

Notices regarding the solicitation “Postconviction Testing of DNA Evidence”

April 4, 2017: Applicants should disregard the “Disclosure of Process Related to Executive Compensation” requirement, as outlined in the Application and Submission Information Section of this solicitation. This requirement does not apply to applicants under this funding opportunity.

April 3, 2017: Answers to questions have been posted. To assist applicants in completing their proposals, NIJ has made the answers to questions received available for this funding opportunity. Visit <https://nij.gov/funding/pages/solicitation-qa.aspx#NIJ-2017-11060> for questions and answers to help prepare your application.

The original solicitation document begins on the next page.



The [U.S. Department of Justice](#) (DOJ), [Office of Justice Programs](#) (OJP), [National Institute of Justice](#) is seeking applications for funding to assist in defraying the costs associated with postconviction case review, evidence location, and DNA testing in violent felony cases (as defined by State law) where the results of such testing might show actual innocence. This program furthers the Department's mission by ensuring the availability of fair and impartial administration of justice to Americans who may have been unjustly convicted.

Postconviction Testing of DNA Evidence

Applications Due: May 9, 2017

Eligibility

In general, eligible applicants are States, units of local government, and public institutions of higher education (including tribal institutions of higher education). 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. Foreign governments, foreign organizations, and foreign institutions of higher education are not eligible to apply.

NIJ welcomes applications under which two or more entities would carry out the federal award; however, only one entity may be the applicant. Any others must be proposed as subrecipients ("subgrantees").¹ The applicant must be the entity that would have primary responsibility for carrying out the award, including administering the funding and managing the entire project.

Under this solicitation, only one application by any particular applicant entity will be considered. An entity may, however, be proposed as a subrecipient ("subgrantee") in more than one application.

Deadline

Applicants must register with [Grants.gov](#) prior to submitting an application. All applications are due by 11:59 p.m. eastern time on May 9, 2017.

To be considered timely, an application must be submitted by the application deadline using [Grants.gov](#), and the applicant must have received a validation message from [Grants.gov](#) that indicates successful and timely submission. OJP urges applicants to submit applications at least 72 hours prior to the application due date, in order to allow time for the applicant to receive

¹ For additional information on subawards, see "Budget and Associated Documentation" under [Section D. Application and Submission Information](#).

validation messages or rejection notifications from Grants.gov, and to correct in a timely fashion any problems that may have caused a rejection notification.

OJP encourages all applicants to read this [Important Notice: Applying for Grants in Grants.gov](#).

For additional information, see [How to Apply](#) in Section D. Application and Submission Information.

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 email to support@grants.gov. The [Grants.gov](#) Support Hotline operates 24 hours a day, 7 days a week, except federal holidays.

An applicant that experiences unforeseen Grants.gov technical issues beyond its control that prevent it from submitting its application by the deadline must email the NIJ contact identified below **within 24 hours after the application deadline** in order to request approval to submit its application after the deadline. Additional information on reporting technical issues appears under “Experiencing Unforeseen Grants.gov Technical Issues” in the [How to Apply](#) section.

For assistance with any other requirements of this solicitation, contact the National Criminal Justice Reference Service (NCJRS) Response Center: toll-free at 1-800-851-3420; via TTY at 301-240-6310 (hearing impaired only); email grants@ncjrs.gov; fax to 301-240-5830; or web chat at <https://webcontact.ncjrs.gov/ncjchat/chat.jsp>. The NCJRS Response Center operates from 10:00 a.m. until 6:00 p.m. eastern time, Monday through Friday, and from 10:00 a.m. until 8:00 p.m. eastern time on the solicitation close date. General information on applying for NIJ awards can be found at www.nij.gov/funding/Pages/welcome.aspx. Answers to frequently asked questions that may assist applicants are posted at www.nij.gov/funding/Pages/faqs.aspx.

Grants.gov number assigned to this solicitation: NIJ-2017-11060

Release date: March 23, 2017

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Postconviction Testing of DNA Evidence

(CFDA no. 16.820)

A. Program Description

Overview

NIJ seeks proposals 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 identify and review such postconviction cases and to locate and analyze associated biological evidence.

Statutory Authority: Any awards under this solicitation would be made under statutory authority provided by a full-year appropriations act for FY 2017. As of the writing of this solicitation, the Department of Justice is operating under a short-term "Continuing Resolution"; no full-year appropriation for the Department has been enacted for FY 2017.

IMPORTANT NOTE

Applicants should be aware that recently-enacted legislation (see page 23 for details) made significant changes to 42 U.S.C. § 14136e (the Kirk Bloodsworth Post-Conviction DNA Testing Grant Program statute) and other related provisions of law. If the FY 2017 appropriation incorporates these changes, then **no awards** will be made from this FY 2017 Postconviction Testing of DNA Evidence solicitation.

All awards are subject to the availability of appropriated funds and to any modifications or additional requirements that may be imposed by law.

Applicants are strongly encouraged to check for updates to this solicitation prior to submitting applications.

Program-Specific Information

Since the advent of forensic DNA analysis, a growing number of Americans convicted of violent crimes have been exonerated through DNA analysis of evidence that was untested at the time of trial. New technologies have increased the likelihood of successful DNA analysis of aged, degraded, limited, or otherwise compromised biological evidence. As a result, crime scene samples once thought to be unsuitable for testing may now yield viable DNA profiles. Moreover, samples that had previously generated inconclusive DNA results may be amenable to reanalysis using newer methods.

NIJ provides funding to help defray the costs (e.g., of additional personnel, overtime, testing supplies and services, etc.) associated with postconviction DNA testing for violent felony offenses (as defined by State law) in which actual innocence might be demonstrated. Funds may be used to review suitable postconviction cases and to locate and analyze biological evidence. Only a limited portion of funds may be used for case identification activities.

This program was previously titled the *Postconviction DNA Testing Assistance Program*. NIJ has made awards for postconviction DNA testing assistance in each fiscal year since 2008.

Prior to fiscal year 2015, NIJ invited applications from States only. In order for a State's application to be considered eligible in those years, the State was required to submit with its application an express certification from the applicant State's chief legal officer (typically the Attorney General) regarding the applicant State's provision of postconviction DNA testing, and its laws and practices addressing the preservation of biological evidence. Since fiscal year 2015, NIJ has expanded eligibility under this program to include units of local government and public institutions of higher education. This is expected to better reflect the diversity of institutions that are engaged in postconviction DNA testing efforts. Certification from the State's chief legal officer as to State procedures regarding evidence retention and access to postconviction DNA testing (see Section [D. What an Application Should Include](#)) is no longer required at the time of application, but must be submitted before funds can be accessed.

Goals, Objectives, and Deliverables

The goal of this program is to fund projects that assist States and units of local government with postconviction DNA testing in cases of violent felony offenses where actual innocence might be demonstrated. This supports the DOJ mission "...to ensure fair and impartial administration of justice for all Americans." While successful exonerations to correct injustice are notable program outcomes, the careful review, consideration and closing of cases subjected to postconviction DNA testing that do not ultimately demonstrate innocence also work to advance the public's interest that justice has been fairly applied.

Program objectives with respect to target number of cases to be reviewed and other concrete goals must be outlined in the proposal. Funded projects are expected to implement some aspect of each of the following activities, except for case identification, which is not mandatory:

1. Identify potential postconviction DNA testing cases. A maximum of 15% of the proposed budget may be dedicated to case identification activities.
2. 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.
3. Locate biological evidence associated with such postconviction cases.
4. Perform DNA analysis of appropriate biological evidence.

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.

- **Evidence Location** 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 program funds must be performed by a laboratory (government-owned or fee-for-service) that is accredited and that undergoes external audits at least once every two 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.

The Goals, Objectives and Deliverables are directly related to the performance measures set out in the table in [Section D. Application and Submission Information](#), under "Program Narrative." Demonstration of progress in implementing the approved program goals is required periodically. This involves the reporting of numerical performance metrics (cases, hours, testing, etc.), which are the key deliverables reported semiannually and at the conclusion of the program. Narrative progress reports to support the reported metrics are to be submitted concurrently.

Performance Measures

The application should describe the applicant's plan for collection of all of the performance measures data listed in the table below under "Data Recipient Provides," should it receive funding.

Award recipients will be required to provide the relevant data by submitting semiannual performance metrics through NIJ's online Performance Measurement Tool (PMT) located at <https://www.nijpmt.org>. The following measures are a sampling of the core performance measures for this program, but applicants should examine the complete list at https://www.nijpmt.org/documents/NIJ%20Postconviction%20Measures_July%202016_508.pdf.

Objective	Performance Measure(s)	Data Recipient Provides
To help defray the costs associated with postconviction DNA testing in cases of violent felony offenses (as defined by State law) where DNA analysis might demonstrate actual innocence.	Percentage of target cases reviewed with grant funds.	Target number of cases to be 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 reviewed with grant funds.

	Percentage of cases in which a search to locate evidence was conducted.	Number of cases in which an evidence search was conducted.
	Percentage of cases that yielded biological evidence.	Number of cases in which biological evidence existed. Number of cases in which biological evidence had been destroyed or was missing.
	Percentage of cases subjected to DNA analysis.	Number of cases in which DNA analysis was performed.
	Average number of pieces of evidence analyzed for cases subjected to DNA analysis.	Total number of pieces of evidence analyzed.
	Percentage of evidence subjected to STR DNA analysis.	Number of STR DNA tests conducted.
	Percentage of evidence subjected to Y-STR DNA analysis.	Number of Y-STR DNA tests conducted.
	Percentage of evidence subjected to mtDNA analysis.	Number of mtDNA tests conducted.
	Percentage of cases subjected to DNA analysis that yielded a viable DNA profile.	Number of cases that yielded a viable DNA profile.
	Number of cases with DNA testing results	Number of cases for which DNA results supported the postconviction claim. Number of cases for which DNA results contradicted the postconviction claim. Number of cases for which DNA results were inconclusive with respect to the postconviction claim.
	Number of profiles uploaded into the Combined DNA Index System (CODIS).	Number of profiles uploaded into CODIS.

	Percentage of profiles resulting in a CODIS hit.	Number of matches resulting from profiles uploaded into CODIS.
	Number of hours spent on case identification, case review, and evidence location.	Approximate number of hours spent on case identification, case review, and evidence location, respectively.

B. Federal Award Information

NIJ estimates that it will make awards for performance periods of up to 24 months, to begin on, or after, October 1, 2017. The number and value of the awards made will depend on available funding and the volume and quality of applications received. Visit the NIJ website for examples of [recent successful proposals](#).

All awards are subject to the availability of appropriated funds, and to any modifications or additional requirements that may be imposed by law.

Type of Award

NIJ expects that any award under this solicitation will be made in the form of a grant. See [Administrative, National Policy, and Other Legal Requirements](#), under [Section F. Federal Award Administration Information](#), for a brief discussion of important statutes, regulations, and award conditions that apply to many (or in some cases, all) OJP grants.

Financial Management and System of Internal Controls

Award recipients and subrecipients (including recipients or subrecipients that are pass-through entities²) must, as described in the Part 200 Uniform Requirements³ as set out at 2 C.F.R. 200.303:

- (a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that [the recipient (and any subrecipient)] is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States and the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- (b) Comply with Federal statutes, regulations, and the terms and conditions of the Federal awards.
- (c) Evaluate and monitor [the recipient’s (and any subrecipient’s)] compliance with statutes, regulations, and the terms and conditions of Federal awards.

² For purposes of this solicitation, the phrase “pass-through entity” includes any recipient or subrecipient that provides a subaward (“subgrant”) to a subrecipient (“subgrantee”) to carry out part of the funded award or program.

³ The “Part 200 Uniform Requirements” means the DOJ regulation at 2 C.F.R Part 2800, which adopts (with certain modifications) the provisions of 2 C.F.R. Part 200.

(d) Take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings.

(e) Take reasonable measures to safeguard protected personally identifiable information and other information the Federal awarding agency or pass-through entity designates as sensitive or [the recipient (or any subrecipient)] considers sensitive consistent with applicable Federal, state, local, and tribal laws regarding privacy and obligations of confidentiality.

To help ensure that applicants understand applicable administrative requirements and cost principles, OJP encourages prospective applicants to enroll, at no charge, in the DOJ Grants Financial Management Online Training, available [here](#).

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 identification, 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 identification, 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 [DOJ Grants Financial Guide](#).
- 3. Travel (limited)**—Funds may be used for reasonable travel expenses directly associated with case identification, 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 authority 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 identification, 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. Engage Additional (Temporary) Personnel**—Funds may be used to obtain the services of individuals (other than employees of the recipient) to perform case

identification and case reviews, locate evidence, or perform DNA analyses of biological evidence in the crime laboratory.

7. **Procurement from private laboratories of DNA analyses**—Funds may 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.

8. **Training (limited)**—In limited circumstances, funds may be used for postconviction training directly related to case identification, 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 identification, case review, location of biological evidence, or 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. Costs for postconviction relief litigation, after DNA testing of biological evidence has been completed.
4. Salaries and benefits for victims advocacy services.
5. Salaries, benefits, or overtime for staff who are not directly engaged in case identification, case review, location of biological evidence, or DNA analysis of biological evidence.
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.

Cost Sharing or Match Requirement

See “Cofunding” paragraph under item 4 (“Budget and Associated Documentation”) under [“What an Application Should Include”](#) in [Section D. Application and Submission Information](#).

Pre-Agreement Costs (also known as Pre-award Costs)

Pre-agreement costs are costs incurred by the applicant prior to the start date of the period of performance of the federal award.

OJP does **not** typically approve pre-agreement costs; an applicant must request and obtain the prior written approval of OJP for all such costs. All such costs incurred prior to award and prior to approval of the costs are incurred at the sole risk of the applicant. (Generally, no applicant should incur project costs *before* submitting an application requesting federal funding for those costs.) Should there be extenuating circumstances that make it appropriate for OJP to consider approving pre-agreement costs, the applicant may contact the point of contact listed on the title page of this solicitation for the requirements concerning written requests for approval. If approved in advance by OJP, award funds may be used for pre-agreement costs, consistent with the recipient’s approved budget and applicable cost principles. See the section on Costs Requiring Prior Approval in the [DOJ Grants Financial Guide](#) for more information.

Limitation on Use of Award Funds for Employee Compensation; Waiver

With respect to any award of more than \$250,000 made under this solicitation, a recipient may not use federal funds to pay total cash compensation (salary plus cash bonuses) to any employee of the 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.⁴ The 2017 salary table for SES employees is available at the Office of Personnel Management [website](#). 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. (Non-federal funds used for any such additional compensation will not be considered matching funds, where match requirements apply.) If only a portion of an employee’s time is charged to an OJP award, the maximum allowable compensation is equal to the percentage of time worked times the maximum salary limitation.

The Assistant Attorney General for OJP may exercise discretion to waive, on an individual basis, this limitation on compensation rates allowable under an award. An applicant that requests a waiver should include a detailed justification in the budget narrative of its application. An applicant that does not submit a waiver request and justification with its application should anticipate that OJP will require the applicant to adjust and resubmit the budget.

The justification should address—in the context of the work the individual would do under the award—the particular qualifications and expertise of the individual, the uniqueness of a service the individual will provide, the individual’s specific knowledge of the proposed program or project, and a statement that explains whether and how the individual’s salary under the award

⁴ OJP does not apply this limitation on the use of award funds to the nonprofit organizations listed in Appendix VIII to 2 C.F.R. Part 200.

would be commensurate with the regular and customary rate for an individual with his/her qualifications and expertise, and for the work he/she would do under the award.

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

OJP strongly encourages every applicant that proposes to use award funds for any conference-, meeting-, or training-related activity (or similar event) to review carefully—before submitting an application—the OJP policy and guidance on approval, planning, and reporting of such events, available at www.ojp.gov/financialguide/DOJ/PostawardRequirements/chapter3.10a.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 conference, meeting, and training costs for cooperative agreement recipients and of some conference, meeting, and training costs for grant recipients; and (3) set cost limits, which include 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 under "[Overview of Legal Requirements Generally Applicable to OJP Grants and Cooperative Agreements - FY 2017 Awards](#)" in the [OJP Funding Resource Center](#).

C. Eligibility Information

For eligibility information, see the title page.

For information on cost sharing or match requirements, see "[What an Application Should Include](#)" in [Section D. Application and Submission Information](#).

D. Application and Submission Information

What an Application Should Include

This section describes in detail what an application should include. An applicant should anticipate that if it fails to submit an application that contains all of the specified elements, it may negatively affect the review of its application; and, should a decision be made to make an award, it may result in the inclusion of award conditions that preclude the recipient from accessing or using award funds until the recipient satisfies the conditions and OJP makes the funds available.

Moreover, an applicant should anticipate that an application that OJP determines is nonresponsive to the scope of the solicitation, or that OJP determines does not include the application elements that NIJ has designated to be critical, will neither proceed to peer review, nor receive further consideration. For this solicitation, NIJ has designated the following

application elements as critical: Program Narrative, Budget Detail Worksheet, and Budget Narrative, and resumes/curriculum vitae of key personnel. An applicant 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. Please review the “Note on File Names and File Types” under [How to Apply](#) (below) to be sure applications are submitted in permitted formats.

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

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

The SF-424 is a required standard form used as a cover sheet for submission of pre-applications, applications, and related information. Grants.gov and the OJP 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).

To avoid processing delays, an applicant must include an accurate legal name on its SF-424. Current OJP award recipients, when completing the field for “Legal Name” should use the same legal name that appears on the prior year award document which is also the legal name stored in OJP’s financial system. On the SF-424, enter the Legal Name in box 5 and Employer Identification Number (EIN) in box 6 exactly as it appears on the prior year award document. An applicant with a current, active award(s) must ensure that its GMS profile is current. If the profile is not current, the applicant should submit a Grant Adjustment Notice updating the information on its GMS profile prior to applying under this solicitation.

A new applicant entity should enter the Official Legal Name and address of the applicant entity in box 5 and the EIN in box 6 of the SF-424. An applicant must attach official legal documents to its application (e.g., articles of incorporation, 501(c)(3), etc.) to confirm the legal name, address, and EIN entered into the SF-424.

Intergovernmental Review: This solicitation (“funding opportunity”) **is not** subject to [Executive Order 12372](#). (In completing the SF-424, an applicant is to answer question 19 by selecting the response that the “Program is not covered by E.O. 12372.”)

2. Project Abstract

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 of the application 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.

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 with 1-inch margins.

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

Project abstracts should follow the detailed template (including the detailed instructions as to content) available at www.nij.gov/funding/documents/nij-project-abstract-template.pdf.

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

In the project abstract template, each applicant is asked to indicate whether it gives OJP permission to share the applicant's project abstract (including contact information for individuals) with the public. Granting (or failing to grant) this permission will not affect OJP's funding decisions. Moreover, if the application is not funded, providing permission will not ensure that OJP will share the abstract information, nor will it assure funding from any other source.

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

3. Program Narrative

The program narrative section of the application should not exceed 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.⁵

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 complete contact information (i.e., name, address, telephone number, and e-mail address) for both the applicant and the project director.

⁵ As noted earlier, if the proposed program or project reasonably could be conducted in discrete phases, with each phase resulting in completion of one or more significant, defined milestones, then NIJ strongly recommends that the applicant structure the application – specifically including the narrative, timelines/milestones, and budget detail worksheet and budget narrative – to set out each phase clearly. See generally “Goals, Objectives, Deliverables, and Expected Scholarly Products” under “Program-Specific Information,” above.

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

If an applicant is resubmitting an application 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 application, and (2) a brief summary of revisions to the application, including responses to previous feedback received from NIJ.

c. Table of Contents (not counted against the 12-page program narrative limit).

d. Main Body

The main body of the program narrative should describe the proposed project in depth. Within its sections (specified below), the main body of the program narrative should address:

- Purpose, goals, and objectives.
- Implementation approach, including case review selection criteria and the target number of cases to be reviewed with award 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.

The following sections should be included as part of the main body of the program narrative:

- Description of the Issue
- Project Design and Implementation.
- Capabilities and Competencies.
- Potential Impact.
- Plan for Collecting the Data Required for this Solicitation's Performance Measures

OJP will require each successful applicant to submit specific performance measures data as part of its reporting under the award (see "[General Information about Post-Federal Award Reporting Requirements](#)" in [Section F. Federal Award Administration Information](#)). The performance measures correlate to the goals, objectives, and deliverables identified under "Goals, Objectives, and Deliverables" in [Section A. Program Description](#).

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

- Curriculum vitae, resumes or biographical sketches for key personnel.
- Bibliography/references, if applicable.
- Any tools/instruments, questionnaires, tables/charts/graphs, or maps pertaining to the proposed project.
- 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 <http://www.nij.gov/funding/documents/nij-project-staff-template.xlsx> to provide this listing.
- Proposed project timeline and expected milestones.
- List of any previous and current NIJ awards to the applicant, including the NIJ-assigned award number(s).
- Letters of cooperation/support or administrative agreements from organizations collaborating in the project (if applicable).

4. Budget and Associated Documentation

a. Budget Detail Worksheet

A sample Budget Detail Worksheet can be found at www.ojp.gov/funding/Apply/Resources/BudgetDetailWorksheet.pdf. An applicant that submits its budget in a different format should use the budget categories listed in the sample budget worksheet. (An applicant should include in the budget work associated with satisfying data archiving requirements.) NIJ expects applicants to provide a thorough narrative for each section of the Budget Detail Worksheet. The Budget Detail Worksheet should break out costs by year.

For questions pertaining to budget and examples of allowable and unallowable costs, see the [DOJ Grants Financial Guide](#).

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).

An applicant should demonstrate in its budget narrative how it will maximize cost effectiveness of award 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 budget narrative should be mathematically sound and correspond clearly 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 those costs are necessary 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 describe costs 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) both within the appropriate cost categories (e.g., personnel, fringe benefits, travel, equipment, supplies, and consultants/contracts), as a separate section of the budget documents.

c. Cofunding

An award 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.

For additional match information, see the [Cost Sharing or Match Requirement](#) section under [Section B. Federal Award Information](#).

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. Information on Proposed Subawards (if any), as well as on Proposed Procurement Contracts (if any)

Applicants for OJP awards typically may propose to make "subawards." Applicants also may propose to enter into procurement "contracts" under the award.

Whether—for purposes of federal grants administrative requirements—a particular agreement between a recipient and a third party will be considered a "subaward" or instead considered a procurement "contract" under the award is determined by federal rules and applicable OJP guidance. It is an important distinction, in part because the federal administrative rules and requirements that apply to "subawards" and to procurement "contracts" under awards differ markedly.

In general, the central question is the relationship between what the third-party will do under its agreement with the recipient and what the recipient has committed (to OJP) to do under its award to further a public purpose (e.g., services the recipient will provide, products it will develop or modify, research or evaluation it will conduct). If a third party will provide some of the services the recipient has committed (to OJP) to provide, will develop or modify all or part of a product the recipient has committed (to OJP) to develop or modify, or will conduct part of the research or evaluation the recipient has committed (to OJP) to conduct, OJP will consider the agreement with the third party a subaward for purposes of federal grants administrative requirements.

This will be true **even if** the recipient, for internal or other non-federal purposes, labels or treats its agreement as a procurement, a contract, or a procurement contract. Neither the title nor the structure of an agreement determines whether the agreement—for purposes of federal grants administrative requirements—is a “subaward” or is instead a procurement “contract” under an award.

Additional guidance on the circumstances under which (for purposes of federal grants administrative requirements) an agreement constitutes a subaward as opposed to a procurement contract under an award, is available (along with other resources) on the [OJP Part 200 Uniform Requirements](#) web page.

1. Information on proposed subawards

A recipient of an OJP award may not make subawards ("subgrants") unless the recipient has specific federal authorization to do so. Unless an applicable statute or DOJ regulation specifically authorizes (or requires) subawards, a recipient must have authorization from OJP before it may make a subaward.

A particular subaward may be authorized by OJP because the recipient included a sufficiently-detailed description and justification of the proposed subaward in the application as approved by OJP. If, however, a particular subaward is not authorized by federal statute or regulation, and is not sufficiently described and justified in the application as approved by OJP, the recipient will be required, post-award, to request and obtain written authorization from OJP before it may make the subaward.

If an applicant proposes to make one or more subawards to carry out the federal award and program, the applicant should—(1) identify (if known) the proposed subrecipient(s), (2) describe in detail what each subrecipient will do to carry out the federal award and federal program, and (3) provide a justification for the subaward(s), with details on pertinent matters such as special qualifications and areas of expertise. Pertinent information on subawards should appear not only in the Program Narrative, but also in the Budget Detail Worksheet and Budget Narrative.

2. Information on proposed procurement contracts (with specific justification for proposed noncompetitive contracts over \$150,000)

Unlike a recipient contemplating a subaward, a recipient of an OJP award generally does not need specific prior federal authorization to enter into an agreement that—for purposes of federal grants administrative requirements—is considered a procurement contract, **provided that** (1) the recipient uses its own documented procurement procedures and (2) those procedures conform to applicable federal law, including the

Procurement Standards of the (DOJ) Part 200 Uniform Requirements (as set out at 2 C.F.R. 200.317 - 200.326). The Budget Detail Worksheet and budget narrative should identify proposed procurement contracts. (As discussed above, subawards must be identified and described separately from procurement contracts.)

The Procurement Standards in the Part 200 Uniform Requirements, however, reflect a general expectation that agreements that (for purposes of federal grants administrative requirements) constitute procurement “contracts” under awards will be entered into on the basis of full and open competition. If a proposed procurement contract would exceed the simplified acquisition threshold—currently, \$150,000—a recipient of an OJP award may not proceed without competition unless and until the recipient receives specific advance authorization from OJP to use a non-competitive approach for the procurement.

An applicant that (at the time of its application) intends—without competition—to enter into a procurement “contract” that would exceed \$150,000 should include a detailed justification that explains to OJP why, in the particular circumstances, it is appropriate to proceed without competition. Various considerations that may be pertinent to the justification are outlined in the [DOJ Grants Financial Guide](#).

e. Pre-Agreement Costs

For information on pre-agreement costs, see [Section B. Federal Award Information](#).

5. Indirect Cost Rate Agreement (if applicable)

Indirect costs may be charged to an award only if:

- (a) The recipient has a current (that is, unexpired), federally-approved indirect cost rate; or
- (b) The recipient is eligible to use, and elects to use, the “de minimis” indirect cost rate described in the Part 200 Uniform Requirements, as set out at 2 C.F.R. 200.414(f).

An applicant with a current (that is, unexpired) federally-approved indirect cost rate is to attach a copy of the indirect cost rate agreement to the application. An applicant that does not have a current federally-approved rate may request one through its cognizant federal agency, which will review all documentation and approve a rate for the applicant entity, or, if the applicant’s accounting system permits, applicants may propose to allocate costs in the direct cost categories.

For assistance with identifying the appropriate cognizant federal agency for indirect costs, please contact the Customer Service Center at 1-800-458-0786 or at ask.ocfo@usdoj.gov. If DOJ is the cognizant federal agency, an applicant may obtain information needed to submit an indirect cost rate proposal at www.ojp.gov/funding/Apply/Resources/IndirectCosts.pdf.

Certain OJP recipients have the option of electing to use the “de minimis” indirect cost rate. An applicant eligible to use the “de minimis” rate that wishes to use the “de minimis” rate should attach written documentation to the application that advises OJP of both—(1) the applicant’s eligibility to use the “de minimis” rate, and (2) its election to do so. If an eligible applicant elects the “de minimis” rate, costs must be consistently charged as either indirect or direct costs, but may not be double charged or inconsistently charged as both. The “de minimis” rate may no longer be used once an approved federally-negotiated indirect cost

rate is in place. (No entity that ever has had a federally-approved negotiated indirect cost rate is eligible to use the "de minimis" rate.)

6. Tribal Authorizing Resolution (if applicable)

A tribe, tribal organization, or third party that proposes to provide direct services or assistance to residents on tribal lands should include in its application a resolution, letter, affidavit, or other documentation, as appropriate, that demonstrates (as a legal matter) that the applicant has the requisite authorization from the tribe(s) to implement the proposed project on tribal lands. In those instances when an organization or consortium of tribes applies for an award on behalf of a tribe or multiple specific tribes, the application should include appropriate legal documentation, as described above, from all tribes that would receive services or assistance under the award. A consortium of tribes for which existing consortium bylaws allow action without support from all tribes in the consortium (i.e., without an authorizing resolution or comparable legal documentation from each tribal governing body) may submit, instead, a copy of its consortium bylaws with the application.

An applicant unable to submit an application that includes a fully-executed (i.e., signed) copy of legal appropriate documentation, as described above, consistent with the applicable tribe's governance structure, should, at a minimum, submit an unsigned, draft version of such legal documentation as part of its application (except for cases in which, with respect to a tribal consortium applicant, consortium bylaws allow action without the support of all consortium member tribes). If selected for funding, OJP will make use of and access to award funds contingent on receipt of the fully-executed legal documentation.

7. Financial Management and System of Internal Controls Questionnaire (including applicant disclosure of high-risk status)

Every applicant (other than an individual applying in his/her personal capacity) is to download, complete, and submit the [OJP Financial Management and System of Internal Controls Questionnaire](#), as part of its application.

Among other things, the form requires each applicant to disclose whether it currently is designated "high risk" by a federal grant-making agency outside of DOJ. For purposes of this disclosure, high risk includes any status under which a federal awarding agency provides additional oversight due to the applicant's past performance, or other programmatic or financial concerns with the applicant. If an applicant is designated high risk by another federal awarding agency, the applicant must provide the following information:

- The federal awarding agency that currently designates the applicant high risk
- The date the applicant was designated high risk
- The high-risk point of contact at that federal awarding agency (name, phone number, and email address)
- The reasons for the high-risk status, as set out by the federal awarding agency

OJP seeks this information to help ensure appropriate federal oversight of OJP awards. An applicant that is considered "high-risk" by another federal awarding agency is not

automatically disqualified from receiving an OJP award. OJP may, however, consider the information in award decisions, and may impose additional OJP oversight of any award under this solicitation (including through the conditions that accompany the award document).

8. Disclosure of Lobbying Activities

Each applicant must complete and submit this information. An applicant that expends any funds for lobbying activities is to provide all of the information requested on the form [Disclosure of Lobbying Activities \(SF-LLL\)](#). An applicant that does not expend any funds for lobbying activities is to enter “N/A” in the text boxes for item 10 (“a. Name and Address of Lobbying Registrant” and “b. Individuals Performing Services”).

9. Additional Attachments

a. Applicant disclosure of pending applications⁶

Each applicant is to disclose whether it has (or is proposed as a subrecipient under) any pending applications for federally-funded grants or cooperative agreements that (1) include requests for funding to support the same project being proposed in the application under this solicitation, and (2) would cover the identical cost items outlined in the budget submitted to OJP under this solicitation. The applicant is to disclose both applications made directly to federal awarding agencies, and also applications for subawards of federal funds (e.g., applications to State agencies that will subaward (“subgrant”) 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.

Each applicant that has one or more pending applications as described above is to provide the following information about pending applications submitted within the last 12 months:

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

Federal or State Funding Agency	Solicitation Name/Project Name	Name/Phone/Email for Point of Contact at Federal or State Funding Agency
DOJ/Office of Community Oriented Policing Services (COPS)	COPS Hiring Program	Jane Doe, 202/000-0000; jane.doe@usdoj.gov

⁶ Typically, the applicant is **not** the project director. Rather, the applicant, most frequently, is the institution, organization, or company in which the project director is employed.

Health and Human Services/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
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Each applicant should include the table as a separate attachment to its application. The file should be named “Disclosure of Pending Applications.” The applicant Legal Name on the application must match the entity named on the disclosure of pending applications statement.

Any applicant that does not have any pending applications as described above is to submit, as a separate attachment, a statement to this effect: “[Applicant Name on SF-424] does not have (and is not proposed as a subrecipient under) any pending applications submitted within the last 12 months for federally-funded grants or cooperative agreements (or for subawards under federal grants or cooperative agreements) that request funding to support the same project being proposed in this application to OJP and that would cover any identical cost items outlined in the budget submitted as part of in this application.”

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

If an award is made, prior to receiving award funds an applicant must submit an express certification from the chief legal officer of the State (typically the Attorney General) that the State:

- i. 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.
- ii. 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. Appendix I: Certification Template provides the template that must be used for the certification.

While it may be submitted with the application package, **submission of this certification is not required at the time of application.** If an award is made, access to award funds will be withheld until this certification is received and approved by NIJ.

Note to all applicants, in particular, applicants proposing postconviction DNA testing projects involving cases outside of the applicant's State: The certification at Appendix I: Certification Template must be executed by the chief legal officer of the appropriate State for each State for which postconviction cases are sought to be funded consistent with this solicitation. **Funds will not be made available to applicants (if awarded) that fail to submit a properly-executed certification(s).**

c. Legal Opinion as to Certification Under Section 413 of the Justice for All Act of 2004 (42 U.S.C. § 14136 note) (“State” applicants only)

As noted above, recently-enacted legislation, the Justice for All Reauthorization Act of 2016 ([Public Law 114-324](#))⁷, contained significant changes impacting 42 U.S.C. § 14136e (the Kirk Bloodsworth Post-Conviction DNA Testing Grant Program (“Bloodsworth”) statute) and other related provisions of law. If FY 2017 funds are made available pursuant to the “Bloodsworth” statutory authority, NIJ will not be in a position to fund awards from this FY 2017 Postconviction Testing of DNA Evidence solicitation.

Given the possibility that a full-year DOJ 2017 appropriation may provide funding for “Bloodsworth” grants (incorporating the recently-enacted legislation), an applicant that is a State is to—

- Review carefully sections 11 and 12 of the Justice for All Reauthorization Act of 2016 (Public Law 114-324).
- Determine whether it would be able to provide the certification that would be required consistent with section 413 of Public Law 108-405, the Justice for All Act of 2004 (42 U.S.C. 14136 note), as amended by section 12 of the Justice for All Reauthorization Act of 2016 (Public Law 114-324).
- Submit a legal opinion following upon such review using the template at Appendix III: Legal Opinion as to Certification Under Section 413 of the Justice for All Act of 2004 (42 U.S.C. § 14136 note) (“State” applicants only).

While it may be submitted with the application package, **submission of this legal opinion document is not required at the time of application.** If an award is made, access to award funds (“State” applicants only) will be withheld until this legal opinion document is received and approved (as to its proper execution) by NIJ.

Note regarding section 413 of Public Law 108-405: Although not applicable to awards under *this* solicitation, the provisions of section 413 or related provisions may apply—including in FY 2017, if funds are made available pursuant to the “Bloodsworth” statutory authority (incorporating the recently enacted legislation)—to future solicitations related to postconviction DNA testing assistance. (A copy of the following provisions (shown with amendments enacted by Public Law 114-324 incorporated into the text) appears in Appendix

⁷ The link provided to Public Law 114-324 here, for convenience of reference, is to the enrolled bill version of S.2577 (114th Congress) that was enacted into law.

II: section 413, along with copies of 18 U.S.C. §§ 3600(a) and 3600A, which are referenced therein. The information at Appendix II has been prepared and included in this solicitation for purposes of convenience only; applicants are strongly encouraged to access and view Public Law 114-324, and federal statutes amended thereby, by using official government repositories such as the [Office of the Law Revision Counsel](#), [Congress.gov](#), or [Government Publishing Office](#) websites.)

d. Disclosure of Process Related to Executive Compensation

An applicant that is a nonprofit organization may be required to make certain disclosures relating to the processes it uses to determine the compensation of its officers, directors, trustees, and key employees.

Under certain circumstances, a nonprofit organization that provides unreasonably high compensation to certain persons may subject both the organization's managers and those who receive the compensation to additional federal taxes. A rebuttable presumption of the reasonableness of a nonprofit organization's compensation arrangements, however, may be available if the nonprofit organization satisfied certain rules set out in Internal Revenue Service regulations with regard to its compensation decisions.

Each applicant nonprofit organization must state at the time of its application (in the "OJP Financial Management and System of Internal Controls Questionnaire" mentioned earlier) whether or not the applicant entity believes (or asserts) that it currently satisfies the requirements of 26 C.F.R. 53.4958-6 (which relate to establishing or invoking a rebuttable presumption of reasonableness of compensation of certain individuals and entities).

A nonprofit organization that states in the questionnaire that it believes (or asserts) that it has satisfied the requirements of 26 C.F.R. 53.4958-6 must then disclose, in an attachment to its application (to be titled "Disclosure of Process related to Executive Compensation"), the process used by the applicant nonprofit organization to determine the compensation of its officers, directors, trustees, and key employees (together, "covered persons").

At a minimum, the disclosure must describe in pertinent detail: (1) the composition of the body that reviews and approves compensation arrangements for covered persons; (2) the methods and practices used by the applicant nonprofit organization to ensure that no individual with a conflict of interest participates as a member of the body that reviews and approves a compensation arrangement for a covered person; (3) the appropriate data as to comparability of compensation that is obtained in advance and relied upon by the body that reviews and approves compensation arrangements for covered persons; and (4) the written or electronic records that the applicant organization maintains as concurrent documentation of the decisions with respect to compensation of covered persons made by the body that reviews and approves such compensation arrangements, including records of deliberations and of the basis for decisions.

For purposes of the required disclosure, the following terms and phrases have the meanings set out by the Internal Revenue Service for use in connection with 26 C.F.R.

53.4958-6: officers, directors, trustees, key employees, compensation, conflict of interest, appropriate data as to comparability, adequate documentation, and concurrent documentation.

Applicant nonprofit organizations should note that following receipt of an appropriate request, OJP may be authorized or required by law to make information submitted to satisfy this requirement available for public inspection. Also, a recipient may be required to make a prompt supplemental disclosure after the award in certain circumstances (e.g., changes in the way the organization determines compensation).

How to Apply

Applicants must register in, and submit applications through Grants.gov, a primary source 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**, which operates 24 hours a day, 7 days a week, except on 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 of registration and a user password. OJP encourages applicants to **register several weeks before** the application submission deadline. In addition, OJP urges applicants to submit applications at least 72 hours prior to the application due date, in order to allow time for the applicant 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.

OJP 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 automatically notified.

Browser Information: Grants.gov was built to be compatible with Internet Explorer. For technical assistance with Google Chrome, or another browser, contact Grants.gov Customer Support.

Note on Attachments: Grants.gov has two categories of files for attachments: “mandatory” and “optional.” OJP receives all files attached in both categories. Please ensure that all required documents are attached in either Grants.gov category.

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

Characters	Special Characters		
Upper case (A – Z)	Parenthesis ()	Curly braces { }	Square brackets []
Lower case (a – z)	Ampersand (&)	Tilde (~)	Exclamation point (!)
Underscore (_)	Comma (,)	Semicolon (;)	Apostrophe (')
Hyphen (-)	At sign (@)	Number sign (#)	Dollar sign (\$)

Space	Percent sign (%)	Plus sign (+)	Equal sign (=)
Period (.)	Applicants must use the “&” format in place of the ampersand (&) when using XML format for documents.		

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:

Every applicant entity must comply with all applicable System for Award Management (SAM) and unique entity identifier (currently, a Data Universal Numbering System [DUNS] number) requirements. If an applicant entity has not fully complied with applicable SAM and unique identifier requirements by the time OJP makes award decisions, OJP may determine that the applicant is not qualified to receive an award and may use that determination as a basis for making the award to a different applicant.

An individual who wishes to apply in his/her personal capacity should search Grants.gov for funding opportunities for which individuals are eligible to apply. Use the Funding Opportunity Number (FON) to register. (An applicant applying as an individual must comply with all applicable Grants.gov individual registration requirements.)

Complete the registration form at <https://apply07.grants.gov/apply/IndCPRegister> to create a username and password for Grants.gov. (An applicant applying as an individual should complete all steps except 1, 2 and 4.)

- 1. Acquire a unique entity identifier (currently, a DUNS number).** In general, the Office of Management and Budget requires every applicant for a federal award (other than an individual) to include a "unique entity identifier" in each application, including an application for a supplemental award. Currently, a DUNS number is the required unique entity identifier.

A DUNS number is a unique nine-digit identification number provided by the commercial company Dun and Bradstreet. This unique entity identifier is used for tracking purposes, and to validate address and point of contact information for applicants, recipients, and subrecipients. It will be used throughout the life cycle of an OJP award. 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 certain standard information about federal financial assistance applicants, recipients, and subrecipients. All applicants for OJP awards (other than individuals) must maintain current registrations in the SAM database. An applicant must be registered in SAM to successfully register in Grants.gov. Each applicant must **update or renew its SAM registration at least annually** to maintain an active status. SAM registration and renewal can take as long as 10 business days to complete.

An application cannot be successfully submitted in Grants.gov until Grants.gov receives the SAM registration information. Once the SAM registration/renewal is complete, **the**

information transfer from SAM to Grants.gov can take as long as 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. An applicant entity's "unique entity identifier" (DUNS number) must be used to complete this step. For more information about the registration process for organizations and other entities, go to <https://apply07.grants.gov/apply/OrcRegister>. Individuals registering with Grants.gov should go to <http://www.grants.gov/web/grants/applicants/individual-registration.html>.
- 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. The E-Biz POC will need the Marketing Partner Identification Number (MPIN) password obtained when registering with SAM to complete this step. Note that an organization can have more than one AOR.
- 5. Search for the funding opportunity on Grants.gov.** Use the following identifying information when searching for the funding opportunity on Grants.gov. The Catalog of Federal Domestic Assistance ("CFDA") number for this solicitation is 16.820, titled "Postconviction Testing of DNA Evidence," and the funding opportunity number is NIJ-2017-11060.
- 6. 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 two notifications from Grants.gov. The first will confirm the receipt of the application. The second will state whether the application has been validated and successfully submitted, or whether it has been 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 an application well ahead of the deadline provides time to correct the problem(s) that caused the rejection. **Important:** OJP urges each applicant to submit its application **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. Applications must be successfully submitted through Grants.gov by 11:59 p.m. eastern time on May 9, 2017

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

Note: Application Versions

If an applicant submits multiple versions of the same application, OJP will review only the most recent system-validated version submitted

Experiencing Unforeseen Grants.gov Technical Issues

An applicant that experiences unforeseen Grants.gov technical issues beyond its control that prevent it from submitting its application by the deadline must contact the Grants.gov [Customer Support Hotline](#) or the [SAM Help Desk](#) (Federal Service Desk) to report the technical issue and

receive a tracking number. The applicant must email the NCJRS contact identified in the Contact Information section on page 2 **within 24 hours after the application deadline** to request approval to submit its application after the deadline. The applicant's email must describe the technical difficulties, and must 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: OJP does not automatically approve requests to submit a late application. After OJP reviews the applicant's request, and contacts the Grants.gov or SAM Help Desks to verify 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 untimely application submission was due to the applicant's failure to follow all required procedures, OJP will deny the applicant's request to submit its application.

The following conditions generally are insufficient to justify late submissions:

- Failure to register in SAM or Grants.gov in sufficient time (SAM registration and renewal can take as long as 10 business days to complete. The information transfer from SAM to Grants.gov can take up to 48 hours.)
- Failure to follow Grants.gov instructions on how to register and apply as posted on its website
- Failure to follow each instruction in the OJP solicitation
- Technical issues with the applicant's computer or information technology environment, such as issues with firewalls or browser incompatibility.

Notifications regarding known technical problems with Grants.gov, if any, are posted at the top of the OJP [Funding Resource Center](#) web page.

E. Application Review Information

Review Criteria

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

1. **Description of the Issue (5%)**
 - a. Awareness of the current state of DNA technology for forensic physical evidence.
 - b. Awareness of the significance of DNA testing relative to postconviction cases.
2. **Project Design and Implementation (40%)**
 - a. Relevance to the goals and objectives of the program (see Goals, Objectives, and Deliverables).

- b. Feasibility of the proposed project, including likelihood of completion of the project goals within the proposed project period.
 - c. Awareness of potential pitfalls and the inclusion of work-arounds.
 - d. Demonstration of multiagency cooperation, collaboration and partnerships.
 - e. Innovation and creativity (where appropriate).
- 3. Capabilities and Competencies (20%)**
- a. Qualifications and experience of proposed staff.
 - b. Demonstrated ability of staff and organization to manage the effort.
 - c. Adequacy of the management plan.
- 4. Potential Impact (15%)**
- a. Relevance to policy and practice.
 - b. Potential for significant advances or outcomes.
- 5. Budget (15%)**
- a. Complete, cost effective, and allowable (e.g., reasonable, allocable, and necessary for project activities). Budget narratives should demonstrate generally how applicants will maximize cost effectiveness of grant expenditures. Budget narratives should demonstrate cost effectiveness in relation to potential alternatives and the goals of the project.⁸
- 6. Plan for Collecting the Data for this Solicitation's Performance Measures (5%)**

Review Process

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

Peer reviewers will review the applications submitted under this solicitation that meet basic minimum requirements. For purposes of assessing whether an application meets basic minimum requirements and should proceed to further consideration, OJP screens applications for compliance with those requirements. Although specific requirements may vary, the following are common requirements applicable to all solicitations for funding under OJP programs:

- The application must be submitted by an eligible type of applicant.

⁸ 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.

- The application must request funding within programmatic funding constraints (if applicable).
- The application must be responsive to the scope of the solicitation.
- The application must include all items designated as “critical elements.”
- The applicant must not be identified in SAM as excluded from receiving federal awards.

For a list of the critical elements for this solicitation, see “What an Application Should Include” under [Section D. Application and Submission Information](#).

Peer review panels will evaluate, score, and rate applications that meet basic minimum requirements. NIJ may use internal peer reviewers, external peer reviewers, or a combination, to assess applications on technical merit using the solicitation’s review criteria. 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. Peer reviewers’ ratings and any resulting recommendations are advisory only, although reviewer views are considered carefully. Other important considerations for OJP include underserved populations, geographic diversity, strategic priorities, and available funding, as well as the extent to which the budget detail worksheet and budget narrative accurately explain project costs that are reasonable, necessary, and otherwise allowable under federal law and applicable federal cost principles.

Pursuant to the Part 200 Uniform Requirements, before award decisions are made, OJP also reviews information related to the degree of risk posed by applicants. Among other things to help assess whether an applicant that has one or more prior federal awards has a satisfactory record with respect to performance, integrity, and business ethics, OJP checks whether the applicant is listed in SAM as excluded from receiving a federal award. If OJP anticipates that an award will exceed \$150,000 in federal funds, OJP also must review and consider any information about the applicant that appears in the non-public segment of the integrity and performance system accessible through SAM (currently, the Federal Awardee Performance and Integrity Information System; “FAPIIS”).

Important note on FAPIIS: An applicant, at its option, may review and comment on any information about itself that currently appears in FAPIIS and was entered by a federal awarding agency. OJP will consider any such comments by the applicant, in addition to the other information in FAPIIS, in its assessment of the risk posed by applicants.

The evaluation of risks goes beyond information in SAM, however. OJP itself has in place a framework for evaluating risks posed by applicants for competitive awards. OJP takes into account information pertinent to matters such as—

1. Applicant financial stability and fiscal integrity
2. Quality of the management systems of the applicant, and the applicant’s ability to meet prescribed management standards, including those outlined in the DOJ Grants Financial Guide

3. Applicant's history of performance under OJP and other DOJ awards (including compliance with reporting requirements and award conditions), as well as awards from other federal agencies
4. Reports and findings from audits of the applicant, including audits under the Part 200 Uniform Requirements
5. Applicant's ability to comply with statutory and regulatory requirements, and to effectively implement other award requirements.

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 take into account not only peer review ratings and NIJ recommendations, but also other factors as indicated in this section.

F. Federal Award Administration Information

Federal Award Notices

Award notifications will be made by September 30, 2017. OJP sends award notifications by email through GMS to the individuals listed in the application as the point of contact and the authorizing official (E-Biz POC and AOR). The email notification includes detailed instructions on how to access and view the award documents, and steps to take in GMS to start the award acceptance process. GMS automatically issues the notifications at 9:00 p.m. eastern time on the award date.

For each successful applicant, an individual with the necessary authority to bind the applicant will be required to log in; execute a set of legal certifications and a set of legal assurances; designate a financial point of contact; thoroughly review the award, including all award conditions; and sign and accept the award. The award acceptance process requires physical signature of the award document by the authorized representative and the scanning of the fully-executed award document to OJP.

Administrative, National Policy, and Other Legal Requirements

If selected for funding, in addition to implementing the funded project consistent with the OJP-approved application, the recipient must comply with all award conditions, as well as all applicable requirements of federal statutes, regulations, and executive orders (including applicable requirements referred to in the assurances and certifications executed in connection with award acceptance). OJP strongly encourages prospective applicants to review information on post-award legal requirements and common OJP award conditions **prior** to submitting an application.

Applicants should consult the "[Overview of Legal Requirements Generally Applicable to OJP Grants and Cooperative Agreements - FY 2017 Awards](#)," available in the [OJP Funding Resource Center](#). In addition, applicants should examine the following two legal documents, as each successful applicant must execute both documents before it may receive any award funds.

- [Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements](#)

- [Standard Assurances](#)

Applicants may view these documents in the Apply section of the [OJP Funding Resource Center](#).

The web pages accessible through the "[Overview of Legal Requirements Generally Applicable to OJP Grants and Cooperative Agreements - FY 2017 Awards](#)" are intended to give applicants for OJP awards a general overview of important statutes, regulations, and award conditions that apply to many (or in some cases, all) OJP grants and cooperative agreements awarded in FY 2017. Individual OJP awards typically also will include additional award conditions. Those additional conditions may relate to the particular statute or program, or solicitation under which the award is made; to the substance of the funded application; to the recipient's performance under other federal awards; to the recipient's legal status (e.g., as a for-profit entity); or to other pertinent considerations.

General Information about Post-Federal Award Reporting Requirements

In addition to the deliverables described in [Section A. Program Description](#), any recipient of an award under this solicitation will be required to submit the following reports and data.

Required reports. Recipients typically must submit quarterly financial reports, semi-annual progress reports, final financial and progress reports, and, if applicable, an annual audit report in accordance with the Part 200 Uniform Requirements or specific award conditions. Future awards and fund drawdowns may be withheld if reports are delinquent. (In appropriate cases, OJP may require additional reports.)

Awards that exceed \$500,000 will include an additional condition that, under specific circumstances, will require the recipient to report (to FAPIIS) information on civil, criminal, and administrative proceedings connected with (or connected to the performance of) either the OJP award or any other grant, cooperative agreement, or procurement contract from the federal government. Additional information on this reporting requirement appears in the text of the award condition posted on the OJP web site at <http://ojp.gov/funding/FAPIIS.htm>.

Data on performance measures. In addition to required reports, an award recipient also must provide data that measure the results of the work done under the award. To demonstrate program progress and success, as well as to assist DOJ in 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, OJP will require any recipient, post award, to provide the data listed as "Data Recipient Provides" in the performance measures table in [Section D. Application and Submission Information](#), under "Program Narrative," so that OJP can calculate values for this solicitation's performance measures.

G. Federal Awarding Agency Contact(s)

For OJP contact(s), see page 2.

For contact information for Grants.gov, see page 2.

H. Other Information

Freedom of Information Act and Privacy Act (5 U.S.C. 552 and 5 U.S.C. 552a)

All applications submitted to OJP (including all attachments to applications) are subject to the federal Freedom of Information Act (FOIA) and to the Privacy Act. By law, DOJ may withhold information that is responsive to a request pursuant to FOIA if DOJ determines that the responsive information either is protected under the Privacy Act or falls within the scope of one of nine statutory exemptions under FOIA. DOJ cannot agree in advance of a request pursuant to FOIA not to release some or all portions of an application.

In its review of records that are responsive to a FOIA request, OJP will withhold information in those records that plainly falls within the scope of the Privacy Act or one of the statutory exemptions under FOIA. (Some examples include certain types of information in budgets, and names and contact information for project staff other than certain key personnel.) In appropriate circumstances, OJP will request the views of the applicant/recipient that submitted a responsive document.

For example, if OJP receives a request pursuant to FOIA for an application submitted by a nonprofit or for-profit organization or an institution of higher education, or for an application that involves research, OJP typically will contact the applicant/recipient that submitted the application and ask it to identify -- quite precisely -- any particular information in the application that applicant/recipient believes falls under a FOIA exemption, the specific exemption it believes applies, and why. After considering the submission by the applicant/recipient, OJP makes an independent assessment regarding withholding information. OJP generally follows a similar process for requests pursuant to FOIA for applications that may contain law-enforcement sensitive information.

Provide Feedback to OJP

To assist OJP in improving its application and award processes, OJP encourages applicants to provide feedback on this solicitation, the application submission process, and/or the application review process. Provide feedback to OJPSolicitationFeedback@usdoj.gov.

IMPORTANT: This email is for feedback and suggestions only. OJP does **not** reply from this mailbox to messages it receives in this mailbox. Any prospective applicant that has specific questions on any program or technical aspect of the solicitation **must** use the appropriate telephone number or email listed on the front of this document to obtain information. These contacts are provided to help ensure that prospective applicants can directly reach an individual who can address specific questions in a timely manner.

If you are interested in being a reviewer for other OJP grant applications, please email your resume to ojpeerreview@lmsolas.com. (Do not send your resume to the OJP Solicitation Feedback email account.) **Note:** Neither you nor anyone else from your organization or entity can be a peer reviewer in a competition in which you or your organization/entity has submitted an application.

Application Checklist

Postconviction Testing of DNA Evidence

This application checklist has been created as an aid in developing an application.

What an Applicant Should Do:

Prior to Registering in Grants.gov:

_____ Acquire a DUNS Number (see page 26)

_____ Acquire or renew registration with SAM (see page 26)

To Register with Grants.gov:

_____ Acquire AOR and Grants.gov username/password (see page 27)

_____ Acquire AOR confirmation from the E-Biz POC (see page 27)

To Find Funding Opportunity:

_____ Search for the Funding Opportunity on Grants.gov (see page 27)

_____ Download Funding Opportunity and Application Package (see page 27)

_____ Sign up for Grants.gov email [notifications](#) (optional) (see page 25)

_____ Read [Important Notice: Applying for Grants in Grants.gov](#)

_____ Read OJP policy and guidance on conference approval, planning, and reporting available at [ojp.gov/financialguide/DOJ/PostawardRequirements/chapter3.10a.htm](#) (see page 12)

After Application Submission, Receive Grants.gov Email Notifications That:

_____ (1) application has been received,

_____ (2) application has either been successfully validated or rejected with errors (see page 27)

If No Grants.gov Receipt, and Validation or Error Notifications are Received:

_____ contact NCJRS regarding experiencing technical difficulties (see page 2)

Overview of Post-Award Legal Requirements:

_____ Review the "[Overview of Legal Requirements Generally Applicable to OJP Grants and Cooperative Agreements - FY 2017 Awards](#)" in the OJP Funding Resource Center.

Scope Requirement:

_____ The federal amount requested is within the allowable limit(s).

Eligibility Requirement: For eligibility information, see the title page.

What an Application Should Include:

_____ Application for Federal Assistance (SF-424) (see page 13)

_____ Project Abstract (see page 13)

_____ Program Narrative (see page 14)

_____ Double-spaced

_____ 12-point standard font

_____ 1" standard margins

_____ Narrative is 12 pages or less

_____ Appendices (see page 16)

_____ Curriculum vitae, resumes, or biographical sketches of key personnel

- _____ Bibliography/references
- _____ Tools/instruments, questionnaires, tables/charts/graphs, or maps
- _____ List of proposed project staff members
- _____ Project timeline
- _____ List of previous and current NIJ awards
- _____ Letters of support
- _____ Budget Detail Worksheet (see page 16)
- _____ Budget Narrative (see page 16)
- _____ Indirect Cost Rate Agreement (if applicable) (see page 19)
- _____ Tribal Authorizing Resolution (if applicable) (see page 20)
- _____ Financial Management and System of Internal Controls Questionnaire
(see page 20)
- _____ Disclosure of Lobbying Activities (SF-LLL) (see page 21)
- _____ Additional Attachments
 - _____ Applicant Disclosure of Pending Applications (see page 21)
 - _____ Certification(s) as to Provision of Postconviction DNA Testing and Preservation
of Biological Evidence (see page 22)
 - _____ Legal Opinion as to Certification Under Section 413 of the Justice for All Act of
2004 (42 U.S.C. § 14136 note)(“State” applicants only) (see page 23)
- _____ Disclosure of Process related to Executive Compensation (see page 24)
- _____ Request and Justification for Employee Compensation; Waiver (see page 11)

Appendix I: Certification Template

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

FY 2017 Postconviction Testing of DNA Evidence

On behalf of the State 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 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 State

Date

Application Information:

Name of Applicant (if applicant is not the above-named State)

Appendix II: Selected Statutes

(See the note regarding section 413 of Public Law 108-405 on page 23)

Section 413 of the Justice for All Act of 2004 (Public Law 108–405), as amended by Public Law 114-324 (the Justice for All Reauthorization Act of 2016) provides:

Incentive grants to States to ensure consideration of claims of actual innocence.

For each of fiscal years 2017 through 2021, 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) for eligible entities that are a State or unit of local government, provide a certification by the chief legal officer of the State in which the eligible entity operates or the chief legal officer of the jurisdiction in which the funds will be used for the purposes of the grants, that the State or jurisdiction—

(A) provides DNA testing of specified evidence under a State statute or a State or local rule or regulation to persons sentenced to imprisonment or death for a State felony offense, in a manner intended to ensure a reasonable process for resolving claims of actual innocence that ensures post-conviction DNA testing in at least those cases that would be covered by section 3600(a) of title 18, United States Code, had they been Federal cases and, if the results of the testing exclude the applicant as the source of the DNA, permits the applicant to apply for post-conviction relief, notwithstanding any provision of law that would otherwise bar the application as untimely; and

(B) preserves biological evidence, as defined in section 3600A of title 18, United States Code, under a State statute or a State or local rule, regulation, or practice in a manner intended to ensure that reasonable measures are taken by the State or jurisdiction to preserve biological evidence secured in relation to the investigation or prosecution of, at a minimum, murder, nonnegligent manslaughter and sexual offenses.

18 U.S.C. § 3600(a), as amended by Public Law 114-324 (the Justice for All Reauthorization Act of 2016), provides:

DNA testing

(a) In general.—Upon a written motion by an individual sentenced to 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 sentenced to 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 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, as amended by Public Law 114-324 (the Justice for All Reauthorization Act of 2016), 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 sentenced to 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) 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;

(2) (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

(3) 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.

**Appendix III: Template for Legal Opinion as to Certification Under
Section 413 of the Justice for All Act of 2004 (42 U.S.C. § 14136
note)(“State” applicants only)**

(Instructions: The applicant State is to execute the legal opinion document by having its chief legal officer initial **only one** of the two options ((1) or (2)) and sign where provided. The applicant must also provide all of the information requested at the bottom of this template. Scan the completed document and submit the image file electronically through GMS.)

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

Legal Opinion as to Certification Under Section 413 of the Justice for All Act of 2004 (42 U.S.C. § 14136 note)(to be completed by "State" applicants only)

By submitting this legal opinion on behalf of the State named below, I hereby represent the following to the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice—

- (1) _____ The State has reviewed the provisions of section 413 of the Justice for All Act of 2004 (Public Law 108–405), as amended by Public Law 114-324, and has determined that it **would** be able to make the certification required under section 413 of the Justice for All Act of 2004 (42 U.S.C. § 14136 note), as amended by Public Law 114-324, consistent with that law.

- (2) _____ The State has reviewed the provisions of section 413 of the Justice for All Act of 2004 (Public Law 108–405), as amended by Public Law 114-324, and has determined that it **would not** be able to make the certification required under section 413 of the Justice for All Act of 2004 (42 U.S.C. § 14136 note), as amended by Public Law 114-324, consistent with that law.

Signature of Chief Legal Officer of Applicant State

Printed Name of Chief Legal Officer of Applicant State

Title of Chief Legal Officer of Applicant State

Name of State

Date