

RAPID DNA ACT OF 2017

MAY 11, 2017.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 510]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 510) to establish a system for integration of Rapid DNA instruments for use by law enforcement to reduce violent crime and reduce the current DNA analysis backlog, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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Purpose and Summary

H.R. 510 will establish a system for integration of Rapid DNA instruments for use by law enforcement to reduce violent crime and reduce the current DNA analysis backlog.

Background and Need for the Legislation

The DNA Identification Act of 1994¹ established federal DNA labs and authorized the Federal Bureau of Investigation to begin compiling DNA information into a central database. This database is known as the National DNA Index System (NDIS) and the system for analyzing and communicating the data is the Combined DNA Index System (CODIS). The 1994 Act allowed DNA testing to be done by accredited state labs with results from state labs being uploaded to CODIS.

DNA technology has advanced a great deal in the years since the 1994 Act. Whereas it once took days or weeks, DNA testing can now be completed in a matter of hours. There is currently technology, known as Rapid DNA technology, that allows for DNA testing and identification on a small, copier-sized machine. A DNA sample—oftentimes a cheek swab—is taken, placed into a cartridge that slides into the Rapid DNA machine, and reports back the DNA profile in approximately ninety minutes. The FBI, working with the forensics community, is hopeful that this technology can be used in a booking station to help identify suspects in the same way a fingerprint is currently used. At present, Rapid DNA technology can only be used for identification purposes, not crime scene analysis.

Unfortunately, the 1994 Act creating CODIS does not allow for the use of this technology since only state labs are allowed access to CODIS. Currently, booking stations have to send their DNA samples off to state labs and wait weeks for the results. This has created a backlog that impacts all criminal investigations using forensics, not just forensics used for identification purposes. H.R. 510 would modify the current law regarding DNA testing and access to CODIS. The short turnaround time resulting from increased use of Rapid DNA technology would help to quickly eliminate potential suspects, capture those who have committed a previous crime and left DNA evidence, as well as free up current DNA profilers to do advanced forensic DNA analysis, such as crime scene analysis and rape-kits.

Hearings

The Committee on the Judiciary held no hearings on H.R. 510. However, the Judiciary Committee's Subcommittee on Crime, Terrorism, Homeland Security and Investigations held a hearing on a virtually identical bill, H.R. 320, on June 18, 2015. Testimony was received from: Ms. Amy Hess, Executive Assistant Director of Science and Technology, Federal Bureau of Investigation; Ms. Jody Wolf, Assistant Crime Laboratory Administrator, Phoenix Police Department Crime Laboratory, President, American Society of Criminal Laboratory Directors; and Ms. Natasha Alexenko, Founder, Natasha's Justice Project.

Committee Consideration

On April 27, 2017, the Committee met in open session and ordered the bill H.R. 510 favorably reported, by voice vote, a quorum being present.

¹ Pub. L. No. 103-322 (1994).

Committee Votes

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that there were no recorded votes during the Committee's consideration of H.R. 510.

Committee Oversight Findings

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

New Budget Authority and Tax Expenditures

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

Congressional Budget Office Cost Estimate

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 510, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

MAY 9, 2017.

Hon. BOB GOODLATTE,
Chairman.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 510, the Rapid DNA Act of 2017.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz.

Sincerely,

KEITH HALL.

Enclosure.

cc: Honorable John Conyers Jr.
Ranking Member

H.R. 510—Rapid DNA Act of 2017

As ordered reported by the House Committee on the Judiciary on
April 27, 2017.

H.R. 510 would direct the Federal Bureau of Investigation (FBI) to issue standards and procedures for the use of certain automated processes to analyze DNA samples. The agency is currently undertaking activities to prepare for increased use of such enhanced analyses. Based on information from the FBI, CBO estimates that

implementing the bill would cost less than \$500,000 annually; such spending would be subject to the availability of appropriated funds.

Enacting the legislation would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. CBO estimates that enacting H.R. 510 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 510 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Mark Grabowicz. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

Duplication of Federal Programs

No provision of H.R. 510 establishes or reauthorizes a program of the Federal government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111 139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

Disclosure of Directed Rule Makings

The Committee estimates that H.R. 510 specifically directs to be completed no specific rule makings within the meaning of 5 U.S.C. 551.

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 510 is designed to establish a system for integration of Rapid DNA instruments for use by law enforcement to reduce violent crime and reduce the current DNA analysis backlog.

Advisory on Earmarks

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 510 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of rule XXI.

Section-by-Section Analysis

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

Section 1. Short Title. This section cites the short title of the bill as the “Rapid DNA Act of 2016.”

Section 2. Rapid DNA Instruments. This section requires the Director of the FBI to issue standards and procedures for the use of Rapid DNA instruments and resulting analyses. It also amends the DNA Identification Act of 1994 to include laboratories that are independently accredited and undergo external audits not less than every two years.

Section 3. Conforming Amendments Relating to Collection of DNA Identification Information. This section amends the DNA Analysis

Backlog Elimination Act of 2000 by allowing the Director of the FBI to waive certain requirements under the Act if the DNA samples are analyzed by means of Rapid DNA instruments and the results are included in CODIS.

Changes in Existing Law Made by the Bill, as Reported

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

DNA IDENTIFICATION ACT OF 1994

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TITLE XXI—STATE AND LOCAL LAW ENFORCEMENT

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Subtitle C—DNA Identification

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SEC. 210303. QUALITY ASSURANCE AND PROFICIENCY TESTING STANDARDS.

(a) PUBLICATION OF QUALITY ASSURANCE AND PROFICIENCY TESTING STANDARDS.—(1)(A) Not later than 180 days after the date of enactment of this Act, the Director of the Federal Bureau of Investigation shall appoint an advisory board on DNA quality assurance methods from among nominations proposed by the head of the National Academy of Sciences and professional societies of crime laboratory officials.

(B) The advisory board shall include as members scientists from State, local, and private forensic laboratories, molecular geneticists and population geneticists not affiliated with a forensic laboratory, and a representative from the National Institute of Standards and Technology.

(C) The advisory board shall develop, and if appropriate, periodically revise, recommended standards for quality assurance, including standards for testing the proficiency of forensic laboratories, and forensic analysts, in conducting analyses of DNA.

(2) The Director of the Federal Bureau of Investigation, after taking into consideration such recommended standards, shall issue (and revise from time to time) standards for quality assurance, including standards for testing the proficiency of forensic laboratories, and forensic analysts, in conducting analyses of DNA.

(3) The standards described in paragraphs (1) and (2) shall specify criteria for quality assurance and proficiency tests to be applied to the various types of DNA analyses used by forensic laboratories. The standards shall also include a system for grading proficiency testing performance to determine whether a laboratory is performing acceptably.

(4) Until such time as the advisory board has made recommendations to the Director of the Federal Bureau of Investigation and the Director has acted upon those recommendations, the quality assurance guidelines adopted by the technical working group on DNA analysis methods shall be deemed the Director's standards for purposes of this section.

(5)(A) *In addition to issuing standards as provided in paragraphs (1) through (4), the Director of the Federal Bureau of Investigation shall issue standards and procedures for the use of Rapid DNA instruments and resulting DNA analyses.*

(B) *In this Act, the term "Rapid DNA instruments" means instrumentation that carries out a fully automated process to derive a DNA analysis from a DNA sample.*

(b) ADMINISTRATION OF THE ADVISORY BOARD.—(1) For administrative purposes, the advisory board appointed under subsection (a) shall be considered an advisory board to the Director of the Federal Bureau of Investigation.

(2) Section 14 of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply with respect to the advisory board appointed under subsection (a).

(3) The DNA advisory board established under this section shall be separate and distinct from any other advisory board administered by the FBI, and is to be administered separately.

(4) The board shall cease to exist on the date 5 years after the initial appointments are made to the board, unless the existence of the board is extended by the Director of the Federal Bureau of Investigation.

(c) PROFICIENCY TESTING PROGRAM.—(1) Not later than 1 year after the effective date of this Act, the Director of the National Institute of Justice shall certify to the Committees on the Judiciary of the House and Senate that—

(A) the Institute has entered into a contract with, or made a grant to, an appropriate entity for establishing, or has taken other appropriate action to ensure that there is established, not later than 2 years after the date of enactment of this Act, a blind external proficiency testing program for DNA analyses, which shall be available to public and private laboratories performing forensic DNA analyses;

(B) a blind external proficiency testing program for DNA analyses is already readily available to public and private laboratories performing forensic DNA analyses; or

(C) it is not feasible to have blind external testing for DNA forensic analyses.

(2) As used in this subsection, the term "blind external proficiency test" means a test that is presented to a forensic laboratory through a second agency and appears to the analysts to involve routine evidence.

(3) Notwithstanding any other provision of law, the Attorney General shall make available to the Director of the National Institute of Justice during the first fiscal year in which funds are distributed under this subtitle up to \$250,000 from the funds available under part X of Title I of the Omnibus Crime Control and Safe Streets Act of 1968 to carry out this subsection.

SEC. 210304. INDEX TO FACILITATE LAW ENFORCEMENT EXCHANGE OF DNA IDENTIFICATION INFORMATION.

(a) ESTABLISHMENT OF INDEX.—The Director of the Federal Bureau of Investigation may establish an index of—

- (1) DNA identification records of—
 - (A) persons convicted of crimes;
 - (B) persons who have been charged in an indictment or information with a crime; and
 - (C) other persons whose DNA samples are collected under applicable legal authorities, provided that DNA samples that are voluntarily submitted solely for elimination purposes shall not be included in the National DNA Index System;
- (2) analyses of DNA samples recovered from crime scenes;
- (3) analyses of DNA samples recovered from unidentified human remains; and
- (4) analyses of DNA samples voluntarily contributed from relatives of missing persons.

(b) INFORMATION.—The index described in subsection (a) shall include only information on DNA identification records and DNA analyses that are—

- (1) based on analyses performed by or on behalf of a criminal justice agency (or the Secretary of Defense in accordance with section 1565 of title 10, United States Code) in accordance with publicly available standards that satisfy or exceed the guidelines for a quality assurance program for DNA analysis, issued by the Director of the Federal Bureau of Investigation under section 210303;

[(2) prepared by laboratories that—

[(A) not later than 2 years after the date of enactment of the DNA Sexual Assault Justice Act of 2004, have been accredited by a nonprofit professional association of persons actively involved in forensic science that is nationally recognized within the forensic science community; and

[(B) undergo external audits, not less than once every 2 years, that demonstrate compliance with standards established by the Director of the Federal Bureau of Investigation; and]

(2) prepared by—

(A) laboratories that—

(i) have been accredited by a nonprofit professional association of persons actively involved in forensic science that is nationally recognized within the forensic science community; and

(ii) undergo external audits, not less than once every 2 years, that demonstrate compliance with standards established by the Director of the Federal Bureau of Investigation; or

(B) criminal justice agencies using Rapid DNA instruments approved by the Director of the Federal Bureau of Investigation in compliance with the standards and procedures issued by the Director under section 210303(a)(5); and

- (3) maintained by Federal, State, and local criminal justice agencies (or the Secretary of Defense in accordance with sec-

tion 1565 of title 10, United States Code) pursuant to rules that allow disclosure of stored DNA samples and DNA analyses only—

(A) to criminal justice agencies for law enforcement identification purposes;

(B) in judicial proceedings, if otherwise admissible pursuant to applicable statutes or rules;

(C) for criminal defense purposes, to a defendant, who shall have access to samples and analyses performed in connection with the case in which such defendant is charged; or

(D) if personally identifiable information is removed, for a population statistics database, for identification research and protocol development purposes, or for quality control purposes.

(c) FAILURE TO COMPLY.—Access to the index established by this section is subject to cancellation if the quality control and privacy requirements described in subsection (b) are not met.

(d) EXPUNGEMENT OF RECORDS.—

(1) BY DIRECTOR.—

(A) The Director of the Federal Bureau of Investigation shall promptly expunge from the index described in subsection (a) the DNA analysis of a person included in the index—

(i) on the basis of conviction for a qualifying Federal offense or a qualifying District of Columbia offense (as determined under sections 3 and 4 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135a, 14135b), respectively), if the Director receives, for each conviction of the person of a qualifying offense, a certified copy of a final court order establishing that such conviction has been overturned; or

(ii) on the basis of an arrest under the authority of the United States, if the Attorney General receives, for each charge against the person on the basis of which the analysis was or could have been included in the index, a certified copy of a final court order establishing that such charge has been dismissed or has resulted in an acquittal or that no charge was filed within the applicable time period.

(B) For purposes of subparagraph (A), the term “qualifying offense” means any of the following offenses:

(i) A qualifying Federal offense, as determined under section 3 of the DNA Analysis Backlog Elimination Act of 2000.

(ii) A qualifying District of Columbia offense, as determined under section 4 of the DNA Analysis Backlog Elimination Act of 2000.

(iii) A qualifying military offense, as determined under section 1565 of title 10, United States Code.

(C) For purposes of subparagraph (A), a court order is not “final” if time remains for an appeal or application for discretionary review with respect to the order.

(2) BY STATES.—(A) As a condition of access to the index described in subsection (a), a State shall promptly expunge from

that index the DNA analysis of a person included in the index by that State if—

(i) the responsible agency or official of that State receives, for each conviction of the person of an offense on the basis of which that analysis was or could have been included in the index, a certified copy of a final court order establishing that such conviction has been overturned; or

(ii) the person has not been convicted of an offense on the basis of which that analysis was or could have been included in the index, and the responsible agency or official of that State receives, for each charge against the person on the basis of which the analysis was or could have been included in the index, a certified copy of a final court order establishing that such charge has been dismissed or has resulted in an acquittal or that no charge was filed within the applicable time period.

(B) For purposes of subparagraph (A), a court order is not “final” if time remains for an appeal or application for discretionary review with respect to the order.

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DNA ANALYSIS BACKLOG ELIMINATION ACT OF 2000

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SEC. 3. COLLECTION AND USE OF DNA IDENTIFICATION INFORMATION FROM CERTAIN FEDERAL OFFENDERS.

(a) **COLLECTION OF DNA SAMPLES.—**

(1) **FROM INDIVIDUALS IN CUSTODY.—**

(A) The Attorney General may, as prescribed by the Attorney General in regulation, collect DNA samples from individuals who are arrested, facing charges, or convicted or from non-United States persons who are detained under the authority of the United States. The Attorney General may delegate this function within the Department of Justice as provided in section 510 of title 28, United States Code, and may also authorize and direct any other agency of the United States that arrests or detains individuals or supervises individuals facing charges to carry out any function and exercise any power of the Attorney General under this section.

(B) The Director of the Bureau of Prisons shall collect a DNA sample from each individual in the custody of the Bureau of Prisons who is, or has been, convicted of a qualifying Federal offense (as determined under subsection (d)) or a qualifying military offense, as determined under section 1565 of title 10, United States Code.

(2) **FROM INDIVIDUALS ON RELEASE, PAROLE, OR PROBATION.—**

The probation office responsible for the supervision under Federal law of an individual on probation, parole, or supervised release shall collect a DNA sample from each such individual who is, or has been, convicted of a qualifying Federal offense (as determined under subsection (d)) or a qualifying military offense, as determined under section 1565 of title 10, United States Code.

(3) INDIVIDUALS ALREADY IN CODIS.—For each individual described in paragraph (1) or (2), if the Combined DNA Index System (in this section referred to as “CODIS”) of the Federal Bureau of Investigation contains a DNA analysis with respect to that individual, or if a DNA sample has been collected from that individual under section 1565 of title 10, United States Code, the Attorney General, the Director of the Bureau of Prisons, or the probation office responsible (as applicable) may (but need not) collect a DNA sample from that individual.

(4) COLLECTION PROCEDURES.—(A) The Attorney General, the Director of the Bureau of Prisons, or the probation office responsible (as applicable) may use or authorize the use of such means as are reasonably necessary to detain, restrain, and collect a DNA sample from an individual who refuses to cooperate in the collection of the sample.

(B) The Attorney General, the Director of the Bureau of Prisons, or the probation office, as appropriate, may enter into agreements with units of State or local government or with private entities to provide for the collection of the samples described in paragraph (1) or (2).

(5) CRIMINAL PENALTY.—An individual from whom the collection of a DNA sample is authorized under this subsection who fails to cooperate in the collection of that sample shall be—

(A) guilty of a class A misdemeanor; and

(B) punished in accordance with title 18, United States Code.

(b) ANALYSIS AND USE OF SAMPLES.—The Attorney General, the Director of the Bureau of Prisons, or the probation office responsible (as applicable) shall furnish each DNA sample collected under subsection (a) to the Director of the Federal Bureau of Investigation, who shall carry out a DNA analysis on each such DNA sample and include the results in CODIS. *The Director of the Federal Bureau of Investigation may waive the requirements under this subsection if DNA samples are analyzed by means of Rapid DNA instruments and the results are included in CODIS.*

(c) DEFINITIONS.—In this section:

(1) The term “DNA sample” means a tissue, fluid, or other bodily sample of an individual on which a DNA analysis can be carried out.

(2) The term “DNA analysis” means analysis of the deoxyribonucleic acid (DNA) identification information in a bodily sample.

(3) *The term “Rapid DNA instruments” means instrumentation that carries out a fully automated process to derive a DNA analysis from a DNA sample.*

(d) QUALIFYING FEDERAL OFFENSES.—The offenses that shall be treated for purposes of this section as qualifying Federal offenses are the following offenses, as determined by the Attorney General:

(1) Any felony.

(2) Any offense under chapter 109A of title 18, United States Code.

(3) Any crime of violence (as that term is defined in section 16 of title 18, United States Code).

(4) Any attempt or conspiracy to commit any of the offenses in paragraphs (1) through (3).

(e) REGULATIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2), this section shall be carried out under regulations prescribed by the Attorney General.

(2) PROBATION OFFICERS.—The Director of the Administrative Office of the United States Courts shall make available model procedures for the activities of probation officers in carrying out this section.

(f) COMMENCEMENT OF COLLECTION.—Collection of DNA samples under subsection (a) shall, subject to the availability of appropriations, commence not later than the date that is 180 days after the date of the enactment of this Act.

SEC. 4. COLLECTION AND USE OF DNA IDENTIFICATION INFORMATION FROM CERTAIN DISTRICT OF COLUMBIA OFFENDERS.

(a) COLLECTION OF DNA SAMPLES.—

(1) FROM INDIVIDUALS IN CUSTODY.—The Director of the Bureau of Prisons shall collect a DNA sample from each individual in the custody of the Bureau of Prisons who is, or has been, convicted of a qualifying District of Columbia offense (as determined under subsection (d)).

(2) FROM INDIVIDUALS ON RELEASE, PAROLE, OR PROBATION.—The Director of the Court Services and Offender Supervision Agency for the District of Columbia shall collect a DNA sample from each individual under the supervision of the Agency who is on supervised release, parole, or probation who is, or has been, convicted of a qualifying District of Columbia offense (as determined under subsection (d)).

(3) INDIVIDUALS ALREADY IN CODIS.—For each individual described in paragraph (1) or (2), if the Combined DNA Index System (in this section referred to as “CODIS”) of the Federal Bureau of Investigation contains a DNA analysis with respect to that individual, the Director of the Bureau of Prisons or Agency (as applicable) may (but need not) collect a DNA sample from that individual.

(4) COLLECTION PROCEDURES.—(A) The Director of the Bureau of Prisons or Agency (as applicable) may use or authorize the use of such means as are reasonably necessary to detain, restrain, and collect a DNA sample from an individual who refuses to cooperate in the collection of the sample.

(B) The Director of the Bureau of Prisons or Agency, as appropriate, may enter into agreements with units of State or local government or with private entities to provide for the collection of the samples described in paragraph (1) or (2).

(5) CRIMINAL PENALTY.—An individual from whom the collection of a DNA sample is authorized under this subsection who fails to cooperate in the collection of that sample shall be—

(A) guilty of a class A misdemeanor; and

(B) punished in accordance with title 18, United States Code.

(b) ANALYSIS AND USE OF SAMPLES.—The Director of the Bureau of Prisons or Agency (as applicable) shall furnish each DNA sample collected under subsection (a) to the Director of the Federal Bureau of Investigation, who shall carry out a DNA analysis on each such

DNA sample and include the results in CODIS. *The Director of the Federal Bureau of Investigation may waive the requirements under this subsection if DNA samples are analyzed by means of Rapid DNA instruments and the results are included in CODIS.*

(c) DEFINITIONS.—In this section:

(1) The term “DNA sample” means a tissue, fluid, or other bodily sample of an individual on which a DNA analysis can be carried out.

(2) The term “DNA analysis” means analysis of the deoxyribonucleic acid (DNA) identification information in a bodily sample.

(3) *The term “Rapid DNA instruments” means instrumentation that carries out a fully automated process to derive a DNA analysis from a DNA sample.*

(d) QUALIFYING DISTRICT OF COLUMBIA OFFENSES.—The government of the District of Columbia may determine those offenses under the District of Columbia Code that shall be treated for purposes of this section as qualifying District of Columbia offenses.

(e) COMMENCEMENT OF COLLECTION.—Collection of DNA samples under subsection (a) shall, subject to the availability of appropriations, commence not later than the date that is 180 days after the date of the enactment of this Act.

(f) Authorization of Appropriations.—There are authorized to be appropriated to the Court Services and Offender Supervision Agency for the District of Columbia to carry out this section such sums as may be necessary for each of fiscal years 2001 through 2005.

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