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The Advancing Justice Through DNA Technology Act of 2003 (H.R. 3214): A Section-by-Section Analysis

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Summary

The Federal Bureau of Investigation (FBI) maintains an automated information processing system, the Combined DNA Index (CODIS), of DNA profiles of certain convicted criminals and DNA analyses of samples recovered from crime scenes, from unidentified human remains and from missing persons. The National DNA Indexing System (NDIS), one of the three indexes that make up the CODIS, enables participating laboratories to exchange and compare state and federal DNA profiles. State legislation has increased the number of qualifying offenses for which convicted offenders must submit DNA samples, such as offender samples, plus case samples from crime scenes creating a bigger pool of DNA samples needing to be analyzed. As the pool increases and new samples are collected the states are finding it difficult to complete the DNA analysis, therefore resulting in a backlog. On November 5, 2003 the House passed H.R. 3214 aimed at modernizing the laws relating to the use of DNA technology in the criminal justice system. The bill would provide States with training, funding and guidelines aimed at eliminating the backlog.

Title I of the act would expand the eligibility provisions of the DNA Backlog Grant Program by adding “units of local government” as potential grantees and proposes to change the program to a formula grant program. Among other things, it would expand the types of DNA records that may be included in the CODIS to include records of persons who have been indicted or who have waived indictment for a crime, and would also broaden the list of federal and military qualifying offenses. Furthermore, it would increase the authorized funding levels for the DNA Analysis Backlog Elimination program to \$151 million annually.

Title II of the act would amend the DNA Identification Act of 1994 to require that laboratories that provide DNA records for the CODIS be accredited by a nationally recognized non-profit professional association of forensic scientists within two years of the enactment of the act, and undergo external audits at least once every two years to show compliance with specified standards. It provides for enhanced criminal penalties for knowing misuse or unauthorized disclosure of DNA information, and authorizes grants to be awarded for DNA training, education, research and development; sexual assault forensic examination programs; using DNA technology to identify missing persons; and tribal domestic violence and sexual assault coalitions. Additionally, it establishes a new National Forensic Science Commission, expands the Paul Coverdell Forensic Sciences Improvement Grant Program, and provides funds to the Federal Bureau of Investigation for the administration of its DNA programs.

Title III would establish the rules governing the applications for post-conviction DNA testing by inmates in the federal system. It would require the preservation of biological evidence in federal criminal cases while the inmate is in prison and would establish grants to states for improving the quality of capital litigation. Also, it would provide funds for post-conviction testing and increase the compensation in federal cases for the wrongfully convicted. This report analyzes the version of H.R. 3214 that was referred to the Senate and will be updated as necessary.

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The Advancing Justice Through DNA Technology Act of 2003 (H.R. 3214): A Section-by-Section Analysis

Introduction

DNA technology is increasingly vital in ensuring the accuracy and fairness of the criminal justice system.¹ DNA technology can help identify criminals with incredible accuracy and can clear suspects and exonerate persons mistakenly accused or convicted of crimes.² The Advancing Justice Through DNA Technology Act of 2003 (hereinafter the “Act”), H.R. 3214³, was introduced to address several problems facing state and federal government in DNA collection and analysis. It addresses three problems: (1) the elimination of backlogs of samples from crime scenes and convicted offenders that have not been analyzed; (2) the improvement and expansion of DNA testing capacity of federal, state and local crime laboratories and the development of new training programs regarding collection and use of DNA evidence; and (3) the conviction of innocent persons.

The Federal Bureau of Investigation (FBI) maintains an automated information processing system, the Combined DNA Index (CODIS)⁴, of DNA profiles of certain

¹ See CRS Report RL30717, *DNA Identification: Application and Issues*, by Eric Fischer.

² H.R. Rep., No. 108-321, pt.1 at 20 (2003).

³ H.R. 3214, sponsored by Rep. F. James Sensenbrenner, Jr., was reported on October 16, 2003 (H.R. Rep., No. 108-321, pt.1 (2003)), and passed the House on November 5, 2003, by a vote of 357-67. On December 9, 2003 this bill was referred to the Senate. It was read twice and referred to the Committee on the Judiciary. A similar bill, S. 1700, sponsored by Sen. Orrin G. Hatch, was introduced in the Senate on October 1, 2003 when it was also referred to the Committee on the Judiciary. This report analyzes the amended version of H.R. 3214 as referred to the Senate after being received from the House.

⁴ The CODIS is an automated DNA information processing and telecommunications system supporting three indexes: the National DNA Index (NDIS), the State DNA Index (SDIS) and the Local DNA Index (LDIS). DNA profiles originate at the local level and flow to the state and national level. Therefore, the NDIS includes DNA profiles from all of the participating states. In addition, the FBI contributes federal DNA profiles. The FBI provides CODIS software, installation, training and support free of charge to any state and local government laboratories performing DNA analysis. See U.S. Department of Justice, Federal Bureau of Investigation, *The FBI's Combined DNA Index System Program- CODIS*, brochure available at [<http://www.fbi.gov/hq/lab/codis/brochures.htm>]; Federal Bureau of Investigation, *FBI Laboratory: Forensic Systems-Combined DNA Index System (CODIS)*, available at [<http://www.fbi.gov/hq/lab/org/systems.htm>]; Kansas Bureau of Investigation Forensic Laboratory Services, *DNA The Newest Implementation of the Technology*, available at [<http://www.accesskansas.org/kbi/PDF/brochures/DNA%20Broshures.pdf>] (brochure with (continued...))

convicted criminals and DNA analyses of samples recovered from crime scenes, from unidentified human remains and from missing persons.⁵ Funding for the CODIS was initially established by the DNA Identification Act of 1994⁶ which established the DNA Identification Grants program⁷ to provide grants to state and local governments for the purpose of developing and improving DNA technology and analysis of DNA evidence. Grants are awarded by the Attorney General and require States to have in place a comprehensive plan for the expeditious DNA analysis of samples.⁸ Additionally, the DNA Identification Act established requirements for quality assurance of laboratories participating in the program and, in order to protect the privacy of the individuals, restricted access to the DNA profiles to a select group.⁹ The National DNA Indexing System (NDIS), one of the three indexes which comprise the CODIS, links together State and Federal DNA profiles and evidence in the CODIS system enabling laboratories participating in the CODIS to compare DNA profiles at a national level.¹⁰

State legislation has increased the number of qualifying offenses for which convicted offenders must submit DNA samples.¹¹ This has created a backlog in the analysis of such samples as samples must be drawn from individuals currently incarcerated and then analyzed. In addition, since the pool of convicted offenders is continuously growing, the States have had a difficult time eliminating the previously existing backlog of convicted offender samples and analyzing new samples, as well as analyzing forensic samples.¹² As a result, the Senate passed a bill in the 107th Congress to analyze the extent of the backlog in DNA analysis of rape kits and to improve the investigation and prosecution of sexual offenses using DNA evidence.¹³

H.R. 3214, aimed at modernizing the laws relating to the use of DNA technology in the criminal justice system, was introduced on October 2003. The bill, if enacted, would provide funding, training and guidelines aimed at eliminating the backlog. It would also provide training for those involved in collecting, processing, and analyzing DNA samples which would help in the backlog elimination. It would

⁴ (...continued)

a very helpful explanation of the CODIS)).

⁵ 42 U.S.C. 14132.

⁶ 42 U.S.C. § 14131 et seq.

⁷ 42 U.S.C. §§ 14135 and 3796kk.

⁸ 42 U.S.C. § 14135.

⁹ 42 U.S.C. §§ 14131 and 14133.

¹⁰ *FBI Laboratory: Forensic Systems-Combined DNA Index System (CODIS)*, supra note 4.

¹¹ *Id.* at 13.

¹² *Id.*

¹³ S. 2513, the “DNA Sexual Assault Justice Act of 2002,” was passed by the Senate by unanimous consent on September 12, 2002. S.Rep. 107-334 (2002), was filed by the Committee on the Judiciary on November 4, 2002.

also provide procedures for inmates to request post-conviction DNA analysis and includes provisions to prevent the abuse of those procedures.

This report is a section-by-section analysis of H.R. 3214. H.R. 3214 passed the House on November 5, 2003, by a vote of 357-67. On December 9, 2003 this bill was referred to the Senate, read twice and referred to the Committee on the Judiciary. The bill passed overwhelmingly in the House but has been criticized by some and is currently stalled in the Senate.¹⁴ It is supported by the Administration.¹⁵

Section 1. Short Title and Table of Contents. This section of the bill contains the short title, “Advancing Justice Through DNA Technology Act of 2003” and the table of contents.

Title I -- Debbie Smith Act of 2003

Sec. 101. Short Title. This section of the bill contains the short title to Title I of the bill, the “Debbie Smith Act of 2003.”

Sec. 102. The Debbie Smith DNA Backlog Grant Program. This section proposes to amend section 2 of the DNA Analysis Backlog Elimination Act of 2000 (hereinafter “Backlog Elimination Act”).¹⁶ Under this law, the Attorney

¹⁴ See American Civil Liberties Union, *ACLU Letter to the House Judiciary Committee Expressing Concerns about H.R. 3214, the Advancing Justice through DNA Technology Act of 2003* (October 8, 2003), available at [<http://www.aclu.org/Privacy/Privacy.cfm?ID=14002&c=129>] (expressing concerns that Titles I and II of the act would expand the CODIS and further undermine principles of privacy and due process); Congressional Quarterly, *DNA Testing Bill Has Many Friends, Some Foes* (November 11, 2003), available at www.nacdl.org/public.nsf/legislation/IPA_0321?OpenDocument (raising questions regarding the legal standards proposed by the bill for allowing new trials after post-conviction DNA testing); CQ Today, *Chambers at Loggerheads on DNA, Death Penalty Bills* (May 6, 2004), available at [<http://www.cq.com/>] (summarizing Senate criticisms of the bill to include making federal grants contingent upon the states meeting certain conditions such as building effective systems to ensure defendants access to competent representation in capital cases).

¹⁵ Office of the President, *Advancing Justice Through DNA Technology* (Mar. 2003), available on Mar. 29, 2004 at [http://www.usdoj.gov/ag/dnapolicybook_cov]; *Prepared Remarks of Attorney General John Ashcroft: DNA Initiative* (Mar. 11, 2003), available on Mar. 29, 2004 at [<http://www.usdoj.gov/ag/speeches/2003/031102dnaremarks>]; *Fact Sheet: The President's Initiative to Advance Justice Through DNA Technology*, available on Apr. 29, 2004 at [<http://www.usdoj.gov/ag/dnaoverviewinitiative21>]; see also, Statement of National Institute of Justice Director Sarah V. Hart, in *Advancing Justice Through Forensic DNA Technology: Hearing Before the Subcomm. On Crime, Terrorism, and Homeland Security of the House Comm. On the Judiciary*, 108th Cong., 1st Sess. 7 (2003), available on Apr. 29, 2004 at [<http://www.house.gov/judiciary/crime>].

¹⁶ 42 U.S.C. § 14135.

General is authorized to make grants (1) to eligible states¹⁷ to increase the capacity of laboratories to do DNA analyses, and (2) to conduct DNA analyses of samples from individuals convicted of qualifying crimes and from crime scenes. The results must be included in the CODIS.

This section would name the grant program in the Backlog Elimination Act ‘The Debbie Smith DNA Backlog Grant Program,’¹⁸ and expand eligibility for such grants by adding “units of local government” as potential grantees. Also, this section would clarify the permissible uses for the grants: (1) to ensure that DNA testing and analyses of samples from certain crime scenes are carried out in a timely manner including samples from (a) rape kits and other sexual assault evidence, and (b) other serious violent crimes;¹⁹ and (2) to collect DNA samples from convicted offenders.²⁰

Additionally, current law does not specify how the grants are to be divided among the states. This section would implement a formula as the method of allocating grants among the states and units of local government. The formula, to be determined by the Attorney General, must distribute funds among eligible states and units of local government in a way that would maximize the effective utilization of DNA technology to solve crimes and protect public safety, and address areas in which significant backlog exists. A minimum amount of 0.50% of the total amount appropriated in a fiscal year for grants under this section would be allocated to each state, with the United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands each being allocated 0.125%. At least 50% of the grant amounts for fiscal years 2005 and 2006 would be required to be allocated for the purpose of analyzing DNA samples from crime scenes, including samples from rape kits, and samples taken from individuals convicted of qualifying crimes and from crime scenes for inclusion in the CODIS. This amount would be reduced to at least 45% for FY2007 and at least 40% for fiscal years 2008 and 2009.

Under current law²¹ the Attorney General is required to submit to Congress, within 90 days of the end of each fiscal year for which such grants are made, a report containing two pieces of information: the amount of grants made to each state for said fiscal year, and a summary of the information provided by the states receiving grants. This section proposes to add a third requirement for the report to include a description of the priorities and plans for awarding grants among eligible states and

¹⁷ An “eligible” State is one that implements a comprehensive program for expeditious DNA analysis within 120 days of the application for the grant, certifies that each DNA analysis will meet privacy requirements and which offenses will qualify for DNA analysis, and provides the planned allocation of the grant money.

¹⁸ The renaming of the program is done in honor of Debbie Smith, a rape victim and leader in promoting the use of the DNA technology to solve crimes. H. Rep. No. 108-321, pt.1 at 26 (2003).

¹⁹ Proposed 42 U.S.C. § 14135(a)(5).

²⁰ Proposed 42 U.S.C. §§ 14135(a)(4) and 14135(a)(7).

²¹ 42 U.S.C. § 14135(g).

units of local government, and how such plans will ensure the effective use of the DNA technology to solve crimes and protect public safety.

Finally, this section would raise the amounts authorized to be distributed by the Attorney General for grants under 42 U.S.C. § 14135 from \$25 million for the years 2003 and 2004, to \$151 million for each fiscal year thereafter until 2009. Up to 1% of these grant amounts would be reserved for distribution to States or units of local government to defray the costs incurred by laboratories in preparing for accreditation or re-accreditation and to defray the costs of external audits to ensure compliance with the federal quality assurance standard for laboratories which participate in the National DNA Index System (NDIS).

Section 103. Expansion of the Combined DNA Index System.

Currently, in addition to forensic samples, the CODIS includes the DNA records of persons convicted of crimes.²² This section would expand the CODIS to include the DNA records of persons who have been indicted or who have waived indictment for a crime, and other persons whose DNA samples are collected under applicable legal authority. It would, however, exclude DNA profiles of arrestees who have not been indicted and DNA samples voluntarily submitted for elimination purposes.²³ Furthermore, this section would expand the list of qualifying offenses that would require inclusion in the CODIS.²⁴ The CODIS would include samples from individuals convicted of any federal felony, any offense relating to sexual abuse, any crime of violence, or the attempt or conspiracy to commit the same; and qualifying military offenses.²⁵

To protect the rights of the innocent from the expansion of the CODIS to include samples from persons who have been indicted, this section would expand the reasons for expungement of records. Under the proposed amendment, a state would have the obligation to expunge from the CODIS the DNA analysis of samples from persons where all charges of qualifying offenses have been dismissed or resulted in an acquittal.

Finally, this section proposes to add a new subsection to 42 U.S.C. §14132 addressing authority for keyboard searches of the National DNA Index System (NDIS). The amendment would allow the federal government or a state to search the

²² 42 U.S.C. § 14132(a)(1).

²³ Samples submitted for “elimination purposes” are samples from individuals who are potential suspects of a crime and who voluntarily submit DNA samples for analysis for the purpose of being removed from consideration as potential suspects.

²⁴ 42 U.S.C. § 14135a currently lists only a select number of federal offenses qualified for inclusion in the DNA index. These include murder, offenses related to sexual abuse, offenses relating to peonage and slavery, kidnaping, robbery or burglary, incest and arson, crimes of violence, terrorist offenses, attempt and conspiracy.

²⁵ Qualifying military offenses would include any offense under the Uniform Code of Military Justice (UCMJ) for which a sentence of confinement for more than a year may be imposed; and any other offense under the UCMJ that is comparable to a qualifying federal offense.

NDIS for a match to any DNA sample that was lawfully obtained by the state.²⁶ “Keyboard search” would be defined as a search under which information from a DNA sample is compared with information in the NDIS without resulting in the obtained information being included in the index.

Sec. 104. Tolling the Statute of Limitations.

This section would add a new section, § 3297, to chapter 213 of title 18 of the U.S.C. addressing the tolling (expiration) of the statute of limitations when DNA analysis is used to identify an alleged offender. This proposed new section would provide that in a case in which DNA testing implicates an identified person in the commission of a felony, the starting date for purpose of the expiration of the statute of limitations would be the date when the person was implicated in the commission of the crime by the DNA testing and not the date of the commission of the crime. Therefore, any delays associated with backlogs in DNA analysis of crime samples would be excluded from the statute of limitations. This section would apply to the prosecution of any offense committed before, on, or after the date of the enactment of this section. However, it would not apply to cases where the statute of limitations had expired at the time the DNA testing was done.²⁷

Sec. 105. Legal Assistance for Victims of Violence.

Current law authorizes the Attorney General to award grants to provide legal assistance or advocacy services to victims of domestic violence, stalking or sexual assault.²⁸ This section would expand the law to include legal assistance to victims of dating violence. It would define “dating violence” as “violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.” The existence of the relationship would be determined based on (a) the length of the relationship, (b) the type of relationship, and (c) the frequency of interaction between the persons involved in the relationship.

Sec. 106. Ensuring Private Laboratory Assistance in Eliminating DNA Backlog.

Existing law allows for grants to analyze samples from crime scenes or from individuals convicted of a qualifying offense to be made in the form of vouchers which may be redeemed by private laboratories that meet quality standards and that have been approved by the Attorney General.²⁹ This section would restate the statute clarifying that grants may be made in the form of a voucher and expanding it to include contracts as a permissible form of grants.

²⁶ Proposed 42 U.S.C. 14132(e).

²⁷ In cases where the identity of the suspect is not known, but the government has been able to get a DNA profile, current law, 18 U.S.C. § 3282(b), provides that the statute of limitations can be tolled by indicting the accused and describing them as someone whose name is unknown but who has a particular DNA profile.

²⁸ 42 U.S.C. § 3796gg-6.

²⁹ 42 U.S.C. § 14134(d)(3).

Title II -- DNA Sexual Assault Justice Act of 2003

Sec. 201. Short Title.

This section provides that this title may be cited as the “DNA Sexual Assault Justice Act of 2003.”

Sec. 202. Ensuring Public Crime Laboratory Compliance with Federal Standards.

Current law requires that laboratories and analysts conducting DNA analyses undergo semiannual external proficiency testing.³⁰ This section would require state and local government public crime laboratories that provide DNA analysis and identification records for the CODIS to be accredited within two years after the enactment of the act. The accreditation would be done by a nationally recognized non-profit professional association involved in forensic science. Furthermore, laboratories would be required to undergo external audits at least once every two years to demonstrate compliance with the standards established by the Director of the Federal Bureau of Investigation.

Sec. 203. DNA Training and Education for Law Enforcement, Correctional Personnel, and Court Officers.

This section would create a new grant program for the purpose of providing to eligible entities training, technical assistance, education, and information relating to the identification, collection, preservation, analysis, and use of DNA samples and evidence. Eligible entities would include law enforcement personnel, including police officers and other first responders, evidence technicians, investigators and others who collect or examine evidence of crime; court officers, including state and local prosecutors, defense lawyers, and judges; forensic science professionals; and corrections personnel, including jail, prison personnel, probation and parole officers. The grant program would authorize \$12.5 million for each fiscal year from 2005 through 2009.

Sec. 204. Sexual Assault Forensic Exam Program Grants.

This section would create a new grant program requiring the Attorney General to award grants for the purpose of providing training, technical assistance, education, equipment, and information relating to the identification, collection, preservation, analysis, and use of DNA samples and DNA evidence by medical personnel, including doctors, medical examiners, coroners, nurses, victim service providers, and other professionals involved in treating victims of sexual assault, and sexual assault examination programs. The grant program would authorize \$30 million for each fiscal year from 2005 through 2009. Grants could be given to states, units of local government, and sexual assault examination programs.

³⁰ 42 U.S.C. § 14132(b)(2).

Sec. 205. DNA Research and Development.

This section would create new grants for research and development to improve forensic DNA technology, including increasing the identification accuracy and efficiency of DNA analysis, decreasing time and expense, and increasing portability. This section would also authorize grants for funding projects to demonstrate and evaluate the use of forensic DNA technology in conjunction with other forensic tools. The demonstration projects would include scientific evaluation of the public safety benefits, improvements to the law enforcement operations, and cost-effectiveness of increased collection and use of DNA evidence. Programs would be authorized for fiscal years 2005 through 2009 at \$15 million per year.

Sec. 206. National Forensic Science Commission.

This section would authorize the Attorney General to establish a new National Forensic Science Commission, appoint its members, designate the Chair and any necessary staff to assist in its functions, and establish procedures and guidelines for its operation. The commission would be composed of persons experienced in criminal justice issues, including persons from the forensic science and criminal justice communities. It would be responsible for: (1) assessing the resource needs of the forensic science community; (2) making recommendations to the Attorney General for maximizing the use of forensic technologies and techniques to solve crimes and protect the public; (3) identifying potential scientific advances that may assist law enforcement in using forensic technologies and techniques to protect the public; (4) making recommendations to the Attorney General for increasing the number of qualified forensic scientists available to work in public crime laboratories; (5) disseminating the best practices concerning the collection and analyses of forensic evidence; (6) examining issues pertaining to forensic science as requested by the Attorney General; (7) examining federal, state and local privacy protection statutes, regulations, and practices relating to DNA analyses and DNA samples; (8) making specific recommendations to the Attorney General to enhance these protections; and (9) providing a forum for the exchange and dissemination of ideas and information in furtherance of the objectives of the commission. This section would also authorize \$500,000 for each of fiscal years 2005 through 2009 for the establishment of the commission and execution of its duties.

Sec. 207. FBI DNA Programs.

This section would authorize \$42.1 million for each fiscal years 2005 through 2009 for the Federal Bureau of Investigation to carry out the DNA programs and activities including nuclear DNA analysis; mitochondrial DNA analysis; regional mitochondrial DNA laboratories; the Combined DNA Index; the Federal Convicted Offender DNA Program; and DNA research and development.

Sec. 208. DNA Identification of Missing Persons.

This section would create new grants for states and units of local government to promote the use of forensic technology to identify missing persons and unidentified human remains. The section would authorize the appropriation of \$2 million for each fiscal years 2005 through 2009 for this purpose.

Sec. 209. Enhanced Criminal Penalties for Unauthorized Disclosure or Use of DNA Information.

Under current law anyone who wrongfully discloses, obtains or uses DNA sample information is punishable by a fine not to exceed \$100,000.³¹ This section would restate the provision clarifying that each instance of disclosing, obtaining, or using would constitute a separate offense.

Sec. 210. Tribal Coalition Grants.

Under current law the Attorney General is required to award grants to state domestic violence and sexual assault coalitions for coordinating state victim service activities.³² This section would create new grants to nonprofit, non-governmental tribal domestic violence and sexual assault coalitions for the purpose of (1) increasing awareness of domestic violence and sexual assault against Indian women; (2) enhancing the response to violence against Indian women at the tribal, federal and state levels; and (3) identifying and providing technical assistance to coalition membership and tribal communities to enhance access to essential services to Indian women victimized by domestic and sexual violence. It would make available 1/54 of the grants for domestic violence and sexual assault coalitions for these purposes.

Sec. 211. Expansion of Paul Coverdell Forensic Sciences Improvement Grant Program.

This section proposes to amend two sections of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. §§ 3797m and 3797k, which address portions of the Paul Coverdell Forensic Sciences Improvement Grant Program. Section 3797m of title 42 allows states and units of local government to use grant money to carry out all or a substantial part of a program intended to improve the timeliness and quality of forensic science or medical examiner services in the State. This section would expand the grant program to permit funds to be used to eliminate the backlog in analysis of forensic science evidence, and to train, assist, and employ forensic laboratory personnel to eliminate such backlog. Additionally, it would provide that a backlog exists when the evidence has been stored in a laboratory, medical examiner's office, coroner's office, law enforcement storage facility, or medical facility and has not been subjected to all appropriate forensic testing due to lack of resources or personnel.

42 U.S.C. § 3797k requires states requesting a grant under this program to submit to the Attorney General a certification that the state or unit of local government has developed a plan for forensic science laboratories; a specific description of the manner in which the grant money will be used to carry out the plan; a certification that any forensic science laboratory, medical examiner's office, or coroner's office receiving grant money uses generally accepted laboratory practices and procedures; and a description of any new facility to be built in connection with plans to carry out this program. This section would add a new requirement for

³¹ 42 U.S.C. 14135e(c).

³² 42 U.S.C. 3796gg.

applying for grants under this program. States and units of local government would be required to submit to the Attorney General a certification that a government entity exists and that an appropriate process is in place to conduct independent external investigations into allegations of serious negligence or misconduct that substantially affect the integrity of the forensic results.

This section would also extend and increase the authorization of appropriations to \$20 million a year from 2007 through FY2009. Current authorizations are \$128,067,000 for 2004, \$56,733,000 for 2005, and \$42,067,000 for 2006.

Sec. 212. Report to Congress.

This section would add a new requirement that the Attorney General submit a report to Congress relating to implementation of the act within two years of its enactment. The report would contain (1) the progress made by federal, state, and local entities in collecting and entering DNA samples for inclusion in the CODIS; analyzing samples from crime scenes and entering such DNA analyses in CODIS; and increasing the capacity of forensic laboratories to conduct DNA analyses; (2) the priorities and plan for awarding grants; (3) the distribution of grants under this act and whether such funds have served the purposes of the programs; (4) grants awarded and the use of such grants for training and education programs; (5) grants awarded and the use of such grants to conduct DNA research and development programs to improve DNA technology; (6) the steps taken to establish the National Science Commission; (7) the use of funds by the FBI; (8) grants awarded and use of such grants to promote the use of forensic DNA technology to identify missing persons and unidentified human remains; (9) grants awarded and the use of such grants to eliminate forensic science backlogs; (10) state compliance with the requirements of section 313 of the DNA Act (requirements for incentive grants to ensure consideration of claims of innocence); and (11) any other matters considered relevant by the Attorney General.

Title III -- Innocence Protection Act of 2003

Sec. 301. Short Title.

This section states that this title may be cited as the ‘Innocence Protection Act of 2003.’

Subtitle A - Exonerating the Innocent Through DNA Testing

Sec. 311. Federal Post-Conviction DNA Testing.

This section proposes to add a new chapter 228A to title 18 that would establish rules and procedures governing applications for DNA testing of inmates in the federal system. It would provide that a court that has sentenced an individual to prison or death shall order DNA testing of specific evidence, upon request of the individual, if the individual asserts under penalty of perjury that (1) he is actually

innocent of a qualifying offense³³; (2) the evidence to be tested was secured in relation to the investigation or prosecution of the qualifying offense; (3) the evidence to be tested was not previously subject to DNA testing, and the individual did not voluntarily and knowingly waive his right to have DNA testing done on the evidence, or the evidence was previously subjected to DNA testing but the individual is requesting DNA testing using new technology; (4) the evidence is in the possession of the government and has been subject to a chain of custody; (5) the proposed DNA testing is reasonable in scope; (6) the individual identifies a theory of defense that is not inconsistent with an affirmative defense presented at trial and would establish actual innocence; (7) if the individual was convicted following a trial, the identity of the perpetrator was at issue; (8) the proposed DNA testing would produce new material evidence that supports the assertion of innocence and raises a reasonable probability that the individual did not commit the crime; (9) the individual certifies that he will provide a DNA sample for purposes of comparison; and (10) the individual's motion is filed for the purpose of demonstrating the individual's actual innocence and not to delay execution of the sentence.

The new chapter also provides for the appointment of counsel for an indigent applicant, notification to the government of the filing of the motion, and an order to the government to preserve the evidence relating to the motion. The DNA testing would be required to be done by the FBI. The cost of the testing would be paid by the applicant or, if the applicant is indigent, by the government. This section would also provide that in capital cases any DNA testing shall be completed no later than 60 days after the date the government responds to the motion; and no later than 120 after the DNA testing is ordered. The results would be simultaneously disclosed to the court, the applicant, and the government. This section also provides for entry of the results of the DNA testing into the NDIS even if the results are inconclusive or show that the applicant was the source of the DNA evidence; or when the DNA sample from the applicant results in a match with another offense. If the DNA test results exclude the applicant as the source of the DNA evidence and there is no match between the applicant's DNA sample and another offense, the Attorney General must destroy the applicant's DNA sample and ensure that such information is not retained in the NDIS unless there is an independent legal authority to do so.

Penalties, including repayment of costs incurred as a result of the petition, denial of good conduct credit, or denial of parole, are established in the event that testing inculcates the applicant. Where test results are exculpatory, the court would grant the applicant's motion for a new trial or resentencing if the test results and other evidence establish by a preponderance of the evidence that a new trial would result in an acquittal of the offense at issue.

The destruction of biological evidence in a federal criminal case would be prohibited while a defendant remains incarcerated, absent one of four criteria being met. These include denial by a court of a motion or request for DNA testing under 18 U.S.C. § 3600, with no appeal pending; a knowing and voluntary waiver by the defendant; prior notification to the defendant that the evidence may be destroyed,

³³ "Qualifying offenses" are those offenses listed under 42 U.S.C. § 14135a and section 103 of this act.

where the defendant, within 180 days of such notice, does not file a motion under 18 U.S.C. § 3600 for DNA testing; or circumstances requiring return of the evidence to its owner or demonstrating that retention of the evidence is impracticable because of its size, bulk or physical characteristics, where the government takes reasonable measures to remove and preserve sufficient portions of the material evidence for future DNA testing. Nothing in this section would supercede any statute, regulation, court order, or other provision of law requiring that evidence, including biological evidence, be preserved. Intentional violations of this preservation provision to prevent evidence from being tested or used in court would be punishable by a fine or imprisonment for up to five years, or both.

Sec. 312. Kirk Bloodsworth Post-Conviction DNA Testing Grant Program.

This section would authorize \$5 million a year in grants for each of fiscal years 2005 through 2009 to help states to defray the costs of post-conviction DNA testing. ‘State’, for purposes of this section, would be defined as 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 Marina Islands.

Sec. 313. Incentive Grants to States to Ensure Consideration of Claims of Actual Innocence.

This section would provide that no entity is eligible to receive a grant under §§ 203, 205, 207, or 312 unless the state has a statute which provides for post-conviction DNA testing and a statute or a state or local rule which provides for the preservation of biological evidence secured in relation to the investigation or prosecution of a state offense.

Subtitle B - - Improving the Quality of Representation in State Capital Cases.

This subtitle establishes grants to improve the quality of capital litigation. Grants would be provided for the improvement of both the prosecution and the representation of defendants. It provides the process of applying for such grants and requires states receiving such grants to submit annual reports to the Attorney General on the use of the grant money.

Sec. 321. Capital Representation Improvement Grants.

This section would authorize 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. ‘Legal representation’ would mean legal counsel and investigative, expert, and other services necessary for competent representation. Grants would be required to be used to establish, implement, or improve an effective system for providing competent legal representation to indigents charged with an offense subject to capital punishment; indigents who have been sentenced to death and who seek appellate or collateral relief in state court; and indigents who have been

sentenced to death and who seek review in the Supreme Court. Funds could not be used to fund representation in specific capital cases.

An 'effective system' would be defined as 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 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.

Sec. 322. Capital Prosecution Improvement Grants.

This section would authorize grants to improve the ability of prosecutors to effectively represent the public in state capital cases. Grants would need to 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 provide support and assistance to the families of murder victims.

Sec. 323. Applications.

This section would establish the process through which states would apply for grants under this subtitle. It provides that a state desiring a grant under this subtitle would need to submit an application to the Attorney General containing: (1) a certification by an officer of the state that the said state authorizes capital punishment under its laws; (2) a description of the communities to be served by the grant; (3) a long-term statewide strategy and detailed implementation plan; and, (4) assurances that federal funds received under this subtitle would be used to supplement and not supplant non-federal funds that would otherwise be available for activities funded under this subtitle, and allocated in accordance with section 326(b) of this act.

Sec. 324 State Reports.

This section would require that each state receiving funds under this subtitle submit an annual report to the Attorney General that identifies the activities carried out with such funds and, explains how each activity complies with the terms and conditions of the grant. The reports would be made available to the public.

A report with respect to grants for the improvement of capital representation would need to include an accounting of all amounts expended; an explanation of the means by which the state implements the assignment of qualified attorneys; and how the state requires the establishment of a qualified attorney roster, assigns attorneys from the roster, conduct training programs for capital defense attorneys, monitors the performance and attendance of the appointed attorneys, and ensures the funding for the full cost of competent legal representation by the defense team including experts selected by counsel.

A report with respect to grants for capital prosecution improvement would need to include an accounting of all expenses; and a description of the means by which the state plans to meet the requirements set out in section 322 of this act.

Sec. 325. Evaluations by Inspector General and Administrative Remedies.

This section would direct 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. If the Inspector General finds that the state is not in compliance with the terms and conditions of the grant, he must specify any deficiencies and make recommendations for corrective action. In conducting such evaluations, the Inspector General would have to 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 would have to consult with appropriate state authorities to enter into a plan for corrective action and report to Congress on the results. If a state fails to comply with the corrective action, the Attorney General would discontinue all further funding under sections 321 and 322 and require the state to return the funds that had been granted for that fiscal year. Nonetheless, a state could reapply for a grant in another fiscal year.

No less than 2.5% of the funds appropriated to carry out this subtitle for each fiscal years 2005 through 2009 would be made available to the Inspector General for these inspections.

Sec. 326. Authorization of Appropriations.

This section would authorize \$100 million a year for each of fiscal years 2005 through 2009 to carry out this subtitle. Each state that would receive a grant under this subtitle would have to allocate the funds equally between the uses in section 321 and 322, except for the 2.5% allocated for the inspections by the Inspector General.

Subtitle C - - Compensation for the Wrongfully Convicted

Sec. 331. Increased Compensation in Federal Cases for the Wrongfully Convicted.

This section proposes to amend 28 U.S.C. § 2513(e) by increasing 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 of incarceration in non-capital cases, and \$100,000 per year of incarceration in capital cases.

Sec. 332. Sense of Congress Regarding Compensation in State Death Penalty Cases.

This section would express 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.