



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 Testing of DNA Evidence to Exonerate the Innocent program. This program furthers the Department's mission by offering assistance to States to help defray the costs associated with postconviction DNA testing in cases of violent felony offenses where actual innocence might be demonstrated.

Postconviction Testing of DNA Evidence to Exonerate the Innocent Eligibility

In general, States are eligible to apply for funding (for the 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 certification from the chief legal officer of the State as specified under "Eligibility" on page 3.

Deadline

Applicants must register with [Grants.gov](#) prior to submitting an application. (See "How to Apply," page 20.) All applications are due by 11:59 p.m. eastern time on May 13, 2014. (See "Deadlines: Registration and Application," page 3.) Applicants are encouraged to read this [Important Notice: Applying for Grants in Grants.gov](#).

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

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 below **within 24 hours after the application deadline** to request approval to submit their application.

For assistance with any other requirements of this solicitation, contact NIJ Program Manager Gregory Dutton at gregory.dutton@usdoj.gov. Additional information can be found at www.nij.gov/nij/funding/welcome.htm. Frequently asked questions that may assist with applying are posted at www.nij.gov/nij/funding/faqs.htm.

Grants.gov number assigned to this announcement: NIJ-2014-3741

Release date: March 14, 2014

SL001116

Contents

Overview	3
Deadlines: Registration and Application	3
Eligibility	3
Program-Specific Information	4
Performance Measures	9
What an Application Should Include	10
Information to Complete the Application for Federal Assistance (SF-424)	10
Project Abstract	11
Program Narrative	11
Budget Detail Worksheet and Budget Narrative	13
Indirect Cost Rate Agreement (if applicable)	14
Additional Attachments	15
Accounting System and Financial Capability Questionnaire (if applicable)	16
Selection Criteria	16
Review Process	17
Additional Requirements	18
Project Deliverables	19
How to Apply	20
Provide Feedback to OJP	22
Application Checklist	24
Appendix I: Certification Template	26
Appendix II: Selected Statutes	28

Postconviction Testing of DNA Evidence to Exonerate the Innocent

(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 associated biological evidence. Where a strong justification is provided, a limited proportion of federal award funds may be used for case identification.

Since the advent of forensic DNA analysis, a number of people who had been convicted of crimes were subsequently exonerated through DNA analysis of crime scene evidence not tested at the time of trial. Additionally, newer technologies have substantially increased the likelihood of successful DNA analysis of aged, degraded, limited, or otherwise compromised biological evidence. As a result, crime scene samples 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 current methods.

Authorizing Legislation: Department of Justice Appropriations Act, 2014 (Public Law 113-76).

Deadlines: Registration and Application

Applicants must register with Grants.gov prior to submitting 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 13, 2014. See "How to Apply" on page 20 for details.

Eligibility

States may apply for funding under this solicitation (for purposes of this solicitation, the term "States" includes the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, American Samoa, Guam, and Northern Mariana Islands). To be eligible for an award, an applicant 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” on page 10 and Appendix I, 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 2014 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 allowed 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 funds under the Postconviction Testing of DNA Evidence to Exonerate the Innocent program 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 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 the following data in their periodic progress reports:

- Target number of cases to be reviewed with grant funds;
- Number of cases reviewed with grant funds;
- Number of cases reviewed by offense type (crimes that included a sexual component; crimes that resulted in the death of the victim);
- Number of cases in which an evidence search was conducted;
- Number of cases in which biological evidence existed;
- Number of cases in which biological evidence had been destroyed or was missing;
- Number of cases in which DNA analysis was performed;
- Number of cases that yielded a viable DNA profile;
- Total number of pieces of evidence analyzed;
- Number of profiles uploaded into CODIS;
- Number of matches resulting from profiles uploaded into CODIS;
- Numbers of confirmatory profiles, exculpatory profiles, and inconclusive results;
- Approximate number of hours spent on case review and location of evidence, respectively.

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 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. NIJ will consider any request for a project period extension only under limited circumstances, and then only where supported with a strong, specific, written grantee justification. NIJ **does not** automatically approve such requests.

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 that 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 employees will be directly engaged in these activities. Supplanting is not permitted.
2. **Overtime**—Funds may be used for employee overtime 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. Current federal travel policy and per diem rate information are available at www.gsa.gov/perdiem.
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 caseload. Award recipients whose proposals involve the purchase or use of chemicals may encounter delays in the release of 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” below.
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. Activities that do not respond to the specific goals of this solicitation.
3. Salaries and benefits for victims 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. Costs for postconviction relief litigation, after DNA testing of biological evidence has been completed.
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. Witness travel.
12. General, non-postconviction training, or training for employees not directly funded under this award.

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 2014 salary table for SES employees is available at www.opm.gov/salary-tables. 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 project's budget 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.

Prior Approval, Planning, and Reporting of Conference/Meeting/Training Costs

OJP strongly encourages applicants that propose to use award funds for any conference-, meeting-, or training-related activity to review carefully – before submitting an application – the OJP policy and guidance on “conference” approval, planning, and reporting available at www.ojp.gov/funding/confcost.htm. OJP policy and guidance (1) encourage minimization of conference, meeting, and training costs; (2) require prior written approval (which may affect project timelines) of most such costs for cooperative agreement recipients and of some such costs for grant recipients; and (3) set cost limits, including a general prohibition of all food and beverage costs.

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 Information

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 Measures	Data Grantee Provides
<p>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.</p>	<ol style="list-style-type: none"> 1. Percentage of target cases reviewed with grant funds. 2. Percentage of cases in which a search to locate evidence was conducted. 3. Percentage of cases that yielded biological evidence. 4. Percentage of cases subjected to DNA analysis. 5. Percentage of cases subjected to DNA analysis that yielded a viable DNA profile. 6. Average number of pieces of evidence analyzed for cases subjected to DNA analysis. 7. Number of profiles uploaded into CODIS. 	<ol style="list-style-type: none"> 1. Target number of cases to be reviewed with grant funds. 2. Number of cases reviewed with grant funds. 3. Number of cases reviewed by offense type (crimes that included a sexual component; crimes that resulted in the death of the victim). 4. Number of cases in which an evidence search was conducted. 5. Number of cases in which biological evidence existed. 6. Number of cases in which biological evidence had been destroyed or was missing. 7. Number of cases in which DNA analysis was performed. 8. Number of cases that yielded a viable DNA profile.

	<p>8. Percentage of profiles resulting in a CODIS hit.</p> <p>9. Numbers of confirmatory profiles, exculpatory profiles, and inconclusive results</p> <p>10. Approximate number of hours spent on case review and locating evidence.</p>	<p>9. Total number of pieces of evidence analyzed.</p> <p>10. Number of profiles uploaded into CODIS.</p> <p>11. Number of matches resulting from profiles uploaded into CODIS.</p> <p>12. Numbers of confirmatory profiles, exculpatory profiles, and inconclusive results.</p> <p>13. Approximate number of hours spent on case review and location of evidence, respectively.</p>
--	--	--

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

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 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, Budget Narrative, resumes/curriculum vitae of key personnel, and the required express certification from the chief legal officer of the State (see “Eligibility” page 3 and Appendix I). Applicants may combine the Budget Narrative and the Budget Detail Worksheet in one document. However, if an applicant submits only one budget 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,” “Budget Narrative,” “Timelines,” “Memoranda of Understanding,” “Resumes”) for all attachments. Also, OJP recommends that applicants include all 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 OJP’s Grants

Management System (GMS) take information from the applicant's profile to populate the fields on this form. When selecting "type of applicant," if the applicant is a for-profit entity, select "For-Profit Organization" or "Small Business" (as applicable).

2. Project 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 project abstract is a very important part of the application, and serves as an introduction to the proposed project. NIJ uses the project abstract for a number of purposes, including assignment to an appropriate review panel. If the application is funded, the project abstract typically will become public information and be used to describe the project.

3. Program Narrative

The program narrative section of the application should not exceed twelve (12) double-spaced pages in 12-point font with 1-inch margins. If included in the main body of the program narrative, tables, charts, figures, and other illustrations count toward the 12-page limit for the narrative section. The project abstract, table of contents, appendices, and government forms do not count toward the 12-page limit.

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 12-page program narrative limit).

The title page should include the title of the project, submission date, funding opportunity number, and the principal investigator(s) name and complete contact information (i.e., address, telephone number, and e-mail address).

- b. **Resubmit Response** (if applicable; not counted against the 12-page program narrative limit).

If an applicant is resubmitting a proposal 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 summary of direct responses to previous peer review. Insert this document after the abstract.

c. **Table of Contents and Figures** (not counted against the 12-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 these sections, the narrative should address:

- Purpose, goals, and objectives.
- Implementation approach, including case review selection criteria and the target number of cases to be reviewed with grant funds.
- 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.
- Management plan and organization.

e. **Appendices** (not counted against the 12-page program narrative limit), including:

- Bibliography/references, if applicable.
- Any tools/instruments, questionnaires, tables/charts/graphs, or maps pertaining to the proposed study.

- Curriculum vitae, resume or biographical sketch for key personnel.
- List (to the extent known) of all proposed project staff members, including those affiliated with the applicant organization or any proposed subrecipient organization(s), any proposed consultant(s) and contractors (whether individuals or organizations), and any proposed members of an advisory board for the project (if applicable). The list should include, for each individual and organization: name, title (if applicable), employer or other organizational affiliation, and roles and responsibilities proposed for the project. Applicants should use the “Proposed Project Staff, Affiliation, and Roles” form available at www.nij.gov/funding/documents/nij-project-staff-template.xlsx to provide this listing.
- Project timeline with expected milestones.
- Human Subjects Protection Paperwork including Institutional Review Board (IRB) documentation and forms (see www.nij.gov/funding/humansubjects/Pages/welcome.aspx). NOTE: Final IRB approval is not required at the time of application submission.
- Privacy Certificate (for further guidance go to www.nij.gov/funding/humansubjects/pages/confidentiality.aspx).
- List of previous and current NIJ awards to applicant organization and investigator(s).
- Letters of cooperation/support or administrative agreements from organizations collaborating in the project (if applicable).
- List of other agencies, organizations, or funding sources to which the proposal has been submitted (if applicable).

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 the 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.

c. 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.

d. Non-Competitive Procurement Contracts In Excess of Simplified Acquisition Threshold

If an applicant proposes to make one or more non-competitive procurements of products or services, where the non-competitive procurement will exceed the simplified acquisition threshold (also known as the small purchase threshold), which is currently set at \$150,000, the application should address the considerations outlined in the [OJP Financial Guide](#).

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. For assistance with identifying your cognizant agency, please contact the OJP Office of the Chief Financial Officer (OCFO) Customer Service Center at 1-800-458-0786 or at ask.ocfo@usdoj.gov. If DOJ is the cognizant federal agency, applicants may 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 State's 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 grants or subgrants (including cooperative agreements) 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 subaward 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:

- Name of the federal or State funding agency.
- The solicitation name and project title.
- 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 such a table as a separate attachment, with the file name “Disclosure of Pending Applications,” along with their application. Applicants that do not have pending applications as described above should include a statement to this effect as a separate attachment (e.g., “[Applicant Name on SF-424] does not have pending applications submitted within the last 12 months for federally funded grants or subgrants (including cooperative agreements) 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. Accounting System and Financial Capability Questionnaire (if applicable)

Any applicant (other than an individual) that is a non-governmental entity and has not received an award from OJP within the past 3 years must download, complete, and submit this [form](#).

Selection Criteria

Applications that meet basic minimum requirements will be evaluated by peer reviewers using the following criteria.

Statement of the Problem (Understanding of the problem and its significance) – 5%

1. Awareness of the current state of DNA technology for forensic physical evidence.
2. Awareness of the significance of DNA testing relative to postconviction cases.

Project Design and Implementation (Quality and technical merit) – 50%

1. Feasibility of the proposed project.
2. Awareness of potential pitfalls and the inclusion of work-arounds.
3. Relevance to the goals and objectives of the program (specifically, to help defray the costs of postconviction DNA testing).
4. Demonstration of multiagency cooperation, collaboration and partnerships.

5. Feasibility of completion of the project goals within the proposed project period.
6. Innovation and creativity (where appropriate).

Capabilities/Competencies (Training, demonstrated productivity, and experience of the applicant) – 30%

1. Qualifications and experience of proposed staff.
2. Demonstrated ability of staff and organization to manage the effort.
3. Adequacy of the management plan, including how various tasks are subdivided and resources are used.

Impact/Outcomes and Evaluation (Relevance to policy and practice) – 15%

1. Potential for significant advances or outcomes.
2. Adequate plan for collecting the data required for the program's performance measures.

Budget

Peer reviewers will consider and may comment on the following additional items in the context of scientific and technical merit.

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 minimize costs.
4. "Case Identification" activities (if any) are identified in a separate section.

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

Review Process

OJP is committed to ensuring a fair and open process for awarding grants. NIJ reviews the application to verify 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 internal peer reviewers, external peer reviewers, or a combination, to review these 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, although their views are considered carefully. 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. With respect to past performance, applicants with open awards funded under previous fiscal years of this solicitation should be aware that the review process will include a review of the applicant's demonstrated ability to complete projects within the proposed project periods.

The Office of the Chief Financial Officer, 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
- Reporting of Potential Fraud, Waste, and Abuse, and Similar Misconduct
- 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
- Non-profit 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
- Active SAM Registration
- Policy and Guidance for Approval, Planning, and Reporting of Conferences (including Meetings and Trainings)
- OJP Training Guiding Principles for Grantees and Subgrantees

Project Deliverables

If a proposal is funded, the award recipient will be required to submit several reports and other materials.

Progress and Financial Reports

Grantees must submit a number of reports, including quarterly and final financial status reports, semi-annual progress reports and, if applicable, an annual audit report in accordance with Office of Management and Budget Circular A-133. Future award and fund draw-downs may be withheld if reports are delinquent.

Final Project Report

Before the end of the project period, grantees must provide an overall summary of the project, documenting project objectives, design and methods, results, and analysis of impact. Specific commentary regarding the degree of completion of planned project goals is required. The final project report should be submitted 30 days prior to the project end date.

How to Apply

Applicants must register in, and submit applications 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.

NIJ strongly 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 updates will be notified.

Note on File Names and File Types: Grants.gov only permits the use of certain specific characters in names of attachment files. Valid file names may include only the characters shown in the table below. Grants.gov is designed to reject any application that includes an attachment(s) with a file name that contains any characters not shown in the table below. Grants.gov is designed to forward successfully submitted applications to OJP’s Grants Management System (GMS).

Characters	Special Characters		
Upper case (A – Z)	Parenthesis ()	Curly braces { }	Square brackets []
Lower case (a – z)	Ampersand (&)	Tilde (~)	Exclamation point (!)
Number 0 – 9	Comma (,)	Semicolon (;)	Apostrophe (‘)
Underscore (_)	At sign (@)	Number sign (#)	Dollar sign (\$)
Hyphen (-)	Percent sign (%)	Plus sign (+)	Equal sign (=)
Space	When using the ampersand (&) in XML, applicants must use the “&amp;” format.		
Period (.)			

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.” GMS may reject applications with files that use these extensions. It is important to allow time to change the type of file(s) if the application is rejected.

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 is 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. Applicants must **update or renew their SAM registration annually** to maintain an active status.

Applications cannot be successfully submitted in Grants.gov until Grants.gov receives the SAM registration information. The information transfer from SAM to Grants.gov can take up to 48 hours. OJP recommends that the applicant register or renew registration with SAM as early as possible.

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 number for this solicitation is 16.820, titled "Postconviction Testing of DNA Evidence to Exonerate the Innocent," and the funding opportunity number is NIJ–2014-3741.
- 6. Complete the Disclosure of Lobbying Activities.** All applicants must complete this information. Applicants that expend any funds for lobbying activities are to 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 a valid 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. It is possible to first receive a message indicating that the application is received and then receive a rejection notice a few minutes or hours later. Submitting well ahead of the deadline provides time to correct the problem(s) that caused the rejection. **Important:** OJP urges applicants to submit applications **at least 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.

Click [here](#) for further details on DUNS, SAM, and Grants.gov registration steps and timeframes.

Note: Duplicate Applications

If an applicant submits multiple versions of an application, NIJ will review only the most recent valid 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 page 1 **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 OJP determines that the applicant failed to follow all required procedures, which resulted in an untimely application submission, OJP will deny the applicant's request to submit the application.

The following conditions are generally insufficient to justify late submissions:

- Failure to register in SAM or Grants.gov in sufficient time.
- Failure to follow Grants.gov instructions on how to register and apply as posted on its Web site.
- Failure to follow each instruction in the OJP solicitation.
- 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

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. Provide feedback to OJPSolicitationFeedback@usdoj.gov.

IMPORTANT: This e-mail 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 e-mail 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 e-mail your resume to ojppeerreview@mbps.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 Testing of DNA Evidence to Exonerate the Innocent

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

What an Applicant Should Do:

Prior to Registering in Grants.gov:

- Acquire a DUNS Number (see page 20)
- Acquire or renew registration with SAM (see page 21)

To Register with Grants.gov:

- Acquire AOR and Grants.gov username/password (see page 21)
- Acquire AOR confirmation from the E-Biz POC (see page 21)

To Find Funding Opportunity:

- Search for the funding opportunity on Grants.gov (see page 21)
- Download Funding Opportunity and Application Package (see page 21)
- Sign up for Grants.gov email notifications (optional) (see page 20)
- Read [Important Notice: Applying for Grants in Grants.gov](#)

General Requirements:

- Review "[Other Requirements](#)" webpage

Eligibility Requirement:

- Certification as to Provision of Postconviction DNA Testing and Preservation of Biological Evidence (see page 15 and Appendix I)

What an Application Should Include:

- Application for Federal Assistance (SF-424) (see page 10)
- Project Abstract (see page 10)
- Program Narrative (see page 10)
 - Double-spaced
 - 12-point standard font
 - 1" standard margins
 - Narrative is 12 pages or less
- Appendices to the Program Narrative (see page 12)
 - 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
 - List of proposed project staff members
 - 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 13)
- _____ Employee Compensation Waiver request and justification (if applicable) (see page 8)
- _____ Read OJP policy and guidance on “conference” approval, planning, and reporting available at www.ojp.gov/funding/confcost.htm
- _____ Disclosure of Lobbying Activities (SF-LLL) (see page 21)
- _____ Indirect Cost Rate Agreement (if applicable) (see page 14)
- _____ Additional Attachments
- _____ Applicant Disclosure of Pending Applications (see page 15)
- _____ Accounting System and Financial Capability Questionnaire (if applicable) (see page 16)

Appendix I: Certification Template

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

FY 2014 Postconviction Testing of DNA Evidence to Exonerate the Innocent

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 under “Eligibility” on page 3)

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 postconviction DNA testing; or

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

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

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

- (6) The applicant identifies a theory of defense that—
- (A) is not inconsistent with an affirmative defense presented at trial; and
 - (B) would establish the actual innocence of the applicant of the Federal or State offense referenced in the applicant's assertion under paragraph (1).
- (7) If the applicant was convicted following a trial, the identity of the perpetrator was at issue in the trial.
- (8) The proposed DNA testing of the specific evidence may produce new material evidence that would—
- (A) support the theory of defense referenced in paragraph (6); and
 - (B) raise a reasonable probability that the applicant did not commit the offense.
- (9) The applicant certifies that the applicant will provide a DNA sample for purposes of comparison.
- (10) The motion is made in a timely fashion, subject to the following conditions:
- (A) There shall be a rebuttable presumption of timeliness if the motion is made within 60 months of enactment of the Justice For All Act of 2004 [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.