



Department of Justice

STATEMENT

OF

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BEFORE THE

SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY
COMMITTEE ON THE JUDICIARY
U.S. HOUSE OF REPRESENTATIVES

CONCERNING

“REAUTHORIZATION OF THE INNOCENCE PROTECTION ACT”

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U.S. DEPARTMENT OF JUSTICE**

Mr. Chairman, Ranking Member Gohmert and Members of the Subcommittee: I am pleased to have the opportunity to discuss the Department of Justice's (DOJ) efforts to implement the Innocence Protection Act of 2004. We appreciate this Subcommittee's interest in this issue.

My name is Lynn Overmann and I am a Senior Advisor in the Office of the Assistant Attorney General for the Office of Justice Programs (OJP) within the Department of Justice. OJP's mission is to increase public safety and improve the fair administration of justice across America through innovative leadership and programs. A critical part of this mission is ensuring that the accused have a competent defense and that, in the unfortunate event that an innocent person is convicted, this person will ultimately be exonerated.

During a speech to the American Council of Chief Defenders (ACCD), a section of the National Legal Aid & Defender Association, U.S. Attorney General Eric Holder opened a new era of dialogue with the nation's indigent defense leaders and renewed the Department's commitment to improve the quality of indigent defense by proposing steps for improving the nation's criminal justice system. In his speech, the Attorney General candidly acknowledged that there is a crisis in indigent defense in this country. Resources

for public defender programs lag far behind other justice system programs, constituting only about three percent of all criminal justice expenditures in our nation's largest counties. We know that defenders in many jurisdictions carry huge caseloads that make it difficult for them to fulfill their legal and ethical responsibilities to their clients.

When defendants fail to receive competent legal representation, their cases are vulnerable to costly mistakes that can take a long time to correct. Lawyers on both sides can spend years dealing with appeals arising from technical infractions and procedural errors. When that happens, no one wins.

At OJP we understand that this challenge is not new. As a result, OJP has taken several steps in addressing this issue. We have multiple initiatives covering both our National Institute of Justice (NIJ) and our Bureau of Justice Assistance (BJA).

Kirk Bloodsworth Postconviction DNA Testing Grant Program

NIJ administers the Kirk Bloodsworth Postconviction DNA Testing Grant program. The program helps states defray the costs associated with postconviction DNA testing of forcible rape, murder, and nonnegligent manslaughter cases and to locate and analyze biological evidence samples associated with these cases. NIJ has awarded a total of over \$17.6 million to 14 states through this program.

Fiscal Year 2009 is the second year that NIJ has awarded Bloodsworth grants. In Fiscal Year 2008, five states -- Arizona, Kentucky, Texas, Virginia, and Washington -- applied for and received awards totaling over \$7.8 million. We have already seen some promising signs from these grants. In Arizona, 162 inmates have applied for assistance under the grant. These applications are currently being reviewed. In Kentucky, 97 cases are currently being reviewed through program funds.

This year, NIJ received 13 applications and awarded grants to nine states -- : Connecticut, Minnesota, North Carolina, Colorado, Louisiana, Wisconsin, California, New Mexico, and Maryland – for a total of more than \$9.8 million.

I am aware that there are concerns about the delay in awarding these funds. These delays were due to very strict eligibility requirements in Section 413 of the Justice for All Act. Funds were first appropriated for the Bloodsworth program in Fiscal Year 2006. No solicitation was issued that fiscal year because of the difficulty crafting a solicitation consistent with the stringent language of the statute. Generally speaking, the statute requires states to demonstrate that all jurisdictions within the state comply with the detailed and strict eligibility requirements for preserving biological evidence and providing post-conviction DNA testing contained in the law.

In Fiscal Year 2007, NIJ issued a solicitation announcing its Post-Conviction DNA Testing Assistance Program consistent with the stringent requirements of Section 413. The solicitation included detailed information regarding eligibility. Only three

states applied. After review, it was determined that none of the three applicants had established eligibility for the program. As a result, NIJ was unable to make any awards. Both the Fiscal Year 2006 and Fiscal Year 2007 appropriations were carried over into Fiscal Year 2008.

FY 2008 appropriations language eased the stringencies of Section 413. Generally speaking, the new language provided OJP with administrative flexibility to require that the states demonstrate only that they have in place rules, regulations, and practices intended to ensure that all jurisdictions within the state comply with the detailed and stringent eligibility requirements for preserving biological evidence and providing post-conviction DNA testing contained in the law.

In Fiscal Year 2008, NIJ conducted extensive outreach to ensure that key state and local government officials as well as forensics professionals were aware of the solicitation. NIJ also worked with organizations such as the American Society of Crime Lab Directors and the American Academy of Forensic Sciences to notify their membership about this program. While we were pleased that we were able to award funds in Fiscal Year 2008, we were also disappointed that more states did not apply.

After the Fiscal Year 2008 application process, NIJ surveyed the states that did not apply to try to determine their reasons for declining. The explanations varied. For example, some states maintained that they had sufficient funds to conduct Postconviction DNA analysis, while other states claimed that they had few applicable cases.

For this fiscal year, NIJ undertook an extensive outreach program, including a post-conviction symposium with representatives from all 50 states. We are confident that this outreach helped lead to the increase in applications and the resulting increase in awards.

Although the Bloodsworth Postconviction DNA program may have gotten off to a slow start, we are confident that it is moving in the right direction. All of the funds appropriated for this program from Fiscal Year 2006 through Fiscal Year 2009 have now been awarded.

We will continue to work with Congress to ensure that, contingent on funding availability, more states can apply for and receive funding. In addition we will work with state and local criminal justice systems and laboratories to ensure that states have procedures in place to ensure that DNA and other biological evidence is preserved in the way the Innocence Protection Act intended.

Capital Case Litigation Initiative

BJA established the Capital Case Litigation Initiative (CCLI) in 2005 as a partnership to create specialized trainings for trial judges, state and local defense counsel and prosecutors who litigate death penalty cases. The program's goal was to improve the reliability of jury verdicts in death penalty cases and ensure quality representation for the accused.

BJA partnered with three lead agencies, the National District Attorneys Association (NDAA), the National Legal Aid & Defenders Association (NLADA) and the National Judicial College (NJC), to develop a training specific to each discipline. By the end of the Fiscal Year (FY), training sessions were delivered at the state and local levels. These trainings focus on investigation techniques; pretrial and trial procedures, including the use of expert testimony and forensic science evidence; advocacy in capital cases; and capital case sentencing-phase procedures. In Fiscal Year 2006 and 2007, BJA continued this program, providing trainings for prosecutors, defense attorneys and judges across the nation.

In FY 2008, the CCLI appropriation was specifically tied to new legislation, the Innocence Protection Act (IPA), a subsection of the Justice For All Act (JFAA). This change in appropriation compelled substantial changes to the program design. Specifically the Act mandates that funding be split equally between capital prosecutors and defense attorneys purposes. CCLI applicants are now limited to state agencies in states that conduct, or will conduct, prosecutions in which capital punishment is sought, and there is no specific statutory authority for the training of judges, which had been an integral part of previous CCLI program designs. For the state agency to be eligible, it must have an “effective system: (as defined in the IPA) for providing competent legal representation for indigent defendants in capital cases.

In FY 2008, BJA provided funding for programs in four states. BJA also provided general technical assistance through Georgia State University, which is implementing a defense-initiated victim outreach (DIVO) program in capital cases in up to four states, targeting both prosecutors and defense attorneys. DIVO creates the infrastructure within the criminal justice system to sustain the pretrial negotiation process that involves the defense, judiciary, and prosecution to ensure more reliable jury verdicts and sentences. In addition, with BJA support, the National Clearinghouse for Science, Technology and the Law (NCSTL) is developing two forensic trainings for prosecutors and defense attorneys who may try capital cases. The training focuses on deciphering what evidence is necessary for trial, and subsequently must be sent to the crime lab for analysis, in addition to general forensic knowledge necessary in death penalty trials. Consistent with the statute, equal amounts of funds were used to train prosecutors and defense attorneys.

In FY 2009, BJA is focusing CCLI funding on making available high-quality training on a competitive basis to capital case litigators in all death penalty states. By the end of September, BJA will award more than \$1.8 million in funding to eight states - eight states: Arizona, Georgia, Kentucky, Louisiana, Ohio, Oklahoma, Pennsylvania and South Carolina. Per the statute, funding is split equally between prosecutor and defense purposes.

BJA's goal with CCLI remains ensuring that the limited funds available are used in the most productive ways possible to improve justice for all and to move forward in close coordination with key partners that represent both sides of the issue.

National Initiatives: Adjudication Program

In FY 2009 BJA, using funds from the Byrne Competitive grant program, initiated the National Initiatives: Adjudication Program. This program focuses on national initiatives to improve the functioning of the criminal justice system, through indigent defense, community prosecution, and addressing the “CSI effect” hypothesis (that the CSI television shows affect the public perceptions, and, in turn, impact jury trials either by burdening the prosecution by creating greater expectations about forensic science than can be delivered or burdening the defense by creating exaggerated faith in the capabilities and reliability of the forensic sciences). By the end of September, BJA will award more than \$3.1 million under this initiative.

Wrongful Prosecution Review Program

After consulting with those in the field who work to exonerate potentially wrongfully convicted defendants, and consistent with Congressional guidance, BJA used a carveout of FY09 CCLI funding to create the Wrongful Prosecution Review discretionary grant program to provide high quality and efficient representation for defendants with post-conviction claims of innocence. While in some cases, post-conviction DNA testing alone can prove innocence, many cases will rely on other forms of proof, and other cases will involve DNA testing together with additional proof and/or

expert testimony, which may be extremely costly. The Wrongful Prosecution Review Program's goal is to provide quality representation to the wrongfully convicted; alleviate burdens placed on the criminal justice system through costly and prolonged post-conviction litigation; and identify, when possible, the actual perpetrator of the crime.

The Wrongful Prosecution Review Program will support public defender offices and non-profit state and local organizations dedicated to exonerating the innocent. These organizations include in-house post-conviction programs with demonstrable experience and competence in litigating post-conviction claims of innocence. The program will also support national organizations to work collaboratively with the state and local organizations to competently and efficiently litigate post-conviction claims of innocence. This will include providing trainings on such topics as evaluation/screening of cases during intake, forensic re-analysis, expert consultation and testimony, and general litigation issues. In FY 2009, BJA will award more than \$2.5 million for the Wrongful Prosecution Review Program, composed of 11 grants to state and non-profit entities and one training and technical assistance award.

National Indigent Defender Conference

The Office of Justice Programs is planning a national indigent defense conference, which we hope to hold next March. This conference will bring together public defenders from every state to address topics such as coalition building, standards development, access to technology, and the judicial role in the appointment of counsel. We also plan to have defenders bring a key stakeholder with them – someone from

prosecution or the bench, for example. We will share more information about this conference as our planning progresses.

In addition, the Attorney General has convened a working group within the Department of Justice to address the ways that the Department can work with our state and local partners to help improve indigent defense services.

Attorney General Holder, the Department of Justice, and OJP in particular are committed to working with our state, local and tribal partners to protect innocent people who are wrongfully convicted. We are also committed to working with Congress on this issue. As the Attorney General said before the American Council of Chief Defenders, “When the system breaks down, we all lose.”

This concludes my statement, Mr. Chairman. Thank you for the opportunity to testify today. I welcome the opportunity to answer any questions you or Members of the Subcommittee may have.