

H.R.5107

Justice for All Act of 2004 (Enrolled as Agreed to or Passed by Both House and Senate)

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*One Hundred Eighth Congress
of the
United States of America
AT THE SECOND SESSION*

Begun and held at the City of Washington on Tuesday,

the twentieth day of January, two thousand and four

An Act

To protect crime victims' rights, to eliminate the substantial backlog of DNA samples collected from crime scenes and convicted offenders, to improve and expand the DNA testing capacity of Federal, State, and local crime laboratories, to increase research and development of new DNA testing technologies, to develop new training programs regarding the collection and use of DNA evidence, to provide post-conviction testing of DNA evidence to exonerate the innocent, to improve the performance of counsel in State capital cases, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Sec. 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.'

(2) CLERICAL AMENDMENT- The chapter analysis for part II of title 18, United States Code, is amended by inserting after the item relating to chapter 228 the following:

3600'

(b) SYSTEM FOR REPORTING MOTIONS-

(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, 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.

(c) EFFECTIVE DATE; APPLICABILITY- This section and the amendments made by this section shall take effect on the date of enactment of this Act and shall apply with respect to any offense committed, and to any judgment of conviction entered, before, on, or after that date of enactment.