

REFERENCES IN TEXT

This Act, referred to in subsec. (b), is Pub. L. 106-468, Nov. 9, 2000, 114 Stat. 2027, known as Kristen's Act, which enacted this section and provisions set out as notes under this section and section 10101 of this title. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was enacted as part of Kristen's Act, and not as part of Jennifer's Law which comprises this chapter.

Section was formerly classified to section 14665 of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

AUTHORIZATION OF APPROPRIATIONS

Pub. L. 106-468, §3, Nov. 9, 2000, 114 Stat. 2028, provided that: "There are authorized to be appropriated to carry out this Act [enacting this section and provisions set out as a note under section 10101 of this title] \$1,000,000 each year for fiscal years 2001 through 2004."

CHAPTER 407—DNA IDENTIFICATION**SUBCHAPTER I—COLLECTION AND ANALYSIS OF SAMPLES**

Sec.	
40701.	The Debbie Smith DNA Backlog Grant Program.
40702.	Collection and use of DNA identification information from certain Federal offenders.
40703.	Collection and use of DNA identification information from certain District of Columbia offenders.
40704.	Conditions of release generally.
40705.	Authorization of appropriations.
40706.	Privacy protection standards.

SUBCHAPTER II—TRAINING, TECHNOLOGY, RESEARCH, AND EXPANDED USE

40721.	Report to Congress on plans to modify CODIS system.
40722.	DNA training and education for law enforcement, correctional personnel, and court officers.
40723.	Sexual assault forensic exam program grants.
40724.	DNA research and development.
40725.	National Forensic Science Commission.
40726.	DNA identification of missing persons.
40727.	Kirk Bloodsworth Post-Conviction DNA Testing Grant Program.
40728.	Establishment of best practices for evidence retention.

SUBCHAPTER III—DNA ARRESTEE COLLECTION PROCESSES

40741.	Definitions.
40742.	Grants to States to implement DNA arrestee collection processes.
40743.	Expungement of profiles.
40744.	Offset of funds appropriated.

SUBCHAPTER I—COLLECTION AND ANALYSIS OF SAMPLES**§ 40701. The Debbie Smith DNA Backlog Grant Program****(a) Authorization of grants**

The Attorney General may make grants to eligible States or units of local government for use by the State or unit of local government 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 collected under applicable legal authority.

(2) To carry out, for inclusion in such Combined DNA Index System, DNA analyses of samples from crime scenes, including samples from rape kits, samples from other sexual assault evidence, and samples taken in cases without an identified suspect.

(3) To increase the capacity of laboratories owned by the State or by units of local government to carry out DNA analyses of samples specified in paragraph (1) or (2).

(4) To collect DNA samples specified in paragraph (1).

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

(6) To implement a DNA arrestee collection process consistent with subchapter III of this chapter.

(7) To conduct an audit consistent with subsection (n) of the samples of sexual assault evidence that are in the possession of the State or unit of local government and are awaiting testing.

(8) To ensure that the collection and processing of DNA evidence by law enforcement agencies from crimes, including sexual assault and other violent crimes against persons, is carried out in an appropriate and timely manner and in accordance with the protocols and practices developed under subsection (o)(1).

(b) Eligibility

For a State or unit of local government to be eligible to receive a grant under this section, the chief executive officer of the State or unit of local government shall submit to the Attorney General an application in such form and containing such information as the Attorney General may require. The application shall, as required by the Attorney General—

(1) provide assurances that the State or unit of local government 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 12592(b)(3) of this title;

(3) include a certification that the State or unit of local government 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 or unit of local government 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);

(5) specify that portion of grant amounts that the State or unit of local government shall use for the purpose specified in subsection (a)(3);

(6) if submitted by a unit of local government, certify that the unit of local government has taken, or is taking, all necessary

steps to ensure that it is eligible to include, directly or through a State law enforcement agency, all analyses of samples for which it has requested funding in the Combined DNA Index System; and

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

(c) Formula for distribution of grants

(1) In general

The Attorney General shall distribute grant amounts, and establish appropriate grant conditions under this section, in conformity with a formula or formulas that are designed to effectuate a distribution of funds among eligible States and units of local government that—

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

(B) allocates grants among eligible entities fairly and efficiently to address jurisdictions in which significant backlogs exist, by considering—

(i) the number of offender and casework samples awaiting DNA analysis in a jurisdiction;

(ii) the population in the jurisdiction; and

(iii) the number of part 1 violent crimes in the jurisdiction.

(2) Minimum amount

The Attorney General shall allocate to each State not less than 0.50 percent of the total amount appropriated in a fiscal year for grants under this section, except that the United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands shall each be allocated 0.125 percent of the total appropriation.

(3) Limitation

Grant amounts distributed under paragraph (1) shall be awarded to conduct DNA analyses of samples from casework or from victims of crime under subsection (a)(2) in accordance with the following limitations:

(A) For fiscal year 2009, not less than 40 percent of the grant amounts shall be awarded for purposes under subsection (a)(2).

(B) For each of the fiscal years 2014 through 2019, not less than 40 percent of the grant amounts shall be awarded for purposes under subsection (a)(2).

(C) For each of fiscal years 2014 through 2019, not less than 75 percent of the total grant amounts shall be awarded for a combination of purposes under paragraphs (1), (2), and (3) of subsection (a).

(4) Allocation of grant awards for audits

For each of fiscal years 2014 through 2022, not less than 5 percent, but not more than 7 percent, of the grant amounts distributed under paragraph (1) shall, if sufficient applications to justify such amounts are received by the Attorney General, be awarded for purposes described in subsection (a)(7), provided that none of the funds required to be distributed under this paragraph shall decrease or other-

wise limit the availability of funds required to be awarded to States or units of local government under paragraph (3).

(d) Analysis of samples

(1) In general

A plan pursuant to subsection (b)(1) 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; or

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

(2) Quality assurance standards

(A) The Director of the Federal Bureau of Investigation shall maintain and make available to States and units of local government 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 12592(b) of this title.

(3) Use of vouchers or contracts for certain purposes

(A) In general

A grant for the purposes specified in paragraph (1), (2), or (5) of subsection (a) may be made in the form of a voucher or contract for laboratory services, even if the laboratory makes a reasonable profit for the services.

(B) Redemption

A voucher or contract under subparagraph (A) may be redeemed at a laboratory operated on a nonprofit or for-profit basis, by a private entity that satisfies quality assurance standards and has been approved by the Attorney General.

(C) Payments

The Attorney General may use amounts authorized under subsection (j) to make payments to a laboratory described under subparagraph (B).

(e) Restrictions on use of funds

(1) Nonsupplanting

Funds made available pursuant to this section shall not be used to supplant State or local government funds, but shall be used to increase the amount of funds that would, in the absence of Federal funds, be made available from State or local government sources for the purposes of this Act.

(2) Administrative costs

A State or unit of local government may not use more than 3 percent of the funds it receives from this section for administrative expenses.

(f) Reports to the Attorney General

Each State or unit of local government 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 or unit of local government for such fiscal year;

(2) a summary of the information provided by States or units of local government receiving grants under this section; and

(3) a description of the priorities and plan for awarding grants among eligible States and units of local government, and how such plan will ensure the effective use of DNA technology to solve crimes and protect public safety.

(h) Expenditure records

(1) In general

Each State or unit of local government 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 or unit of local government 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

There are authorized to be appropriated to the Attorney General for grants under subsection (a) \$151,000,000 for each of fiscal years 2015 through 2019.

(k) Use of funds for accreditation and audits

The Attorney General may distribute not more than 1 percent of the grant amounts under subsection (j)—

(1) to States or units of local government to defray the costs incurred by laboratories operated by each such State or unit of local government in preparing for accreditation or re-accreditation;

(2) in the form of additional grants to States, units of local government, or nonprofit professional organizations of persons actively involved in forensic science and nationally

recognized within the forensic science community—

(A) to defray the costs of external audits of laboratories operated by such State or unit of local government, which participates in the National DNA Index System, to determine whether the laboratory is in compliance with quality assurance standards;

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

(C) to support future capacity building efforts; and

(3) in the form of additional grants to nonprofit professional associations actively involved in forensic science and nationally recognized within the forensic science community to defray the costs of training persons who conduct external audits of laboratories operated by States and units of local government and which participate in the National DNA Index System.

(l) Use of funds for other forensic sciences

The Attorney General may award a grant under this section to a State or unit of local government to alleviate a backlog of cases with respect to a forensic science other than DNA analysis if the State or unit of local government—

(1) certifies to the Attorney General that in such State or unit—

(A) all of the purposes set forth in subsection (a) have been met;

(B) a significant backlog of casework is not waiting for DNA analysis; and

(C) there is no need for significant laboratory equipment, supplies, or additional personnel for timely DNA processing of casework or offender samples; and

(2) demonstrates to the Attorney General that such State or unit requires assistance in alleviating a backlog of cases involving a forensic science other than DNA analysis.

(m) External audits and remedial efforts

In the event that a laboratory operated by a State or unit of local government which has received funds under this Act has undergone an external audit conducted to determine whether the laboratory is in compliance with standards established by the Director of the Federal Bureau of Investigation, and, as a result of such audit, identifies measures to remedy deficiencies with respect to the compliance by the laboratory with such standards, the State or unit of local government shall implement any such remediation as soon as practicable.

(n) Use of funds for auditing sexual assault evidence backlogs

(1) Eligibility

The Attorney General may award a grant under this section to a State or unit of local government for the purpose described in subsection (a)(7) only if the State or unit of local government—

(A) submits a plan for performing the audit of samples described in such subsection; and

(B) includes in such plan a good-faith estimate of the number of such samples.

(2) Grant conditions

A State or unit of local government receiving a grant for the purpose described in subsection (a)(7)—

(A) may not enter into any contract or agreement with any non-governmental vendor laboratory to conduct an audit described in subsection (a)(7); and

(B) shall—

(i) not later than 1 year after receiving the grant, complete the audit referred to in paragraph (1)(A) in accordance with the plan submitted under such paragraph;

(ii) not later than 60 days after receiving possession of a sample of sexual assault evidence that was not in the possession of the State or unit of local government at the time of the initiation of an audit under paragraph (1)(A), subject to paragraph (4)(F), include in any required reports under clause (v), the information listed under paragraph (4)(B);

(iii) for each sample of sexual assault evidence that is identified as awaiting testing as part of the audit referred to in paragraph (1)(A)—

(I) assign a unique numeric or alphanumeric identifier to each sample of sexual assault evidence that is in the possession of the State or unit of local government and is awaiting testing; and

(II) identify the date or dates after which the State or unit of local government would be barred by any applicable statutes of limitations from prosecuting a perpetrator of the sexual assault to which the sample relates;

(iv) provide that—

(I) the chief law enforcement officer of the State or unit of local government, respectively, is the individual responsible for the compliance of the State or unit of local government, respectively, with the reporting requirements described in clause (v); or

(II) the designee of such officer may fulfill the responsibility described in subclause (I) so long as such designee is an employee of the State or unit of local government, respectively, and is not an employee of any governmental laboratory or non-governmental vendor laboratory; and

(v) comply with all grantee reporting requirements described in paragraph (4).

(3) Extension of initial deadline

The Attorney General may grant an extension of the deadline under paragraph (2)(B)(i) to a State or unit of local government that demonstrates that more time is required for compliance with such paragraph.

(4) Sexual assault forensic evidence reports

(A) In general

For not less than 12 months after the completion of an initial count of sexual assault evidence that is awaiting testing during an

audit referred to in paragraph (1)(A), a State or unit of local government that receives a grant award under subsection (a)(7) shall, not less than every 60 days, submit a report to the Department of Justice, on a form prescribed by the Attorney General, which shall contain the information required under subparagraph (B).

(B) Contents of reports

A report under this paragraph shall contain the following information:

(i) The name of the State or unit of local government filing the report.

(ii) The period of dates covered by the report.

(iii) The cumulative total number of samples of sexual assault evidence that, at the end of the reporting period—

(I) are in the possession of the State or unit of local government at the reporting period;

(II) are awaiting testing; and

(III) the State or unit of local government has determined should undergo DNA or other appropriate forensic analyses.

(iv) The cumulative total number of samples of sexual assault evidence in the possession of the State or unit of local government that, at the end of the reporting period, the State or unit of local government has determined should not undergo DNA or other appropriate forensic analyses, provided that the reporting form shall allow for the State or unit of local government, at its sole discretion, to explain the reasoning for this determination in some or all cases.

(v) The cumulative total number of samples of sexual assault evidence in a total under clause (iii) that have been submitted to a laboratory for DNA or other appropriate forensic analyses.

(vi) The cumulative total number of samples of sexual assault evidence identified by an audit referred to in paragraph (1)(A) or under paragraph (2)(B)(ii) for which DNA or other appropriate forensic analysis has been completed at the end of the reporting period.

(vii) The total number of samples of sexual assault evidence identified by the State or unit of local government under paragraph (2)(B)(ii), since the previous reporting period.

(viii) The cumulative total number of samples of sexual assault evidence described under clause (iii) for which the State or unit of local government will be barred within 12 months by any applicable statute of limitations from prosecuting a perpetrator of the sexual assault to which the sample relates.

(C) Publication of reports

Not later than 7 days after the submission of a report under this paragraph by a State or unit of local government, the Attorney General shall, subject to subparagraph (D), publish and disseminate a facsimile of the

full contents of such report on an appropriate internet website.

(D) Personally identifiable information

The Attorney General shall ensure that any information published and disseminated as part of a report under this paragraph, which reports information under this subsection, does not include personally identifiable information or details about a sexual assault that might lead to the identification of the individuals involved.

(E) Optional reporting

The Attorney General shall—

(i) at the discretion of a State or unit of local government required to file a report under subparagraph (A), allow such State or unit of local government, at their sole discretion, to submit such reports on a more frequent basis; and

(ii) make available to all States and units of local government the reporting form created pursuant to subparagraph (A), whether or not they are required to submit such reports, and allow such States or units of local government, at their sole discretion, to submit such reports for publication.

(F) Samples exempt from reporting requirement

The reporting requirements described in paragraph (2) shall not apply to a sample of sexual assault evidence that—

(i) is not considered criminal evidence (such as a sample collected anonymously from a victim who is unwilling to make a criminal complaint); or

(ii) relates to a sexual assault for which the prosecution of each perpetrator is barred by a statute of limitations.

(5) Definitions

In this subsection:

(A) Awaiting testing

The term “awaiting testing” means, with respect to a sample of sexual assault evidence, that—

(i) the sample has been collected and is in the possession of a State or unit of local government;

(ii) DNA and other appropriate forensic analyses have not been performed on such sample; and

(iii) the sample is related to a criminal case or investigation in which final disposition has not yet been reached.

(B) Final disposition

The term “final disposition” means, with respect to a criminal case or investigation to which a sample of sexual assault evidence relates—

(i) the conviction or acquittal of all suspected perpetrators of the crime involved;

(ii) a determination by the State or unit of local government in possession of the sample that the case is unfounded; or

(iii) a declaration by the victim of the crime involved that the act constituting the basis of the crime was not committed.

(C) Possession

(i) In general

The term “possession”, used with respect to possession of a sample of sexual assault evidence by a State or unit of local government, includes possession by an individual who is acting as an agent of the State or unit of local government for the collection of the sample.

(ii) Rule of construction

Nothing in clause (i) shall be construed to create or amend any Federal rights or privileges for non-governmental vendor laboratories described in regulations promulgated under section 12591 of this title.

(o) Establishment of protocols, technical assistance, and definitions

(1) Protocols and practices

Not later than 18 months after March 7, 2013, the Director, in consultation with Federal, State, and local law enforcement agencies and government laboratories, shall develop and publish a description of protocols and practices the Director considers appropriate for the accurate, timely, and effective collection and processing of DNA evidence, including protocols and practices specific to sexual assault cases, which shall address appropriate steps in the investigation of cases that might involve DNA evidence, including—

(A) how to determine—

(i) which evidence is to be collected by law enforcement personnel and forwarded for testing;

(ii) the preferred order in which evidence from the same case is to be tested; and

(iii) what information to take into account when establishing the order in which evidence from different cases is to be tested;

(B) the establishment of a reasonable period of time in which evidence is to be forwarded by emergency response providers, law enforcement personnel, and prosecutors to a laboratory for testing;

(C) the establishment of reasonable periods of time in which each stage of analytical laboratory testing is to be completed;

(D) systems to encourage communication within a State or unit of local government among emergency response providers, law enforcement personnel, prosecutors, courts, defense counsel, crime laboratory personnel, and crime victims regarding the status of crime scene evidence to be tested; and

(E) standards for conducting the audit of the backlog for DNA case work in sexual assault cases required under subsection (n).

(2) Technical assistance and training

The Director shall make available technical assistance and training to support States and units of local government in adopting and implementing the protocols and practices developed under paragraph (1) on and after the date on which the protocols and practices are published.

(3) Definitions

In this subsection, the terms “awaiting testing” and “possession” have the meanings given those terms in subsection (n).

(Pub. L. 106-546, § 2, Dec. 19, 2000, 114 Stat. 2726; Pub. L. 108-405, title II, §§ 202, 206, Oct. 30, 2004, 118 Stat. 2266, 2272; Pub. L. 109-162, title X, § 1003, Jan. 5, 2006, 119 Stat. 3085; Pub. L. 110-360, § 2, Oct. 8, 2008, 122 Stat. 4008; Pub. L. 112-253, § 6, Jan. 10, 2013, 126 Stat. 2409; Pub. L. 113-4, title X, §§ 1002, 1004, 1006, Mar. 7, 2013, 127 Stat. 127, 131, 134; Pub. L. 113-182, § 2, Sept. 29, 2014, 128 Stat. 1918; Pub. L. 115-107, § 3(a), Jan. 8, 2018, 131 Stat. 2266.)

AMENDMENT OF SECTION

For termination of amendment by section 1006 of Pub. L. 113-4, see Termination Date of 2013 Amendment note below.

REFERENCES IN TEXT

Subchapter III of this chapter, referred to in subsec. (a)(6), was in the original “the Katie Sepich Enhanced DNA Collection Act of 2012”, meaning Pub. L. 112-253, Jan. 10, 2013, 126 Stat. 2407, which is classified principally to subchapter III (§ 40741 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title of 2013 Act note set out under section 10101 of this title and Tables.

This Act, referred to in subsecs. (e)(1), (k)(2)(B), and (m), is Pub. L. 106-546, Dec. 19, 2000, 114 Stat. 2726, known as the DNA Analysis Backlog Elimination Act of 2000. For complete classification of this Act to the Code, see Short Title of 2000 Act note set out under section 10101 of this title and Tables.

CODIFICATION

Section was formerly classified to section 14135 of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section. Some section numbers or references in amendment notes below reflect the classification of such sections or references prior to editorial reclassification.

AMENDMENTS

2018—Subsec. (c)(4). Pub. L. 115-107 substituted “2022” for “2017”.

2014—Subsec. (c)(3)(B). Pub. L. 113-182, § 2(1)(A), substituted “2014 through 2019” for “2010 through 2018”.

Subsec. (c)(3)(C). Pub. L. 113-182, § 2(1)(B), substituted “2019” for “2018”.

Subsec. (j). Pub. L. 113-182, § 2(2), substituted “2015 through 2019” for “2009 through 2014”.

2013—Subsec. (a)(6). Pub. L. 113-4, § 1006, struck out par. (6) which read as follows: “To implement a DNA arrestee collection process consistent with sections 14137 to 14137c of this title.” See Termination Date of 2013 Amendment note below.

Pub. L. 112-253 added par. (6).

Subsec. (a)(7), (8). Pub. L. 113-4, § 1002(1), added pars. (7) and (8).

Subsec. (c)(3)(B). Pub. L. 113-4, § 1004(a), substituted “2018” for “2014”.

Subsec. (c)(3)(C). Pub. L. 113-4, § 1004(b), added subpar. (C).

Subsec. (c)(4). Pub. L. 113-4, § 1002(2), added par. (4).

Subsec. (n). Pub. L. 113-4, § 1006, struck out subsec. (n) which related to use of funds for auditing sexual assault evidence backlogs. See Termination Date of 2013 Amendment note below.

Pub. L. 113-4, § 1002(3), added subsec. (n).

Subsec. (o). Pub. L. 113-4, § 1002(3), added subsec. (o).
2008—Subsec. (c)(3). Pub. L. 110-360, § 2(1)(B), which directed redesignation of subpar. (E) and subpar. (A), was executed by redesignating subpar. (E) as (A), to reflect the probable intent of Congress.

Subsec. (c)(3)(A). Pub. L. 110-360, § 2(1)(A), struck out subpar. (A) which read as follows: “For fiscal year 2005, not less than 50 percent of the grant amounts shall be awarded for purposes under subsection (a)(2) of this section.”

Subsec. (c)(3)(B) to (D). Pub. L. 110-360, § 2(1)(A), (C), added subpar. (B) and struck out former subpars. (B) to (D) which read as follows:

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

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

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

Subsec. (j). Pub. L. 110-360, § 2(2), amended subsec. (j) generally. Prior to amendment, subsec. (j) authorized to be appropriated to the Attorney General for grants under subsection (a) \$151,000,000 for each of fiscal years 2005 through 2009.

2006—Subsec. (a)(1). Pub. L. 109-162 substituted “collected under applicable legal authority” for “taken from individuals convicted of a qualifying State offense (as determined under subsection (b)(3) of this section)”.

2004—Pub. L. 108-405, § 202(a)(1), substituted “The Debbie Smith DNA Backlog Grant Program” for “Authorization of grants” in section catchline.

Subsec. (a). Pub. L. 108-405, § 202(a)(2)(A), in introductory provisions, inserted “or units of local government” after “eligible States” and “or unit of local government” after “State”.

Subsec. (a)(2). Pub. L. 108-405, § 202(a)(2)(B), inserted “, including samples from rape kits, samples from other sexual assault evidence, and samples taken in cases without an identified suspect” before period at end.

Subsec. (a)(3). Pub. L. 108-405, § 202(a)(2)(C), (b)(1)(A), struck out “within the State” after “local government” and inserted “(1) or” before “(2)”.

Subsec. (a)(4), (5). Pub. L. 108-405, § 202(b)(1)(B), added pars. (4) and (5).

Subsec. (b). Pub. L. 108-405, § 202(a)(3)(A), in introductory provisions, inserted “or unit of local government” after “State” in two places and “, as required by the Attorney General” after “application shall”.

Subsec. (b)(1). Pub. L. 108-405, § 202(a)(3)(B), inserted “or unit of local government” after “State”.

Subsec. (b)(3). Pub. L. 108-405, § 202(a)(3)(C), inserted “or unit of local government” after “that the State”.

Subsec. (b)(4). Pub. L. 108-405, § 202(a)(3)(D), inserted “or unit of local government” after “State” and struck out “and” at end.

Subsec. (b)(5). Pub. L. 108-405, § 202(a)(3)(E), inserted “or unit of local government” after “State” and substituted semicolon for period at end.

Subsec. (b)(6). Pub. L. 108-405, § 202(a)(3)(F), added par. (6).

Subsec. (b)(7). Pub. L. 108-405, § 202(b)(2), added par. (7).

Subsec. (c). Pub. L. 108-405, § 202(b)(3), amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: “A State that proposes to allocate grant amounts under paragraph (4) or (5) of subsection (b) of this section for the purposes specified in paragraph (2) or (3) of subsection (a) of this section 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.”

Subsec. (d)(1). Pub. L. 108-405, § 202(a)(4)(A), substituted “A plan pursuant to subsection (b)(1)” for “The plan” in introductory provisions and struck out “within the State” after “local government” in subpars. (A) and (B).

Subsec. (d)(2)(A). Pub. L. 108-405, § 202(a)(4)(B), inserted “and units of local government” after “States”.

Subsec. (d)(3). Pub. L. 108-405, § 206, amended heading and text of par. (3) generally. Prior to amendment, text

read as follows: “A grant for the purposes specified in paragraph (1) or (2) of subsection (a) of this section 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 laboratory for the analysis of DNA samples using amounts authorized for those purposes under subsection (j) of this section.”

Subsec. (e)(1). Pub. L. 108-405, §202(a)(5)(A), inserted “or local government” after “State” in two places.

Subsec. (e)(2). Pub. L. 108-405, §202(a)(5)(B), inserted “or unit of local government” after “State”.

Subsec. (f). Pub. L. 108-405, §202(a)(6), inserted “or unit of local government” after “State” in introductory provisions.

Subsec. (g)(1). Pub. L. 108-405, §202(a)(7)(A), inserted “or unit of local government” after “State”.

Subsec. (g)(2). Pub. L. 108-405, §202(a)(7)(B), inserted “or units of local government” after “States”.

Subsec. (g)(3). Pub. L. 108-405, §202(b)(4), added par. (3).

Subsec. (h). Pub. L. 108-405, §202(a)(8), inserted “or unit of local government” after “State” in pars. (1) and (2).

Subsec. (j)(1) to (5). Pub. L. 108-405, §202(b)(5), substituted pars. (1) to (5) for former pars. (1) and (2) which read 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.”

Subsec. (k) to (m). Pub. L. 108-405, §202(b)(6), added subsecs. (k) to (m).

TERMINATION DATE OF 2013 AMENDMENT

Pub. L. 113-4, title X, §1006, Mar. 7, 2013, 127 Stat. 134, as amended by Pub. L. 115-107, §3(b), Jan. 8, 2018, 131 Stat. 2266, provided that: “Effective on December 31, 2023, subsections (a)(6) and (n) of section 2 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135(a)(6) and (n)) [now 34 U.S.C. 40701(a)(6), (n)] are repealed.”

REPORTS TO CONGRESS

Pub. L. 113-4, title X, §1003, Mar. 7, 2013, 127 Stat. 131, provided that: “Not later than 90 days after the end of each fiscal year for which a grant is made for the purpose described in section 2(a)(7) of the DNA Analysis Backlog Elimination Act of 2000 [34 U.S.C. 40701(a)(7)], as amended by section 1002, the Attorney General shall submit to Congress a report that—

“(1) lists the States and units of local government that have been awarded such grants and the amount of the grant received by each such State or unit of local government;

“(2) states the number of extensions granted by the Attorney General under section 2(n)(3) of the DNA Analysis Backlog Elimination Act of 2000 [34 U.S.C. 40701(n)(3)], as added by section 1002; and

“(3) summarizes the processing status of the samples of sexual assault evidence identified in Sexual Assault Forensic Evidence Reports established under section 2(n)(4) of the DNA Analysis Backlog Elimination Act of 2000 [34 U.S.C. 40701(n)(4)], including the number of samples that have not been tested.”

OVERSIGHT AND ACCOUNTABILITY

Pub. L. 113-4, title X, §1005, Mar. 7, 2013, 127 Stat. 132, provided that: “All grants awarded by the Department of Justice that are authorized under this title [amend-

ing this section and enacting provisions set out as notes under this section and section 10101 of this title] shall be subject to the following:

“(1) AUDIT REQUIREMENT.—Beginning in fiscal year 2013, and each fiscal year thereafter, the Inspector General of the Department of Justice shall conduct audits of recipients of grants under this title to prevent waste, fraud, and abuse of funds by grantees. The Inspector General shall determine the appropriate number of grantees to be audited each year.

“(2) MANDATORY EXCLUSION.—A recipient of grant funds under this title that is found to have an unresolved audit finding shall not be eligible to receive grant funds under this title during the 2 fiscal years beginning after the 12-month period described in paragraph (5).

“(3) PRIORITY.—In awarding grants under this title, the Attorney General shall give priority to eligible entities that, during the 3 fiscal years before submitting an application for a grant under this title, did not have an unresolved audit finding showing a violation in the terms or conditions of a Department of Justice grant program.

“(4) REIMBURSEMENT.—If an entity is awarded grant funds under this Act [Pub. L. 113-4, see Tables for classification] during the 2-fiscal-year period in which the entity is barred from receiving grants under paragraph (2), the Attorney General shall—

“(A) deposit an amount equal to the grant funds that were improperly awarded to the grantee into the General Fund of the Treasury; and

“(B) seek to recoup the costs of the repayment to the fund from the grant recipient that was erroneously awarded grant funds.

“(5) DEFINED TERM.—In this section, the term ‘unresolved audit finding’ means an audit report finding in the final audit report of the Inspector General of the Department of Justice that the grantee has utilized grant funds for an unauthorized expenditure or otherwise unallowable cost that is not closed or resolved within a 12-month period beginning on the date when the final audit report is issued.

“(6) NONPROFIT ORGANIZATION REQUIREMENTS.—

“(A) DEFINITION.—For purposes of this section and the grant programs described in this title, the term ‘nonprofit organization’ means an organization that is described in section 501(c)(3) of the Internal Revenue Code of 1986 [26 U.S.C. 501(c)(3)] and is exempt from taxation under section 501(a) of such Code.

“(B) PROHIBITION.—The Attorney General shall not award a grant under any grant program described in this title to a nonprofit organization that holds money in offshore accounts for the purpose of avoiding paying the tax described in section 511(a) of the Internal Revenue Code of 1986 [26 U.S.C. 511(a)].

“(C) DISCLOSURE.—Each nonprofit organization that is awarded a grant under a grant program described in this title and uses the procedures prescribed in regulations to create a rebuttable presumption of reasonableness for the compensation of its officers, directors, trustees and key employees, shall disclose to the Attorney General, in the application for the grant, the process for determining such compensation, including the independent persons involved in reviewing and approving such compensation, the comparability data used, and contemporaneous substantiation of the deliberation and decision. Upon request, the Attorney General shall make the information disclosed under this subsection available for public inspection.

“(7) ADMINISTRATIVE EXPENSES.—Unless otherwise explicitly provided in authorizing legislation, not more than 7.5 percent of the amounts authorized to be appropriated under this title may be used by the Attorney General for salaries and administrative expenses of the Department of Justice.

“(8) CONFERENCE EXPENDITURES.—

“(A) LIMITATION.—No amounts authorized to be appropriated to the Department of Justice under

this title may be used by the Attorney General or by any individual or organization awarded discretionary funds through a cooperative agreement under this Act, to host or support any expenditure for conferences that uses more than \$20,000 in Department funds, unless the Deputy Attorney General or the appropriate Assistant Attorney General, Director, or principal deputy as the Deputy Attorney General may designate, provides prior written authorization that the funds may be expended to host a conference.

“(B) WRITTEN APPROVAL.—Written approval under subparagraph (A) shall include a written estimate of all costs associated with the conference, including the cost of all food and beverages, audio/visual equipment, honoraria for speakers, and any entertainment.

“(C) REPORT.—The Deputy Attorney General shall submit an annual report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives on all conference expenditures approved by operation of this paragraph.

“(9) PROHIBITION ON LOBBYING ACTIVITY.—

“(A) IN GENERAL.—Amounts authorized to be appropriated under this title may not be utilized by any grant recipient to—

“(i) lobby any representative of the Department of Justice regarding the award of grant funding; or

“(ii) lobby any representative of a Federal, state, local, or tribal government regarding the award of grant funding.

“(B) PENALTY.—If the Attorney General determines that any recipient of a grant under this title has violated subparagraph (A), the Attorney General shall—

“(i) require the grant recipient to repay the grant in full; and

“(ii) prohibit the grant recipient from receiving another grant under this title for not less than 5 years.”

SENSE OF CONGRESS REGARDING THE OBLIGATION OF GRANTEE STATES TO ENSURE ACCESS TO POST-CONVICTION DNA TESTING AND COMPETENT COUNSEL IN CAPITAL CASES

Pub. L. 106-561, § 4, Dec. 21, 2000, 114 Stat. 2791, provided that:

“(a) FINDINGS.—Congress finds that—

“(1) over the past decade, deoxyribonucleic acid testing (referred to in this section as ‘DNA testing’) has emerged as the most reliable forensic technique for identifying criminals when biological material is left at a crime scene;

“(2) because of its scientific precision, DNA testing can, in some cases, conclusively establish the guilt or innocence of a criminal defendant;

“(3) in other cases, DNA testing may not conclusively establish guilt or innocence, but may have significant probative value to a finder of fact;

“(4) DNA testing was not widely available in cases tried prior to 1994;

“(5) new forensic DNA testing procedures have made it possible to get results from minute samples that could not previously be tested, and to obtain more informative and accurate results than earlier forms of forensic DNA testing could produce, resulting in some cases of convicted inmates being exonerated by new DNA tests after earlier tests had failed to produce definitive results;

“(6) DNA testing can and has resulted in the post-conviction exoneration of more than 75 innocent men and women, including some under sentence of death;

“(7) in more than a dozen cases, post-conviction DNA testing that has exonerated an innocent person has also enhanced public safety by providing evidence that led to the apprehension of the actual perpetrator;

“(8) experience has shown that it is not unduly burdensome to make DNA testing available to inmates in appropriate cases;

“(9) under current Federal and State law, it is difficult to obtain post-conviction DNA testing because of time limits on introducing newly discovered evidence;

“(10) the National Commission on the Future of DNA Evidence, a Federal panel established by the Department of Justice and comprised of law enforcement, judicial, and scientific experts, has urged that post-conviction DNA testing be permitted in the relatively small number of cases in which it is appropriate, notwithstanding procedural rules that could be invoked to preclude such testing, and notwithstanding the inability of an inmate to pay for the testing;

“(11) only a few States have adopted post-conviction DNA testing procedures;

“(12) States have received millions of dollars in DNA-related grants, and more funding is needed to improve State forensic facilities and to reduce the nationwide backlog of DNA samples from convicted offenders and crime scenes that need to be tested or retested using upgraded methods;

“(13) States that accept such financial assistance should not deny the promise of truth and justice for both sides of our adversarial system that DNA testing offers;

“(14) post-conviction DNA testing and other post-conviction investigative techniques have shown that innocent people have been sentenced to death in this country;

“(15) a constitutional error in capital cases is incompetent defense lawyers who fail to present important evidence that the defendant may have been innocent or does not deserve to be sentenced to death; and

“(16) providing quality representation to defendants facing loss of liberty or life is essential to fundamental due process and the speedy final resolution of judicial proceedings.

“(b) SENSE OF CONGRESS.—It is the sense of Congress that—

“(1) Congress should condition forensic science-related grants to a State or State forensic facility on the State’s agreement to ensure post-conviction DNA testing in appropriate cases; and

“(2) Congress should work with the States to improve the quality of legal representation in capital cases through the establishment of standards that will assure the timely appointment of competent counsel with adequate resources to represent defendants in capital cases at each stage of the proceedings.”

Pub. L. 106-546, § 11, Dec. 19, 2000, 114 Stat. 2735, enacted provisions substantially identical to those enacted by Pub. L. 106-561, § 4, set out above.

§ 40702. Collection and use of DNA identification information from certain Federal offenders

(a) Collection of DNA samples

(1) From individuals in custody

(A) The Attorney General may, as prescribed by the Attorney General in regulation, collect DNA samples from individuals who are arrested, facing charges, or convicted or from non-United States persons who are detained under the authority of the United States. The Attorney General may delegate this function within the Department of Justice as provided in section 510 of title 28 and may also authorize and direct any other agency of the United States that arrests or detains individuals or supervises individuals facing charges to carry out any function and exercise any power of the Attorney General under this section.

(B) The Director of the Bureau of Prisons shall collect a DNA sample from each individual in the custody of the Bureau of Prisons