated for purposes of this section as a qualifying military offense.

"(e) EXPUNGEMENT.—(1) The Secretary of Defense shall promptly expunge, from the index described in subsection (a) of section 210304 of the Violent Crime Control and Law Enforcement Act of 1994, the DNA analysis of a person included in the index on the basis of a qualifying military offense if the Secretary receives, for each conviction of the person of a qualifying offense, a certified copy of a final court order establishing that such conviction has been overturned.

"(2) For purposes of paragraph (1), the term 'qualifying offense' means any of the following offenses:

"(A) A qualifying Federal offense, as determined under section 3 of the DNA Analysis Backlog Elimination Act of 2000.

"(B) A qualifying District of Columbia offense, as determined under section 4 of the DNA Analysis Backlog Elimination Act of 2000.

"(C) A qualifying military offense.

"(3) For purposes of paragraph (1), a court order is not 'final' if time remains for an appeal or application for discretionary review with respect to the order.

"(f) REGULATIONS.—This section shall be carried out under regulations prescribed by the Secretary of Defense, in consultation with the Secretary of Transportation and the Attorney General. Those regulations shall apply, to the extent practicable, uniformly throughout the armed forces.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"1565. DNA identification information: collection from certain offenders; use.".

(b) INITIAL DETERMINATION OF QUALIFYING MILITARY OFFENSES.—The initial determination of qualifying military offenses under section 1565(d) of title 10, United States Code, as added by subsection (a)(1), shall be made not later than 120 days after the date of the enactment of this Act.

(c) COMMENCEMENT OF COLLECTION.—Collection of DNA samples under section 1565(a) of such title, as added by subsection (a)(1), shall, subject to the availability of appropriations, commence not later than the date that is 60 days after the date of the initial determination referred to in subsection (b).

SEC. 6. EXPANSION OF DNA IDENTIFICATION INDEX.

(a) USE OF CERTAIN FUNDS.—Section 811(a)(2) of the Antiterrorism and Effective Death Penalty Act of 1996 (28 U.S.C. 531 note) is amended to read as follows:

"(2) the Director of the Federal Bureau of Investigation shall expand the combined DNA Identification System (CODIS) to include analyses of DNA samples collected from—

"(A) individuals convicted of a qualifying Federal offense, as determined under section 3(d) of the DNA Analysis Backlog Elimination Act of 2000;

"(B) individuals convicted of a qualifying District of Columbia offense, as determined under section 4(d) of the DNA Analysis Backlog Elimination Act of 2000; and

"(C) members of the Armed Forces convicted of a qualifying military offense, as determined under section 1565(d) of title 10, United States Code.".

(b) INDEX TO FACILITATE LAW ENFORCEMENT EXCHANGE OF DNA IDENTIFICATION INFORMATION.—Section 210304 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14132) is amended—

(1) in subsection (b)(1), by inserting after "criminal justice agency" the following: "(or the Secretary of Defense in accordance with section 1565 of title 10, United States Code)";

(2) in subsection (b)(2)—

(A) by striking ", at regular intervals of not to exceed 180 days," and inserting "semiannual"; and

(B) by inserting before the semicolon the following: "(or prepared by the Secretary of Defense in accordance with section 1565 of title 10, United States Code)";

(3) in subsection (b)(3), by inserting after "local criminal justice agencies" the following: "(or the Secretary of Defense in accordance with section 1565 of title 10, United States Code)"; and

(4) by adding at the end the following new subsection:

"(d) EXPUNGEMENT OF RECORDS.—(1) The Director of the Federal Bureau of Investigation shall promptly expunge from the index described in subsection (a) the DNA analysis of a person included in the index on the basis of a qualifying Federal offense or a qualifying District of Columbia offense (as determined under section 3

and 4 of the DNA Analysis Backlog Elimination Act of 2000, respectively) if the Director receives, for each conviction of the person of a qualifying offense, a certified copy of a final court order establishing that such conviction has been overturned.

"(2) For purposes of paragraph (1), the term 'qualifying offense' means any of the following offenses:

"(A) A qualifying Federal offense, as determined under section 3 of the DNA Analysis Backlog Elimination Act of 2000.

"(B) A qualifying District of Columbia offense, as determined under section 4 of the DNA Analysis Backlog Elimination Act of 2000.

"(C) A qualifying military offense, as determined under section 1565 of title 10, United States Code.

"(3) For purposes of paragraph (1), a court order is not 'final' if time remains for an appeal or application for discretionary review with respect to the order.".

SEC. 7. CONDITIONS OF RELEASE.

(a) CONDITIONS OF PROBATION.—Section 3563(a) of title 18, United States Code, is amended—

(1) in paragraph (7), by striking "and" at the end;

(2) in paragraph (8), by striking the period at the end and inserting "; and"; and

(3) by inserting after paragraph (8) the following:

"(9) that the defendant cooperate in the collection of a DNA sample from the defendant if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000.".

(b) CONDITIONS OF SUPERVISED RELEASE.—Section 3583(d) of title 18, United States Code, is amended by inserting before "The court shall also order" the following: "The court shall order, as an explicit condition of supervised release, that the defendant cooperate in the collection of a DNA sample from the defendant, if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000.".

(c) CONDITIONS OF PAROLE.—Section 4209 of title 18, United States Code, insofar as such section remains in effect with respect to certain individuals, is amended by inserting before "In every case, the Commission shall also impose" the following: "In every case, the Commission shall impose as a condition of parole that the parolee cooperate in the collection of a DNA sample from the parolee, if the collection of such a sample is authorized pursuant to section 3 or section 4 of the DNA Analysis Backlog Elimination Act of 2000 or section 1565 of title 10.".

(d) CONDITIONS OF RELEASE GENERALLY.—If the collection of a DNA sample from an individual on probation, parole, or supervised release is authorized pursuant to section 3 or 4 of this Act or section 1565 of title 10, United States Code, the individual shall cooperate in the collection of a DNA sample as a condition of that probation, parole, or supervised release.

SEC. 8. TECHNICAL AND CONFORMING AMENDMENTS.

(a) DRUG CONTROL AND SYSTEM IMPROVEMENT GRANTS.—Section 503(a)(12)(C) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3753(a)(12)(C)) is amended by striking ", at regular intervals of not to exceed 180 days," and inserting "semiannual".

(b) DNA IDENTIFICATION GRANTS.—Section 2403(3) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796kk–2(3)) is amended by striking ", at regular intervals not exceeding 180 days," and inserting "semiannual".

(c) FEDERAL BUREAU OF INVESTIGATION.—Section 210305(a)(1)(A) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14133(a)(1)(A)) is amended by striking ", at regular intervals of not to exceed 180 days," and inserting "semiannual".

SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Attorney General to carry out this Act (including to reimburse the Federal judiciary for any reasonable costs incurred in implementing such Act, as determined by the Attorney General) such sums as may be necessary.

SEC. 10. PRIVACY PROTECTION STANDARDS.

(a) IN GENERAL.—Except as provided in subsection (b), any sample collected under, or any result of any analysis carried out under, section 2, 3, or 4 may be used only for a purpose specified in such section.

(b) PERMISSIVE USES.—A sample or result described in subsection (a) may be disclosed under the circumstances under which disclosure of information included in the Combined DNA Index System is allowed, as specified in subparagraphs (A) through (D) of section 210304(b)(3) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14132(b)(3)).

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

(1) discloses a sample or result described in subsection (a) in any manner to any person not authorized to receive it; or

(2) obtains, without authorization, a sample or result described in subsection (a),

shall be fined not more than $100,000.

PURPOSE AND SUMMARY

H.R. 4640 would authorize a new program of Federal assistance to States to enable them to clear their backlogs of DNA samples which have been collected from convicted offenders or crime scenes and which the States have been unable to analyze, or to reanalyze in light of recent developments in DNA identification technology, because of shortfalls in resources and the failure of available laboratory capacity to keep pace with the growth of the DNA identification system. H.R. 4640 would also fill a gap in the system by authorizing collection, analysis, and indexing of DNA samples from persons convicted of Federal crimes, crimes under the laws of the District of Columbia, or offenses under military law.

BACKGROUND AND NEED FOR THE LEGISLATION

H.R. 4640 addresses two areas of concern: the absence of legal authority for DNA samples to be collected from persons convicted of Federal crimes, analyzed, and cataloged into a national database of convicted offenders; and the increasing backlog of biological samples waiting analysis in the States.

COLLECTION OF DNA SAMPLES FROM CONVICTED OFFENDERS

In the Violent Crime Control and Law Enforcement Act of 1994,[1] Congress authorized the FBI to create a national index of DNA samples taken from convicted offenders, crime scenes and victims of crime, and unidentified human remains. That portion of the act also specified the uses to which such samples could be put, and authorized the appropriation of funds to the FBI and to States to assist them in developing DNA testing capabilities.

In response to this authority, the FBI established the Combined DNA Index System (CODIS), which the FBI had been developing as a pilot program since the early 1990's. CODIS allows State and local forensics laboratories to exchange and compare DNA profiles electronically in an attempt to link evidence from crime scenes for which there are no suspects to DNA samples of convicted offenders on file in the system. Today, CODIS is installed in over 90 laboratories in 41 States and the District of Columbia. There are approximately 445,000 offender samples and 31,000 crime scene samples classified and stored in CODIS.

All 50 States have enacted statutes requiring convicted offenders to provide DNA samples for analysis and entry into the CODIS system. The crimes which trigger the requirement to provide a sample vary from State to State. Samples from Federal offenders are not included in CODIS (unless they previously committed a State offense for which a sample was taken) because the language of the 1994 act only authorized the creation of the CODIS system, and not the taking of samples from persons convicted of Federal crimes,

[1] Public Law No. 103–322.

crimes under the District of Columbia Code, or offenses under the Uniform Code of Military Justice (UCMJ). In 1996, Congress passed the Antiterrorism and Effective Death Penalty Act of 1996 which contained a provision that authorized the Director of the FBI to "expand CODIS to include Federal crimes and crimes committed in the District of Columbia,"[2] however, the Department of Justice later determined that this provision was insufficient to provide it with the legal authority to collect samples from convicted Federal offenders. In 1997, Congress passed a bill authorizing appropriations for the Departments of Commerce, State, and Justice, the Judiciary and related agencies and in that bill required the Attorney General to submit a report to Congress with an implementation plan for collecting DNA samples from persons convicted of Federal sexual offenses.[3]

The FBI submitted this report to Congress in late 1998. In it, the FBI requested that Congress enact statutory authority to allow the taking of DNA samples from persons committing Federal crimes of violence, robbery, and burglary, or similar crimes in the District of Columbia or while in the military, and authorizing them to be included in CODIS.[4]

THE BACKLOG OF BIOLOGICAL SAMPLES TO BE ANALYZED IN THE STATES

The development of DNA identification technology is one of the most important advances in criminal identification methods in decades. As a direct result of the proven ability of DNA evidence to solve crime, the 120 public forensic laboratories operating across country during the 1990's have been besieged by requests to analyze DNA samples. More than half of them have developed significant testing backlogs that have yet to be cleared. Of the several hundred thousand DNA samples submitted to these labs during the past 10 years, the vast majority were taken from convicted felons pursuant to the State laws that require such samples be taken and analyzed. But thousands of crimes scene samples also are awaiting analysis. Even in States where these samples are made a priority, the lack of existing laboratory capacity to analyze these samples results in a delay in justice being done, both for those accused of the crime and for the victim of that crime. These backlogs have been exacerbated in recent years as new developments in DNA analysis technology has required that many samples, especially those taken from convicted offenders and cataloged in the CODIS database, be reanalyzed using new technology.

In a report issued by the Justice Department's Bureau of Justice Statistics (BJA),[5] as of December 1997, approximately 69% of publicly operated forensic crime labs across the country had at least 6,800 unprocessed DNA cases and an additional 287,000 unprocessed convicted offender DNA samples. The public labs reporting a

[2] Public Law No. 104–132, § 811(a)(2).

[3] Public Law 105–119, at § 121.

[4] FBI Laboratory Report to Congress, Implementation Plan for Collection of DNA Samples from Federal Convicted Offenders Pursuant to P.L. 105–229 (December 1998). Public Law 105–119, § 121 (the FY 1999 appropriations act for the Justice Department and other agencies) required the Attorney General to submit a report to Congress with an implementation plan for collecting DNA samples from Federal convicted sex offenders prior to their release. The reference in the title of the report to Public Law 105–229 is in error.

[5] Bureau of Justice Statistics, U.S. Department of Justice, Survey of DNA Crime Laboratories, 1998 (February 2000).

backlog include the FBI's crime lab in Washington. In 1997, for example, these labs received about 21,000 cases involving DNA evidence for analysis and processed about 14,000 of those cases. In that same year, 116,000 convicted offender samples were submitted for analysis, an increase from 72,000 in 1996. Of these totals, only 45,000 were analyzed in 1997 and 37,000 in 1996.

As a result of these backlogs, killers, rapists, and other dangerous offenders who might be successfully identified through DNA matching remain at large to engage in further crimes against the public. Where the limitation period for prosecution expires prior to such an identification, the delay in utilizing the DNA technology may permanently bar bringing a criminal to justice. In addition to these obvious public safety costs, the current inadequacies of the system also endanger the innocent. Promptly identifying the actual perpetrator of a crime through DNA matching exonerates any other persons who might wrongfully be suspected, accused, or convicted of the crime. Where this cannot be done because of an inability to analyze and index convicted offender or crime scene samples in a timely manner, the risks of convicting an innocent person increase.

HOW H.R. 4640 ADDRESSES THESE PROBLEMS

H.R. 4640 will assist States in reducing the backlog of samples awaiting DNA analysis, by establishing a grant program whereby the Federal Government would make grants to States to enable them to conduct DNA analyses of biological samples taken from offenders who are required to provide a sample for DNA analysis and samples taken from crime scenes and from victims of crime. The bill authorizes funding for convicted offender sample analysis of $15 million a year for each of fiscal years 2001 through 2003. This part of the backlog problem has been partially addressed through a $15 million appropriation by Congress for fiscal year 2000, which the National Institute of Justice has administered to assist the States in reducing their backlogs of convicted offender DNA samples. However, funding at the same level for an additional 3 years is necessary to complete the elimination of this backlog. It is expected that once the current convicted offender sample backlog is cleared through the proposed program, State laboratory capacity will be adequate for the analysis of convicted offender DNA samples that come in thereafter, and further Federal assistance for this purpose will not be needed.

In addition to extending convicted offender sample backlog assistance for the period needed to complete the elimination of this backlog, the bill makes an important change in the administration of the assistance program. Under the fiscal year 2000 program, only States could be directly provided with backlog reduction funding, though most of the actual analysis of convicted offender DNA samples is being carried out through outsourcing to private laboratories. The need to deal with the procurement processes of 50 different States has greatly increased the administrative, overhead, and marketing costs of these private laboratories, resulting in higher charges for sample analysis and considerable inefficiency in the use of the funds. H.R. 4640 corrects this problem by authorizing the Department of Justice to issue vouchers to the States, which will be redeemable at approved private laboratories that will receive direct payment for the sample analysis they carry out for the

States. It is expected that the increased efficiency of this approach will enable 20 to 30 percent more samples to be analyzed with the same level of funding.

With respect to crime scene sample backlog reduction, H.R. 4640 authorizes $25 million in fiscal year 2001, $50 million in fiscal year 2002, and $25 million in each of fiscal year 2003 and fiscal year 2004. Addressing the crime scene sample backlog is intrinsically more expensive because of the high cost of analyzing crime scene samples. For example, analysis of an individual rape kit typically costs about $2,000, and analysis of other forensic DNA evidence—such as DNA analysis of the material found at the scene of a murder—may cost up to several times that amount. The bill provides a two-pronged response to this backlog problem. Funds authorized for crime scene sample backlog reduction could be utilized both for outsourcing to private laboratories, which would receive direct payment for the analysis carried out for the States, and to increase public laboratory capacity to analyze such samples. The authorization of outsourcing will provide immediate relief for the States in addressing their crime scene sample backlogs, and will encourage the commitment of State resources to crime scene sample analysis by providing concrete illustrations of the utility of DNA matching in solving murders, sexually violent offenses, and other crimes. The authorization of assistance for public laboratory capacity expansion will help the States to develop their own capacity to regularly carry out DNA analysis and matching in cases which may be solvable by this means, thereby eliminating the need for Federal assistance in the long term.

States wishing to receive funding under the program created by the bill are required to make application to the Attorney General through the Office of Justice Programs. To qualify for funding, a State must develop a plan to eliminate its backlog of samples awaiting DNA analysis.

The bill also authorizes DNA samples to be collected and included into CODIS from offenders convicted of certain Federal offenses, crimes under the District of Columbia Code, and offenses under the UCMJ. The offenses triggering the sample requirement are specified in the bill and consist principally of serious violent crimes and crimes involving sex offenses. The bill also requires that samples of offenders whose convictions are reversed be removed from CODIS.

H.R. 4640 is similar to three other bills which have been introduced in the 106th Congress and which were the subject of a hearing in the Subcommittee on Crime on March 23, 2000.[6] The sponsors of those bills are original co-sponsors of H.R. 4640.

HEARINGS

The committee's Subcommittee on Crime held no hearings on H.R. 4640 but held 1 day of hearings on related bills H.R. 2810, the "Violent Offender DNA Identification Act of 1999;" H.R. 3087, the "DNA Backlog Elimination Act;" and H.R. 3375, the "Convicted Offender DNA Index System Support Act;" on March 23, 2000. Tes-

[6] H.R. 2810, the "Violent Offender DNA Identification Act of 1999" introduced by Rep. Kennedy; H.R. 3087, the "DNA Backlog Elimination Act," introduced by Rep. Weiner; and H.R. 3375, the "Convicted Offender DNA Index System Support Act," introduced by Rep. Gilman.

timony was received from 10 witnesses, representing 6 organizations, with additional material submitted by 1 other individual.

COMMITTEE CONSIDERATION

On June 15, 2000, the Subcommittee on Crime met in open session and ordered favorably reported the bill H.R. 4640, by a voice vote, a quorum being present. On July 26, 2000, the committee met in open session and ordered favorably reported the bill H.R. 4640 with an amendment by a by voice vote, a quorum being present.

VOTE OF THE COMMITTEE

No recorded votes were taken on the bill H.R. 4640 during committee consideration.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the committee reports that the findings and recommendations of the committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM FINDINGS

No findings or recommendations of the Committee on Government Reform were received as referred to in clause 3(c)(4) of rule XIII of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House Rule XIII is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the committee sets forth, with respect to the bill, H.R. 4640, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 19, 2000.

Hon. HENRY J. HYDE, *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4640, the DNA Analysis Backlog Elimination Act of 2000.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mark Grabowicz (for federal costs), who can be reached at 226–2860, Shelley Finlayson (for the impact on state, local, and tribal governments), who can be

reached at 225–3220, and Tim Vandenberg (for the impact on the private sector), who can be reached at 226–2940.

Sincerely,

DAN L. CRIPPEN, *Director.*

Enclosure

cc: Honorable John Conyers Jr.
Ranking Democratic Member

H.R. 4640—DNA Analysis Backlog Elimination Act of 2000.

SUMMARY

H.R. 4640 would authorize the appropriation of $170 million over fiscal years 2001 through 2004 for grants to states to increase their capability to perform DNA analyses. The bill would direct the Department of Justice, the Judiciary, and the Department of Defense (DoD) to collect and analyze DNA samples from persons convicted of certain crimes. H.R. 4640 also would establish new federal crimes for refusing to provide DNA samples and for the unauthorized use of DNA samples.

Assuming appropriation of the necessary amounts, CBO estimates that implementing H.R. 4640 would cost about $165 million over the 2001–2005 period. This legislation could affect direct spending and receipts, so pay-as-you-go procedures would apply; however, CBO estimates that any such effects would be less than $500,000 annually.

The bill contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would benefit states by enabling them to obtain grant funds. H.R. 4640 would impose a new private-sector mandate, as defined by UMRA, on persons who have been convicted of certain federal offenses. CBO estimates that the cost of the mandate would fall well below the threshold established by UMRA for private-sector mandates ($109 million in 2000, adjusted annually for inflation).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 4640 is shown in the following table. The costs of this legislation fall within budget functions 050 (national defense) and 750 (administration of justice).

By fiscal year, in millions of dollars

	2001	2002	2003	2004	2005
CHANGES IN SPENDING SUBJECT TO APPROPRIATION*					
State Grants for DNA Analysis					
Authorization Level	40	65	40	25	0
Estimated Outlays	9	30	48	45	27
Costs to the Department of Justice					
Estimated Authorization Level	3	1	1	1	1
Estimated Outlays	2	2	1	1	1
Costs to the Judicial Branch and DoD					
Estimated Authorization Level	1	**	**	**	**
Estimated Outlays	1	**	**	**	**
Total Costs					
Estimated Authorization Level	44	66	41	26	1
Estimated Outlays	12	32	49	46	28

*In addition to the discretionary costs, enacting H.R. 4640 could affect direct spending and receipts, but CBO estimates that any such effects would be less than $500,000 annually

**Less than $500,000.

BASIS OF ESTIMATE

For this estimate, CBO assumes that H.R. 4640 will be enacted near the beginning of fiscal year 2001, and that the necessary amounts will be appropriated for each year. Outlay estimates are based on historical information for similar programs.

Spending Subject to Appropriation

State Grants for DNA Analysis. CBO assumes that the bill's specified authorization levels will be appropriated for each fiscal year and that spending will follow the historical rates of similar grant programs.

Costs to the Department of Justice. H.R. 4640 would direct the Bureau of Prisons (BoP) to collect a DNA sample from each person in federal custody who has been convicted of certain felonies or sexual offenses. Based on information from the Department of Justice, CBO estimates that there are roughly 6,000 such persons now and that there would be another 2,000 persons incarcerated in fiscal year 2001 and in each year thereafter. The BoP estimates that it would cost about $50 to collect DNA samples for each of these individuals, so collection costs would total less than $500,000 in each year.

The bill would direct the Court Services and Offender Supervision Agency for the District of Columbia (CSOSA) to collect a DNA sample from each person under the supervision of that agency who has been convicted of certain offenses. For this estimate, CBO assumes that these crimes will include the same felonies and sexual offenses that apply to BoP. CSOSA estimates that there are about 5,000 such individuals under its supervision, so collection costs would total less than $500,000 in fiscal year 2001.

H.R. 4640 would direct the Federal Bureau of Investigation (FBI) to perform analyses of most of the DNA samples collected under the bill's provisions. Based on information from the FBI, CBO estimates that it would cost about $3 million in fiscal year 2001 and about $500,000 in each year thereafter, subject to the availability of appropriated funds, for the necessary equipment and personnel to carry out these analyses.

Costs to the Judicial Branch. The bill would direct the Judiciary to collect a DNA sample from each person under federally supervised release who has been convicted of certain felonies or sexual offenses. The Administrative Office of the United States Courts estimates that there are about 1,500 such individuals now and that there would be a few hundred more offenders under federal supervision in fiscal year 2001 and in each year thereafter. CBO estimates that DNA collection costs for these individuals would total less than $500,000 in each year.

Costs to DoD. The bill would direct DoD to collect a DNA sample from members of the armed forces who have been convicted of certain felonies or sexual offenses and to perform an analysis of these samples. Because of the small number of military personnel affected, CBO estimates that this would cost less than $500,000 in each year, assuming appropriation of the necessary amounts.

Direct Spending and Receipts

Under the provisions of H.R. 4640, specific individuals who refuse to allow DNA samples to be taken, or misuse information concerning DNA samples could be subject to criminal fines. The federal government might collect additional fines if the bill is enacted. Collections of criminal fines are recorded in the budget as governmental receipts (revenues), which are deposited in the Crime Victims Fund and spent in subsequent years. CBO expects that any additional receipts and direct spending would be less than $500,000 each year.

PAY-AS-YOU-GO CONSIDERATIONS

The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. CBO estimates that enacting H.R. 4640 would change direct spending and receipts by less than $500,000 each year.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

H.R. 4640 contains no intergovernmental mandates as defined in UMRA and would benefit states by enabling them to obtain federal grants to analyze certain DNA samples for inclusion in the Combined DNA Index System (CODIS). Those funds could also be used to increase the capacity of laboratories owned by state and local governments to conduct such analyses. States would have to meet certain conditions in order to receive grants. The bill also would benefit state and local law enforcement entities because the expansion of the CODIS database would enhance their ability to use DNA information for law enforcement purposes.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

H.R. 4640 would impose a new private-sector mandate, as defined by UMRA, on persons who have been convicted of certain federal offenses. The bill would require such persons to submit DNA samples to federal authorities upon demand. The bill would authorize the Director of the Bureau of Prisons and probation officers responsible under federal law for the supervision of individuals on probation, parole, or supervised release, to collect DNA samples from individuals convicted of murder, offenses relating to sexual

abuse, kidnaping, burglary, and certain military offenses. Individuals who fail to cooperate with the collection of samples would be guilty of a misdemeanor and subject to criminal punishment.

The collection of DNA samples would impose negligible monetary costs on prisoners and individuals on parole, probation, or supervised release. CBO estimates, therefore, that the cost of the mandate would fall well below the threshold established by UMRA for private-sector mandates ($109 million in 2000, adjusted annually for inflation).

ESTIMATE PREPARED BY:

Federal Costs: Mark Grabowicz (226–2860)
Impact on State, Local, and Tribal Governments: Shelley Finlayson (225–3220)
Impact on the Private Sector: Tim VandenBerg (226–2940)

ESTIMATE APPROVED BY:

Peter H. Fontaine
Deputy Assistant Director for Budget Analysis

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the committee finds the authority for this legislation in Article I, sections 8, clause 3, 14, 17, and 18 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Section 1. Short Title

Section 1 of the bill states the short title of the bill as the "DNA Analysis Backlog Elimination Act of 2000."

Section 2. Authorization of Grants

Section 2 of the bill establishes a $170 million grant program whereby the Attorney General would make grants to States to assist them in reducing the backlog of samples awaiting DNA analysis. The grant funds may be used to conduct DNA analyses of biological samples or to increase the capacity of laboratories owned by States or by units of local government within the State to carry out DNA analysis of such samples. The biological samples to be analyzed using funds granted under H.R. 4640 are samples taken from offenders convicted of specific offenses, determined by each State, that require offenders to provide a sample, and samples taken from crime scenes or from victims of crime. States wishing to receive funding under the program created by the bill are required to make application to the Attorney General through the Justice Department's Office of Justice Programs.

Each grant application must provide assurances that the State has implemented or will implement a comprehensive plan for the expeditious DNA analysis of all of the samples described above that were collected prior to the date of enactment of the bill. This provision is to ensure that the funds made available to States under the bill are used to reduce the backlog of samples awaiting analysis and the plan must detail how the State plans to accomplish this.

In its application, a State must certify that it has determined (by statute, rule, or regulation) those offenses that require convicted offenders to provide a sample for DNA analysis. The bill does not specify what offenses must trigger the requirement to provide a sample, rather, each State is left to make that determination for itself. States must also certify that each DNA analysis carried out under its comprehensive plan (regardless if that analysis is performed using funds granted under H.R. 4640) shall be maintained pursuant to the privacy requirements of the Violent Crime Control and Law Enforcement Act of 1994. Finally, a State must also discuss in its application how it proposes to allocate funds received under the program with respect to DNA analysis of the two categories of biological samples. The bill also authorizes the Attorney General to require States to include other information in applications for these funds.

The bill requires that States which propose to use funds under the program to conduct DNA analysis of samples taken from crime scenes or to build laboratory capacity to conduct DNA samples must use those funds to conduct analysis of samples, or build the capacity to conduct samples, from crimes where there are no suspects. Currently, forensic laboratories generally must prioritize for DNA analysis cases which are scheduled for trial, and other cases involving known suspects in which DNA analysis must be carried out for such purposes as making an arrest. Solving cases without known suspects often stands at the end of the line. As a result of these competing priorities and limited laboratory capacity, the unique potential of the DNA identification system to solve no-suspect cases through matching to convicted offender databases and "crime scene to crime scene" matches is largely unutilized. The targeting of the bill's new program on no-suspect casework, and on expansion of public laboratory capacity for such casework, will correct this critical shortfall in the existing system. Accordingly, when a State proposes to use grant funds to conduct samples, this provision should be interpreted to require the State to dedicate a significant portion of the funds to analyzing samples from crimes where there are no suspects. If the State proposes to use the funds to build capacity, the State must then use a significant portion of that additional capacity to analyze samples taken from crimes where there are no suspects.

States must not use grants funds under this program to supplant State funding for DNA analysis but must instead use the Federal funds to increase the amount of funds that would be allocated to this issue. States must make annual reports to the Attorney General as to the use of funds received under this program and must keep records, which the Attorney General may review, documenting the use of any funds received under this program. The bill also requires the Attorney General to make annual reports to Congress concerning the grants made under the bill.

With respect to grants made to conduct DNA analysis of samples, the bill authorizes the Attorney General to make these grants in the form of a voucher for laboratory services which could be redeemed at a laboratory operated by a private entity approved by the Attorney General. The Attorney General would make payment to the laboratory for the analysis it has conducted in exchange for the vouchers.

The bill authorizes the appropriation of grant funds for two broad purposes. The bill authorizes the appropriation of up to $15 million per year for the next three fiscal years to be used for grants to reduce the backlog of samples taken from convicted offenders. Second, the bill authorizes the appropriation of up to $125 million over the next four fiscal years to be used for grants to reduce the backlog of crime scene samples waiting analysis and to build the capacity of States to conduct DNA analysis in the future.

With respect to crime scene samples, the provision is designed to meet the dual needs of immediate analysis of unknown suspect casework through outsourcing, and capacity building within the public laboratories. The committee expects that most of the grants made by the Attorney General for this purpose in the first year of the program will be directed toward outsourcing backlogged crime scene samples to private laboratories for analysis, since States will need time to develop plans to increase public laboratory capacity, including planning to hire and train additional staff and procure of additional space and equipment. The larger authorization in the second year of the program is designed to enable the Attorney General to fund outsourcing at a level comparable to the first year—thereby forestalling the development of a new backlog—while also providing adequate funding for States to begin implementing their public laboratory capacity expansion programs. It is expected that in the final 2 years of the program the Attorney General will make grants directed toward building public laboratory capacity and diminishing reliance on outsourcing. The intended long-term effect of the program is the inclusion of no-suspect casework as a routine part of the caseload of public laboratories.

Section 3. Collection and Use of DNA Identification Information from Certain Federal Offenders.

Section 3 of the bill directs the Director of the Federal Bureau of Prisons (BOP) to collect a sample from each person in her custody who has been convicted of a "qualifying Federal offense" or a "qualifying military offense."[7] That section also requires the various Federal probation offices throughout the country to also collect samples from persons on parole or under supervised release who have been convicted of a qualifying Federal offense or a qualifying military offense. The committee understands that in most cases, probation officers will not actually collect samples from offenders but rather, will make arrangements with laboratories operated by the Federal Government, a State or unit of local government, or a private entity to collect these samples and then require offenders to report to a particular laboratory to provide a sample.

Biological samples collected under this section of the bill are to be furnished to the Director of the Federal Bureau of Investigation who is to perform a DNA analysis of each sample and include the results in the Combined DNA Index System (CODIS) maintained by the FBI. In order to prevent duplication of effort, if the DNA analysis of a sample taken from an offender is on file in CODIS at the time the offender becomes subject to the custody of the Bureau of Prisons or a probation office, no new sample is required to be

[7] Approximately 430 persons convicted of offenses under the UCMJ are incarcerated in a BOP facility rather than a military disciplinary facility pursuant to a memorandum of understanding between the BOP and the Department of the Army.

taken from that offender, however, a new sample may be taken if the Director of the BOP or the probation office determines that it is appropriate to do so.

The term "qualifying Federal offense" is defined in the bill to include murder; voluntary manslaughter; other homicide offenses; offenses relating to sexual abuse, sexual exploitation or other abuse of children, and transportation for illegal sexual activity; kidnaping; burglary; and any attempt or conspiracy to commit those crimes. Because some of these terms are not used in the United States Code to define an offense, the bill requires the Attorney General to determine which specific Federal offenses fall within the definition of qualifying Federal offense. The Attorney General is required to make this determination within 120 days after enactment of the bill. The Attorney General may not include offenses other than those described in words by general category in the bill and must include those specific offenses described in the bill by section number reference to title 18 of the United States Code. Some offenses within this definition are described both by words and by reference to a section number of title 18 of the United States Code, and in such case the Attorney General may not add additional offenses to the definition of "qualifying Federal offense" with respect to those terms.

The bill makes the refusal to give a sample required under the bill a Federal misdemeanor offense. The bill also authorizes the Director of the Bureau of Prisons and the probation office responsible for the supervision of offenders of parole or supervised released to use reasonable means to detain, restrain, and collect samples from person who refuse to voluntarily give them. Each are also authorized to enter into agreements with units of State or local government or with private entities to provide for the collection of the samples described in this section of the bill.

With respect to Executive Branch agencies affected by this section, the Attorney General is required to promulgate regulations to implement the section. The Director of the Administrative Office of the United States Courts is required to make available model procedures to be used by probation offices in carrying out this section.

Section 4. Collection and Use of DNA Identification Information from Certain District of Columbia Offenders.

Section 4 of the bill directs the Director of the Federal Bureau of Prisons to collect a sample from each person in her custody who has been convicted of a "qualifying District of Columbia offense." Pursuant to the National Capital Revitalization and Self-Government Improvement Act of 1997, many persons convicted of felony offenses under the laws of the District of Columbia are currently incarcerated in BOP facilities. As of 2001, all such felons will be incarcerated in a facility under the control of the BOP. The bill also requires the Director of Court Services and Offender Supervision Agency for the District of Columbia (CSOSA) to collect samples from persons on supervised release, parole, or probation who have been convicted of such an offense. Persons convicted of offenses under the District of Columbia code and who are sentenced to or granted supervised release, parole, or probation are under the supervision of the Director or CSOSA. Samples collected under this section are to be furnished to the Director of the Federal Bureau

of Investigation who is to perform a DNA analysis of each sample and include the results in the CODIS system.

The government of the District of Columbia is given the responsibility to determine which offenses under the District of Columbia Code are to be "qualifying District of Columbia offenses." In this regard, the District of Columbia is given the same discretion currently exercised by the 50 States, each of which has made a determination under its State law as to which offenses trigger the requirement to provide a DNA sample that will be included in CODIS.

This section of the bill makes the refusal to give a sample required under the bill a Federal misdemeanor offense. The bill also authorizes the Director of the BOP and the Director of CSOSA to use reasonable means to detain, restrain, and collect samples from persons who refuse to voluntarily give them. Each are also authorized to enter into agreements with units of State or local government or with private entities to provide for the collection of the samples described in this section of the bill.

Section 5. Collection and Use of DNA Identification Information from Certain Offenders in the Armed Forces.

Section 5 of the bill enacts new section 1565 of title 10 of the United States Code which directs the Secretaries of the Army, Navy, Air Force, and the Treasury[8] (the "Service Secretaries") to collect a sample from each member of the Armed Forces under the respective Service Secretary's jurisdiction who has been convicted of a "qualifying military offense." Samples collected are to be furnished to the Secretary of Defense who is to perform a DNA analysis of each sample and furnish the results of such analysis to the Director of the Federal Bureau of Investigation. The FBI Director is to include the results in the CODIS system. The Service Secretaries may, but are not required, to take samples from military members under his or her jurisdiction for whom a sample is already on file in CODIS at the time they are convicted of a qualifying military offense.

The term "qualifying military offense" is defined in the bill as any of those offenses under the Uniform Code of Military Justice (UCMJ) that are equivalent to the offenses defined as a "qualifying Federal offense" in section 3 of the bill. The Secretary of Defense, in consultation with the Attorney General, is required to determine which felony or sexual offenses under the UCMJ fall within this definition. The committee's use of the phrase "felony or sexual offense" is intended to allow misdemeanor sexual offense to be included within the definition of qualifying military offense if the Secretary so determines. Notwithstanding the discretion given the Secretary in the bill, however, the bill requires that the Secretary include in his determination of the military offenses that fall within this definition all such offenses that are comparable to the offenses defined as "qualifying Federal offenses" in section 3 of the bill. This determination is to be made within 120 days of the enactment of the bill. Collection of samples under new section 1565 is to commence within 60 days after the date of this determination.

[8] The Secretary of the Treasury has operational control of the Coast Guard during peacetime.

The bill authorizes the Service Secretaries to enter into agreements with other Federal agencies, units of State or local government, or private entities to provide for the collection of the samples requires to be collection by the bill.

The bill requires the Secretary of Defense to promptly expunge from CODIS the DNA analysis of a person included in CODIS on the basis of a qualifying military offense if the Secretary receives a certified copy of a final order of a court evidencing that each conviction for which that person is required to provide a sample under State or Federal law has been reversed. The committee points out that the bill excuses the Service Secretaries from obtaining a DNA sample from offenders for whom a DNA analysis already exists in CODIS, and also excuses other persons or agencies charged with collecting DNA samples (e.g., the Director of the BOP) from collecting such samples from persons for whom a DNA analysis is contained in CODIS. In order to ensure that DNA analysis for persons convicted of qualifying offenses are not expunged from CODIS inappropriately, however, the bill requires that before the Secretary expunges a sample placed into CODIS on the basis of a qualifying military offense, the Secretary must also determine whether the offender in question has been convicted of any other offense which would be qualifying offense under H.R. 4640. If so, he may not remove the DNA sample of that offender from CODIS, notwithstanding the fact that the person's qualifying military offense may have been overturned, unless the Secretary also is provided with a certified copy of a final order establishing that all other qualifying convictions also have been overturned.

The Secretary of Defense, in consultation with the Secretary of the Treasury, is required to promulgate regulations to carry out this section of the bill within the Armed Forces.

Section 6. Expansion of DNA Identification Index.

This section of the bill amends the Antiterrorism and Effective Death Penalty Act of 1996, to provide the FBI Director with the authority to include in CODIS all DNA samples taken from Federal offenders, persons convicted of crimes under the District of Columbia Code, and persons who are convicted of offenses under the Uniform Code of Military Justice. Section 6 also requires the FBI Director to promptly expunge from CODIS the DNA analysis of a sample taken from a Federal, District of Columbia, or military offender if the Director receives a certified copy of a final order of a court evidencing that each conviction for which that person is required to provide a sample under State or Federal law has been reversed.

The bill requires the FBI Director to promptly expunge from CODIS the DNA analysis of a person included in CODIS on the basis of a qualifying offense if the Director receives a certified copy of a final order of a court evidencing that each conviction for which that person is required to provide a sample under State or Federal law has been reversed. For the purposes of this provision, the term "qualifying offense" refers to a qualifying Federal offense, a qualifying District of Columbia Offense, and a qualifying military of-

fense.[9] As discussed above, the bill excuses certain persons charged with collecting DNA samples from offenders (e.g., the Director of the BOP, the Director of CSOSA) from obtaining a DNA sample from an offender for whom a DNA analysis already exists in CODIS. Therefore, in order to ensure that DNA analysis for persons convicted of qualifying offenses are not expunged from CODIS inappropriately, the bill requires that before the Director expunges a sample placed into CODIS on the basis of a qualifying military offense, he must also determine whether the offender in question has been convicted of any other offense which would be qualifying offense under H.R. 4640. If so, he may not remove the DNA sample of that offender from CODIS, notwithstanding the fact that the particular qualifying offense for which the DNA sample on file in CODIS was taken may have been overturned.

While the bill requires the prompt expungement of a DNA sample with the standards for expungement have been met, this provision does not require that any expungement protocol be included in the operating software of CODIS. The committee understands and is satisfied that the record of a sample to be expunged from CODIS will be removed by FBI information systems personnel as soon as practical after the Director has made the determination required by the bill.

Subsection (b) inserts references to the Secretary of Defense in provisions of 42 U.S.C. § 14132 relating to participation in the DNA identification system by "criminal justice agencies," to avoid any possible inconsistency with the provisions of section 5 of the bill relating to participation in the system by the Department of Defense. Subsection (b) also makes a technical correction to 42 U.S.C. § 14132(b)(2), so that it requires "semiannual" proficiency testing for DNA laboratories and analysts, rather than proficiency testing "at regular intervals of not to exceed 180 days."

Section 7. Conditions of Release.

Section 7 of the bill amends section 3563 of title 18 of the United States Code to require Federal courts to order, as a condition of any imposed term of probation, that defendants cooperate in the collection of DNA samples authorized under the bill. It also amends section 3583 of title 18, United States Code, to require Federal courts to order, as a condition of any imposed term of supervised release, that defendants cooperate in the collection of DNA samples authorized under the bill. Finally, this section of the bill amends section 4209 of title 18, United States Code, to require the United States Parole Commission to order, as a condition of any imposed term of parole, that paroled offenders cooperate in the collection of DNA samples authorized under the bill.

Section 8. Technical and Conforming Amendments.

Section 8 makes technical and conforming amendments in other laws that are required due to the changes made by the bill. Specifi-

[9] In most cases, DNA samples from persons convicted of a qualifying military offense will have been placed in CODIS by the Secretary of Defense and, when appropriate, would be expunged by him. In some cases, such as when military offenders are incarcerated in a BOP facility, the Director of the BOP or a probation office will have taken the DNA sample from the offenders and the Director of the FBI will have analyzed it and placed it in CODIS. In that circumstance, the FBI Director will be charged with expunging it when the conditions for expungement described in the bill are satisfied.

cally, this section amends several existing provisions to require "semiannual" proficiency testing of DNA laboratories and analysts, rather than proficiency testing at regular intervals which do not exceed 180 days.

Section 9 Authorization of Appropriations.

Section 9 authorizes the appropriation to the Attorney General of such funds as are necessary to carry out the bill. From these funds, the Attorney General may reimburse the several Federal probation offices for their costs in complying with the requirements imposed on them under the bill.

Section 10. Privacy Protection Standards.

Section 10 prohibits the use of samples taken from Federal offenders, District of Columbia offenders, and persons convicted of offenses under the UCMJ or the results of any analyses on those samples for any purpose other than those described in the bill (i.e., principally for the purpose of including the analyses of those samples in CODIS). This section authorizes the disclosure of those samples or the results of any analysis carried out on them for any of the purposes described in the Violent Crime Control and Law Enforcement Act of 1994 with respect to samples taken from State offenders which are included in CODIS. Section 10 of the bill provides for the imposition of a criminal penalty on any person who discloses a sample or the result of any analysis on it to any person not authorized to receive it or who obtains, without authorization, a sample or result described in that section.

AGENCY VIEWS

DEPARTMENT OF JUSTICE,
Washington, DC, July 21, 2000.

Hon. HENRY J. HYDE, *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: This letter presents the views of the Department of Justice and the Administration concerning H.R. 4640, the "DNA Analysis Backlog Elimination Act of 2000". The Department of Justice strongly supports the objectives of this legislation, but recommends certain modifications as discussed in this letter. We understand that the bill's sponsor is preparing a substitute amendment, which we hope will incorporate our recommendations, discussed below. In brief, our principal recommendations are as follows:

1. *Eliminating the backlog of convicted offender DNA samples.* H.R. 4640 addresses a critical impediment to the effective operation of the DNA identification system—a backlog of hundreds of thousands of DNA samples that states have collected from convicted offenders, but have been unable to analyze because of inadequate laboratory capacity. The Department of Justice, through the National Institute of Justice, is currently administering a program of assistance to the states to clear this backlog pursuant to a $15 million FY2000 appropriation. Since this program is already being carried out, relatively simple statutory provisions authorizing the continuation and completion of the program would be adequate. At-

tachment A of this letter includes suggested provisions for that purpose. It is important that the program include adequate funding to permit the prompt elimination of this backlog, as the Administration has proposed in its budget requests. It is also important that the statutory provisions for the program permit direct grants to the private laboratories which analyze DNA samples for the states, an approach that will permit 20 to 30% more samples to be analyzed with the same funding.

2. *Eliminating the backlog of forensic ("crime scene") DNA samples*. H.R. 4640 also addresses a second critical backlog problem—an enormous volume of forensic ("crime scene") evidence which has not been subjected to DNA testing. For example, a recent survey estimated that there are 180,000 unanalyzed rape kits sitting in evidence storage lockers across the country. An effective forensic sample backlog reduction program should incorporate two key elements: (1) immediate assistance to the states for analysis of backlogged forensic samples through outsourcing to private laboratories, and (2) concurrent assistance to state laboratories to increase their forensic sample analysis capacity, thereby eliminating the need for outsourcing and federal assistance in the long term. Suitable provisions for such a program are included in Attachment B to this letter.

3. *Federal offender sample collection and systemic amendments*. Existing federal law authorizes the inclusion of persons convicted of federal crimes in the national DNA identification index, with *no* restrictions on the categories of offenders who may be so included. *See* § 811(a)(2) of the Antiterrorism and Effective Death Penalty Act of 1996. Provisions in H.R. 4640 seek to implement this reform by authorizing DNA sample collection and indexing for certain federal offenders. The bill's provisions, however, would radically restrict the categories of federal offenders who could be included by generally confining sample collection and indexing to offenders convicted of sex offenses, certain homicides, or kidnapping.

This retreat from the approach of existing federal law would leave some crimes unsolved and could in some cases endanger the innocent. The experience of state DNA systems is instructive:

- Virginia collects DNA samples from all convicted felons. Empirical findings indicate that about 40% of the successful DNA identifications in sex offense cases in Virginia could not have been made if the state had only collected DNA samples from persons convicted of violent or sexual offenses.
- Florida has been collecting DNA samples from persons convicted of sex offenses, murder, aggravated battery, home invasion robbery, and carjacking. Florida recently enacted legislation adding burglary as a basis for DNA sample collection, in light of a finding that 52% of offenders linked to crimes (in most cases sexual assaults or homicides) through DNA matching had burglary convictions in their criminal histories.
- In New York, legislation took effect in December, 1999, which required all convicted violent felons and a number of nonviolent felons (approximately 65% of all offenders) to submit DNA samples, thus increasing tenfold the number of DNA samples in the state's DNA databank. The governor

> has submitted legislation to the New York legislature which would further expand the DNA databank to require that all felony and misdemeanor offenders submit a DNA sample upon conviction.

In light of the fundamental importance of adequate sample collection and indexing to the efficacy of the DNA identification system, we strongly recommend against statutory restrictions on the categories of convicted federal offenders from whom DNA samples can be collected.

In contrast to several earlier legislative proposals, H.R. 4640 also does not authorize sample collection and indexing for juveniles adjudicated delinquent in federal proceedings, and does not permit states to include information on adjudicated delinquents in the national DNA identification index. However, about half of the states collect samples from adjudicated delinquents and include the DNA profiles in their own databases. There is no reason these states should be barred from including the same information in the national index.

It should be noted that the existing legal rules for the DNA identification system generally ensure that DNA samples and indexed information will be used solely for law enforcement identification purposes. Moreover, the DNA profiles maintained in the index do no more than provide a means of identifying an offender in much the same way that fingerprint information identifies a person. They do not reveal any of the personal traits or characteristics of an offender. Since *all* information in the DNA identification index—whether it relates to adult offenders or juveniles—is subject to strict confidentiality rules and protections, concerns about safeguarding the privacy of criminal offenders and delinquents do not justify a restrictive approach to DNA sample collection and indexing.

We have previously transmitted to Congress suggested statutory language to implement the inclusion of federal, military, and District of Columbia offenders in the DNA identification index, and to allow information relating to juveniles. Language which fully reflects our recommendations appears in Attachment C to this letter.

The remainder of this letter provides a more detailed explanation of our recommendations. We first provide general background concerning the DNA identification system and how DNA matching is used to solve crimes. The letter thereafter addresses the specific provisions of H.R. 4640 affecting the reduction of the convicted offender sample backlog, the reduction of the forensic ("crime scene") sample backlog, and incorporation of federal offenders and juveniles into the DNA identification system. We have previously addressed these issues in testimony before the Subcommittee on Crime, which can be consulted for further discussion. *See* Statement of David Boyd, Deputy Director, Office of Science and Technology, National Institute of Justice before the House Judiciary Subcommittee on Crime concerning Speeding DNA Evidence Processing (March 23, 2000) (hereafter, "DOJ–NIJ Testimony"); Statement of Dr. Dwight E. Adams, Deputy Assistant Director, Forensic Analysis Branch, Federal Bureau of Investigation before the House Judiciary Subcommittee on Crime (March 23, 2000) (hereafter, "DOJ–FBI Testimony").

I. THE DNA IDENTIFICATION SYSTEM

The emergence of DNA identification technology is one of the most significant advances in criminal identification methods since the advent of fingerprinting. Recognizing the promise and importance of this new technology, legislatures and administrators at the federal, state, and local levels have been developing the DNA identification system since the late 1980's.

Toward the end of the 1980's, the Laboratory Division of the FBI convened a group of federal, state, and local forensic scientists to establish guidelines for the use of forensic DNA analysis in laboratories. This group developed guidelines which formed the basis for the existing national quality assurance standards and proposed the creation of a national DNA database for the storage and exchange of DNA profiles. This led to the development of the Combined DNA Index (or Identification) System, commonly referred to as "CODIS." The CODIS program provides software that enables federal, state, and local laboratories to store and compare DNA profiles electronically and thereby link serial crimes to each other and identify suspects by matching DNA from crime scenes to convicted offenders.

Congress provided a statutory basis for the DNA identification system in subtitle C of title XXI of the Violent Crime Control and Law Enforcement Act of 1994. The federal legislation in this area has: (1) created a DNA Advisory Board to recommend quality assurance standards to the FBI Director, (2) established a national DNA identification index, containing DNA profiles from convicted offenders and from crime scene evidence, subject to quality assurance and privacy requirements, and (3) provided funding for the CODIS program and for state and local laboratories to enhance or expand their DNA testing abilities. The legislatively authorized DNA Advisory Board has been in existence for over five years and has recommended quality assurance standards both for laboratories that analyze crime scene DNA evidence and laboratories that analyze DNA samples collected from convicted offenders. The FBI Director has adopted these standards as national standards for CODIS and participation in the national DNA index. Compliance with these quality assurance standards is also required for laboratories receiving federal funding for DNA purposes.

The practical operation of CODIS is as follows: Suppose, for example, that a sexual assault is committed, and a rape kit is taken from the victim.[1] A DNA profile of the perpetrator is developed from the rape kit evidence. If there is no suspect in the case, or if a known suspect's DNA profile does not match that of the rape kit evidence, the laboratory will search the DNA profile against the index of DNA profiles obtained from convicted offenders. If there is a match in the convicted offender index, the laboratory will obtain the identity of the suspected perpetrator. If there is no match in the convicted offender index, the DNA profile is searched in the index of DNA profiles derived from forensic (i.e., crime scene) evidence. If there is a match in the forensic index, the laboratory has linked two or more crimes together and law enforcement agencies

[1] "Rape kit" refers to a standardized equipment package and protocol for taking physical samples from victims of sexual assaults, in a form suitable for the development of evidence useful in criminal investigation or prosecution.

involved in the cases are able to pool the information obtained in each of the cases.

As this example indicates, one of the underlying concepts behind CODIS is to create a database of convicted offender profiles and use it to solve crimes for which there are no suspects. Recognizing this, as early as the late 1980's, states began to enact laws requiring that offenders convicted of certain offenses provide DNA samples. Currently, all 50 states have such laws. The national DNA identification index administered by the FBI compiles the DNA profiles obtained under the state systems and makes them accessible on a nationwide basis for law enforcement identification purposes.

Pursuant to the 1994 legislation, the DNA identification system incorporates strict privacy protections. The statutory rules for the system provide that stored DNA samples and DNA analyses may be used for law enforcement identification purposes and virtually nothing else. *See* 42 U.S.C. 14132(b)(3). This ensures that if the DNA profile of a convicted offender is included in the index, the information will not be disclosed, and he will suffer no adverse consequences later in life—unless DNA matching shows him to be the source of DNA found at the scene of another crime or crimes.

Moreover, the genetic markers used for forensic DNA testing were purposely selected because they are not associated with any known physical or medical characteristics, providing further assurance against the use of convicted offender DNA profiles for purposes other than law enforcement identification. In common parlance, they show only the configuration of DNA at selected "junk sites" which do not control or influence the expression of any trait. DNA records in the national database contain the following information only: an agency identifier for the agencies submitting the DNA profile; the specimen identification number; the DNA profile; and the name of the DNA personnel associated with the DNA analysis. As noted, DNA profiles generated in conformity with the national standards do not reveal information relating to any medical condition or other trait. By design, the effect of the system is to provide a kind of genetic fingerprint, which uniquely identifies an individual, but does not provide a basis for determining or inferring anything else about the person.

II. CONVICTED OFFENDER SAMPLE BACKLOG REDUCTION

Following the initial passage of state legislation creating DNA databases, laboratory capacity for the analysis of convicted offender DNA samples did not keep pace with the collection of the samples. This has resulted in a backlog of hundreds of thousands of DNA samples taken from convicted offenders. Samples often remain in storage for years, even after a convicted offender is released from prison. If the released offender commits new crimes, the database is of no value in identifying him so long as the sample taken from him has not been analyzed and profiled in the database.

Pursuant to a $15 million FY2000 appropriation, the National Institute of Justice is administering an assistance program to help the states clear this backlog of unanalyzed samples. The scope of the backlog problem, and the operation of the existing assistance program, are described in greater detail in our Subcommittee testimony. *See* DOJ–NIJ Testimony, *supra*, at 1–2, 5–7, 7–8, 10–11.

H.R. 4640, in § 2, recognizes the need to carry forward and complete this backlog elimination program. However, certain features of the bill would have the unintended effect of impeding the efficient and prompt completion of the program. These problems could be resolved by using instead the language appearing in Attachment A to this letter. In relation to the current language of the bill, our specific comments are as follows:

1. *Funding levels.* The current backlog reduction program for convicted offender samples has an appropriation of $15 million for FY2000. We project that continued funding at this level—$15 million annually—for two additional years will suffice to eliminate the existing backlog of state convicted offender samples. Thereafter, the states should be able to keep abreast of their convicted offender samples without further federal funding. The Administration's budget request for FY 2001 includes funding at the $15 million level. However, H.R. 4640 only authorizes $10 million annually, and requires that the funding be split between convicted offender sample backlog reduction and forensic ("crime scene") sample backlog reduction. This would predictably delay for several years completion of the convicted offender backlog elimination program. We recommend adequate funding of the convicted offender sample backlog reduction program at the level requested by the Administration.

2. *Identity of grantees*. In one important respect, we believe that the formulation of the existing backlog reduction program should be changed. The current statutory provisions for the program require that funding go directly to the states. As a result, state procurement processes must be followed by the grantees in dealing with laboratories that analyze their samples. Substantial economies of scale are lost because these laboratories have to increase their price per sample to include marketing and administration costs to all 50 states, and valuable time is lost in procurement processes that should be spent actually analyzing the convicted offender samples.

The process would be streamlined and simplified if allocated funds were not distributed directly to the states, but rather if the states were given vouchers which they could redeem at approved laboratories that would be the direct grantees of the funding. We expect that the efficiency of such a voucher system would increase by 20–30% the number of samples that can be analyzed with the same amount of funding. *See* DOJ–NIJ testimony, *supra*, at 11.

The current language in § 2(a) of H.R. 4640 limits eligible grantees to "States." This would preclude the more efficient approach of direct payment to the laboratories that carry out the sample analysis. As indicated in Attachment A to this letter, adequate language could simply authorize the Attorney General to make grants to assist States in eliminating their backlogs, and specify that such grants may be made to public or private entities to carry out DNA analysis for states as provided by the Attorney General.

3. *Analysis by private laboratories*. Under the existing backlog reduction program, the vast majority of sample analysis is being carried out for the states by private laboratories. These are the laboratories which presently have the capacity to do this backlog reduction work. Precluding or stringently restricting outsourcing to pri-

vate laboratories would effectively halt the backlog reduction program, and delay its completion for many years.

H.R. 4640 § 2(e)(1) limits DNA sample analysis under the backlog program to laboratories "operated by the State" or "operated by a private entity pursuant to a contract with the State." On a restrictive reading, this could be understood to limit DNA sample analysis to public laboratories, and to quasi-public laboratories operated for states by private entities pursuant to contract, thereby precluding sample analysis by ordinary private laboratories. This language should be clarified or eliminated to ensure that sample analysis by private laboratories will not be limited.[2]

4. *Assistance for analysis of all backlogged samples.* Section 2(a)(1), (b)(2) in the bill contains language which would apparently limit backlog reduction assistance to analysis of samples taken from persons convicted of "violent or sexual offenses." There is no such restriction under the existing program. Imposing this restriction would disrupt the program by requiring states to segregate samples taken from violent or sexual offenders and those taken from other offenders, and to limit use of the assistance funding to the violent/sexual offender samples.

This limitation would reduce the value of the backlog reduction program and impair the operation of the DNA identification system. Many states collect DNA samples from some types of nonviolent (and nonsexual) offenders—e.g., burglars, or all felons. As discussed below, experience indicates that samples collected on the basis of convictions for nonviolent offenses are actually among the most useful in solving crimes, including violent crimes. The DNA identification system would be undermined by denying states assistance in clearing their backlogs of such samples.

5. *Matching funds.* Section 2(f)(1) of the bill would impose a 25% matching funds requirement on states, though there is no such requirement under the existing program. Matching funds requirements are generally imposed to encourage state responsibility and continuation of a program beyond the termination of federal funding. However, a new requirement of this type would not be helpful in the context of the backlog reduction program. The states have their own incentives to keep abreast of their convicted offender samples, but have been unable to do so because of a backlog of convicted offender samples generated by the start-up of the DNA database systems. *See* DOJ–NIJ Testimony, *supra*, at 5–8. Once the existing convicted offender sample backlog is cleared—which should be possible in another two years with adequate funding—state laboratory capacity is likely to be adequate to analyze in a timely manner the new samples that come in. Imposing a matching funds requirement during the limited period of federal funding is not necessary to promote this result. Rather, it would more likely be coun-

[2] Utilization of private laboratories for DNA analysis does not compromise privacy interests. Any public or private entity which prepares DNA analyses for inclusion in the national DNA identification index must comply with the standards of subsection (b) of 42 U.S.C. 14132, including the privacy rules set forth in paragraph (3) of that subsection. Those rules generally provide that DNA samples and analyses may be utilized solely for law enforcement identification purposes. Noncompliance with these standards would result in ineligibility for participation in DNA grant programs, debarment from access to the national index, and potentially other penalties. *See* 42 U.S.C. 14132(c), 14133(c). Additional protections are inherent in the design of the DNA identification system and grant programs administered as part of the system. As discussed above, the indexed information does not reveal a person's traits or characteristics.

terproductive, potentially delaying the elimination of the backlog in some states.

6. *Other matters.* Section 2 of H.R. 4640 contains fairly elaborate provisions relating to administrative matters, such as state plans required for funding eligibility, quality assurance, nonsupplanting and administrative cost requirements, reports, and fiscal controls. However, such matters can be and are addressed through existing statutory requirements and administrative rules under the current program. *See, e.g.*, 42 U.S.C. 14131, 14132(b)(1)–(2) (relating to quality assurance and proficiency testing standards applicable to all laboratories analyzing samples for inclusion in the DNA identification index). Extensive new statutory provisions would tend to complicate the administration of the program, but would not serve any positive purpose. Rather, simple statutory provisions like those set out in Attachment A to this letter would be adequate.

II. FORENSIC ("CRIME SCENE") SAMPLE BACKLOG REDUCTION

The other critical backlog problem is unanalyzed forensic ("crime scene") samples. For example, a recent survey performed by the Police Executive Research Forum estimated that over 180,000 rape kits currently sit in evidence storage lockers throughout the country unanalyzed for DNA evidence. Every day, many of these cases become unprosecutable because they are barred by statutes of limitations. Every day, killers, rapists, and other dangerous criminals remain at large who could be identified and apprehended through the effective utilization of the existing DNA technology.

As with the backlog of convicted offender samples, the backlog of crime scene samples results primarily from limited laboratory capacity. Currently, forensic laboratories must prioritize their DNA cases by first analyzing DNA samples in cases which are scheduled for trial. Next in line are cases in which known suspects exist, but in which the DNA must be analyzed to make an arrest, or in some in cases to release an innocent suspect from custody. Not until those cases are analyzed are laboratories able to address the solution of cases without known suspects. In conjunction with limited laboratory capacity, the low prioritization of these cases tends to thwart a central objective of the DNA identification system, which is specifically intended and designed to permit the solution of no-suspect cases through matching to DNA profiles in the convicted offender database, and through the establishment of "crime scene to crime scene" linkages. In many instances, police do not even submit rape kits to crime labs when they have no suspect because they believe the samples will never get analyzed. *See* DOJ–NIJ Testimony, *supra*, at 2, 8–10.

Our Subcommittee testimony endorsed the establishment of an assistance program to address this critical problem. *See* DOJ–NIJ Testimony, *supra*, at 2, 11–12. We believe that an effective program addressing the forensic backlog must reflect the following points: (1) outsourcing to private laboratories is generally the most expeditious way to reduce the backlog of untested no-suspect cases because the capacity of most public laboratories is over-extended, and (2) public laboratories, however, must also be stimulated to increase capacity to handle the ongoing submission of unknown suspect cases in a timely fashion.

1. *Outsourcing.* Outsourcing some portion of the current backlog of unknown suspect casework to private laboratories will allow immediate successes in solving crimes through matches with DNA profiles in the convicted offender database. Beyond its direct value in solving rapes and other serious crimes, the solution of no-suspect cases through DNA matching is likely to spur support at the state level and encourage public laboratories to build stronger infrastructure for the analysis of crime scene DNA evidence in such cases. This should enable the public laboratories in the long term to incorporate what has traditionally been considered lower priority case work into their daily routines. As with the convicted offender backlog reduction program, the statutory provisions for the forensic backlog reduction program should be drafted to allow the efficient approach of direct grants to private laboratories, where such laboratories analyze backlogged forensic samples for the states.

The draft provisions in Attachment B to this letter accordingly authorize outsourcing to provide a degree of immediate relief for the forensic sample backlog—as well as grants to increase public laboratory capacity—and are worded to allow private laboratories as direct grantees. The corresponding provisions in § 2 of H.R. 4640 are less satisfactory as currently formulated. They only allow states as direct grantees, which would reproduce in the forensic sample program the inefficiencies that have been seen to arise from this limitation in the current convicted offender sample program. The provisions of the bill also do not clearly recognize the dual need for immediate relief through outsourcing to private laboratories and expansion of public laboratory capacity to carry out forensic sample analysis for the long term.

2. *Expansion of public laboratory capacity.* The other key objective of the forensic backlog reduction program should be building the infrastructure of public crime laboratories. By supplying laboratories with funding specifically to increase their capacity for unknown suspect casework, future backlog issues will be eliminated. Eventually, public laboratories will be able to replace the temporary outsourcing solution.[3] The suggested statutory provisions in Attachment B explicitly recognize this objective and authorize grants for this purpose.

The draft provisions in Attachment B would permit the implementation of an effective program to eliminate the forensic sample backlog. As discussed above, however, the provisions currently appearing in § 2 of H.R. 4640 are not consistent in some respects with the effective design of such a program. Also, as with the convicted offender backlog program, the degree of administrative detail in the bill's current provisions—concerning such matters as eligibility plans, quality assurance, matching funds, non-supplanting and administrative cost requirements, reports, and fiscal controls—is not needed and would tend to introduce unnecessary complications into the forensic backlog elimination program. The simpler provisions set forth in Attachment B would be adequate.

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[3] *See* Prepared Statement of David Coffman, Crime Laboratory Analyst Supervisor, Florida Department of Law Enforcement before the House Judiciary Subcommittee on Crime, at 7 (March 23, 2000) (long-term solution to forensic sample backlog problem requires appropriate staff and facilities for public laboratories).

III. INCLUDING FEDERAL OFFENDERS IN THE DNA IDENTIFICATION SYSTEM

In 1996, Congress acted to fill a gap in the DNA identification system by authorizing the expansion of the national DNA identification index to include information on federal and D.C. offenders. *See* § 811(a)(2) of the Antiterrorism and Effective Death Penalty Act of 1996. However, it has not been possible to implement this decision, in the absence of statutory authority and funding to collect and analyze DNA samples from these offenders. The Department of Justice accordingly proposed additional legislation to provide the necessary authority in a report submitted by the FBI to Congress. *See* FBI Laboratory Report to Congress: Implementation Plan for Collection of DNA Samples from Federal Convicted Offenders Pursuant to P.L. 105–229, Appendix A (Dec. 1998). Several proposals which ultimately derive from the Department's original proposal have been introduced in the current Congress, including H.R. 3375 § 6, H.R. 2810 § 3, and § 1503 of S. 254 as passed by the Senate. The proposal for federal offender sample collection and indexing in § 3 of H.R. 4640 is the most recent.

Following the approach of existing federal law, our proposal would not restrict by statute the categories of federal offenders who can be included in the DNA identification system. *See* DOJ–NIJ Testimony, *supra*, at 2–3, 13–17. H.R. 4640, however, would limit offense coverage for purposes of DNA sample collection and indexing to: (1) certain homicidal offenses under chapter 51 of title 18, (2) sex offenses, (3) kidnapping, and (4) attempts or conspiracies to commit these crimes. This is radically more restrictive than any earlier enactment, bill, or proposal. It would generally preclude DNA sample collection from (among others) persons convicted of terrorist crimes, civil rights offenses, aggravated assault, robbery, burglary, arson, violent crimes associated with drug trafficking, extortion, or organized crime offenses. For example:

- A sample could not be collected from a terrorist convicted under 18 U.S.C. 32 for planting a bomb on an airplane, or even for actually blowing up an airplane.
- A sample could not be collected from a person convicted under 18 U.S.C. 2332 for engaging in terrorist violence against U.S. nationals, or under 18 U.S.C. 2332a for using a weapon of mass destruction in a terrorist attack.
- A sample could not be collected from a person convicted under 18 U.S.C. 351 for assaulting, attempting to kill, or actually killing a member of Congress.
- A sample could not be collected from a gangster convicted under RICO or other racketeering laws (18 U.S.C. 1951–52, 1958–59, 1961ff.) for such crimes as murder, arson, robbery, or extortion.
- A sample could not be collected from a person convicted under 18 U.S.C. 245 or 247 for a hate crime involving torture or murder of the victim.

We are advised that the restrictive approach of H.R. 4640 reflects the view of some that the DNA identification system was conceived and designed to contain DNA profiles from convicted sex offenders, and that any significant extension beyond that limited scope would

require a controversial change in the character of the system. This assumption, however, is mistaken. From its inception, the national DNA identification system has permitted the inclusion of DNA profiles from persons convicted of crimes, with *no* restrictions on offense category coverage. *See* 42 U.S.C. 14132(a) ("[t]he Director of the Federal Bureau of Investigation may establish an index of . . . DNA identification records of persons convicted of crimes . . . [and] . . . analyses of DNA samples recovered from crime scenes"). Likewise, when Congress acted in 1996 to authorize expansion of the system to include DNA profiles from convicted federal and D.C. offenders, it included *no* restrictions on allowed offense categories. *See* § 811(a)(2) of the Antiterrorism and Effective Death Penalty Act of 1996 ("the Director of the Federal Bureau of Investigation may expand the combined DNA Identification System (CODIS) to include Federal crimes and crimes committed in the District of Columbia").

At the state level, the trend has been towards broader offense coverage for purposes of DNA sample collection and indexing. A recent review of state systems found, for example, that all states covered sex offenses, 40 states covered offenses against children,[4] 29 states covered assault/battery offenses,[5] 22 states covered robberies,[6] 20 states covered burglaries,[7] and seven states covered all felonies.[8] Proposals for further extensions of offense coverage are pending in many states. *See, e.g.*, Letter of Governor George E. Pataki to Honorable Bill McCollum, Chairman, House Judiciary Subcommittee on Crime (March 20, 2000) (governor has submitted proposal to the New York legislature that will "further expand the DNA databank to require that all felony and misdemeanor offenders submit a DNA sample upon conviction"); Testimony of Michael G. Sheppo, Bureau Chief, Illinois State Police, before the House Judiciary Subcommittee on Crime, at 1 (March 23, 2000) (noting pending Illinois legislation to include persons convicted of "crimes such as homicide, attempted homicide, kidnapping, aggravated kidnapping, burglary, and other serious crimes," which will "substantially increase the power of the DNA database to solve crimes").

In assessing this issue, it is important to understand that the perpetrators of sexual crimes and other violent crimes frequently have varied criminal histories, including both violent and nonviolent offenses. In many cases, the DNA sample which (for example) enables law enforcement to identify the perpetrator of a rape has not been collected in connection with an earlier rape conviction, but as a result of the perpetrator's prior conviction for some other type of crime—perhaps a lesser violent offense, or an offense that

[4] Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Hawaii, Idaho, Illinois, Indiana, Kansas, Louisiana, Maine, Massachusetts, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

[5] Alabama, Alaska, Arkansas, California, Florida, Georgia, Idaho, Indiana, Iowa, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Missouri, Montana, Nevada, New Mexico, New York, North Carolina, Oklahoma, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

[6] Alabama, Alaska, Arkansas, Florida, Georgia, Idaho, Indiana, Maine, Maryland, Massachusetts, Minnesota, Montana, New Mexico, New York, North Carolina, Tennessee, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

[7] Alabama, Arizona, Florida, Georgia, Indiana, Iowa, Maine, Massachusetts, Minnesota, Nevada, New Mexico, New York, Oregon, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.

[8] Alabama, Georgia, New Mexico, Tennessee, Virginia, Wisconsin, and Wyoming.

was not violent. Hence, even if the identification of sexual offenders (or other serious violent offenders) is seen as the principal focus of the DNA identification system, achieving this objective effectively requires casting a broader net.

The experience in a number of state systems provides strong confirmation for this point. For example, Virginia collects DNA samples from all convicted felons. A review of cases in Virginia in which offenders were linked to sex crimes through DNA matching found that 40% of the offenders had no prior convictions for sexual or violent offenses. The findings imply that no match might have been obtained in 40% of the Virginia sex offense cases in which DNA identifications were made if the state database had been confined to violent or sex offenders.

Likewise, Florida has been collecting DNA samples from a broader range of offenders than the narrow categories proposed in H.R. 4640, including persons convicted of such offenses as aggravated battery and some types of robbery. Empirical study in Florida showed that 52% of the offenders in Florida who were linked to a crime through DNA matching—in most cases a sexual assault or homicide—had burglary convictions in their criminal histories. In light of this finding, Florida recently enacted legislation adding burglary as a basis for DNA sample collection.[9]

These findings highlight the enormous human costs of the restrictive approach proposed in H.R. 4640. Persons committing the most heinous crimes will escape apprehension—and will remain at large to engage in further predation against innocent members of the public—because samples will not be taken from them on the basis of their conviction for crimes that fall outside of the bill's narrow categories. The following cases illustrate what is lost under such a restrictive approach:

- Timothy Spencer, referred to as the "Southside Strangler," is a serial killer who was convicted of the sexual assault and murder of four women in Richmond, Virginia in the mid-1980s. Spencer's case served as the seminal case for the use of DNA evidence and was instrumental in the creation of a convicted offender DNA database in Virginia. Spencer's criminal record included convictions for burglary and trespassing, but lacked any violent or sex offenses. The restrictive approach of H.R. 4640 would exclude from the DNA identification system the DNA profile of a federal offender with a criminal record like Spencer's, and could thereby prevent the solution of murders and rapes committed by such an offender.
- In New York, legislation took effect in December, 1999, which required all convicted violent felons and a number of nonviolent felons (approximately 65% of all offenders) to submit DNA samples, thus increasing tenfold the number of DNA samples in the state's DNA databank. This imme-

[9] See Prepared Statement of David Coffman, Crime Laboratory Analyst Supervisor, Florida Department of Law Enforcement before the House Judiciary Subcommittee on Crime, at 5 (March 23, 2000) ("Florida has documented that over 52% of the offenders matched to sexual assaults and homicides using the state's DNA database had a prior burglary conviction in their criminal history. . . . [The] legislative expansion [to include burglaries] will increase the size of Florida's DNA database from 65,000 offenders to over 110,000 in the first year of implementation.").

diately led to the identification of a suspect in the unsolved brutal killing of Diane Gregory in 1979. DNA analysis of a bloodied sheet provided a match to the DNA profile of Walter Gill, a convicted robber, whose DNA sample was taken and entered into the databank shortly after the new law took effect.[10] In contrast, the standards of H.R. 4640 would not allow sample collection based on convictions for robbery, or for the vast majority of other violent offenses, or for any nonviolent and nonsexual offense.

- Mark Daigle is a serial rapist who brutally attacked victims in Sarasota, Florida in 1997. He was convicted and is currently serving six life terms. Daigle was identified only after Florida officials sent a DNA sample to Virginia for examination against Virginia's DNA database. Because Virginia's DNA database includes all convicted felons, Virginia officials were able to find a match for Daigle, who had been convicted years before in Virginia on charges of grand theft, burglary, larceny, escape, and failure to pay child support.
- In Virginia, Jerry Wyche was convicted for the rape of a 25-year-old woman and for the aggravated sexual battery of a 10-year-old girl. These convictions were obtained because crime scene DNA samples matched Wyche's DNA sample taken in 1994 as a result of a conviction for attempted auto theft. In another Virginia rape case, S. Hudnall pleaded guilty after the DNA sample from the rape matched a DNA sample taken from him after a conviction for burglary.[11]

The restrictive approach of H.R. 4640 will also endanger the innocent by preventing their exoneration through DNA testing. Both in the investigative stage of criminal cases, and in the post-conviction setting, DNA testing may clear an individual who is mistakenly suspected or convicted of committing a crime by identifying the actual perpetrator. This cannot occur, however, unless the actual perpetrator's DNA profile is in the convicted offender database. Since there would be relatively few federal offenders in the database under the restrictive approach of H.R. 4640, the possibility of exonerating innocent persons through the identification of the actual perpetrators would be reduced accordingly.

Hence, the restrictive approach of H.R. 4640 could be justified only if it served some purpose even more important than convicting the guilty and protecting the innocent. We see no such overriding purpose. Considerations of privacy or confidentiality do not justify these restrictions. If an offender's records are included in the DNA identification index, he is protected by the strict confidentiality

[10] *See* Letter of Gov. George E. Pataki to Honorable Bill McCollum, Chairman, House Judiciary Subcommittee on Crime (March 20, 2000); DOJ–FBI Statement, *supra*, at 2; Testimony of Rep. Anthony D. Weiner before the House Judiciary Subcommittee on Crime (March 23, 2000).

[11] In a number of pending prosecutions for violent or sexual offenses in Virginia, matches were obtained on the basis of DNA samples taken for earlier convictions for nonviolent offenses. For example: (1) A defendant is currently facing prosecution for homicide because of a DNA match from an earlier marijuana conviction. (2) A defendant whose DNA sample was taken after a conviction for receiving stolen property is currently being charged with homicide. (3) A defendant is being charged in a rape on the basis of the DNA sample that was taken when the suspect was originally convicted of cocaine possession. (4) A defendant whose DNA sample was taken after a forgery conviction is currently being prosecuted for the rape of a 10-year-old girl. (5) A defendant is being prosecuted for the rape of an elderly woman based on DNA evidence taken from an earlier burglary conviction. (6) A defendant is being charged in a homicide on the basis of the DNA sample that was taken when the suspect was originally convicted of breaking and entering.

rules in the DNA statutes (42 U.S.C. 14132(b)(3), 14133(b)–(c)). As noted above, these rules allow samples collected from offenders and information in the index to be used for law enforcement identification purposes and virtually nothing else. Moreover, the genetic markers used for forensic DNA testing were purposely selected because they are not associated with any known physical or medical characteristics, providing further assurance against the use of convicted offender DNA profiles for purposes other than identification. An offender suffers no adverse effects later in life from the inclusion of information on him in the index—unless DNA matching shows him to be the source of DNA found at the scene of another crime or crimes.

We accordingly recommend that the legislation be formulated in a manner consistent with existing federal law, *see* § 811(a)(2) of the Antiterrorism and Effective Death Penalty Act of 1996, by not restricting the categories of federal, military, and D.C. offenders who can be included in the DNA identification system. We have a number of further recommendations concerning particular issues in the formulation of the proposal:

1. *Coverage of adjudicated delinquents.* We disagree with H.R. 4640's failure to include adjudicated juvenile delinquents among the categories of persons from whom samples can be collected, and for whom information can be included in the DNA identification index. *See* DOJ–NIJ Testimony, *supra*, at 15–16. This omission would bar the collection of samples from juveniles who are adjudicated delinquent in federal proceedings, regardless of the seriousness of their conduct. Moreover, about half of the states currently do collect samples from adjudicated delinquents.[12] There is no reason why these states should be barred from entering the resulting DNA analyses and records in the national index.

As a matter of policy, a 17-year-old who is adjudicated delinquent for (e.g.) molesting a child or committing a rape presents potentially the same future danger to public safety as an older person who commits such a crime. If he commits additional offenses later in life, the public interest in being able to solve these crimes and apprehend the perpetrator is the same, regardless of the age at which he commenced his course of criminal conduct. Of course justice systems often incorporate stronger protections of confidentiality and privacy for juveniles than for adult offenders—but *all* information in the DNA identification index is subject to strict confidentiality rules which ensure that no one will know about it, and the individual will suffer no adverse effects later in life, unless his DNA profile in the index matches that of DNA found in crime scene evidence. In light of these protections, we see no basis for excluding or restricting sample collection and indexing of information for juveniles.

2. *Military offenders*. There are some problems in the formulation of the bill's provisions relating to DNA sample collection and indexing for military offenders. Section 5 of the bill provides that the secretaries of the military departments are to collect DNA samples from convicted military offenders. However, some military offenders are housed in regular federal prisons under the jurisdiction of

[12] Alaska, Arizona, Arkansas, California, Colorado, Florida, Idaho, Illinois, Kansas, Louisiana, Maine, Minnesota, Montana, New Hampshire, New Jersey, New Mexico, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, and Washington.

the Bureau of Prisons (rather than military prisons), and military offenders who are paroled from Bureau of Prisons facilities are supervised by federal probation offices (rather than the military parole supervision systems). In many of these cases, it will make more sense for the Bureau of Prisons or the probation offices to collect the samples from the military offenders in their custody or supervision, rather than requiring the Department of Defense to do it directly. The bill should be modified to authorize this arrangement.

The provision in section 5 of the bill requiring that the FBI analyze DNA samples collected from military offenders is also problematic. It is inconsistent with earlier legislative proposals, and with the plans developed by the Justice Department and the Department of Defense, under which the Department of Defense will be responsible for the analysis of the military offender samples it collects. *See* DOJ–NIJ Testimony, *supra*, at 21.

3. *District of Columbia offenders*. The bill, in § 4(d), has provisions relating to DNA sample collection from District of Columbia offenders which are unnecessarily complicated and in some respects unclear. Affirmative action would be required by the District of Columbia government to identify covered D.C. offenses, which would have to be "violent or sexual offenses." However, a fallback provision would give the Attorney General the authority to identify covered D.C. offenses, if the District of Columbia government failed to act within 120 days. Whether the District of Columbia government or the Attorney General made this determination, the covered D.C. offenses would have to include those "equivalent to" covered federal offenses. It is unclear whether *only* "equivalent" D.C. offenses could be covered, or whether this provision just sets a floor and other "violent or sexual offenses" could be covered, even if not "equivalent" to covered federal offenses. The relevant notion of "equivalence" is unclear. The definitions of particular offenses almost invariably are not exactly the same in different jurisdictions, and this is true of the federal jurisdiction and the District of Columbia as well as others.

The problems under this provision would be mooted by accepting our recommendation that the categories of covered federal, military, and D.C. offenses should not be restricted by statute. As suggested in earlier legislative proposals, covered D.C. offenses, as well as covered federal offenses, could properly be specified by regulation.

H.R. 4640 also departs from earlier proposals in requiring that the District of Columbia government collect DNA samples from offenders in its custody. A requirement of this type is unnecessary, and the District of Columbia government has in the past objected on home rule grounds to federal mandates that its agencies collect DNA samples. Under the reforms of the National Capital Revitalization and Self-Government Improvement Act of 1997, the entire population of incarcerated D.C. felons is being transferred to the federal Bureau of Prisons (BOP), and virtually all adult D.C. offenders will be under probation supervision or post-imprisonment supervision by the federal Court Services and Offender Supervision Agency for the District of Columbia (CSOSA). Given this wholesale transfer of the D.C. offender population to the jurisdiction of federal agencies, provisions directing that BOP and CSOSA collect

samples from D.C. offenders in their custody or supervision are adequate, and a mandate that the D.C. government also collect samples is unnecessary.

4. *Funding*. It will not be possible to carry out the proposed expansion of the DNA identification system to include federal, military, and D.C. offenders without the funding needed for that purpose. This includes approximately $5.3 million for the FBI in first-year costs, which has been included in the Administration's budget requests. *See* DOJ–NIJ Testimony, *supra*, at 3–4, 19–21 (discussing budgetary requirements for FBI and other agencies).

5. *Arrangements for sample collection*. The federal agencies responsible for DNA sample collection may have their own personnel carry out this function in some cases, but may in other cases find it useful or necessary to have sample collection carried out by other entities through contracting or other arrangements. For example, contract facility personnel should be able to carry out DNA sample collection from the many inmates in the custody of the Bureau of Prisons who are housed in contract facilities. To foreclose litigative challenges by offenders, it would be advisable to include explicit language in the legislation which confirms the authority to have sample collection carried out through such arrangements.[13]

6. *Other systemic amendments*. Section 6 of the bill includes some amendments to the general provisions governing the DNA identification index. One of these amendments would modify 42 U.S.C. 14132(a)(2) to authorize including in the DNA identification index analyses of DNA samples recovered from "victims of crime." The provision currently authorizes inclusion of analyses of DNA samples recovered from "crime scenes." The purpose of the amendment is unclear. DNA samples taken from victims—such as rape kits or samples taken from the bodies of murder victims—are understood to be encompassed in the current language covering "crime scene" samples.

Section 6 of the bill also includes provisions requiring the expungement of information from the DNA identification index where a federal, D.C., or military conviction has been overturned. We recommend against the enactment of a statutory expungement requirement. *Cf.* Ill. Comp. Stat. Ann., ch. 730, § 5/5–4–3(f) (notwithstanding any other statutory provision, information in state DNA database "may not be subject to expungement"). By way of comparison, other records which may be useful for law enforcement identification purposes, such as fingerprint records, are normally not disposed of in case of reversal of a conviction. In light of the strict confidentiality rules that govern the DNA identification index, the fact that a person's DNA profile is included in the index is not disclosed, and retention of the information has no effect on him later in life, unless DNA matching shows him to be the source of DNA found at the scene of another crime or crimes. *See* DOJ–NIJ Testimony, *supra*, at 17–18.

If, against our recommendation, statutory expungement requirements are included in the bill, we recommend that they go no further than deemed necessary. By way of comparison, the corresponding provisions passed by the Senate, in S. 254 § 1503, pro-

[13] The draft in Attachment C to this letter contains language for this purpose in proposed 42 U.S.C. 14132(d)(5)(E), (e)(2)(F).

vide for expungement only of DNA profiles from juveniles adjudicated delinquent (not for those from adult offenders), and only in cases in which the underlying delinquency adjudication has been expunged.

Modification of the expungement procedure for military offenders would be advisable, if the expungement provision for such offenders remains in the bill. The states vary in whether they provide for expungement under their DNA provisions in case of reversal of a conviction. In states which do provide for expungement, persons whose convictions have been reversed do not directly approach the FBI with evidence of reversal of the conviction. Rather, they contact the appropriate state authorities, who then notify the FBI to expunge the records from the national index. In cases in which the Defense Department has forwarded to the FBI the DNA profile of a military offender for inclusion in the DNA identification index, it is in essentially the same position as a state which has submitted a DNA profile for a state offender. If expungement is to be required where a person's court martial conviction is reversed, the appropriate procedure would be for the person to deal with the Department of Defense, and for that Department to notify the FBI to expunge the record from the index.

Section 8(d) of H.R. 4640 contains an amendment to 42 U.S.C. 14132(b), a statute defining requirements for data maintained in the DNA identification index. The amendment would change the quality assurance requirements for laboratories that prepare DNA analyses for inclusion in the index. The amendment is drafted as a substitute for current 42 U.S.C. 14132(b)(2), which is not concerned with general quality assurance standards, but with periodic external proficiency testing. This would eliminate the specific requirement for external proficiency testing in current 42 U.S.C. 14132(b)(2), and substitute new quality assurance standards which would coexist with conflicting quality assurance requirements in 42 U.S.C. 14132(b)(1). Perhaps the new language in the amendment is actually intended as a substitute for current 42 U.S.C. 14132(b)*(1)*, which does address quality assurance.

Whatever the intent may be on this drafting point, the change in quality assurance requirements proposed in section 8(d) should not be made. In part, the new language in the amendment provides that laboratories may satisfy quality assurance standards adopted by the Director of the FBI. However, it refers to quality assurance standards maintained by the FBI Director under section 2 of the bill, rather than the statute (42 U.S.C. 14131) under which the FBI Director has issued the existing national quality assurance standards. Moreover, the amendment provides in the alternative that laboratories may prepare DNA analyses for inclusion in the national DNA identification index—even if they do not satisfy the quality assurance standards adopted by the Director of the FBI—if they are accredited by nonprofit professional associations that satisfy certain criteria. There are very few organizations that currently offer accreditation programs that would satisfy the elements of this provision, and they are not required to adopt the FBI Director's national quality assurance standards.

To ensure the integrity of data included in the national DNA index, the law now requires that laboratories preparing analyses for inclusion in the index meet the quality assurance standards

issued by the FBI Director. *See* 42 U.S.C. 14131, 14132(b)(1). The amendment proposed in section 8(d), however, would potentially destroy the important uniformity of minimum quality assurance standards required under existing law. We accordingly recommend that the change proposed in section 8(d) not be made.

Attachment C to this letter contains suggested provisions for incorporating federal, military, and D.C. offenders into the DNA identification system, and for necessary "systemic" amendments, which conform fully to the recommendations set forth above.

In sum, the Department of Justice strongly supports the objectives of this legislation. However, modifications in the bill are needed to realize these objectives effectively. The backlog reduction assistance program for convicted offender samples should be designed and adequately funded so as to permit the continuation and prompt completion of the existing program. The new program for forensic sample backlog reduction should provide immediate relief through outsourcing to private laboratories, and should promote a permanent solution to the forensic sample backlog problem through support for increased public laboratory capacity. The provisions for including federal, military, and D.C. offenders in the DNA identification system should not restrict the offense categories for which samples can be collected.

Thank you for your attention to this matter. We have appreciated the opportunity to work with the staffs of the Chairman and Ranking Minority Member of the Subcommittee on Crime in connection with this issue. If we may be of additional assistance, we trust that you will not hesitate to call upon us. The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

ROBERT RABEN, *Assistant Attorney General.*

cc: Honorable John Conyers Jr.
Ranking Democratic Member

Attachments

ATTACHMENT A—PROVISIONS RELATING TO CONVICTED OFFENDER DNA SAMPLE BACKLOG REDUCTION:

Sec. ____. Elimination of Convicted Offender DNA Sample Backlog.

(a) GRANTS.—The Attorney General may make grants to assist States in eliminating their backlogs of unanalyzed DNA samples collected from convicted offenders. Grants awarded under this section may be made to public or private entities to carry out DNA analysis for States as provided by the Attorney General.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $15,000,000 in fiscal year 2001 and $15,000,000 in fiscal year 2002.

(c) DEFINITION.—As used in this section, "State" means a State of the United States, the District of Columbia, or a commonwealth, territory, or possession of the United States.

ATTACHMENT B—PROVISIONS RELATING TO FORENSIC ("CRIME SCENE") DNA SAMPLE BACKLOG REDUCTION:

Sec. ____. Elimination of Forensic DNA Sample Backlog.

(a) GRANTS.—The Attorney General may make grants to assist States in eliminating, and preventing the future development of, backlogs of cases without known suspects in which the perpetrator may be identifiable through DNA analysis. The program carried out under this section shall include both grants to public or private entities for the DNA analysis of evidence in no-suspect cases through outsourcing, and grants to increase the capacity of public laboratories to carry out such analysis.

(b) GRANT ELIGIBILITY CONDITION.—To be eligible to receive a grant under this section, or to submit material for analysis through outsourcing supported by a grant under this section, a State must submit to the Attorney General an assessment of the volume and nature of unanalyzed evidence in the State to which this section may apply, and a plan to utilize any funding or resources made available to carry out the purposes of this section.

(c) DEFINITION.—As used in this section, "State" means a State of the United States, the District of Columbia, or a commonwealth, territory, or possession of the United States.

ATTACHMENT C—PROVISIONS FOR INCLUDING FEDERAL, MILITARY, AND D.C. OFFENDERS IN THE DNA IDENTIFICATION SYSTEM:

Sec. ____. Inclusion of Federal Offenders in the DNA Identification System.

(a) EXPANSION OF DNA IDENTIFICATION INDEX.—Section 811(a)(2) of the Antiterrorism and Effective Death Penalty Act of 1996 is amended to read as follows:

"(2) the Director of the Federal Bureau of Investigation may expand the Combined DNA Identification System (CODIS) to include information on DNA identification records and analyses related to Federal crimes, crimes under the Uniform Code of Military Justice, and crimes under the District of Columbia Code, in accordance with section 210304 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14132).".

(b) AMENDMENTS TO DNA IDENTIFICATION STATUTE.—Section 210304 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14132) is amended—

(1) in subsection (a), by amending paragraph (1) to read as follows:

"(1) DNA identification records of persons convicted of or adjudicated delinquent for crimes;";

(2) in subsection (b)(2), by striking ", at regular intervals of not to exceed 180 days," and inserting "semiannual"; and

(3) by adding at the end the following:

"(d) FEDERAL AND DISTRICT OF COLUMBIA CRIMES.—(1) The Director of the Federal Bureau of Investigation shall include in the index established by this section DNA identification records from persons convicted of or adjudicated delinquent for qualifying Federal crimes or qualifying crimes under the District of Columbia Code, as defined in regulations promulgated by the Director (hereafter, 'qualifying crimes'). The Director of the Federal Bureau of In-

vestigation shall promulgate regulations establishing standards and procedures for the analysis of the DNA samples collected from such persons, and for the inclusion of the analyses and DNA identification records relating to those samples in the index. In promulgating regulations under this paragraph, the Director of the Federal Bureau of Investigation shall consult with the Director of the Bureau of Prisons, the Director of the Court Services and Offender Supervision Agency for the District of Columbia, and the Chief of Police of the Metropolitan Police Department of the District of Columbia.

"(2) The Bureau of Prisons shall collect a DNA sample from each person in its custody who has been convicted of or adjudicated delinquent for a qualifying crime. The Director of the Bureau of Prisons shall specify the time and manner of collection of DNA samples from such persons.

"(3) The probation office responsible for a person's supervision shall collect a DNA sample from each person who is on supervised release, parole, or probation and who has been convicted of or adjudicated delinquent for a qualifying crime. The Director of the Administrative Office of the United States Courts shall specify the time and manner of collection of DNA samples from such persons.

"(4) (A) The Court Services and Offender Supervision Agency for the District of Columbia shall collect a DNA sample from each person under the supervision of the Agency who is on supervised release, parole, or probation and who has been convicted of a qualifying crime. The Director of the Agency shall specify the time and manner of collection of DNA samples from such persons.

"(B) The Government of the District of Columbia shall have the authority to collect DNA samples from persons who are in the custody of or under supervision by the District of Columbia, including the authority to determine the categories of such persons from whom DNA samples will be collected.

"(5) The agency responsible for collecting DNA samples under paragraph (2), (3), or (4)(A)—

"(A) shall collect DNA samples from persons convicted of or adjudicated delinquent for qualifying offenses before or after the enactment of this subsection;

"(B) shall, subject to the availability of appropriations, commence the collection of DNA samples no later than 180 days after the enactment of this subsection;

"(C) may waive the collection of a DNA sample from a person if another agency has collected such a sample from the person;

"(D) may use or authorize the use of such means as are necessary to restrain, and collect a DNA sample from, a person who refuses to cooperate in the collection of a sample; and

"(E) may have its own personnel carry out DNA sample collection, or have other persons or entities carry out DNA sample collection through contracting or other arrangements.

"(e) MILITARY OFFENDERS.—(1) The Secretary of Defense shall specify categories of conduct punishable under the Uniform Code of Military Justice (hereafter, 'qualifying military crimes') which are comparable to the crimes specified by the Director of the Federal Bureau of Investigation under subsection (d) (1). The Secretary shall promulgate regulations establishing standards and procedures for—

"(A) the collection of DNA samples from persons convicted of qualifying military crimes;

"(B) the analysis of DNA samples collected from such persons; and

"(C) the inclusion of the analyses of such DNA samples and DNA identification records relating to those samples in the index established by this section.

"(2) The Secretary—

"(A) shall collect DNA samples from persons convicted of qualifying military crimes before or after the enactment of this subsection who are in custody or under supervision;

"(B) shall, subject to the availability of appropriations, commence the collection of DNA samples no later than 180 days after the enactment of this subsection;

"(C) may waive the collection of a DNA sample from a person if another agency has collected such a sample from the person;

"(D) may delegate the authority to collect a DNA sample from a person to the Bureau of Prisons or another agency responsible for the collection of samples under subsection (d), if the person is or will be in the custody of or under supervision by the Bureau of Prisons or such other agency;

"(E) may use or authorize the use of such means as are necessary to restrain, and collect a DNA sample from, a person who refuses to cooperate in the collection of the sample; and

"(F) may have Department of Defense personnel carry out DNA sample collection, or have other persons or entities carry out DNA sample collection through contracting or other arrangements.

"(f) CRIMINAL PENALTIES.—If the collection of a DNA sample from a person is required pursuant to subsection (d), the refusal of the person to cooperate in the collection of such a sample is a Class A misdemeanor. If the collection of a DNA sample from a person is required pursuant to subsection (e), the refusal of the person to cooperate in the collection of such a sample may be punished as a court martial may direct as a violation of the Uniform Code of Military Justice.

"(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out subsections (d) and (e)—

"(1) to the Department of Justice—

"(A) $5,300,000 for fiscal year 2001; and

"(B) such sums as may be necessary for each of fiscal years 2002 through 2005;

"(2) to the Court Services and Offender Supervision Agency for the District of Columbia, such sums as may be necessary for each of fiscal years 2001 through 2005; and

"(3) to the Department of Defense, such sums as may be necessary for each of fiscal years 2001 through 2005.".

(c) CONDITIONS OF RELEASE.—(1) Section 3563(a) of title 18, United States Code, is amended—

(A) in paragraph (7), by striking "and" at the end;

(B) in paragraph (8), by striking the period at the end and inserting "; and"; and

(C) by inserting after paragraph (8) the following:

"(9) that the defendant cooperate in the collection of a DNA sample from the defendant if the collection of such a sample is required

pursuant to section 210304 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14132).".

(2) Section 3583(d) of title 18, United States Code, is amended by inserting before "The court shall also order" the following: "The court shall order as an explicit condition of supervised release that the defendant cooperate in the collection of a DNA sample from the defendant if the collection of such a sample is required pursuant to section 210304 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14132).".

(3) Section 4209(a) of title 18, United States Code, is amended by inserting before "In every case, the Commission shall also impose" the following: "In every case, the Commission shall impose as a condition of parole that the parolee cooperate in the collection of a DNA sample from the parolee if the collection of such a sample is required pursuant to section 210304 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14132).".

(4) If the collection of a DNA sample from a person on probation, parole, or supervised release pursuant to a conviction or adjudication of delinquency under the law of any jurisdiction is required pursuant to section 210304 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14132), it is a condition of the person's probation, parole, or supervised release that the person cooperate in the collection of a DNA sample from the person.

(d) CONFORMING AMENDMENTS.—(1) Section 503(a)(12)(C) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3753(a)(12)(C)) is amended by striking ", at regular intervals of not to exceed 180 days," and inserting "semiannual".

(2) Section 2403(3) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796kk–2(3)) is amended by striking ", at regular intervals not exceeding 180 days," and inserting "semiannual".

(3) Section 210305(a)(1)(A) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14133(a)(1)(A)) is amended by striking ", at regular intervals of not to exceed 180 days," and inserting "semiannual".

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

CHAPTER 80 OF TITLE 10, UNITED STATES CODE

CHAPTER 80—MISCELLANEOUS INVESTIGATION REQUIREMENTS AND OTHER DUTIES

Sec.
1561. Complaints of sexual harassment: investigation by commanding officers.

* * * * * * *

1565. DNA identification information: collection from certain offenders; use.

* * * * * * *

§ 1565. DNA identification information: collection from certain offenders; use

(a) COLLECTION OF DNA SAMPLES.—(1) The Secretary concerned shall collect a DNA sample from each member of the armed forces under the Secretary's jurisdiction who is, or has been, convicted of a qualifying military offense (as determined under subsection (d)).

(2) For each member described in paragraph (1), 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 member, or if a DNA sample has been or is to be collected from that member under section 3(a) of the DNA Analysis Backlog Elimination Act of 2000, the Secretary concerned may (but need not) collect a DNA sample from that member.

(3) The Secretary concerned may enter into agreements with other Federal agencies, units of State or local government, or private entities to provide for the collection of samples described in paragraph (1).

(b) ANALYSIS AND USE OF SAMPLES.—The Secretary concerned shall furnish each DNA sample collected under subsection (a) to the Secretary of Defense. The Secretary of Defense shall carry out a DNA analysis on each such DNA sample and furnish the results of each such analysis to the Director of the Federal Bureau of Investigation for inclusion 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.

(d) QUALIFYING MILITARY OFFENSES.—(1) Subject to paragraph (2), the Secretary of Defense, in consultation with the Attorney General, shall determine those felony or sexual offenses under the Uniform Code of Military Justice that shall be treated for purposes of this section as qualifying military offenses.

(2) An offense under the Uniform Code of Military Justice that is comparable to a qualifying Federal offense (as determined under section 3(d) of the DNA Analysis Backlog Elimination Act of 2000), as determined by the Secretary in consultation with the Attorney General, shall be treated for purposes of this section as a qualifying military offense.

(e) EXPUNGEMENT.—(1) The Secretary of Defense shall promptly expunge, from the index described in subsection (a) of section 210304 of the Violent Crime Control and Law Enforcement Act of 1994, the DNA analysis of a person included in the index on the basis of a qualifying military offense if the Secretary receives, for each conviction of the person of a qualifying offense, a certified copy of a final court order establishing that such conviction has been overturned.

(2) For purposes of paragraph (1), the term "qualifying offense" means any of the following offenses:

(A) A qualifying Federal offense, as determined under section 3 of the DNA Analysis Backlog Elimination Act of 2000.

(B) A qualifying District of Columbia offense, as determined under section 4 of the DNA Analysis Backlog Elimination Act of 2000.

(C) A qualifying military offense.

(3) For purposes of paragraph (1), a court order is not "final" if time remains for an appeal or application for discretionary review with respect to the order.

(f) REGULATIONS.—This section shall be carried out under regulations prescribed by the Secretary of Defense, in consultation with the Secretary of Transportation and the Attorney General. Those regulations shall apply, to the extent practicable, uniformly throughout the armed forces.

SECTION 811 OF THE ANTITERRORISM AND EFFECTIVE DEATH PENALTY ACT OF 1996

SEC. 811. FEDERAL BUREAU OF INVESTIGATION.

(a) IN GENERAL.—With funds made available pursuant to subsection (c)—

(1) * * *

[(2) the Director of the Federal Bureau of Investigation may expand the combined DNA Identification System (CODIS) to include Federal crimes and crimes committed in the District of Columbia.]

(2) the Director of the Federal Bureau of Investigation shall expand the combined DNA Identification System (CODIS) to include analyses of DNA samples collected from—

(A) individuals convicted of a qualifying Federal offense, as determined under section 3(d) of the DNA Analysis Backlog Elimination Act of 2000;

(B) individuals convicted of a qualifying District of Columbia offense, as determined under section 4(d) of the DNA Analysis Backlog Elimination Act of 2000; and

(C) members of the Armed Forces convicted of a qualifying military offense, as determined under section 1565(d) of title 10, United States Code.

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VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1994

TITLE XXI—STATE AND LOCAL LAW ENFORCEMENT

* * * * * * *

Subtitle C—DNA Identification

* * * * * * *

SEC. 210304. INDEX TO FACILITATE LAW ENFORCEMENT EXCHANGE OF DNA IDENTIFICATION INFORMATION.

(a) * * *

(b) INFORMATION.—The index described in subsection (a) shall include only information on DNA identification records and DNA analyses that are—

(1) based on analyses performed by or on behalf of a criminal justice agency *(or the Secretary of Defense in accordance with section 1565 of title 10, United States Code)* in accordance with publicly available standards that satisfy or exceed the guidelines for a quality assurance program for DNA analysis, issued by the Director of the Federal Bureau of Investigation under section 210303;

(2) prepared by laboratories, and DNA analysts, that undergo[, at regular intervals of not to exceed 180 days,] *semi-annual* external proficiency testing by a DNA proficiency testing program meeting the standards issued under section 210303 *(or prepared by the Secretary of Defense in accordance with section 1565 of title 10, United States Code)*; and

(3) maintained by Federal, State, and local criminal justice agencies *(or the Secretary of Defense in accordance with section 1565 of title 10, United States Code)* pursuant to rules that allow disclosure of stored DNA samples and DNA analyses only—

(A) to criminal justice agencies for law enforcement identification purposes;

(B) in judicial proceedings, if otherwise admissible pursuant to applicable statutes or rules;

(C) for criminal defense purposes, to a defendant, who shall have access to samples and analyses performed in connection with the case in which such defendant is charged; or

(D) if personally identifiable information is removed, for a population statistics database, for identification research and protocol development purposes, or for quality control purposes.

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(d) EXPUNGEMENT OF RECORDS.—(1) The Director of the Federal Bureau of Investigation shall promptly expunge from the index described in subsection (a) the DNA analysis of a person included in the index on the basis of a qualifying Federal offense or a qualifying District of Columbia offense (as determined under section 3 and 4 of the DNA Analysis Backlog Elimination Act of 2000, respectively) if the Director receives, for each conviction of the person of a qualifying offense, a certified copy of a final court order establishing that such conviction has been overturned.

(2) For purposes of paragraph (1), the term "qualifying offense" means any of the following offenses:

(A) A qualifying Federal offense, as determined under section 3 of the DNA Analysis Backlog Elimination Act of 2000.

(B) A qualifying District of Columbia offense, as determined under section 4 of the DNA Analysis Backlog Elimination Act of 2000.

(C) A qualifying military offense, as determined under section 1565 of title 10, United States Code.

(3) For purposes of paragraph (1), a court order is not "final" if time remains for an appeal or application for discretionary review with respect to the order.

SEC. 210305. FEDERAL BUREAU OF INVESTIGATION.

(a) PROFICIENCY TESTING REQUIREMENTS.—

(1) GENERALLY.—(A) Personnel at the Federal Bureau of Investigation who perform DNA analyses shall undergo**[**, at regular intervals of not to exceed 180 days,**]** *semiannual* external proficiency testing by a DNA proficiency testing program meeting the standards issued under section 210303.

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TITLE 18, UNITED STATES CODE

PART II—CRIMINAL PROCEDURE

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CHAPTER 227—SENTENCES

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SUBCHAPTER B—PROBATION

§ 3563. Conditions of probation

(a) MANDATORY CONDITIONS.—The court shall provide, as an explicit condition of a sentence of probation—

(1) * * *

* * * * * * *

(7) that the defendant will notify the court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution, fines, or special assessments; **[**and**]**

(8) for a person described in section 4042(c)(4), that the person report the address where the person will reside and any subsequent change of residence to the probation officer responsible for supervision, and that the person register in any State where the person resides, is employed, carries on a vocation, or is a student (as such terms are defined under section 170101(a)(3) of the Violent Crime Control and Law Enforcement Act of 1994)**[**.**]***; and*

(9) that the defendant cooperate in the collection of a DNA sample from the defendant if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000.

If the court has imposed and ordered execution of a fine and placed the defendant on probation, payment of the fine or adherence to the court-established installment schedule shall be a condition of the probation.

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SUBCHAPTER D—IMPRISONMENT

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§ 3583. Inclusion of a term of supervised release after imprisonment

(a) * * *

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(d) CONDITIONS OF SUPERVISED RELEASE.—The court shall order, as an explicit condition of supervised release, that the defendant not commit another Federal, State, or local crime during the term of supervision and that the defendant not unlawfully possess a controlled substance. *The court shall order, as an explicit condition of supervised release, that the defendant cooperate in the collection of a DNA sample from the defendant, if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000.* The court shall order as an explicit condition of supervised release for a defendant convicted for the first time of a domestic violence crime as defined in section 3561(b) that the defendant attend a public, private, or private nonprofit offender rehabilitation program that has been approved by the court, in consultation with a State Coalition Against Domestic Violence or other appropriate experts, if an approved program is readily available within a 50-mile radius of the legal residence of the defendant. The court shall order, as an explicit condition of supervised release for a person described in section 4042(c)(4), that the person report the address where the person will reside and any subsequent change of residence to the probation officer responsible for supervision, and that the person register in any State where the person resides, is employed, carries on a vocation, or is a student (as such terms are defined under section 170101(a)(3) of the Violent Crime Control and Law Enforcement Act of 1994). The court shall also order, as an explicit condition of supervised release, that the defendant refrain from any unlawful use of a controlled substance and submit to a drug test within 15 days of release on supervised release and at least 2 periodic drug tests thereafter (as determined by the court) for use of a controlled substance. The condition stated in the preceding sentence may be ameliorated or suspended by the court as provided in section 3563(a)(4). The results of a drug test administered in accordance with the preceding subsection shall be subject to confirmation only if the results are positive, the defendant is subject to possible imprisonment for such failure, and either the defendant denies the accuracy of such test or there is some other reason to question the results of the test. A drug test confirmation shall be a urine drug test confirmed using gas chromatography/mass spectrometry techniques or such test as the Director of the Administrative Office of the United States Courts after consultation with the Secretary of Health and Human Services may determine to be of equivalent accuracy. The court shall consider whether the availability of appropriate substance abuse treatment programs, or an individual's current or past participation in such programs, warrants an exception in accordance with United States Sentencing Commission guidelines from the rule of section 3583(g) when considering any action against a de-

fendant who fails a drug test. The court may order, as a further condition of supervised release, to the extent that such condition—

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OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968

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TITLE I—JUSTICE SYSTEM IMPROVEMENT

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PART E—BUREAU OF JUSTICE ASSISTANCE GRANT PROGRAMS

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Subpart 1—Drug Control and System Improvement Grant Program

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STATE APPLICATIONS

SEC. 503. (a) To request a grant under this subpart, the chief executive officer of a State shall submit an application within 60 days after the Bureau has promulgated regulations under this section, and for each subsequent year, within 60 days after the date that appropriations for this part are enacted, in such form as the Director may require. Such application shall include the following:

(1) * * *

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(12) If any part of funds received from a grant made under this part is to be used to develop or improve a DNA analysis capability in a forensic laboratory, a certification that—

(A) * * *

* * * * * * *

(C) such laboratory, and each analyst performing DNA analyses at such laboratory, will undergo**[**, at regular intervals of not to exceed 180 days,**]** *semiannual* external proficiency testing by a DNA proficiency testing program meeting the standards issued under section 210303 of the DNA Identification Act of 1994.

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PART X—DNA IDENTIFICATION GRANTS

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SEC. 2403. APPLICATION REQUIREMENTS.

No grant may be made under this part unless an application has been submitted to the Attorney General in which the applicant certifies that—

(1) * * *

* * * * * * *

(3) the laboratory and each analyst performing DNA analyses at the laboratory shall undergo[, at regular intervals not exceeding 180 days,] *semiannual* external proficiency testing by a DNA proficiency testing program that meets the standards issued under section 210303 of the DNA Identification Act of 1994.

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MINORITY VIEWS

We concur with the Majority Views as to the importance of providing additional funds to States and localities to address their DNA backlogs. However, by providing these resources to the States, the amount of data entered into the Combine DNA Index System (CODIS) will dramatically expand. With this expansion comes the increased likelihood that the DNA samples and analyses could be misused. We must be ever mindful of our responsibility to protect the privacy of this DNA information, ensuring that it be used only for law enforcement identification purposes.

We are pleased that the Judiciary Committee agreed to an amendment that would impose criminal penalties for anyone who uses DNA samples or analyses for purposes not designated by CODIS. We are also grateful to the Majority for its willingness to provide for the expungement from CODIS of DNA information on individuals whose convictions have been overturned on appeal. The information obtainable from DNA testing surpasses any previous types of testing available. The amount of personal and private data contained in a DNA specimen provides insights into the most personal family relationships and the most intimate workings of the human body, including the likelihood of the occurrence of over 4,000 types of genetic conditions and diseases. Genetic information pertains not only to the individual whose DNA is sampled, but also to anyone who shares that bloodline. Thus, in addition to criminal penalties for misuse of DNA, we believe a specific security protocol should be developed to prevent misuse of such samples. This approach is the only way to ensure that the DNA analysis will not be used for unlawful purposes.

However, we are disappointed that H.R. 4640 does not include any requirements on States to provide access to DNA testing to convicted persons who did not have access to such testing at the time of their trial. While we certainly support H.R. 4640, we believe that Congress should also ensure some of the funds be made available to persons seeking to prove they were wrongfully convicted.

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