

JUSTICE FOR ALL ACT OF 2004

Including the

INNOCENCE PROTECTION ACT

Section-By-Section Analysis

OVERVIEW

The Justice For All Act of 2004 enhances protections for victims of Federal crimes, increases Federal resources available to State and local governments to combat crimes with DNA technology, and provides safeguards to prevent wrongful convictions and executions.

Title I of the bill is the Scott Campbell, Stephanie Roper, Wendy Preston, Louarna Gillis, and Nila Lynn Crime Victims' Rights Act. The provisions of this title establish enhanced and enforceable rights for crime victims in the Federal criminal justice system, and authorize grants to help States implement and enforce their own victims' rights laws.

Titles II and III of the bill establish the Debbie Smith DNA Backlog Grant Program, which authorize \$755 million over five years to address the DNA backlog crisis in the nation's crime labs, and also authorize more than \$500 million in new grant programs to reduce other forensic science backlogs, train criminal justice and medical personnel in the use of DNA evidence, and promote the use of DNA technology to identify missing persons.

Title IV of the bill, the Innocence Protection Act, provides access to post-conviction DNA testing in Federal cases, helps States improve the quality of legal representation in capital cases, and increases compensation in Federal cases of wrongful conviction. It also establishes the Kirk Bloodsworth Post-Conviction DNA Testing Program, which authorizes \$25 million over five years to defray the costs of post-conviction DNA testing.

TITLE I— SCOTT CAMPBELL, STEPHANIE ROPER, WENDY PRESTON, LOUARNA GILLIS, AND NILA LYNN CRIME VICTIMS’ RIGHTS ACT

Sec. 101. Short Title. This title may be cited as the “Scott Campbell, Stephanie Roper, Wendy Preston, Louarna Gillis, and Nila Lynn Crime Victims’ Rights Act.”

Sec. 102. Crime Victims’ Rights. Establishes enhanced rights for victims of Federal crimes, including the right to be reasonably protected from the accused; the right to reasonable, accurate, and timely notice of certain proceedings and events; the right not to be excluded from certain proceedings; the right to be reasonably heard at certain proceedings and to confer with the attorney for the Government in the case; the right to full and timely restitution; the right to proceedings free from unreasonable delay; and the right to be treated with fairness and with respect for the victim’s dignity and privacy. Government employees shall make best efforts to ensure that victims are notified of and accorded these rights. A victim or the lawful representative of a victim may assert these rights in district court and, if relief is denied, may petition the court of appeals for a writ of mandamus, which the court of appeals must take up and decide within 72 hours. A failure to afford a right shall not provide grounds for a new trial, and may only be used to re-open and plea or sentence in limited circumstances.

Sec. 103. Increased Resources for Enforcement of Crime Victims’ Rights. Authorizes grants to assist State and local authorities in implementing and enforcing crime victims’ rights laws, including grants to develop and implement state-of-the-art systems for notifying crime victims of important dates and developments relating to the criminal proceedings at issue in a timely and efficient manner.

Sec. 104. Reports. Requires annual reports on the implementation of this title.

TITLE II—DEBBIE SMITH ACT OF 2004

Sec. 201. Short Title. This title may be cited as the “Debbie Smith Act of 2004.”

Sec. 202. Debbie Smith DNA Backlog Grant Program. Reauthorizes and expands the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135), increasing the authorized funding levels for the DNA Analysis Backlog Elimination program to \$151 million annually for the next five years, as proposed in the President’s DNA initiative.

Subsection (a) names the Backlog Elimination Act grant program in honor of Debbie Smith, a rape survivor and leader in promoting the use of the DNA technology to solve crimes. In addition, subsection (a) amends the eligibility provisions to add “units of local government” as potential grantees, so that Federal resources can meet local needs more quickly.

Subsection (b) provides a single annual authorization for the program, and modifies existing program objectives by: (1) adding the collection of DNA samples from convicted offenders as a specific program purpose; (2) ensuring that DNA testing and analysis of samples from crime scenes are carried out in a timely manner.

Subsection (b) further provides for the disbursement of grant funds by the Attorney General in conformity with a formula that maximizes the effective use of DNA technology to solve crimes and protect public safety, and addresses areas where significant backlogs exist. A minimum grant amount of 0.50 percent is to be awarded to each State, and a specified percentage of remaining funds will be awarded to conduct DNA analyses of samples from casework.

Conversion of the Backlog Elimination Act grant program into a formula grant program will ensure that funds will be fairly distributed among all eligible jurisdictions. It is expected that the factors given weight in the formula will include the magnitude and nature of the DNA backlogs and current DNA work demands in the jurisdictions that seek funding; deficits in public laboratory capacity for the timely and efficient analysis of DNA samples in these jurisdictions, and cost requirements for remedying these deficits; and the ability of these jurisdictions to use the funds to increase DNA analysis and public laboratory capacity for such analysis. It is further expected that the formula will target funding on the use of DNA analysis to solve the most serious violent crimes, including rapes and murders, whose solution through DNA testing promises the greatest return in promoting public safety.

Subsection (b) also reserves no more than 1 percent of the grant amounts to assist State and local crime labs to become accredited, and to undergo regular external audits, in order to ensure that such labs fully comply with Federal quality assurance standards. If an external audit of a crime lab funded by this Act identifies measures to remedy deficiencies with respect to the lab’s compliance with FBI standards, such remediation must be implemented as soon as practicable.

Finally, subsection (b) provides that DNA backlog grants may be used for non-DNA forensic science backlogs if the State has no significant DNA backlog or lab improvement needs relating to DNA processing.

Sec. 203. Expansion of Combined DNA Index System. CODIS -- the national database of DNA identification information -- is currently limited to analyses of DNA samples from convicted offenders, crime scenes, unidentified human remains, and missing persons. This section expands CODIS to allow the inclusion of virtually any DNA information that a State chooses to collect, with two exceptions: DNA profiles of arrestees who have not been charged in an indictment or information, and DNA samples that are voluntarily submitted solely for elimination purposes.

This section also provides new authority for State and local law enforcement to perform “keyboard searches” of CODIS; using this tool, law enforcement can attempt to match DNA analyses of samples taken from crime suspects against the analyses in CODIS without permanently uploading information into the system. In addition, this section provides for the collection, analysis, and inclusion in CODIS of DNA samples from all convicted federal felony offenders -- another significant expansion of the national database.

If the Department of Justice plans to modify or supplement the core genetic markers needed for compatibility with the CODIS system, it must notify the House and Senate Judiciary Committees in writing no less than 180 days before any change is made and explain the reasons therefore.

Sec. 204. Tolling of State of Limitations. Provides that, in a case where DNA testing implicates an identified person in the commission of a felony, except for a felony offense under chapter 109A, no statute of limitations would preclude prosecution of the offense until a time period equal to the statute of limitations has elapsed from the date of identification of the perpetrator.

Sec. 205. Legal Assistance for Victims of Dating Violence. Amends the Violence Against Women Act to include legal assistance for victims of “dating violence,” defined as violence committed by a person: (1) who is or has been in a romantic or intimate relationship with the victim; and (2) where the existence of such relationship is determined based upon consideration of its length and its type, and upon the frequency of interaction between the persons involved.

Sec. 206. Ensuring Private Laboratory Assistance in Eliminating DNA Backlog. Clarifies that grants may be made through vouchers and contracts to private for-profit laboratories to assist in collection of DNA samples from offenders and processing of crime scene DNA evidence.

TITLE III—DNA SEXUAL ASSAULT JUSTICE ACT OF 2004

Sec. 301. Short Title. This title may be cited as the “DNA Sexual Assault Justice Act of 2004.”

Sec. 302. Ensuring Public Crime Laboratory Compliance with Federal Standards.

Requires that eligible State and local government public crime labs are accredited and undergo external audits, not less than once every 2 years, to demonstrate compliance with Federal standards established by the Federal Bureau of Investigation.

Sec. 303. DNA Training and Education for Law Enforcement, Correctional Personnel, and Court Officers.

Authorizes grants to provide training, technical assistance, education and information relating to the identification, collection, preservation, analysis and use of DNA samples and DNA evidence by law enforcement personnel and other first responders who collect or examine crime scene evidence; court officers, including prosecutors, defense lawyers and judges; forensic science professionals; and corrections personnel. The grant program is authorized through 2009 at \$12.5 million per year.

Sec. 304. Sexual Assault Forensic Exam Program Grants.

Authorizes grants to provide training, technical assistance, education and information relating to the identification, collection, preservation, analysis and use of DNA samples and DNA evidence by medical personnel and other personnel, including doctors, medical examiners, coroners, nurses, victim service providers, and other medical professionals, including existing sexual assault and sexual assault examination programs (Sexual Assault Nurse Examiner (SANE), Sexual Assault Forensic Examiner (SAFE), and Sexual Assault Response Team (SART)). The grant program is authorized through 2009 at \$30 million per year.

Sec. 305. DNA Research and Development. Authorizes grants for research and development to improve forensic DNA technology, including funding of demonstration projects involving law enforcement agencies and criminal justice participants to evaluate the use of forensic DNA technology. The grant program is authorized through 2009 at \$15 million per year.

Sec. 306. National Forensic Science Commission. Directs the Attorney General to appoint a National Forensic Science Commission, composed of members from the forensic science and criminal justice communities, which will be responsible for examining various issues, including: (1) maximizing the use of forensic sciences to solve crimes and protect public safety; (2) increasing the number of qualified forensic scientists; (3) disseminating best practices concerning the collection and analyses of forensic evidence; and (4) assessing Federal, State and local privacy protection laws and practices relating to access to, or use of, stored DNA samples and analyses. The grant program is authorized through 2009 at \$500,000 per year.

Sec. 307. FBI DNA Programs. Authorizes \$42.1 million per year through 2009 for FBI DNA programs and activities, including (1) nuclear DNA analysis; (2) mitochondrial DNA analysis; (3) regional mitochondrial DNA laboratories; (4) the Combined DNA Index System; (5) the Federal Convicted Offender DNA Program; and (6) DNA research and development.

Sec. 308. DNA Identification of Missing Persons. Authorizes \$2 million per year through 2009 for grants to promote the use of forensic DNA technology to identify missing persons and unidentified human remains.

Sec. 309. Enhanced Criminal Penalties for Unauthorized Disclosure or Use of DNA Information. Modifies the existing criminal provision for unauthorized disclosure of DNA information to include unauthorized “use” of such information, and increases the potential fine to \$100,000 for each criminal offense.

Sec. 310. Tribal Coalition Grants. Amends the eligibility criteria for discretionary grants under the Violence Against Women Act to include tribal coalitions, and thereby directly supports nonprofit, nongovernmental tribal domestic violence and sexual assault coalitions.

Sec. 311. Expansion of the Paul Coverdell Forensic Sciences Improvement Grant Program. Expands existing grant program to permit funds to be used to eliminate a backlog in the analysis of forensic science evidence, including ballistics examination, latent prints, and toxicology, and extends authorization of appropriations for 2007, 2008 and 2009, at \$20 million a year. Current authorizations are \$128,067,000 for 2004, \$56,733,000 for 2005, and \$42,067,000 for 2006. This section further amends the program to require any State applying for funds to certify that it has a process in place to conduct independent external investigations into any allegations of serious negligence or misconduct affecting the integrity of forensic results.

Sec. 312. Report to Congress. Requires the Attorney General to submit a report, not later than 2 years after enactment, relating to implementation of this title and title II.

TITLE IV—INNOCENCE PROTECTION ACT OF 2004

Sec. 401. Short Title. This title may be cited as the “Innocence Protection Act of 2004.”

Subtitle 1—Exonerating The Innocent Through DNA Testing

Sec. 411. Federal Post-Conviction DNA Testing. Establishes rules and procedures governing applications for DNA testing by inmates in the Federal system. A court shall order DNA testing if the applicant asserts under penalty of perjury that he or she is actually innocent, and the proposed DNA testing may produce new material evidence that supports such assertion and raises a reasonable probability that the applicant did not commit the offense. Motions filed more than 5 years after enactment and 3 years after conviction are presumed untimely, but such presumption may be rebutted upon good cause shown. Penalties are established in the event that testing inculpatates the applicant. Where test results are exculpatory, the court shall grant the applicant’s motion for a new trial or resentencing if the test results and other evidence establish by compelling evidence that a new trial would result in an acquittal.

This section also prohibits the destruction of DNA evidence in a Federal criminal case while a defendant remains incarcerated, with certain exceptions. The government may destroy DNA evidence if the defendant waived the right to DNA testing; if the defendant was notified after his conviction became final that the evidence may be destroyed and did not file a motion for testing; if a court has denied a motion for testing; or if the evidence has already been tested and the results included the defendant as the source. If the evidence is large or bulky, the government may remove and preserve a representative sample. Intentional violations of these evidence-retention provisions to prevent evidence from being tested or used in court are punishable by a term of imprisonment. Nothing in this section supersedes any law requiring that evidence be preserved.

Sec. 412. Kirk Bloodsworth Post-Conviction DNA Testing Grant Program. Authorizes \$5 million a year in grants through 2009 to help States to defray the costs of post-conviction DNA testing. This program is named in honor of Kirk Bloodsworth, the first death row inmate to be exonerated by DNA testing.

Sec. 413. Incentive Grants to States to Ensure Consideration of Claims of Actual Innocence. Reserves the total amount of funds appropriated to carry out sections 303, 305, 308, and 412 of this Act for States that have adopted reasonable procedures for providing post-conviction DNA testing and preserving DNA evidence. States that have already adopted such procedures through legislation enacted before this Act shall qualify for these grants.

Subtitle 2—Improving The Quality of Representation

In State Capital Cases

Sec. 421. Capital Representation Improvement Grants. Authorizes a grant program, to be administered by the Attorney General, to improve the quality of legal representation provided to indigent defendants in State capital cases. Grants shall be used to establish, implement, or improve an effective system for providing competent legal representation in capital cases, but may not be used to fund representation in specific cases. An effective system is one in which a public defender program or other entity establishes qualifications for attorneys who may be appointed to represent indigents in capital cases; establishes and maintains a roster of qualified attorneys and assigns attorneys from the roster (or provides the trial judge with a choice of attorneys from the roster); trains and monitors the performance of such attorneys; and ensures funding for the full cost of competent legal representation by the defense team and any outside experts. A State may also qualify for these grants if it has adopted and substantially complies with statutory procedures enacted before this Act under which the trial judge is required to appoint qualified attorneys from a roster maintained by a State or regional selection committee or similar entity.

Sec. 422. Capital Prosecution Improvement Grants. As part of the same program established in section 421, authorizes grants to improve the representation of the public in State capital cases. Grants shall be used to design and implement training programs for capital prosecutors; develop, implement, and enforce appropriate standards and qualifications for such prosecutors and assess their performance; establish programs under which prosecutors conduct a systematic review of cases in which a defendant is sentenced to death in order to identify cases in which post-conviction DNA testing is appropriate; and assist the families of murder victims.

Sec. 423. Applications. Establishes requirements for States applying for grants under this subtitle, including a long-term strategy and detailed implementation plan that reflects consultation with the judiciary, the organized bar, and State and local prosecutor and defender organizations, and establishes as a priority improvement in the quality of trial-level representation of indigents charged with capital crimes and trial-level prosecution of capital crimes in order to enhance the reliability of capital trial verdicts.

Sec. 424. State Reports. Requires States receiving funds under this subtitle to submit an annual report to the Attorney General identifying the activities carried out with the funds and explaining how each activity complies with the terms and conditions of the grant.

Sec. 425. Evaluations by Inspector General and Administrative Remedies. Directs the Inspector General of the Department of Justice to submit periodic reports to the Attorney General evaluating the compliance of each State receiving funds under this subtitle with the terms and conditions of the grant. In conducting such evaluations, the Inspector General shall give priority to States at the highest risk of noncompliance. If, after receiving a report from the Inspector General, the Attorney General finds that a State is not in compliance, the Attorney General shall take a series of steps to bring the State into compliance and report to Congress on the results.

Sec. 426. Authorization of Appropriations. Authorizes \$75 million a year for five years to carry out this subtitle. States receiving grants under this subtitle shall allocate the funds equally between the programs established in sections 421 and 422.

Subtitle 3—Compensation Of the Wrongfully Convicted

Sec. 431. Increased Compensation in Federal Cases for the Wrongfully Convicted.

Increases the maximum amount of damages that the U.S. Court of Federal Claims may award against the United States in cases of unjust imprisonment from a flat \$5,000 to \$50,000 per year in non-capital cases, and \$100,000 per year in capital cases.

Sec. 432. Sense of Congress Regarding Compensation in State Death Penalty Cases.

Expresses the sense of Congress that States should provide reasonable compensation to any person found to have been unjustly convicted of an offense against the State and sentenced to death.