H.R.5107

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

TITLE IV--INNOCENCE PROTECTION ACT OF 2004

SEC. 401. SHORT TITLE.

This title may be cited as the `Innocence Protection Act of 2004'.

Subtitle A--Exonerating the Innocent Through DNA Testing

SEC. 411. FEDERAL POST-CONVICTION DNA TESTING.

(a) FEDERAL CRIMINAL PROCEDURE-

(1) IN GENERAL- Part II of title 18, United States Code, is amended by inserting after chapter 228 the following:

`CHAPTER 228A--POST-CONVICTION DNA TESTING

`Sec.

`3600. DNA testing.

`3600A. Preservation of biological evidence.

`Sec. 3600. DNA testing

`(a) IN GENERAL- Upon a written motion by an individual under a sentence of imprisonment or death pursuant to a conviction for a Federal offense (referred to in this section as the `applicant'), the court that entered the judgment of conviction shall order DNA testing of specific evidence if the court finds that all of the following apply:

`(1) The applicant asserts, under penalty of perjury, that the applicant is actually innocent of--

`(A) the Federal offense for which the applicant is under a sentence of imprisonment or death; or

`(B) another Federal or State offense, if--

`(i) evidence of such offense was admitted during a Federal death sentencing hearing and exoneration of such offense would entitle the

applicant to a reduced sentence or new sentencing hearing; and

`(ii) in the case of a State offense--

`(I) the applicant demonstrates that there is no adequate remedy under State law to permit DNA testing of the specified evidence relating to the State offense; and

`(II) to the extent available, the applicant has exhausted all remedies available under State law for requesting DNA testing of specified evidence relating to the State offense.

`(2) The specific evidence to be tested was secured in relation to the investigation or prosecution of the Federal or State offense referenced in the applicant's assertion under paragraph (1).

`(3) The specific evidence to be tested--

`(A) was not previously subjected to DNA testing and the applicant did not--

`(i) knowingly and voluntarily waive the right to request DNA testing of that evidence in a court proceeding after the date of enactment of the Innocence Protection Act of 2004; or

`(ii) knowingly fail to request DNA testing of that evidence in a prior motion for postconviction DNA testing; or

`(B) was previously subjected to DNA testing and the applicant is requesting DNA testing using a new method or technology that is substantially more probative than the prior DNA testing.

`(4) The specific evidence to be tested is in the possession of the Government and has been subject to a chain of custody and retained under conditions sufficient to ensure that such evidence has not been substituted, contaminated, tampered with, replaced, or altered in any respect material to the proposed DNA testing.

`(5) The proposed DNA testing is reasonable in scope, uses scientifically sound methods, and is consistent with accepted forensic practices.

`(6) The applicant identifies a theory of defense that--

`(A) is not inconsistent with an affirmative defense presented at trial; and

`(B) would establish the actual innocence of the applicant of the Federal or State offense referenced in the applicant's assertion under paragraph (1).

`(7) If the applicant was convicted following a trial, the identity of the perpetrator was at issue in the trial.

`(8) The proposed DNA testing of the specific evidence may produce new material evidence that would--

`(A) support the theory of defense referenced in paragraph (6); and

`(B) raise a reasonable probability that the applicant did not commit the offense.

`(9) The applicant certifies that the applicant will provide a DNA sample for

purposes of comparison.

`(10) The motion is made in a timely fashion, subject to the following conditions:

`(A) There shall be a rebuttable presumption of timeliness if the motion is made within 60 months of enactment of the Justice For All Act of 2004 or within 36 months of conviction, whichever comes later. Such presumption may be rebutted upon a showing--

`(i) that the applicant's motion for a DNA test is based solely upon information used in a previously denied motion; or

`(ii) of clear and convincing evidence that the applicant's filing is done solely to cause delay or harass.

`(B) There shall be a rebuttable presumption against timeliness for any motion not satisfying subparagraph (A) above. Such presumption may be rebutted upon the court's finding--

`(i) that the applicant was or is incompetent and such incompetence substantially contributed to the delay in the applicant's motion for a DNA test;

`(ii) the evidence to be tested is newly discovered DNA evidence;

`(iii) that the applicant's motion is not based solely upon the applicant's own assertion of innocence and, after considering all relevant facts and circumstances surrounding the motion, a denial would result in a manifest injustice; or

`(iv) upon good cause shown.

`(C) For purposes of this paragraph--

`(i) the term `incompetence' has the meaning as defined in section 4241 of title 18, United States Code;

`(ii) the term `manifest' means that which is unmistakable, clear, plain, or indisputable and requires that the opposite conclusion be clearly evident.

`(b) NOTICE TO THE GOVERNMENT; PRESERVATION ORDER; APPOINTMENT OF COUNSEL-

`(1) NOTICE- Upon the receipt of a motion filed under subsection (a), the court shall--

`(A) notify the Government; and

`(B) allow the Government a reasonable time period to respond to the motion.

`(2) PRESERVATION ORDER- To the extent necessary to carry out proceedings under this section, the court shall direct the Government to preserve the specific evidence relating to a motion under subsection (a).

`(3) APPOINTMENT OF COUNSEL- The court may appoint counsel for an indigent applicant under this section in the same manner as in a proceeding under section

3006A(a)(2)(B).

`(c) TESTING PROCEDURES-

`(1) IN GENERAL- The court shall direct that any DNA testing ordered under this section be carried out by the Federal Bureau of Investigation.

`(2) EXCEPTION- Notwithstanding paragraph (1), the court may order DNA testing by another qualified laboratory if the court makes all necessary orders to ensure the integrity of the specific evidence and the reliability of the testing process and test results.

`(3) COSTS- The costs of any DNA testing ordered under this section shall be paid--

`(A) by the applicant; or

`(B) in the case of an applicant who is indigent, by the Government.

`(d) TIME LIMITATION IN CAPITAL CASES- In any case in which the applicant is sentenced to death--

`(1) any DNA testing ordered under this section shall be completed not later than 60 days after the date on which the Government responds to the motion filed under subsection (a); and

`(2) not later than 120 days after the date on which the DNA testing ordered under this section is completed, the court shall order any post-testing procedures under subsection (f) or (g), as appropriate.

`(e) REPORTING OF TEST RESULTS-

`(1) IN GENERAL- The results of any DNA testing ordered under this section shall be simultaneously disclosed to the court, the applicant, and the Government.

`(2) NDIS- The Government shall submit any test results relating to the DNA of the applicant to the National DNA Index System (referred to in this subsection as `NDIS').

`(3) RETENTION OF DNA SAMPLE-

`(A) ENTRY INTO NDIS- If the DNA test results obtained under this section are inconclusive or show that the applicant was the source of the DNA evidence, the DNA sample of the applicant may be retained in NDIS.

`(B) MATCH WITH OTHER OFFENSE- If the DNA test results obtained under this section exclude the applicant as the source of the DNA evidence, and a comparison of the DNA sample of the applicant results in a match between the DNA sample of the applicant and another offense, the Attorney General shall notify the appropriate agency and preserve the DNA sample of the applicant.

`(C) NO MATCH- If the DNA test results obtained under this section exclude the applicant as the source of the DNA evidence, and a comparison of the DNA sample of the applicant does not result in a match between the DNA sample of the applicant and another offense, the Attorney General shall destroy the DNA sample of the applicant and ensure that such information is not retained in NDIS if there is no other legal authority to retain the DNA

sample of the applicant in NDIS.

`(f) POST-TESTING PROCEDURES; INCONCLUSIVE AND INCULPATORY RESULTS-

`(1) INCONCLUSIVE RESULTS- If DNA test results obtained under this section are inconclusive, the court may order further testing, if appropriate, or may deny the applicant relief.

`(2) INCULPATORY RESULTS- If DNA test results obtained under this section show that the applicant was the source of the DNA evidence, the court shall--

`(A) deny the applicant relief; and

`(B) on motion of the Government--

`(i) make a determination whether the applicant's assertion of actual innocence was false, and, if the court makes such a finding, the court may hold the applicant in contempt;

`(ii) assess against the applicant the cost of any DNA testing carried out under this section;

`(iii) forward the finding to the Director of the Bureau of Prisons, who, upon receipt of such a finding, may deny, wholly or in part, the good conduct credit authorized under section 3632 on the basis of that finding;

`(iv) if the applicant is subject to the jurisdiction of the United States Parole Commission, forward the finding to the Commission so that the Commission may deny parole on the basis of that finding; and

`(v) if the DNA test results relate to a State offense, forward the finding to any appropriate State official.

`(3) SENTENCE- In any prosecution of an applicant under chapter 79 for false assertions or other conduct in proceedings under this section, the court, upon conviction of the applicant, shall sentence the applicant to a term of imprisonment of not less than 3 years, which shall run consecutively to any other term of imprisonment the applicant is serving.

`(g) POST-TESTING PROCEDURES; MOTION FOR NEW TRIAL OR RESENTENCING-

`(1) IN GENERAL- Notwithstanding any law that would bar a motion under this paragraph as untimely, if DNA test results obtained under this section exclude the applicant as the source of the DNA evidence, the applicant may file a motion for a new trial or resentencing, as appropriate. The court shall establish a reasonable schedule for the applicant to file such a motion and for the Government to respond to the motion.

`(2) STANDARD FOR GRANTING MOTION FOR NEW TRIAL OR RESENTENCING- The court shall grant the motion of the applicant for a new trial or resentencing, as appropriate, if the DNA test results, when considered with all other evidence in the case (regardless of whether such evidence was introduced at trial), establish by compelling evidence that a new trial would result in an acquittal of--

`(A) in the case of a motion for a new trial, the Federal offense for which the applicant is under a sentence of imprisonment or death; and

`(B) in the case of a motion for resentencing, another Federal or State offense, if evidence of such offense was admitted during a Federal death sentencing hearing and exoneration of such offense would entitle the applicant to a reduced sentence or a new sentencing proceeding.

`(h) OTHER LAWS UNAFFECTED-

`(1) POST-CONVICTION RELIEF- Nothing in this section shall affect the circumstances under which a person may obtain DNA testing or post-conviction relief under any other law.

`(2) HABEAS CORPUS- Nothing in this section shall provide a basis for relief in any Federal habeas corpus proceeding.

`(3) NOT A MOTION UNDER SECTION 2255- A motion under this section shall not be considered to be a motion under section 2255 for purposes of determining whether the motion or any other motion is a second or successive motion under section 2255.

`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.

SEC. 412. KIRK BLOODSWORTH POST-CONVICTION DNA TESTING GRANT PROGRAM.

(a) IN GENERAL- The Attorney General shall establish the Kirk Bloodsworth Post-Conviction DNA Testing Grant Program to award grants to States to help defray the costs of post-conviction DNA testing.

(b) AUTHORIZATION OF APPROPRIATIONS- There are authorized to be appropriated $5,000,000 for each of fiscal years 2005 through 2009 to carry out this section.

(c) STATE DEFINED- 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.

SEC. 413. INCENTIVE GRANTS TO STATES TO ENSURE CONSIDERATION OF CLAIMS OF ACTUAL INNOCENCE.

For each of fiscal years 2005 through 2009, all funds appropriated to carry out sections 303, 305, 308, and 412 shall be reserved for grants to eligible entities that--

(1) meet the requirements under section 303, 305, 308, or 412, as appropriate; and

(2) demonstrate that the State in which the eligible entity operates--

(A) provides post-conviction DNA testing of specified evidence--

(i) under a State statute enacted before the date of enactment of this Act (or extended or renewed after such date), to persons convicted after trial and under a sentence of imprisonment or death for a State felony offense, in a manner that ensures a reasonable process for resolving claims of actual innocence; or

(ii) under a State statute enacted after the date of enactment of this Act, or under a State rule, regulation, or practice, to persons under a sentence of imprisonment or death for a State felony offense, in a manner comparable to section 3600(a) of title 18, United States Code (provided that the State statute, rule, regulation, or practice may make post-conviction DNA testing available in cases in which such testing is not required by such section), and if the results of such testing exclude the applicant, permits the applicant to apply for post-conviction relief, notwithstanding any provision of law that would otherwise bar such application as untimely; and

(B) preserves biological evidence secured in relation to the investigation or prosecution of a State offense--

(i) under a State statute or a State or local rule, regulation, or practice, enacted or adopted before the date of enactment of this Act (or extended or renewed after such date), in a manner that ensures that reasonable measures are taken by all jurisdictions within the State to preserve such evidence; or

(ii) under a State statute or a State or local rule, regulation, or practice, enacted or adopted after the date of enactment of this Act, in a manner comparable to section 3600A of title 18, United States Code, if--

(I) all jurisdictions within the State comply with this requirement; and

(II) such jurisdictions may preserve such evidence for longer than the period of time that such evidence would be required to be preserved under such section 3600A.

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

SEC. 421. CAPITAL REPRESENTATION IMPROVEMENT GRANTS.

(a) IN GENERAL- The Attorney General shall award grants to States for the purpose of improving the quality of legal representation provided to indigent defendants in State capital cases.

(b) DEFINED TERM- In this section, the term `legal representation' means legal counsel and investigative, expert, and other services necessary for competent representation.

(c) USE OF FUNDS- Grants awarded under subsection (a)--

(1) shall be used to establish, implement, or improve an effective system for providing competent legal representation to--

(A) indigents charged with an offense subject to capital punishment;

(B) indigents who have been sentenced to death and who seek appellate or collateral relief in State court; and

(C) indigents who have been sentenced to death and who seek review in the Supreme Court of the United States; and

(2) shall not be used to fund, directly or indirectly, representation in specific capital cases.

(d) APPORTIONMENT OF FUNDS-

(1) IN GENERAL- Of the funds awarded under subsection (a)--

(A) not less than 75 percent shall be used to carry out the purpose described in subsection (c)(1)(A); and

(B) not more than 25 percent shall be used to carry out the purpose described in subsection (c)(1)(B).

(2) WAIVER- The Attorney General may waive the requirement under this subsection for good cause shown.

(e) EFFECTIVE SYSTEM- As used in subsection (c)(1), an effective system for providing competent legal representation is a system that--

(1) invests the responsibility for appointing qualified attorneys to represent indigents in capital cases--

(A) in a public defender program that relies on staff attorneys, members of the private bar, or both, to provide representation in capital cases;

(B) in an entity established by statute or by the highest State court with jurisdiction in criminal cases, which is composed of individuals with demonstrated knowledge and expertise in capital cases, except for individuals currently employed as prosecutors; or

(C) pursuant to a statutory procedure enacted before the date of the enactment of this Act under which the trial judge is required to appoint qualified attorneys from a roster maintained by a State or regional selection committee or similar entity; and

(2) requires the program described in paragraph (1)(A), the entity described in paragraph (1)(B), or an appropriate entity designated pursuant to the statutory procedure described in paragraph (1)(C), as applicable, to--

(A) establish qualifications for attorneys who may be appointed to represent indigents in capital cases;

(B) establish and maintain a roster of qualified attorneys;

(C) except in the case of a selection committee or similar entity described in paragraph (1)(C), assign 2 attorneys from the roster to represent an indigent in a capital case, or provide the trial judge a list of not more than 2 pairs of attorneys from the roster, from which 1 pair shall be assigned, provided that, in any case in which the State elects not to seek the death penalty, a court may find, subject to any requirement of State law, that a second attorney need not remain assigned to represent the indigent to ensure competent representation;

(D) conduct, sponsor, or approve specialized training programs for attorneys representing defendants in capital cases;

(E)(i) monitor the performance of attorneys who are appointed and their attendance at training programs; and

`(ii) remove from the roster attorneys who--

`(I) fail to deliver effective representation or engage in unethical conduct;

`(II) fail to comply with such requirements as such program, entity, or selection committee or similar entity may establish regarding participation in training programs; or

`(III) during the past 5 years, have been sanctioned by a bar association or court for ethical misconduct relating to the attorney's conduct as defense counsel in a criminal case in Federal or State court; and

(F) ensure funding for the cost of competent legal representation by the defense team and outside experts selected by counsel, who shall be compensated--

(i) in the case of a State that employs a statutory procedure described in paragraph (1)(C), in accordance with the requirements of that

statutory procedure; and

(ii) in all other cases, as follows:

(I) Attorneys employed by a public defender program shall be compensated according to a salary scale that is commensurate with the salary scale of the prosecutor's office in the jurisdiction.

(II) Appointed attorneys shall be compensated for actual time and service, computed on an hourly basis and at a reasonable hourly rate in light of the qualifications and experience of the attorney and the local market for legal representation in cases reflecting the complexity and responsibility of capital cases.

(III) Non-attorney members of the defense team, including investigators, mitigation specialists, and experts, shall be compensated at a rate that reflects the specialized skills needed by those who assist counsel with the litigation of death penalty cases.

(IV) Attorney and non-attorney members of the defense team shall be reimbursed for reasonable incidental expenses.

SEC. 422. CAPITAL PROSECUTION IMPROVEMENT GRANTS.

(a) IN GENERAL- The Attorney General shall award grants to States for the purpose of enhancing the ability of prosecutors to effectively represent the public in State capital cases.

(b) USE OF FUNDS-

(1) PERMITTED USES- Grants awarded under subsection (a) shall be used for one or more of the following:

(A) To design and implement training programs for State and local prosecutors to ensure effective representation in State capital cases.

(B) To develop and implement appropriate standards and qualifications for State and local prosecutors who litigate State capital cases.

(C) To assess the performance of State and local prosecutors who litigate State capital cases, provided that such assessment shall not include participation by the assessor in the trial of any specific capital case.

(D) To identify and implement any potential legal reforms that may be appropriate to minimize the potential for error in the trial of capital cases.

(E) To establish a program under which State and local prosecutors conduct a systematic review of cases in which a death sentence was imposed in order to identify cases in which post-conviction DNA testing may be appropriate.

(F) To provide support and assistance to the families of murder victims.

(2) PROHIBITED USE- Grants awarded under subsection (a) shall not be used to fund, directly or indirectly, the prosecution of specific capital cases.

SEC. 423. APPLICATIONS.

(a) IN GENERAL- The Attorney General shall establish a process through which a State may apply for a grant under this subtitle.

(b) APPLICATION-

(1) IN GENERAL- A State desiring a grant under this subtitle shall submit an application to the Attorney General at such time, in such manner, and containing such information as the Attorney General may reasonably require.

(2) CONTENTS- Each application submitted under paragraph (1) shall contain--

(A) a certification by an appropriate officer of the State that the State authorizes capital punishment under its laws and conducts, or will conduct, prosecutions in which capital punishment is sought;

(B) a description of the communities to be served by the grant, including the nature of existing capital defender services and capital prosecution programs within such communities;

(C) a long-term statewide strategy and detailed implementation plan that--

(i) reflects consultation with the judiciary, the organized bar, and State and local prosecutor and defender organizations; and

(ii) establishes as a priority improvement in the quality of trial-level representation of indigents charged with capital crimes and trial-level prosecution of capital crimes;

(D) in the case of a State that employs a statutory procedure described in section 421(e)(1)(C), a certification by an appropriate officer of the State that the State is in substantial compliance with the requirements of the applicable State statute; and

(E) assurances that Federal funds received under this subtitle shall be--

(i) used to supplement and not supplant non-Federal funds that would otherwise be available for activities funded under this subtitle; and

(ii) allocated in accordance with section 426(b).

SEC. 424. STATE REPORTS.

(a) IN GENERAL- Each State receiving funds under this subtitle shall submit an annual report to the Attorney General that--

(1) identifies the activities carried out with such funds; and

(2) explains how each activity complies with the terms and conditions of the grant.

(b) CAPITAL REPRESENTATION IMPROVEMENT GRANTS- With respect to the funds provided under section 421, a report under subsection (a) shall include--

(1) an accounting of all amounts expended;

(2) an explanation of the means by which the State--

(A) invests the responsibility for identifying and appointing qualified attorneys to represent indigents in capital cases in a program described in section

421(e)(1)(A), an entity described in section 421(e)(1)(B), or a selection committee or similar entity described in section 421(e)(1)(C); and

(B) requires such program, entity, or selection committee or similar entity, or other appropriate entity designated pursuant to the statutory procedure described in section 421(e)(1)(C), to--

(i) establish qualifications for attorneys who may be appointed to represent indigents in capital cases in accordance with section 421(e)(2)(A);

(ii) establish and maintain a roster of qualified attorneys in accordance with section 421(e)(2)(B);

(iii) assign attorneys from the roster in accordance with section 421(e)(2)(C);

(iv) conduct, sponsor, or approve specialized training programs for attorneys representing defendants in capital cases in accordance with section 421(e)(2)(D);

(v) monitor the performance and training program attendance of appointed attorneys, and remove from the roster attorneys who fail to deliver effective representation or fail to comply with such requirements as such program, entity, or selection committee or similar entity may establish regarding participation in training programs, in accordance with section 421(e)(2)(E); and

(vi) ensure funding for the cost of competent legal representation by the defense team and outside experts selected by counsel, in accordance with section 421(e)(2)(F), including a statement setting forth--

(I) if the State employs a public defender program under section 421(e)(1)(A), the salaries received by the attorneys employed by such program and the salaries received by attorneys in the prosecutor's office in the jurisdiction;

(II) if the State employs appointed attorneys under section 421(e)(1)(B), the hourly fees received by such attorneys for actual time and service and the basis on which the hourly rate was calculated;

(III) the amounts paid to non-attorney members of the defense team, and the basis on which such amounts were determined; and

(IV) the amounts for which attorney and non-attorney members of the defense team were reimbursed for reasonable incidental expenses;

(3) in the case of a State that employs a statutory procedure described in section 421(e)(1)(C), an assessment of the extent to which the State is in compliance with the requirements of the applicable State statute; and

(4) a statement confirming that the funds have not been used to fund representation in specific capital cases or to supplant non-Federal funds.

(c) CAPITAL PROSECUTION IMPROVEMENT GRANTS- With respect to the funds provided under section 422, a report under subsection (a) shall include--

(1) an accounting of all amounts expended;

(2) a description of the means by which the State has--

(A) designed and established training programs for State and local prosecutors to ensure effective representation in State capital cases in accordance with section 422(b)(1)(A);

(B) developed and implemented appropriate standards and qualifications for State and local prosecutors who litigate State capital cases in accordance with section 422(b)(1)(B);

(C) assessed the performance of State and local prosecutors who litigate State capital cases in accordance with section 422(b)(1)(C);

(D) identified and implemented any potential legal reforms that may be appropriate to minimize the potential for error in the trial of capital cases in accordance with section 422(b)(1)(D);

(E) established a program under which State and local prosecutors conduct a systematic review of cases in which a death sentence was imposed in order to identify cases in which post-conviction DNA testing may be appropriate in accordance with section 422(b)(1)(E); and

(F) provided support and assistance to the families of murder victims; and

(3) a statement confirming that the funds have not been used to fund the prosecution of specific capital cases or to supplant non-Federal funds.

(d) PUBLIC DISCLOSURE OF ANNUAL STATE REPORTS- The annual reports to the Attorney General submitted by any State under this section shall be made available to the public.

SEC. 425. EVALUATIONS BY INSPECTOR GENERAL AND ADMINISTRATIVE REMEDIES.

(a) EVALUATION BY INSPECTOR GENERAL-

(1) IN GENERAL- As soon as practicable after the end of the first fiscal year for which a State receives funds under a grant made under this subtitle, the Inspector General of the Department of Justice (in this section referred to as the `Inspector General') shall--

(A) submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report evaluating the compliance by the State with the terms and conditions of the grant; and

(B) if the Inspector General concludes that the State is not in compliance with the terms and conditions of the grant, specify any deficiencies and make recommendations to the Attorney General for corrective action.

(2) PRIORITY- In conducting evaluations under this subsection, the Inspector General shall give priority to States that the Inspector General determines, based on information submitted by the State and other comments provided by any other person, to be at the highest risk of noncompliance.

(3) DETERMINATION FOR STATUTORY PROCEDURE STATES- For each State that

employs a statutory procedure described in section 421(e)(1)(C), the Inspector General shall submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate, not later than the end of the first fiscal year for which such State receives funds, a determination as to whether the State is in substantial compliance with the requirements of the applicable State statute.

(4) COMMENTS FROM PUBLIC- The Inspector General shall receive and consider comments from any member of the public regarding any State's compliance with the terms and conditions of a grant made under this subtitle.

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