



The [U.S. Department of Justice](#) (DOJ), [Office of Justice Programs](#) (OJP), [National Institute of Justice](#) (NIJ), is seeking applications for funding under the Postconviction DNA Testing Assistance Program. This program furthers the Department's mission by offering assistance to States to help defray the costs associated with postconviction DNA testing of cases of violent felony offenses where actual innocence might be demonstrated.

Postconviction DNA Testing Assistance Program

Eligibility

In general, States are eligible to apply for funding (for purposes of this solicitation, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands). To be eligible for an award, an applicant must submit a certification from the chief legal officer of the State as specified under "Eligibility" on pages 3–4.

Deadline

Applicants must register with [Grants.gov](#) prior to submitting an application. (See "How to Apply," page 19). All applications are due by 11:59 p.m. eastern time on **May 10, 2013**. (See "Deadlines: Registration and Application," page 3).

Contact Information

For technical assistance with submitting an application, contact the Grants.gov Customer Support Hotline at 800–518–4726 or 606–545–5035, or via e-mail to support@grants.gov.

Note: The [Grants.gov](#) Support Hotline hours of operation are 24 hours a day, 7 days a week, except Federal holidays.

For assistance with any other requirements of this solicitation, contact Michael Dillon, Senior Grants Management Specialist, by telephone at 202–514–5528, or by e-mail at Michael.Dillon3@usdoj.gov.

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Postconviction DNA Testing Assistance Program (CFDA No. 16.820)

Overview

NIJ seeks proposals from States for funding to assist in defraying the costs associated with postconviction DNA testing in cases of violent felony offenses (as defined by State law) in which actual innocence might be demonstrated. Funds may be used to review such postconviction cases and to locate and analyze biological evidence associated with them. Where a strong justification is provided, a limited proportion of Federal award funds may be used for case identification.

Postconviction DNA testing has received considerable attention in recent years. Since the advent of forensic DNA analysis, a number of people convicted of crimes have been subsequently exonerated through DNA analysis of crime scene evidence that was not tested at the time of trial. Additionally, newer technologies have substantially increased the successful DNA analysis of aged, degraded, limited, or otherwise compromised biological evidence. As a result, crime scene samples once thought to be unsuitable for testing in the past may now yield DNA profiles. Moreover, samples that previously generated inconclusive DNA results may now be amenable to reanalysis using newer methods.

Deadlines: Registration and Application

Applicants must register with Grants.gov in order to submit an application. OJP encourages applicants to **register several weeks before** the application submission deadline. In addition, OJP urges applicants to submit applications 72 hours prior to the application due date. The deadline to apply for funding under this announcement is 11:59 p.m. eastern time on **May 10, 2013**. See “How to Apply” on page 19 for details.

Eligibility

States may apply for funding under this solicitation (for purposes of this solicitation, the term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands). To be eligible for an award, a State must submit an express certification from the chief legal officer of the State (typically the Attorney General) that the State—

1. Provides postconviction DNA testing of specified biological evidence under a State statute, or under State rules, regulations, or practices, to persons convicted after trial and under a sentence of imprisonment or death for a State offense of murder or forcible rape, in a manner intended to ensure a reasonable process for resolving claims of actual innocence.
2. Preserves biological evidence secured in relation to the investigation or prosecution of a State offense of murder or forcible rape, under a State statute, local ordinances, or State or local rules, regulations, or practices, in a manner intended to ensure that reasonable measures are taken by all jurisdictions within the State to preserve such evidence.

Any certification that is submitted must be personally executed by the chief legal officer of the State after a determination that the certification may properly be made. To establish eligibility, the certification must be received by NIJ **no later than the application deadline** as an attachment to the application. See also “What an Application Should Include” below and Appendix 1, which includes a template for the certification.

Note: States are encouraged to review the provisions of section 413 of the Justice for All Act of 2004 (Public Law 108–405). Although not applicable to awards under this FY 2013 solicitation, these or related provisions may apply to future solicitations related to postconviction DNA testing assistance. (A copy of section 413 appears in Appendix II, along with copies of 18 U.S.C. §§ 3600(a) and 3600A, which are referenced therein.)

Program-Specific Information

This solicitation seeks applications for funds to help defray the costs associated with postconviction DNA testing in cases of violent felony offenses where actual innocence might be demonstrated. Specifically, funding may be used to review postconviction cases of violent felony offenses (as defined by State law), and to locate and analyze biological evidence samples associated with these cases. Where a strong justification is provided, a small percentage of Federal award funds (not to exceed 15 percent) may be used for permissible case identification activities.

For the purposes of this announcement—

- **Case identification** means performing outreach or initial screening activities, other than “case review” as defined below, designed to identify postconviction cases of violent felony offenses (as defined by State law) where DNA analysis might demonstrate actual innocence. Permissible outreach and initial screening mechanisms are face-to-face meetings, closed-circuit television meetings, eligibility letters/questionnaires/applications, telephone calls, and computerized searches of State court records.
- **Case review** means review of files or documentation of postconviction cases of violent felony offenses (as defined by State law) by appropriate persons (e.g., prosecutors, public defenders, law enforcement personnel, and medical examiners) to determine whether biological evidence exists that might, through DNA analysis, demonstrate the actual innocence of the person previously convicted.
- **Locate evidence** means seeking to locate, following a case review, biological evidence that, through DNA analysis, might demonstrate actual innocence, through activities such as the searching of files, storage facilities, and evidence rooms.
- **DNA analysis of biological evidence** includes the handling, screening, and DNA analysis of biological evidence located in connection with a case review.

All DNA analyses conducted using funding from this program must be performed by a laboratory (government-owned or fee-for-service) that is accredited and that undergoes external audits at least once every 2 years that demonstrate compliance with the applicable DNA Quality Assurance Standards established by the Director of the Federal Bureau of Investigation.

All DNA analyses conducted and profiles generated under this program must be maintained pursuant to any applicable Federal privacy requirements.

Goals, Objectives, and Deliverables

States receiving Postconviction DNA Testing Assistance funds are expected to —

1. Review appropriate postconviction cases to identify those in which DNA testing could prove the actual innocence of a person convicted of a violent felony offense(s) as defined by State law.
2. Locate biological evidence associated with such postconviction cases.
3. Perform DNA analysis of appropriate biological evidence.

Awardees must submit data in their progress reports detailing the following:

- Target number of cases to be reviewed with grant funds;
- Number and types of cases reviewed with grant funds;
- Number of cases where an evidence search was conducted, as well as the number of actual evidence searches conducted;
- Number of cases where biological evidence existed, as well as the number of evidence searches that yielded biological evidence;
- Number of cases where biological evidence had been destroyed or was missing, as well as the number of actual searches in which biological evidence had been destroyed or was missing;
- Approximate number of hours in each case spent on case review, locating evidence, and DNA analysis;
- Number of cases where DNA analysis was performed, as well as the number of pieces of evidence analyzed;
- Number of profiles uploaded into CODIS; and, if applicable,
- Number of matches resulting from profiles uploaded into CODIS.

Amount and Length of Awards

Total funding for this solicitation and the number of awards made will depend on the availability of funds, the quality of the applications, and other pertinent factors. **All awards are subject to the availability of appropriated funds and to any modifications or additional requirements that may be imposed by law.**

In general, NIJ will limit its grants under this program to a period of **24 months** after the start of the award.

Budget Information

Permissible Expenses

1. **Salary and Benefits of Additional Employees.** Funds may be used for salaries and benefits of additional full- or part-time employees to the extent such employees are directly engaged in case review, location of evidence, or DNA analysis of biological evidence.

Applicants should demonstrate that any **additional** full- or part-time employee(s) will be directly engaged in these activities. Supplanting is not permitted.

2. **Overtime.** Funds may be used for overtime for employees for the purpose of case review, location of evidence, or DNA analysis of biological evidence. Any payments for overtime must be in accordance with the applicable provisions of the OJP Financial Guide, available at www.ojp.usdoj.gov/financialguide.
3. **Travel (limited).** Funds may be used for reasonable travel expenses directly associated with case review, location of evidence, or DNA analysis of biological evidence. These costs must be in accordance with Federal policy or an organizationally approved travel policy. The Office of the Chief Financial Officer reserves the right to determine the reasonableness of the recipient's own established travel rates. The current travel policy and per diem rate information is available at the [Per Diem Rates – General Services Administration Web site](#).
4. **Computer equipment.** Funds may be used to upgrade, replace, lease, or purchase computer hardware or software that will be used exclusively for case review, location of evidence, or DNA analysis of biological evidence.
5. **Laboratory supplies.** Funds may be used to acquire laboratory supplies for DNA analysis of biological evidence. The proposal must clearly demonstrate that the types and number of supplies requested are appropriate for the proposed level of effort.

Applicants should note that award recipients whose proposals involve the use or purchase of chemicals may encounter delays in the release of their award funds pending satisfactory completion of the National Environmental Protection Act (NEPA) review process.

6. **Consultant and Contractor Services.** Funds may be used to hire consultants and/or temporary contract staff to conduct case reviews, locate evidence, or conduct DNA analysis of biological evidence. Funds may also be used for contracts with accredited fee-for-service laboratories to conduct DNA analysis of biological evidence.

Please note: No profiles generated with funding from this program may be entered into any non-governmental DNA database without prior express written approval from NIJ.

7. **Case Identification.** In limited cases, with prior written authorization from NIJ based on a strong and specific written justification, a small percentage of award funds may be used for case identification activities, as defined above. See “Limitation on Use of Award Funds for Case Identification” (page 14).
8. **Training (limited).** In limited circumstances, funds may be used for postconviction training directly related to case review, location of biological evidence, and DNA analysis of biological evidence. Funds for this purpose must be used only for grant-funded personnel directly engaged in case review, location of biological evidence, and DNA analysis of biological evidence. The proposal must clearly demonstrate that the proposed training directly supports the program's purpose areas, and is related directly to the job position and duties of the individual(s) receiving the training.

Expenses that are not permitted:

Federal funds awarded under this solicitation may only be used for the permissible expenses outlined above. Among other things, funds may not be used for:

1. Work that will be funded under another specific solicitation.
2. Proposals that do not respond to the specific goals of this solicitation.
3. Salaries and benefits for victim advocacy services.
4. Salaries, benefits, or overtime for staff who are not directly engaged in case review, location of biological evidence, DNA analysis of biological evidence, or specifically-authorized case-identification activities (as defined above).
5. Salaries, benefits, or overtime for staff for litigation assistance other than case review, location of biological evidence, DNA analysis of biological evidence, or specifically-authorized case-identification activities (as defined above).
6. Outreach and initial screening activities not included in case identification (as defined above).
7. Laboratory equipment.
8. Construction.
9. Renovation.
10. Office furnishings.
11. General, non-postconviction training, or training for employees not directly funded under this award.
12. Witness travel.

Limitation on Use of Award Funds for Employee Compensation; Waiver

With respect to any award of more than \$250,000 made under this solicitation, recipients may not use federal funds to pay total cash compensation (salary plus cash bonuses) to any employee of the award recipient at a rate that exceeds 110% of the maximum annual salary payable to a member of the Federal Government's Senior Executive Service (SES) at an agency with a Certified SES Performance Appraisal System for that year. The 2012 salary table for SES employees is available at www.opm.gov/oca/12tables/indexSES.asp. Note: A recipient may compensate an employee at a greater rate, provided the amount in excess of this compensation limitation is paid with non-federal funds. (Any such additional compensation will not be considered matching funds where match requirements apply.)

The Assistant Attorney General for OJP may exercise discretion to waive, on an individual basis, the limitation on compensation rates allowable under an award. An applicant requesting a waiver should include a detailed justification in the budget narrative of the application. Unless the applicant submits a waiver request and justification with the application, the applicant should anticipate that OJP will request the applicant to adjust and resubmit the budget.

The justification should include the particular qualifications and expertise of the individual, the uniqueness of the service the individual will provide, the individual's specific knowledge of the program or project being undertaken with award funds, and a statement explaining that the individual's salary is commensurate with the regular and customary rate for an individual with his/her qualifications and expertise, and for the work to be done.

Limitation on Use of Award Funds for Case Identification

Where supported by a strong and specific written justification, NIJ may authorize a small percentage of a grant under this solicitation (not to exceed 15 percent of the federal award amount) to be used for case identification activities as defined above. Justification should be included in the program narrative section of the application.

Minimization of Conference Costs

OJP encourages applicants to review the OJP guidance on conference approval, planning, and reporting that is available on the OJP Web site at www.ojp.gov/funding/confcost.htm. This guidance sets out the current OJP policy, which requires all funding recipients that propose to hold or sponsor conferences (including meetings, trainings, and other similar events) to minimize costs, requires OJP review and prior written approval of most conference costs for cooperative agreement recipients (and certain costs for grant recipients), and generally prohibits the use of OJP funding to provide food and beverages at conferences. The guidance also sets upper limits on many conference costs, including facility space, audio/visual services, logistical planning services, programmatic planning services, and food and beverages (in the rare cases where food and beverage costs are permitted at all).

Prior review and approval of conference costs can take time (see the guidance for specific deadlines), and applicants should take this into account when submitting proposals. Applicants also should understand that conference cost limits may change and that they should check the guidance for updates before incurring such costs.

Note on food and beverages: OJP may make exceptions to the general prohibition on using OJP funding for food and beverages, but will do so only in rare cases where food and beverages are not otherwise available (e.g., in extremely remote areas); the size of the event and capacity of nearby food and beverage vendors would make it impractical to not provide food and beverages; or a special presentation at a conference requires a plenary address where conference participants have no other time to obtain food and beverages. Any such exception requires OJP's prior written approval. The restriction on food and beverages does not apply to water provided at no cost, but does apply to any and all other refreshments, regardless of the size or nature of the meeting. Additionally, this restriction does not affect direct payment of per diem amounts to individuals in a travel status under your organization's travel policy.

Costs Associated With Language Assistance (if applicable)

If an applicant proposes a program or activity that would deliver services or benefits to individuals, the costs of taking reasonable steps to provide meaningful access to those services or benefits for individuals with limited English proficiency may be allowable. Reasonable steps to provide meaningful access to services or benefits may include interpretation or translation services where appropriate.

For additional information, see the "Civil Rights Compliance" section of the OJP "Other Requirements for OJP Applications" Web page at www.ojp.usdoj.gov/funding/other_requirements.htm.

Match Requirement

See “Cofunding” paragraph under “What an Application Should Include” (below).

Performance Measures

To assist the Department with fulfilling its responsibilities under the Government Performance and Results Act of 1993 (GPRA), Public Law 103-62, and the GPRA Modernization Act of 2010, Public Law 111-352, applicants that receive funding under this solicitation must provide data that measure the results of their work done under this solicitation. OJP will require any award recipient, post award, to provide the data requested in the “Data Grantee Provides” column so that OJP can calculate values for the “Performance Measures” column. Performance measures for this solicitation are as follows:

Objective	Performance Measure(s)	Data Grantee Provides
To help defray the costs associated with postconviction DNA testing in cases of violent felony offenses (as defined by State law) where DNA analysis might demonstrate actual innocence.	1. Percentage of target cases to be reviewed with grant funds. 2. Number of reviewed cases where a search to locate evidence was conducted. 3. Number of searches conducted to locate evidence. 4. Percentage of reviewed cases that yielded biological evidence. 5. Percentage of searches conducted that yielded biological evidence. 6. Percentage of cases where biological evidence had been destroyed or was missing. 7. Percentage of searches conducted in which biological evidence had been destroyed or was missing. 8. Approximate number of hours spent on case review, locating evidence, and DNA analysis. 9. Percentage of cases subjected to DNA analysis that yielded a viable DNA profile. 10. Average number of pieces of evidence analyzed for cases subjected to DNA analysis. 11. Number of profiles uploaded into CODIS. 12. Percentage of profiles resulting in a CODIS hit.	1. Target number of cases to be reviewed with grant funds. 2. Number of cases reviewed with grant funds. 3. Number of reviewed cases where a search to locate evidence was conducted. 4. Number of searches conducted to locate evidence. 5. Number of reviewed cases that yielded biological evidence. 6. Number of searches that yielded biological evidence. 7. Number of cases where biological evidence had been destroyed or was missing. 8. Number of searches in which biological evidence had been destroyed or was missing. 9. Approximate number of hours spent on case review, locating evidence, and DNA analysis. 10. Number of cases where DNA analysis was performed. 11. Number of cases subjected to a DNA analysis that yielded a viable DNA profile. 12. Number of pieces of evidence analyzed. 13. Number of profiles uploaded into CODIS. 14. Number of CODIS profile matches.

OJP does not require applicants to submit performance measures data with their applications. Instead, applicants should discuss in their application their proposed methods for collecting data for performance measures. Refer to the section “What an Application Should Include” on page 10 for additional information.

Note on Project Evaluations (if applicable)

Applicants that propose to use funds awarded through this solicitation to conduct project evaluations should be aware that certain project evaluations (such as systematic investigations designed to develop or contribute to generalizable knowledge) may constitute “research” for purposes of applicable DOJ human subjects protection regulations. However, project evaluations that are intended only to generate internal improvements to a program or service, or are conducted only to meet OJP’s performance measure data reporting requirements likely do not constitute “research.” Applicants should provide sufficient information for OJP to determine whether the particular project they propose would either intentionally or unintentionally collect and/or use information in such a way that it meets the DOJ regulatory definition of research.

Research, for the purposes of human subjects protections for OJP-funded programs, is defined as, “a systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to generalizable knowledge” 28 C.F.R. § 46.102(d). For additional information on determining whether a proposed activity would constitute research, see the decision tree to assist applicants on the “Research and the Protection of Human Subjects” section of the OJP “Other Requirements for OJP Applications” Web page (www.ojp.usdoj.gov/funding/other_requirements.htm). Applicants whose proposals may involve a research or statistical component also should review the “Confidentiality” section on that Web page.

Notice of Post-Award FFATA Reporting Requirement

Applicants should anticipate that OJP will require all recipients (other than individuals) of awards of \$25,000 or more under this solicitation, consistent with the Federal Funding Accountability and Transparency Act of 2006 (FFATA), to report award information on any first-tier subawards totaling \$25,000 or more, and, in certain cases, to report information on the names and total compensation of the five most highly compensated executives of the recipient and first-tier subrecipients. Each applicant entity must ensure that it has the necessary processes and systems in place to comply with the reporting requirements should it receive funding. Reports regarding subawards will be made through the FFATA Subaward Reporting System (FSRS), found at www.fsrs.gov.

Please note also that applicants should anticipate that no subaward of an award made under this solicitation may be made to a subrecipient (other than an individual) unless the potential subrecipient acquires and provides a Data Universal Numbering System (DUNS) number.

What an Application Should Include

Applicants should anticipate that if they fail to submit an application that contains all of the specified elements, it may negatively affect the review of their application; and, should a decision be made to make an award, it may result in the inclusion of special conditions that

preclude the recipient from accessing or using award funds pending satisfaction of the conditions.

Moreover, applicants should anticipate that applications that are determined to be nonresponsive to the scope of the solicitation, or that do not include the application elements that NIJ has designated to be critical, will neither proceed to peer review nor receive further consideration. Under this solicitation, NIJ has designated the following application elements as critical: Program Narrative, Budget Detail Worksheet and Budget Narrative, resumes/curriculum vitae of key personnel, and the required express certification from the chief legal officer of the State (see “Eligibility,” pages 3–4, and Appendix I). Applicants may combine the Budget Narrative and the Budget Detail Worksheet in one document. However, if an applicant submits only one document, it must contain **both** narrative and detail information.

OJP strongly recommends that applicants use appropriately descriptive file names (e.g., “Program Narrative,” “Budget Detail Worksheet and Budget Narrative,” “Timelines,” “Memoranda of Understanding,” “Resumes”) for all attachments. Also, OJP recommends that applicants include resumes in a single file.

1. Information to Complete the Application for Federal Assistance (SF-424)

The SF-424 is a required standard form used as a cover sheet for submission of pre-applications, applications, and related information. Grants.gov and GMS take information from the applicant’s profile to populate the fields on this form.

2. Abstract

Applications should include a high-quality “Project Abstract” that summarizes the proposed project in **250-400 words**. Project abstracts should be—

- Written for a general public audience.
- Submitted as a separate attachment with <Project Abstract> as part of its file name.
- Single-spaced, using a standard 12-point font (Times New Roman) with 1-inch margins.

As a separate attachment, the project abstract will **not** count against the page limit for the program narrative.

All project abstracts should follow the detailed template available at www.ojp.usdoj.gov/funding/Project_Abstract_Template.pdf.

The abstract is a critical part of your application, serving as an important introduction to your proposed project. NIJ uses the abstract for a number of purposes, including assignment to the appropriate independent review panel. If your proposal is funded, the abstract typically will become public information and be used to describe your proposed work. The abstract should be 250–400 words and describe the proposed work succinctly and accurately. The abstract does not count against the **20**-page limit for the program narrative.

Permission to Share Project Abstract with the Public: It is unlikely that NIJ will be able to fund all promising applications submitted under this solicitation, but it may have the opportunity to share information with the public regarding promising but unfunded applications, for example, through a listing on a webpage available to the public. The intent of this public posting would be to allow other possible funders to become aware of such proposals.

In the project abstract template, applicants are asked to indicate whether they give OJP permission to share their project abstract (including contact information) with the public. Granting (or failing to grant) this permission will not affect OJP's funding decisions, and, if the application is not funded, granting permission will not guarantee that abstract information will be shared, nor will it guarantee funding from any other source.

Note: OJP may choose not to list a project that otherwise would have been included in a listing of promising but unfunded applications, should the abstract fail to meet the format and content requirements noted above and outlined in the project abstract template.

3. Program Narrative

The program narrative section of the application should not exceed **20** double-spaced pages in 12-point font with 1-inch margins. Abstract, table of contents, charts, figures, appendices, and government forms do not count toward the **20**-page limit for the narrative section.

If the program narrative fails to comply with these length-related restrictions, NIJ may consider such noncompliance in peer review and in final award decisions.

The following sections should be included as part of the program narrative.

Program Narrative Guidelines:

- a. **Title Page** (not counted against the **20**-page program narrative limit).
The title page should include the title of the project, submission date, funding opportunity number, and the applicant's name and complete contact information (i.e., name, address, telephone number, and e-mail address).
- b. **Resubmit Response** (if applicable) (not counted against the **20**-page program narrative limit). If an applicant is resubmitting a proposal that was presented previously to NIJ, but not funded, the applicant should indicate this. A statement should be provided, no more than two pages, addressing: (1) the title, submission date, and NIJ-assigned application number of the previous proposal, and (2) a brief summary of revisions to the proposal. This document should be inserted after the abstract.
- c. **Table of Contents and Figures** (not counted against the **20**-page program narrative limit).
- d. **Main body.** The main body of the program narrative should describe the project in depth. The following sections should be included as part of the program narrative:

- Statement of the Problem.
- Project/Program Design and Implementation.
- Capabilities/Competencies.
- Impact/Outcomes and Evaluation.
- Plan for Collecting the Data Required for This Solicitation's Performance Measures. **Note:** NIJ does not require applicants to submit performance measures data with their application. Performance measures are included as an alert that NIJ will require successful applicants to submit specific data as part of their reporting requirements. For the application, applicants should indicate an understanding of these requirements and discuss how they will gather the required data, should they receive funding.

Within the above sections, the narrative should address:

- Purpose, goals, objectives, and expected results.
- Implementation approach, including case review selection criteria and the target number of cases to be reviewed with grant funds.
- Management plan and organization.
- Need and relevance to the goals and objectives of the program.
- Detailed justification for specific case identification activities proposed for federal funding, if applicable (not to exceed 15% of the federal award amount).
- Implications for criminal justice policy and practice in the United States.

e. **Appendices** (not counted against the **20**-page program narrative limit) include:

- Bibliography/references, if applicable.
- Any tools/instruments, questionnaires, tables/charts/graphs, or maps pertaining to the proposed project.
- Curriculum vitae, resumes, or biographical sketches of key personnel.
- Project timeline with expected milestones.
- Letters of cooperation/support or administrative agreements from organizations collaborating in the project, if applicable.
- Human Subjects Protection Paperwork including Institutional Review Board (IRB) documentation and forms (see www.ojp.gov/nij/funding/humansubjects/human-subjects.htm).
- Privacy Certificate (for further guidance go to www.ojp.gov/nij/funding/humansubjects/privacy-certificate-guidance.htm).
- List of previous and current NIJ awards to applicant organization.
- List of other agencies, organizations, or funding sources to which this proposal has been submitted (if applicable).
- Other materials specified by the solicitation.

4. **Budget Detail Worksheet and Budget Narrative**

a. **Budget Detail Worksheet**

A sample Budget Detail Worksheet can be found at www.ojp.gov/funding/forms/budget_detail.pdf. Applicants that submit their budget in

a different format should include the budget categories listed in the sample budget worksheet.

For questions pertaining to budget and examples of allowable and unallowable costs, see the OJP Financial Guide at www.ojp.usdoj.gov/financialguide/index.htm.

b. Budget Narrative

The Budget Narrative should thoroughly and clearly describe every category of expense listed in the Budget Detail Worksheet. OJP expects proposed budgets to be complete, cost effective, and allowable (e.g., reasonable, allocable, and necessary for project activities).

Applicants should demonstrate in their budget narratives how they will maximize cost effectiveness of grant expenditures. Budget narratives should generally describe cost effectiveness in relation to potential alternatives and the goals of the project. For example, a budget narrative should detail why planned in-person meetings are necessary, or how technology and collaboration with outside organizations could be used to reduce costs, without compromising quality.

The narrative should be mathematically sound and correspond with the information and figures provided in the Budget Detail Worksheet. The narrative should explain how the applicant estimated and calculated all costs, and how they are relevant to the completion of the proposed project. The narrative may include tables for clarification purposes but need not be in a spreadsheet format. As with the Budget Detail Worksheet, the Budget Narrative should be broken down by year.

Case Identification: The budget detail worksheet and budget narrative should clearly indicate the cost breakouts for any proposed case identification activities (total cost not to exceed 15% of the total Federal award amount requested), in the appropriate cost category (e.g., personnel, fringe benefits, travel, equipment, supplies, and consultants/contracts), as a separate section of the budget documents.

Cofunding: A grant made by NIJ under this solicitation may account for up to 100 percent of the total cost of the project. The application should indicate whether it is feasible for the applicant to contribute cash, facilities, or services as non-Federal support for the project. The application should identify generally any such contributions that the applicant expects to make and the proposed budget should indicate in detail which items, if any, will be supported with non-Federal contributions.

If a successful application proposes a voluntary match amount, and OJP approves the budget, the total match amount incorporated into the approved budget becomes mandatory and subject to audit.

5. Indirect Cost Rate Agreement (if applicable)

Indirect costs are allowed only if the applicant has a federally approved indirect cost rate. (This requirement does not apply to units of local government.) Attach a copy of the federally approved indirect cost rate agreement to the application. Applicants that do not have an approved rate may request one through their cognizant federal agency, which will review all documentation and approve a rate for the applicant organization, or, if the

applicant's accounting system permits, costs may be allocated in the direct cost categories. If DOJ is the cognizant federal agency, obtain information needed to submit an indirect cost rate proposal at www.ojp.usdoj.gov/funding/pdfs/indirect_costs.pdf.

6. Additional Attachments

a. Certification as to Provision of Postconviction DNA Testing and Preservation of Biological Evidence

As described above in the "Eligibility" section, to be eligible for an award, a State must submit a specific certification personally executed by its chief legal officer (typically the Attorney General) regarding the provision of postconviction DNA testing and preservation of biological evidence. A template for the certification appears in Appendix I. **Any such certification must be received by NIJ by the application deadline, as an attachment, or the application will neither proceed to peer review nor receive further consideration.**

b. Applicant disclosure of pending applications

Applicants are to disclose whether they have pending applications for federally funded assistance that include requests for funding to support the same project being proposed under this solicitation and will cover the identical cost items outlined in the budget narrative and worksheet in the application under this solicitation. The disclosure should include both direct applications for federal funding (e.g., applications to federal agencies) and indirect applications for such funding (e.g., applications to State agencies that will be subawarding federal funds).

OJP seeks this information to help avoid any inappropriate duplication of funding. Leveraging multiple funding sources in a complementary manner to implement comprehensive programs or projects is encouraged and is not seen as inappropriate duplication.

Applicants that have pending applications as described above are to provide the following information about pending applications submitted within the last 12 months:

- The Federal or State funding agency.
- The solicitation name/project name.
- The point of contact information at the applicable funding agency.

Federal or State Funding Agency	Solicitation Name/Project Name	Name/Phone/E-mail for Point of Contact at Funding Agency
DOJ/COPS	COPS Hiring Program	Jane Doe, 202/000-0000; jane.doe@usdoj.gov
HHS/ Substance Abuse & Mental Health Services Administration	Drug Free Communities Mentoring Program/ North County Youth Mentoring Program	John Doe, 202/000-0000; john.doe@hhs.gov

Applicants should include the table as a separate attachment, with the file name "Disclosure of Pending Applications," to their application. Applicants that do not have pending applications as described above are to include a statement to this effect in the separate attachment page (e.g., "[Applicant Name] does not have pending applications submitted within the last 12 months for federally funded assistance that include requests for funding to support the same project being proposed under this solicitation and will cover the identical cost items outlined in the budget narrative and worksheet in the application under this solicitation.").

7. Other Standard Forms

Additional forms that OJP may require in connection with an award are available on OJP's funding page at www.ojp.usdoj.gov/funding/forms.htm. For successful applicants, receipt of funds may be contingent upon submission of all necessary forms. Note in particular the following forms:

- a. [Standard Assurances*](#)
Applicants must read, certify, and submit this form in GMS prior to the receipt of any award funds.
- b. [Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements*](#)
Applicants must read, certify, and submit in GMS prior to the receipt of any award funds.
- c. [Accounting System and Financial Capability Questionnaire](#)
Any applicant (other than an individual) that is a non-governmental entity and that has not received any award from OJP within the past 3 years, must download, complete, and submit this form.

*These OJP Standard Assurances and Certifications are forms, which applicants accept in GMS. They are not additional forms to be uploaded at the time of application submission.

Selection Criteria

Statement of the Problem (Understanding of the problem and its importance)—10%

1. Awareness of the state of current DNA technology and DNA testing relative to postconviction cases.

Project/Program Design and Implementation (Quality and technical merit)—35%

1. How requested funds will be used to help defray costs of postconviction DNA testing.
2. Demonstration of multiagency cooperation and collaboration (e.g., partnerships).
3. Need and relevance to the goals and objectives of the program.
4. Feasibility of proposed project and awareness of pitfalls.
5. Innovation and creativity (when appropriate).
6. Strength of the justification for case identification costs, if applicable.

Capabilities/Competencies (Capabilities, demonstrated productivity, and experience of applicants)—25%

1. Qualifications and experience of proposed staff.
2. Demonstrated ability of proposed staff and organization to manage the effort.
3. Adequacy of the plan to manage the project, including how various tasks are subdivided and resources are used.
4. Successful past performance on NIJ grants and contracts (when applicable).

Budget—15% NOTE: *The budget should be complete, cost effective, and allowable (e.g., reasonable, allocable, and necessary for project activities.) Budget narratives should generally demonstrate how applicants will maximize cost effectiveness of grant expenditures. Budget narratives should demonstrate cost effectiveness in relation to the proposed level of effort, potential alternatives, and the goals of the project.*¹

1. Total cost of the project relative to the perceived benefit (cost-effectiveness).
2. Appropriateness of the budget relative to the level of effort.
3. Use of existing resources to conserve costs.
4. "Case identification" activities (if any) are identified in a separate section.

Impact/Outcomes and Evaluation/Plan for Collecting Data for Performance Measures (Relevance to policy and practice)—15%

1. Potential for significant outcomes.
2. Plan for collecting data required for this solicitation's performance measures.

Review Process

OJP is committed to ensuring a fair and open process for awarding grants. NIJ reviews the application to make sure that the information presented is reasonable, understandable, measurable, and achievable, as well as consistent with the solicitation.

¹ Generally speaking, a reasonable cost is a cost that, in its nature or amount, does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the costs.

Peer reviewers will review the applications submitted under this solicitation that meet basic minimum requirements. NIJ may use either internal peer reviewers, external peer reviewers, or a combination, to review the applications. An external peer reviewer is an expert in the subject matter of a given solicitation who is NOT a current DOJ employee. An internal reviewer is a current DOJ employee who is well-versed or has expertise in the subject matter of this solicitation. A peer review panel will evaluate, score, and rate applications that meet basic minimum requirements. Peer reviewers' ratings and any resulting recommendations are advisory only. In addition to peer review ratings, considerations for award recommendations and decisions may include, but are not limited to, underserved populations, geographic diversity, strategic priorities, past performance, and available funding.

The Office of the Chief Financial Officer (OCFO), in consultation with NIJ, reviews applications for potential discretionary awards to evaluate the fiscal integrity and financial capability of applicants, examines proposed costs to determine if the Budget Detail Worksheet and Budget Narrative accurately explain project costs, and determines whether costs are reasonable, necessary, and allowable under applicable federal cost principles and agency regulations.

Absent explicit statutory authorization or written delegation of authority to the contrary, all final award decisions will be made by the Assistant Attorney General, who may consider factors including, but not limited to, underserved populations, geographic diversity, strategic priorities, past performance, and available funding when making awards.

Additional Requirements

Applicants selected for awards must agree to comply with additional legal requirements upon acceptance of an award. OJP encourages applicants to review the information pertaining to these additional requirements prior to submitting an application. Additional information for each requirement can be found at www.ojp.usdoj.gov/funding/other_requirements.htm.

- Civil Rights Compliance
- Civil Rights Compliance Specific to State Administering Agencies
- Faith-Based and Other Community Organizations
- Confidentiality
- Research and the Protection of Human Subjects
- Anti-Lobbying Act
- Financial and Government Audit Requirements
- National Environmental Policy Act (NEPA)
- DOJ Information Technology Standards (if applicable)
- Single Point of Contact Review

- Non-Supplanting of State or Local Funds
- Criminal Penalty for False Statements
- Compliance with [Office of Justice Programs Financial Guide](#)
- Suspension or Termination of Funding
- Nonprofit Organizations
- For-profit Organizations
- Government Performance and Results Act (GPRA)
- Rights in Intellectual Property
- Federal Funding Accountability and Transparency Act of 2006 (FFATA)
- Awards in Excess of \$5,000,000 – Federal Taxes Certification Requirement
- Policy and Guidance for Conference Approval, Planning, and Reporting
- OJP Training Guiding Principles for Grantees and Subgrantees

If a proposal is funded, the award recipient will be required to submit several reports and other materials, including quarterly financial reports, semi-annual progress reports, a final progress report, and, if applicable, an annual audit report in accordance with Office of Management and Budget Circular A–133. Future awards and fund drawdowns may be withheld if reports are delinquent.

How to Apply

Applicants must submit applications through Grants.gov. Applicants must first register with Grants.gov in order to submit an application through Grants.gov, a “one-stop storefront” to find federal funding opportunities and apply for funding. Find complete instructions on how to register and submit an application at www.Grants.gov. Applicants that experience technical difficulties during this process should call the Grants.gov Customer Support Hotline at **800-518-4726** or **606-545-5035**, 24 hours a day, 7 days a week, except federal holidays. Registering with Grants.gov is a one-time process; however, **processing delays may occur, and it can take several weeks** for first-time registrants to receive confirmation and a user password. OJP encourages applicants to **register several weeks before** the application submission deadline. In addition, OJP urges applicants to submit applications 72 hours prior to the application due date to allow time to receive validation messages or rejection notifications from Grants.gov, and to correct in a timely fashion any problems that may have caused a rejection notification.

Note: NIJ encourages all prospective applicants to sign up for Grants.gov email notifications regarding this solicitation. If this solicitation is cancelled or modified, individuals who sign up with Grants.gov for email updates will be notified.

All applicants are required to complete the following steps:

1. **Acquire a Data Universal Numbering System (DUNS) number.** In general, the Office of Management and Budget requires that all applicants (other than individuals) for federal funds include a DUNS number in their applications for a new award or a supplement to an existing award. A DUNS number is a unique nine-digit sequence recognized as the universal standard for identifying and differentiating entities receiving federal funds. The identifier is used for tracking purposes and to validate address and point of contact information for federal assistance applicants, recipients, and subrecipients. The DUNS number will be used throughout the grant life cycle. Obtaining a DUNS number is a free, one-time activity. Call Dun and Bradstreet at 866-705-5711 to obtain a DUNS number or apply online at www.dnb.com. A DUNS number is usually received within 1-2 business days.
2. **Acquire registration with the System for Award Management (SAM). SAM replaces the Central Contractor Registration (CCR) database** as the repository for standard information about federal financial assistance applicants, recipients, and subrecipients. OJP requires all applicants (other than individuals) for federal financial assistance to maintain current registrations in the SAM database. Applicants must be registered in SAM to successfully register in Grants.gov. (Previously, organizations that had submitted applications via Grants.gov were registered with CCR, as it was a requirement for Grants.gov registration. SAM registration replaces CCR as a pre-requisite for Grants.gov registration.) Applicants must **update or renew their SAM registration annually** to maintain an active status.

Applicants that were previously registered in the CCR database must, at a minimum:

- Create a SAM account;
- Log in to SAM and migrate permissions to the SAM account (all the entity registrations and records should already have been migrated).

Applicants that were not previously registered in the CCR database must register in SAM prior to registering in Grants.gov. Information about SAM registration procedures can be accessed at www.sam.gov.

3. **Acquire an Authorized Organization Representative (AOR) and a Grants.gov username and password.** Complete the AOR profile on Grants.gov and create a username and password. The applicant organization's DUNS number must be used to complete this step. For more information about the registration process, go to www.grants.gov/applicants/get_registered.jsp.
4. **Acquire confirmation for the AOR from the E-Business Point of Contact (E-Biz POC).** The E-Biz POC at the applicant organization must log into Grants.gov to confirm the applicant organization's AOR. Note that an organization can have more than one AOR.

5. **Search for the funding opportunity on Grants.gov.** Use the following identifying information when searching for the funding opportunity on Grants.gov. The Catalog of Federal Domestic Assistance (CFDA) number for this solicitation is 16.820, titled "Postconviction DNA Testing Assistance Program," and the funding opportunity number is NIJ-2013-3367.
6. **Complete the Disclosure of Lobbying Activities.** All applicants must complete this information. Applicants that expend any funds for lobbying activities must provide the detailed information requested on the form, *Disclosure of Lobbying Activities* (SF-LLL). Applicants that do not expend any funds for lobbying activities should enter "N/A" in the required highlighted fields.
7. **Submit an application consistent with this solicitation by following the directions in Grants.gov.** Within 24–48 hours after submitting the electronic application, the applicant should receive an e-mail validation message from Grants.gov. The message will state whether the application has been received and validated, or rejected due to errors, with an explanation. **Important:** OJP urges applicants to submit applications **at least 72 hours prior** of the application due date to allow time to receive validation messages or rejection notifications from Grants.gov, and to correct in a timely fashion any problems that may have caused a rejection notification.

Note: Grants.gov only permits the use of specific characters in names of attachment files. Valid file names may only include the following characters: A-Z, a-z, 0-9, underscore (), hyphen (-), space, and period. Grants.gov will forward the application to OJP's Grants Management System (GMS). GMS does not accept executable file types as application attachments. These disallowed file types include, but are not limited to, the following extensions: ".com," ".bat," ".exe," ".vbs," ".cfg," ".dat," ".db," ".dbf," ".dll," ".ini," ".log," ".ora," ".sys," and ".zip."

Note: Duplicate Applications

If an applicant submits multiple versions of an application, NIJ will review the most recent version submitted.

Experiencing Unforeseen Grants.gov Technical Issues

Applicants that experience unforeseen Grants.gov technical issues beyond their control that prevent them from submitting their application by the deadline must e-mail the NIJ contact identified in the Contact Information section on the title page **within 24 hours after the application deadline** and request approval to submit their application. The e-mail must describe the technical difficulties, and include a timeline of the applicant's submission efforts, the complete grant application, the applicant's DUNS number, and any Grants.gov Help Desk or SAM tracking number(s). **Note: NIJ does not automatically approve requests.** After the program office reviews the submission, and contacts the Grants.gov or SAM Help Desks to validate the reported technical issues, OJP will inform the applicant whether the request to submit a late application has been approved or denied. If the technical issues reported cannot be validated, OJP will reject the application as untimely.

The following conditions are not valid reasons to permit late submissions: (1) failure to register in sufficient time, (2) failure to follow Grants.gov instructions on how to register and apply as

posted on its Web site, (3) failure to follow each instruction in the OJP solicitation, and (4) technical issues with the applicant's computer or information technology environment, including firewalls.

Notifications regarding known technical problems with Grants.gov, if any, are posted at the top of the OJP funding Web page at www.ojp.usdoj.gov/funding/solicitations.htm.

Provide Feedback to OJP on This Solicitation

To assist OJP in improving its application and award processes, we encourage applicants to provide feedback on this solicitation, the application submission process, and/or the application review/peer review process. Feedback may be provided to OJPSolicitationFeedback@usdoj.gov.

IMPORTANT: This email is for feedback and suggestions only. Replies are **not** sent from this mailbox. If you have specific questions on any program or technical aspect of the solicitation, **you must** directly contact the appropriate number or email listed on the front of this solicitation document. These contacts are provided to help ensure that you can directly reach an individual who can address your specific questions in a timely manner.

If you are interested in being a reviewer for other OJP grant applications, please email your resume to oippeereview@lmbps.com. The OJP Solicitation Feedback email account will not forward your resume. **Note:** Neither you nor anyone else from your organization can be a peer reviewer in a competition in which you or your organization have submitted an application.

Application Checklist

Postconviction DNA Testing Assistance Program

This application checklist has been created to assist in developing an application.

Eligibility Requirement:

- _____ Certification as to Provision of Postconviction DNA Testing and Preservation of Biological Evidence (see pages 3–4 and Appendix I)

What an Application Should Include:

- _____ Application for Federal Assistance (SF-424) (see page 11)
- _____ Abstract (see page 11)
- _____ Program Narrative (see page 12)
 - _____ Double-spaced
 - _____ 12-point standard font
 - _____ 1" standard margins
 - _____ Narrative is **20** pages or less
- _____ Appendices to the Program Narrative (see page 13)
 - _____ Bibliography/references (if applicable)
 - _____ Any tools/instruments, questionnaires, tables/charts/graphs, or maps pertaining to the proposed project
 - _____ Curriculum vitae, resumes, or biographical sketches of key personnel
 - _____ Project timeline with expected milestones
 - _____ Letters of cooperation/support or administrative agreements from organizations collaborating in the project (if applicable)
 - _____ Human Subjects Protection Paperwork
 - _____ Privacy Certificate
 - _____ List of previous and current NIJ awards to applicant organization
 - _____ List of other agencies, organizations, or funding sources to which this proposal has been submitted (if applicable)
- _____ Budget Detail Worksheet (see page 13)
- _____ Budget Narrative (see page 14)
- _____ Disclosure of Lobbying Activities (SF-LLL) (see page 21)
- _____ Indirect Cost Rate Agreement (if applicable) (see page 14)
- _____ Additional Attachment
 - _____ Disclosure of Pending Applications (see page 15)
- _____ Other Standard Forms as applicable (see page 16)

Appendix I: Certification Template

**U.S. DEPARTMENT OF JUSTICE
OFFICE OF JUSTICE PROGRAMS
NATIONAL INSTITUTE OF JUSTICE**

FY 2013 Postconviction DNA Testing Assistance Program

Certification as to Provision of Postconviction DNA Testing and Preservation of Biological Evidence
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On behalf of the applicant State (as defined in the solicitation) named below, I certify the following to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice:

- (A) The State provides postconviction DNA testing of specified biological evidence under a State statute or under State rules, regulations, or practices, to persons convicted after trial and under a sentence of imprisonment or death for a State offense of murder or forcible rape, in a manner intended to ensure a reasonable process for resolving claims of actual innocence; and
- (B) The State preserves biological evidence secured in relation to the investigation or prosecution of a State offense of murder or forcible rape under a State statute; local ordinances; or State or local rules, regulations, or practices, in a manner intended to ensure that reasonable measures are taken by all jurisdictions within the State to preserve such evidence.

I am the chief legal officer of the applicant State and have authority to make this certification. I am aware that a false statement in this certification may be the subject of criminal prosecution, including under 18 U.S.C. § 1001. I also acknowledge that certifications provided in connection with Office of Justice Programs grants are subject to review by the Office of Justice Programs or by the Department of Justice's Office of the Inspector General.

Signature of Certifying Official

Printed Name of Certifying Official

Title of Certifying Official

Name of Applicant State

Date

Appendix II: Selected Statutes

(See “NOTE” in the “Eligibility” section of the solicitation)

Section 413 of the Justice for All Act of 2004 (Public Law 108–405) provides:

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 [October 30, 2004] (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 [October 30, 2004] 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 [October 30, 2004] (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 [October 30, 2004], 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.

18 U.S.C. § 3600(a) provides:

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 [October 30, 2004]; or

(ii) knowingly fail to request DNA testing of that evidence in a prior motion for post-conviction 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 [October 30, 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.

18 U.S.C. § 3600A provides:

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 [October 30, 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 [October 30, 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.