

DEBBIE SMITH REAUTHORIZATION ACT OF 2008

JULY 14, 2008.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. CONYERS, from the Committee on the Judiciary,  
submitted the following

R E P O R T

[To accompany H.R. 5057]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 5057) to reauthorize the Debbie Smith DNA Backlog Grant Program, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

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THE AMENDMENTS

The amendments are as follows:  
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Debbie Smith Reauthorization Act of 2008”.

**SEC. 2. REAUTHORIZATION OF THE DEBBIE SMITH DNA BACKLOG GRANT PROGRAM.**

(a) AMENDMENTS.—Section 2 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135) is amended—

(1) in subsection (a)—

(A) by redesignating paragraphs (3) through (5) as paragraphs (4) through (6), respectively;

(B) by inserting after paragraph (2) the following new paragraph:

“(3) To carry out, for inclusion in such Combined DNA Index System, DNA analyses of samples from missing or unidentified persons, including samples from the remains, personal effects, or biological relatives of such persons.”;

(C) in paragraph (4) (as redesignated by subparagraph (A)), by striking “paragraph (1) or (2)” and inserting “paragraph (1), (2), or (3)”; and

(D) in paragraph (5) (as so redesignated), by striking “in paragraph (1)” and inserting “in paragraphs (1) and (3)”; and

(2) in subsection (b)—

(A) in paragraph (6), by striking “and” after the semicolon;

(B) in paragraph (7), by striking the period and inserting “; and”; and

(C) by adding at the end the following new paragraph:

“(8) provide assurances that the State or unit of local government has implemented, or will implement not later than 2 years after the date of such application, a process under which the State or unit, respectively, provides for the collection, for purposes of inclusion in the Combined DNA Index System of the Federal Bureau of Investigation, of DNA samples from all felons who are imprisoned in a prison of such State or unit, respectively, (including all felons imprisoned in such prison or unit, respectively, as of the date of the enactment of the Debbie Smith Reauthorization Act of 2008).”;

(3) in subsection (c)(3)—

(A) by striking subparagraphs (A) through (D);

(B) by redesignating subparagraph (E) as subparagraph (A); and

(C) by inserting after subparagraph (A) (as so redesignated) the following new subparagraph:

“(B) For each of the fiscal years 2010 through 2014, not less than 40 percent of the grant amounts shall be awarded for purposes under subsection (a)(2) of this section.”; and

(4) by amending subsection (j) to read as follows:

“(j) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Attorney General for grants under subsection (a)—

“(1) \$151,000,000 for fiscal year 2009; and

“(2) \$200,000,000 for each of the fiscal years 2010 through 2014.”.

(b) EFFECTIVE DATE.—The amendments made by paragraph (2) of subsection (a) shall apply to grants made on or after January 1, 2009.

**SEC. 3. STUDY TO ASSESS THE DNA ANALYSIS BACKLOG.**

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

(1) despite the funding provided for more than 5 fiscal years by the Federal Government to assist in the reduction of the DNA analysis backlog, the backlog continues to exist in many crime laboratories around the country;

(2) as a consequence of the continuance of the DNA analysis backlog, many violent crimes that could be solved remain unsolved, and individuals who have been wrongfully convicted who could be determined to be innocent through DNA testing remain in prison; and

(3) the causes of the DNA analysis backlog are complex and require a thorough and detailed study.

(b) STUDY REQUIRED.—The National Academy of Sciences shall, in consultation with no fewer than 3 forensic science practitioners from States and units of local government, conduct a study to determine the resources and other requirements necessary to eliminate the DNA analysis backlog and to prevent such a backlog from reoccurring after it has been eliminated.

(c) REPORT.—Not later than one year after the date of the enactment of this Act, the National Academy of Sciences shall submit to the Attorney General and to Congress a report on the results of the study conducted under subsection (b).

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section \$2,000,000 for fiscal year 2009.

**SEC. 4. INCENTIVES FOR PERMANENT STATE-GENERATED DNA FUNDING STREAMS.**

(a) MATCHING FUNDS.—For each fiscal year beginning after the date of the enactment of this Act, each eligible DNA funding State, with respect to a funding mechanism described in subsection (b) implemented by such State, shall be eligible for Federal matching funds to carry out such mechanism in an amount determined to be appropriate by the Attorney General.

(b) **ELIGIBLE DNA FUNDING STATES DESCRIBED.**—For purposes of this section, the term “eligible DNA funding State” means a State that demonstrates to the satisfaction of the Attorney General that the State has implemented (and applies) a permanent funding mechanism that generates funds, whether by fees or penalties, that are allocated by the State only for purposes of the analysis of DNA samples for law enforcement purposes.

(c) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 2009 through 2013.

**SEC. 5. EVALUATION OF DNA INTEGRITY AND SECURITY.**

(a) **EVALUATION.**—Not later than one year after the date of the enactment of this Act, and annually thereafter, the Attorney General shall evaluate the integrity and security of DNA collection and storage practices and procedures at a sample of crime laboratories in the United States to determine the extent to which DNA samples are tampered with or are otherwise contaminated in crime laboratories. Such sample shall be a representative sample of crime laboratories in the United States.

(b) **REPORT.**—The Attorney General shall annually report to Congress the findings of the evaluation conducted under subsection (a).

(c) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated to carry out this section \$10,000,000 for each of the fiscal years 2009 through 2015.

**SEC. 6. INCENTIVES FOR STATES TO COLLECT DNA SAMPLES FROM INDIVIDUALS ARRESTED FOR OR CHARGED WITH MURDER AND SEX CRIMES.**

(a) **IN GENERAL.**—In the case of a State that receives funds for a fiscal year under subpart 1 of part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 and that has an implemented enhanced State DNA collection process for such year, the amount of funds that would otherwise be allocated for that fiscal year to the State under such subpart shall be increased by 10 percent.

(b) **ENHANCED STATE DNA COLLECTION PROCESS DEFINED.**—For purposes of this section, the term “enhanced State DNA collection process” means, with respect to a State, a process under which the State provides for the collection, for purposes of inclusion in the Combined DNA Index System of the Federal Bureau of Investigation, of DNA samples from individuals who are at least 18 years of age and who are arrested for or charged with a criminal offense under State law that consists of—

(1) murder or voluntary manslaughter or any attempt to commit murder or voluntary manslaughter; or

(2) an element involving a sexual act or sexual contact with another, any other criminal offense that is a specified offense against a minor (as defined in section 111(7) of the Sex Offender Registration and Notification Act (42 U.S.C. 16911(7))), or an attempt to commit such an offense.

The expungement requirements under section 210304(d) of the DNA Identification Act of 1994 (42 U.S.C. 14132(d)) shall apply to any samples collected pursuant to this section for purposes of inclusion in the Combined DNA Index System.

(c) **EFFECTIVE DATE.**—The provisions of this section shall apply to grants made on or after the date of the enactment of this Act.

(d) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated, in addition to funds made available under section 508 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3758), such sums as may be necessary to carry out this section for each of the fiscal years 2009 through 2013.

**SEC. 7. ADDITIONAL STUDY AND REPORT ON INVESTIGATIONS AND PROSECUTIONS RELATED TO CODIS “HITS”.**

(a) **STUDY.**—The Inspector General of the Department of Justice shall carry out a study on—

(1) the number of instances in which DNA samples that are matched with samples included in the Combined DNA Index System database of the Federal Bureau of Investigation that are followed up on by appropriate law enforcement entities;

(2) the number of such matches described in paragraph (1) that are brought to the attention of a prosecutor;

(3) the number of the investigations described in paragraph (2) that result in a trial; and

(4) in the case of matches described in paragraph (1) that were not followed up on by appropriate law enforcement entities, were not brought to the attention of a prosecutor, or did not result in a trial—

(A) the reasons why such matches were not pursued accordingly; and

(B) the resulting impact on the criminal justice system, including whether other crimes were committed that could have been prevented if such matches had been pursued accordingly.

(b) REPORT.—Not later than one year after the date of the enactment of this Act, the Inspector General shall submit to Congress a report on the study under subsection (a).

**SEC. 8. NATIONAL DNA INDEX SYSTEM ADVISORY BOARD.**

(a) ESTABLISHMENT.—The Attorney General shall establish the National DNA Index System Advisory Board (in this section referred to as the “NDIS Advisory Board”) to develop and, if appropriate, periodically revise standards and requirements for the use of and access to the index described in section 210304(a) of the DNA Identification Act of 1994 (42 U.S.C. 14132(a)).

(b) MEMBERSHIP.—Not later than 30 days after the date of the enactment of this Act, the Director of the Federal Bureau of Investigation shall appoint members to the NDIS Advisory Board as follows:

- (1) At least 4 directors of State or local forensic laboratories.
- (2) One representative from the Federal Bureau of Investigation.
- (3) One representative from the Scientific Working Group on DNA Analysis Methods.
- (4) One representative from the Office of Legal Policy of the Department of Justice.
- (5) One representative from the National Institute of Justice.
- (6) One representative from the National Academies of Science.
- (7) One State or local prosecutor.
- (8) One criminal defense attorney.
- (9) One representative from the National Institute of Standards and Technology.
- (10) One member of the academic community who specializes in DNA privacy issues.
- (11) One crime victim or crime victim advocate.
- (12) One representative of a State police agency.
- (13) One representative of a local police agency.

(c) APPLICATION OF FACA.—The Federal Advisory Committee Act (5 U.S.C. App.), other than section 14 of such Act, shall apply to the NDIS Advisory Board.

(d) NOTICE, COMMENT, AND PUBLICATION.—The Attorney General shall provide for public notice and comment for each standard developed under this section and for publication of each such standard.

(e) PAY AND REIMBURSEMENT.—

(1) NO COMPENSATION FOR MEMBERS OF NDIS ADVISORY BOARD.—Except as provided in paragraph (2), a member of the NDIS Advisory Board may not receive pay, allowances, or benefits by reason of their service on the Board.

(2) TRAVEL EXPENSES.—Each member shall receive travel expenses, including per diem in lieu of subsistence under subchapter I of chapter 57 of title 5, United States Code.

(f) QUALITY ASSURANCE STANDARDS.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the NDIS Advisory Board shall develop (and provide recommendations to the Director of the Federal Bureau of Investigation on) standards governing the use of and access to the index described in subsection (a). The NDIS Advisory Board shall periodically update such standards as appropriate. The standards shall provide for the expedited uploading into such index by State and local forensic laboratories of DNA analyses of samples obtained from persons convicted of crimes, including such analyses processed by private forensic laboratories.

(2) CONSIDERATION OF ADDITIONAL PROPOSALS TO EXPEDITE PROCESSING AND UPLOADING OF DNA SAMPLES.—Not later than one year after the date of the enactment of this Act, the NDIS Advisory Board shall also provide recommendations to the Director of the Federal Bureau of Investigation on the following:

(A) The feasibility and desirability of entering into agreements with private forensic laboratories to enable direct access to the Combined DNA Index System of the Federal Bureau of Investigation for the purpose of uploading DNA analyses of samples obtained from persons convicted of crimes.

(B) The feasibility and desirability of providing for more limited technical review audits of DNA analyses of samples prior to uploading such data into the Combined DNA Index System.

(C) The feasibility and desirability of permitting greater participation in the technical review of DNA analyses of samples by contractor personnel.

(D) The feasibility and desirability of allowing immediate upload of DNA profiles obtained from crime scene samples and rape kits.

(3) ISSUANCE OF POLICIES, PROCEDURES, AND STANDARDS.—The Director of the Federal Bureau of Investigation, with the approval of the Attorney General, after taking into consideration the recommended policies, procedures, and standards recommended by the NDIS Advisory Board under this section shall issue (and revise from time to time) policies, procedures, and standards relating to the administration of the National DNA Index System including, standards for quality assurance, testing the proficiency of forensic laboratories, and forensic analysts, in conducting analyses of DNA.

(g) EXCLUSIVITY OF POLICIES, PROCEDURES, AND STANDARDS.—The policies, procedures, and standards issued under subsection (f)(3) shall be the exclusive policies, procedures, and standards issued with respect to State, local, and private laboratories that participate in the National DNA Index System. Policies, procedures, laboratory audit requirements, standards, and any other manner of regulation or control (other than any condition imposed pursuant to a grant awarded through the Department of Justice) may not be inconsistent with, or expand upon provisions contained in such approved policies, procedures, or standards.

#### **SEC. 9. DNA TECHNOLOGY ENHANCEMENT GRANTS.**

(a) IN GENERAL.—The Attorney General shall establish a grant program under which the Attorney General may make grants to States and units of local government to purchase forensic DNA technology or to improve such technology.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated \$50,000,000 for each of the fiscal years 2009 through 2013 to carry out subsection (a).

#### **SEC. 10. REAUTHORIZATIONS OF CERTAIN DNA-RELATED GRANT PROGRAMS.**

(a) DNA TRAINING AND EDUCATION FOR LAW ENFORCEMENT, CORRECTIONAL PERSONNEL, AND COURT OFFICERS.—Section 303(b) of the Justice For All Act of 2004 (42 U.S.C. 14136(b)) is amended by striking “2009” and inserting “2014”.

(b) SEXUAL ASSAULT FORENSIC EXAM PROGRAM GRANTS.—Section 304(c) of such Act (42 U.S.C. 14136a(c)) is amended by striking “2009” and inserting “2014”.

(c) DNA RESEARCH AND DEVELOPMENT.—Section 305(c) of such Act (42 U.S.C. 14136b(c)) is amended by striking “2009” and inserting “2014”.

(d) DNA IDENTIFICATION OF MISSING PERSONS.—Section 308(c) of such Act (42 U.S.C. 14136d(c)) is amended by striking “2009” and inserting “2014”.

Amend the title so as to read:

A bill to reauthorize the Debbie Smith DNA Backlog Grant Program, and for other purposes.

### **PURPOSE AND SUMMARY**

Re-authorization of the Debbie Smith DNA Backlog Grant Program will facilitate the development of a comprehensive national DNA data base against which samples from current crime scenes can be compared. It will allow laboratories to reduce unacceptable delays in processing DNA samples that currently exist in many States. Finally, it will provide law enforcement and prosecutors important tools to quickly identify and prosecute criminals, reducing not only the costs of investigation and prosecution, but also the risk of prosecuting the wrong person. Ultimately, it is likely to have a significant deterrent effect on the commission of crimes.

### **BACKGROUND AND NEED FOR THE LEGISLATION**

#### **DNA EVIDENCE BACKLOG ELIMINATION**

In recent years, law enforcement agencies have realized the critical value that DNA evidence has in helping more quickly solve cases. Often, a DNA sample result can scientifically link a perpetrator to a crime, or prove a defendant’s innocence, with virtual certainty.

Unfortunately, many of the Nation's Federal and State criminal forensics laboratories are currently overwhelmed with samples awaiting DNA analysis. As of 2003, a comprehensive report funded by the Department of Justice estimated the total crime DNA backlog at more than 48,000 samples.<sup>1</sup> While the National Institute of Justice has not yet issued its current backlog reports, it is likely that the current DNA backlog is similarly high.

Due to this backlog and resulting long delays in processing DNA samples at public laboratories, many local police departments have been resorting to sending DNA samples to private labs for timely analyses, costing upwards of \$700 per sample.<sup>2</sup> As recently as February 2008, at least one public laboratory had a reported delay time of 16 months for the processing of a DNA sample.<sup>3</sup>

The consequences of this backlog are unacceptable. Too many dangerous criminals remain on the streets, free to commit new crimes. Too many victims live in fear of another attack. And too many innocent people may remain unjustly incarcerated until the real perpetrator can be discovered and apprehended.

Named for Debbie Smith, who was kidnapped in her Virginia home and raped in a nearby woods by a stranger, the Debbie Smith DNA Backlog Grant Program authorized grant money to States to collect samples from crime scenes and convicted persons, conduct DNA analyses, and enter these results into a comprehensive national database. Debbie Smith's attacker remained unidentified for more than 6 years, until a DNA sample collected from a convicted person serving time in a Virginia State prison revealed his involvement in her rape. Although eventually identified, the 6 years between crime and identification allowed Ms. Smith's attacker to continue engaging in criminal activity.

PUBLIC LAW 106-546, THE INITIAL DNA ANALYSIS BACKLOG  
ELIMINATION ACT

Recognizing that the backlog of biological evidence that had to be entered in State databases was preventing law enforcement officials from solving many of the Nation's most heinous crimes, Congress passed the DNA Analysis Backlog Elimination Act of 2000.<sup>4</sup> That law authorized the United States Attorney General to make grants to eligible States to collect DNA samples from convicted individuals and crime scenes for inclusion in the Federal DNA database, the Combined DNA Index System (CODIS), and to increase the capacity of State crime laboratories. In addition, the Act required the Bureau of Prisons and the military to collect DNA samples from convicted individuals and forward these samples for analysis, and required the FBI to expand its CODIS database to include the analyses of these DNA samples.

The Act also amended the criminal code to require all defendants on probation or supervised release to cooperate with the collection of a DNA sample. The Act expressed the sense of Congress that State grants should be conditioned upon the State's agreement to ensure post-conviction DNA testing in appropriate cases; and that Congress should work with the States to improve the quality of

<sup>2</sup> *Ohio Crime Lab Shortages Cause Headaches*, THE IDAHO STATESMAN, Mar. 19, 2008.

<sup>3</sup> Jessica Logan, *Riverside Police Seek Grant for More DNA Testing in Old Cases*, THE PRESS-ENTERPRISE, Feb. 28, 2008.

<sup>4</sup> Pub. L. No. 106-546 (2000).

legal representation in capital cases. Finally, the Act authorized such sums as might be necessary for the Attorney General to carry out the Act.

#### REAUTHORIZATION AS THE DEBBIE SMITH DNA BACKLOG DGRANT PROGRAM

In 2004, DNA backlog elimination was incorporated into the Justice for All Act of 2004,<sup>5</sup> and was renamed the Debbie Smith DNA Backlog Grant Program.<sup>6</sup> While the Act authorized \$151 million for each of fiscal years 2005 through 2009, Congress did not appropriate any money until fiscal year 2008, at which time it appropriated \$147.4 million.

The Debbie Smith DNA Backlog Grant Program expires at the end of fiscal year 2009. H.R. 5057, the “Debbie Smith Reauthorization Act,” would reauthorize the Program for fiscal years 2009 through 2014. H.R. 5057 specifies that not less than 40 percent of the total amount awarded in grants must be used for DNA analyses of samples from crime scenes, from rape kits and other sexual assault evidence, and from cases that do not have an identified suspect.

There is strong State support for the Debbie Smith Reauthorization Act of 2008. To date, at least nine States, including Alabama, Alaska, Illinois, Kentucky, Michigan, Ohio, Tennessee, Vermont, and West Virginia, have introduced or passed resolutions urging Congress to reauthorize the Debbie Smith DNA Backlog Grant Program.

#### HEARINGS

The Committee’s Subcommittee on Crime, Terrorism, and Homeland Security held 1 day of hearings on H.R. 5057, on April 10, 2008. Testimony was received from Representative Carolyn B. Maloney of New York, sponsor of H.R. 5057; Debbie Smith, the namesake of the Program; Dr. David W. Hagy, Director, National Institute of Justice, Office of Justice Programs, U.S. Department of Justice; Peter Marone, Director, State of Virginia Crime Labs; Peter Neufeld, Esq., Co-founder and Co-Director of the Innocence Project; and Allen Newton, who was exonerated through post-conviction DNA testing. Additional material was submitted by Human Rights Watch and the American Civil Liberties Union.

#### COMMITTEE CONSIDERATION

On May 13, 2008, the Subcommittee on Crime, Terrorism, and Homeland Security met in open session and ordered the bill, H.R. 5057, favorably reported, without amendment, by voice vote, a quorum being present. On June 11, 2008, the Committee met in open session and ordered the bill, H.R. 5057, favorably reported, with an amendment, by voice vote, a quorum being present.

#### COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following

<sup>5</sup>Pub. L. No. 108–405 (2004).

<sup>6</sup>Pub. L. No. 108–9405, tit. II (2004) (codified at 42 U.S.C. § 14135).

rollcall vote occurred during the Committee's consideration of H.R. 5057:

1. An amendment by Mr. Schiff offering grant incentives to States that collect DNA samples from suspects arrested for or charged with murder, voluntary manslaughter, and sex offenses for inclusion in CODIS. Passed 19 to 12.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman .....		X	
Mr. Berman .....	X		
Mr. Boucher .....			
Mr. Nadler .....			
Mr. Scott .....		X	
Mr. Watt .....		X	
Ms. Lofgren .....	X		
Ms. Jackson Lee .....		X	
Ms. Waters .....		X	
Mr. Delahunt .....			
Mr. Wexler .....			
Ms. Sanchez .....		X	
Mr. Cohen .....		X	
Mr. Johnson .....		X	
Ms. Sutton .....		X	
Mr. Gutierrez .....			
Mr. Sherman .....	X		
Ms. Baldwin .....			
Mr. Weiner .....	X		
Mr. Schiff .....	X		
Mr. Davis .....			
Ms. Wasserman Schultz .....	X		
Mr. Ellison .....		X	
Mr. Smith (Texas) .....	X		
Mr. Sensenbrenner, Jr. ....	X		
Mr. Coble .....		X	
Mr. Gallegly .....	X		
Mr. Goodlatte .....		X	
Mr. Chabot .....	X		
Mr. Lungren .....	X		
Mr. Cannon .....	X		
Mr. Keller .....	X		
Mr. Issa .....	X		
Mr. Pence .....	X		
Mr. Forbes .....	X		
Mr. King .....	X		
Mr. Feeney .....			
Mr. Franks .....			
Mr. Gohmert .....	X		
Mr. Jordan .....	X		
Total .....	19	12	

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.



## NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 5057, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, July 10, 2008.*

Hon. JOHN CONYERS, Jr., *Chairman,*  
*Committee on the Judiciary,*  
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has completed the enclosed cost estimate for H.R. 5057, the Debbie Smith Reauthorization Act of 2008.

The CBO staff contacts for this estimate are Mark Grabowicz (for Federal costs), who can be reached at 226–2860, and Melissa Merrell (for the impact on State and local governments), who can be reached at 225–3220.

Sincerely,

PETER R. ORSZAG,  
DIRECTOR.

Enclosure.

cc: Honorable Lamar S. Smith,  
Ranking Member.

*H.R. 5057—Debbie Smith Reauthorization Act of 2008.*

## SUMMARY

H.R. 5057 would authorize the appropriation of about \$1.6 billion over the 2009–2015 period for Department of Justice (DOJ) programs to enhance the analysis of DNA samples relating to criminal investigations. In addition, CBO estimates that the bill would authorize the appropriation of about \$75 million over the 2009–2013 period for other DOJ programs. Assuming appropriation of the necessary amounts, we estimate that implementing H.R. 5057 would cost about \$875 million over the 2009–2013 period, with remaining amounts spent in subsequent years. Enacting the bill would not affect direct spending or revenues.

H.R. 5057 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on State, local, or tribal governments.

## ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 5057 is shown in the following table. The costs of this legislation fall within budget function 750 (administration of justice).

## BASIS OF ESTIMATE

For this estimate, CBO assumes that the necessary amounts will be appropriated near the start of each fiscal year and that spending will follow the historical spending patterns for the existing programs or similar activities.

By Fiscal Year, in Millions of Dollars

	2008	2009	2010	2011	2012	2013
SPENDING SUBJECT TO APPROPRIATION <sup>1</sup>						
Spending Under Current Law for Programs Authorized by H.R. 5057:						
Budget Authority/Authorization Level <sup>1</sup>	152	211	0	0	0	0
Estimated Outlays	118	145	124	80	51	27
Proposed Changes:						
Programs with Specified Funding Levels:						
Authorization Level	0	62	320	320	320	320
Estimated Outlays	0	22	93	181	240	286
Other Programs:						
Estimated Authorization Level	0	16	15	15	15	15
Estimated Outlays	0	4	8	11	13	15
Total Changes:						
Estimated Authorization Level	0	78	335	335	335	335
Estimated Outlays	0	26	101	192	253	301
Spending Under H.R. 5057:						
Estimated Authorization Level	152	289	335	335	335	335
Estimated Outlays	118	171	225	272	304	328

1. The 2009 level is the amount authorized under current law for that year for the programs authorized by the bill. For those programs, the Congress appropriated \$152 million for 2008.

### *Programs with Specified Funding Levels*

H.R. 5057 would authorize the appropriation of about \$1.6 billion over the 2009–2015 period for DOJ programs to enhance the analysis of DNA samples relating to criminal investigations. The bill would authorize the appropriation of:

- \$200 million annually over the 2010–2014 period for the Debbie Smith DNA Backlog grant program;
- \$50 million annually over the 2009–2013 period for DOJ to make grants to State and local governments to improve the technology used in forensic DNA analysis;
- \$30 million annually over the 2010–2014 period for DOJ to make grants to State and local governments and other entities for programs to collect and use DNA evidence relating to sexual assaults; and
- A total of \$220 million over the 2009–2015 period for other programs to enhance DNA collection and analysis.

### *Other Programs*

In addition to the specified authorizations identified above, CBO estimates that H.R. 5057 would authorize the appropriation of about \$75 million over the 2009–2013 period for other DOJ programs.

The bill would authorize the appropriation of whatever funds are necessary for fiscal years 2009 through 2013 to increase by 10 per-

cent the amounts received by States through DOJ's Byrne Justice Assistance Grants if States collect DNA samples from certain types of offenders. The Congress appropriated \$170 million for fiscal year 2008 for this grant program, and we expect that nearly all States would qualify for the increased funding. Assuming that appropriations for this program for fiscal years 2009 through 2013 are similar to the 2008 level, CBO estimates that this provision would require additional funding of about \$15 million annually over the 2009–2013 period.

In addition, CBO estimates that it would cost about \$1 million in fiscal year 2009 and less than \$500,000 for each subsequent year for a DOJ study on the use of DNA samples by prosecutors, a national advisory board to develop standards for use of a Federal DNA database, and other programs.

#### INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

H.R. 5057 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on State, local, or tribal governments. Assuming appropriation of authorized amounts, State and local governments would receive about \$800 million over the 2009–2013 period for DNA collections and analysis. Any costs to those governments would be incurred voluntarily.

#### ESTIMATE PREPARED BY:

Federal Costs: Mark Grabowicz (226–2860).

Impact on State, Local, and Tribal Governments: Melissa Merrell (225–3220).

Impact on the Private Sector: Paige Piper/Bach (226–2940).

#### ESTIMATE APPROVED BY:

Peter H. Fontaine

Assistant Director for Budget Analysis.

#### PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 5057 will assist States in reducing the backlog of DNA samples in the Nation's labs, thereby assisting law enforcement in solving and deterring crimes.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8, clause 18 of the Constitution.

#### ADVISORY ON EARMARKS

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 5057 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

## SECTION-BY-SECTION ANALYSIS

The following discussion describes the bill as reported by the Committee.

*Sec. 1. Short title.* Section 1 sets forth the short title of the bill as the “Debbie Smith Reauthorization Act of 2008.”

*Sec. 2. Reauthorization of the Debbie Smith DNA Backlog Elimination Act of 2000.* Section 2 renews the United States Attorney General’s authority under section 14135 of title 42 of the United States Code to issue grants to States to help eliminate the backlog of DNA samples in the Nation’s labs.

This section also amends the current provision in three ways. First, it raises the funding authorization from \$151 million in fiscal year 2009 to \$200 million for each of fiscal years 2010 through 2014. Second, it broadens the allowable uses of grants funded under this Program beyond criminal investigation, to include analyzing and cataloguing biological samples from missing persons and relatives of missing persons to help identify those missing persons. Finally, it conditions eligibility for a grant upon a State conducting mandatory DNA testing for all felons imprisoned within its system, for including the DNA samples in CODIS, within 2 years of receiving the grant.

*Sec 3. Study to Assess the DNA Analysis Backlog.* Section 3 authorizes \$2 million for a study to be completed by the National Academies of Science that would identify the best practices for eliminating the backlog of DNA samples in the Nation’s labs. Despite 5 years of funding to help eliminate the backlog, the backlog remains high. This study would identify the necessary level of funding, training needs, personnel levels, and any other pertinent information that would eliminate the backlog and prevent it from recurring. The National Academies of Science would submit the findings to the Attorney General of the United States within 1 year after the date of enactment of the Act.

*Sec. 4. Incentives for Permanent State-Generated DNA Funding Programs.* Section 4 authorizes additional funding, beyond that authorized in section 2, to match funds that a State generates by fees or penalties to analyze DNA samples for law enforcement purposes. Funding is authorized for each of fiscal years 2009 through 2013.

*Sec. 5. Evaluation of DNA Integrity and Security.* Section 5 authorizes \$10 million for each fiscal year 2009 through 2015 for the United States Attorney General to evaluate the integrity and security of DNA collection practices and security of collected samples. The evaluation would be conducted through a representative audit sample of labs around the country each year, the results of which the Attorney General is to report to Congress.

*Sec. 6. Incentives for States to Collect DNA Samples from Individuals Arrested for or Charged with Murder and Sex Crimes.* Section 6 provides grant incentives for States that mandate DNA testing for arrestees charged with murder, voluntary manslaughter, and certain sex offenses for including the results of the testing in CODIS. States that conduct such mandatory testing would be eligible for a 10 percent increase in the funding they receive under section 3758 of title 42 of the United States Code, the Edward Byrne Memorial Justice Assistance Grant Program, and funds are authorized as are necessary to carry out this section.

Persons whose DNA profiles are entered in CODIS under this section pursuant to arrest, but who are not convicted may under certain circumstances have their DNA profiles removed from CODIS. Such expungement procedures are governed by section 210304(d) of the DNA Identification Act of 1994.<sup>7</sup>

*Sec. 7. Additional Study and Report on Investigations and Prosecutions Related to CODIS "Hits."* Section 7 directs the Attorney General to conduct a study to determine the effectiveness of investigative use of matches of DNA crime scene evidence to DNA samples taken from individuals. The study must detail the number of matches, the investigations that resulted in trial and conviction, and the cases that did not result in trial, or in conviction. For those instances where convictions were not attained, the study must detail the reasons why and whether there were any consequence that the lack of conviction had on the criminal justice system (i.e., whether the suspect has committed further crimes that could have been prevented). The study must be completed not later than 1 year after the date of enactment of the Act, and the Attorney General is to report the results of the study to Congress.

*Sec. 8. National DNA Index System Advisory Board.* Section 8 directs the Attorney General to establish the National DNA Index System Advisory Board to ensure diversity of views in the development of standards and requirements for the use of and access to the national DNA index, and provides for the establishment of standards providing for the expedited uploading of certain DNA profiles.

*Sec. 9. DNA Technology Enhancement Grants.* Section 9 directs the Attorney General to establish a grant program under which the Attorney General may make grants to States and local governments for improving their DNA technology. This grant program is authorized \$50 million for each of fiscal years 2009 through 2013.

*Sec. 10. Reauthorization of Certain DNA-Related Grant Programs.* Section 10 reauthorizes section 303(b) of the Justice for All Act of 2000,<sup>8</sup> which is currently set to expire at the end of fiscal year 2009, for five additional years. The grants under this section fund sexual assault forensic exams, DNA research and development, and DNA identification of missing persons.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

#### **DNA ANALYSIS BACKLOG ELIMINATION ACT OF 2000**

\* \* \* \* \*

#### **SEC. 2. 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:

<sup>7</sup> 42 U.S.C. § 14132(d).

<sup>8</sup> 42 U.S.C. § 14136(b).

(1) \* \* \*

\* \* \* \* \*

(3) *To carry out, for inclusion in such Combined DNA Index System, DNA analyses of samples from missing or unidentified persons, including samples from the remains, personal effects, or biological relatives of such persons.*

[(3)] (4) 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)] paragraph (1), (2), or (3).

[(4)] (5) To collect DNA samples specified [in paragraph (1)] in paragraphs (1) and (3).

[(5)] (6) 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.

\* \* \* \* \*

(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) \* \* \*

\* \* \* \* \*

(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)[.]; and

(8) *provide assurances that the State or unit of local government has implemented, or will implement not later than 2 years after the date of such application, a process under which the State or unit, respectively, provides for the collection, for purposes of inclusion in the Combined DNA Index System of the Federal Bureau of Investigation, of DNA samples from all felons who are imprisoned in a prison of such State or unit, respectively, (including all felons imprisoned in such prison or unit, respectively, as of the date of the enactment of the Debbie Smith Reauthorization Act of 2008).*

(c) FORMULA FOR DISTRIBUTION OF GRANTS.—

(1) \* \* \*

\* \* \* \* \*

(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 2005, not less than 50 percent of the grant amounts shall be awarded for purposes under subsection (a)(2).

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

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

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

[(E)] (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 2010 through 2014, not less than 40 percent of the grant amounts shall be awarded for purposes under subsection (a)(2) of this section.*

[(j) AUTHORIZATION OF APPROPRIATIONS.—Amounts are authorized to be appropriated to the Attorney General for grants under subsection (a) as follows:

- [(1) \$151,000,000 for fiscal year 2005;
- [(2) \$151,000,000 for fiscal year 2006;
- [(3) \$151,000,000 for fiscal year 2007;
- [(4) \$151,000,000 for fiscal year 2008; and
- [(5) \$151,000,000 for fiscal year 2009.]]

(j) AUTHORIZATION OF APPROPRIATIONS.—*There is authorized to be appropriated to the Attorney General for grants under subsection (a)—*

- (1) *\$151,000,000 for fiscal year 2009; and*
- (2) *\$200,000,000 for each of the fiscal years 2010 through 2014.*

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## JUSTICE FOR ALL ACT OF 2004

\* \* \* \* \*

## TITLE III—DNA SEXUAL ASSAULT JUSTICE ACT OF 2004

\* \* \* \* \*

### SEC. 303. DNA TRAINING AND EDUCATION FOR LAW ENFORCEMENT, CORRECTIONAL PERSONNEL, AND COURT OFFICERS.

(a) \* \* \*

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated \$12,500,000 for each of fiscal years 2005 through [2009] 2014 to carry out this section.

### SEC. 304. SEXUAL ASSAULT FORENSIC EXAM PROGRAM GRANTS.

(a) \* \* \*

\* \* \* \* \*

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated \$30,000,000 for each of fiscal years 2005 through [2009] 2014 to carry out this section.

**SEC. 305. DNA RESEARCH AND DEVELOPMENT.**

(a) \* \* \*

\* \* \* \* \*

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated \$15,000,000 for each of fiscal years 2005 through **[2009]** 2014 to carry out this section.

\* \* \* \* \*

**SEC. 308. DNA IDENTIFICATION OF MISSING PERSONS.**

(a) \* \* \*

\* \* \* \* \*

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated \$2,000,000 for each of fiscal years 2005 through **[2009]** 2014 to carry out this section.

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