

ter and provisions set out as a note under this section] and the amendments made by this section shall take effect on the date of enactment of this Act [Oct. 30, 2004] and shall apply with respect to any offense committed, and to any judgment of conviction entered, before, on, or after that date of enactment.”

#### SHORT TITLE OF 2004 AMENDMENT

Pub. L. 108-405, title IV, § 401, Oct. 30, 2004, 118 Stat. 2278, provided that: “This title [enacting this chapter and sections 14136e and 14163 to 14163e of Title 42, The Public Health and Welfare, amending section 2513 of Title 28, Judiciary and Judicial Procedure, and enacting provisions set out as notes under this section and section 14136 of Title 42] may be cited as the ‘Innocence Protection Act of 2004’.”

#### SYSTEM FOR REPORTING MOTIONS

Pub. L. 108-405, title IV, § 411(b), Oct. 30, 2004, 118 Stat. 2284, provided that:

“(1) **ESTABLISHMENT.**—The Attorney General shall establish a system for reporting and tracking motions filed in accordance with section 3600 of title 18, United States Code.

“(2) **OPERATION.**—In operating the system established under paragraph (1), the Federal courts shall provide to the Attorney General any requested assistance in operating such a system and in ensuring the accuracy and completeness of information included in that system.

“(3) **REPORT.**—Not later than 2 years after the date of enactment of this Act [Oct. 30, 2004], the Attorney General shall submit a report to Congress that contains—

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

“(B) whether DNA testing was ordered pursuant to such a motion;

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

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

“(4) **ADDITIONAL INFORMATION.**—The report required to be submitted under paragraph (3) may include any other information the Attorney General determines to be relevant in assessing the operation, utility, or costs of section 3600 of title 18, United States Code, as added by this title, and any recommendations the Attorney General may have relating to future legislative action concerning that section.”

### § 3600A. Preservation of biological evidence

(a) **IN GENERAL.**—Notwithstanding any other provision of law, the Government shall preserve biological evidence that was secured in the investigation or prosecution of a Federal offense, if a defendant is under a sentence of imprisonment for such offense.

(b) **DEFINED TERM.**—For purposes of this section, the term “biological evidence” means—

(1) a sexual assault forensic examination kit; or

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

(c) **APPLICABILITY.**—Subsection (a) shall not apply if—

(1) a court has denied a request or motion for DNA testing of the biological evidence by the defendant under section 3600, and no appeal is pending;

(2) the defendant knowingly and voluntarily waived the right to request DNA testing of the biological evidence in a court proceeding conducted after the date of enactment of the Innocence Protection Act of 2004;

(3) after a conviction becomes final and the defendant has exhausted all opportunities for

direct review of the conviction, the defendant is notified that the biological evidence may be destroyed and the defendant does not file a motion under section 3600 within 180 days of receipt of the notice;

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

(B) the Government takes reasonable measures to remove and preserve portions of the material evidence sufficient to permit future DNA testing; or

(5) the biological evidence has already been subjected to DNA testing under section 3600 and the results included the defendant as the source of such evidence.

(d) **OTHER PRESERVATION REQUIREMENT.**—Nothing in this section shall preempt or supersede any statute, regulation, court order, or other provision of law that may require evidence, including biological evidence, to be preserved.

(e) **REGULATIONS.**—Not later than 180 days after the date of enactment of the Innocence Protection Act of 2004, the Attorney General shall promulgate regulations to implement and enforce this section, including appropriate disciplinary sanctions to ensure that employees comply with such regulations.

(f) **CRIMINAL PENALTY.**—Whoever knowingly and intentionally destroys, alters, or tampers with biological evidence that is required to be preserved under this section with the intent to prevent that evidence from being subjected to DNA testing or prevent the production or use of that evidence in an official proceeding, shall be fined under this title, imprisoned for not more than 5 years, or both.

(g) **HABEAS CORPUS.**—Nothing in this section shall provide a basis for relief in any Federal habeas corpus proceeding.

(Added Pub. L. 108-405, title IV, § 411(a)(1), Oct. 30, 2004, 118 Stat. 2283.)

#### REFERENCES IN TEXT

The date of enactment of the Innocence Protection Act of 2004, referred to in subsecs. (c)(2) and (e), is the date of enactment of Pub. L. 108-405, which was approved Oct. 30, 2004.

### CHAPTER 229—POSTSENTENCE ADMINISTRATION

| Subchapter                   | Sec. <sup>1</sup> |
|------------------------------|-------------------|
| <b>A. Probation .....</b>    | <b>3601</b>       |
| <b>B. Fines .....</b>        | <b>3611</b>       |
| <b>C. Imprisonment .....</b> | <b>3621</b>       |

#### PRIOR PROVISIONS

A prior chapter 229 (§ 3611 et seq.) was repealed (except sections 3611, 3612, 3615, 3617 to 3620 which were renumbered sections 3665 to 3671, respectively), by Pub. L. 98-473, title II, §§ 212(a)(1), (2), 235(a)(1), Oct. 12, 1984, 98 Stat. 1987, 2031, as amended, effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such repeal. See Effective Date note set out under section 3551 of this title.

Section 3611 renumbered section 3665 of this title.

Section 3612 renumbered section 3666 of this title.

Section 3613, act June 25, 1948, ch. 645, 62 Stat. 840, related to fines for setting grass and timber fires.

<sup>1</sup> Editorially supplied.