CONSORTIUM OF FORENSIC SCIENCE ORGANIZATIONS

SEPTEMBER 2013

113th Congress 1st Session

LEGISLATIVE UPDATE

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Leahy Update

Senator Leahy's Senior Counsel, Chan Park, attended the International Association for Identification (IAI), a member of the CFSO, conference in Providence, RI earlier this month and announced Senator Leahy plans to re-introduce his Bill on forensic reform in September 2013. It was welcomed news by the Membership but perhaps what was more encouraging was the fact that Republican Minority Whip and Member of the Senate Judiciary Committee, Senator Cornyn, has agreed to co-sponsor the legislation. This is a significant step forward since the Democratic Majority is not large enough to pass something of this substance unless it is bipartisan. Perhaps more importantly, the House has a Republican Majority so even if the Senate were to pass a bill supported only by the Majority, the House may not. As a result the fate of the Forensic Reform Bill would not be very positive. Therefore, it appears we are closer to a bill that can move through the House and Senate and become law. It will not, however, be a simple path forward and we will be providing guidance in future newsletters of how you, as practitioners, can help move this bill closer to becoming law.

The Forensic Commission

During the IAI conference, NIST advised the Membership that the Commission Members had been chosen and the names have been submitted to the Chain of Command for approval. Keep an eye on the Federal Register for news.

The Scientific Working Groups

Also at the IAI conference, NIST provided an overview of a proposed movement and restructuring of the Scientific Working Groups to the Members. According to the charts, one of the proposals is to consolidate the current SWGs into Guidance Groups based on commonly shared scientific

principles, such as all pattern evidence being in a single Guidance Group. These are proposals that will be submitted to the Federal Register for the public's review and comment.

Budget Time

June and July saw a flurry of activity with the budget process, however, by his own admission the Speaker of the House has said they cannot complete their work on time and has asked for a short term Continuing Resolution (CR). Bottom line is there is a strong likelihood we will live under a CR again with our FY14 funds. But…if they do get a budget what will it say? Well, the House and Senate bills are quite different so the final outcome will likely be a mixture of each and a compromise. Here is a summary and we have attached the full language in each Report for you to review in detail.

Funding:

Coverdell: The Administration did not propose funding for this program nor did the House. The Senate, however, provided $15million. This means the House and Senate will need to reconcile the difference between $0 and $15million. It is very important for policy-makers to hear from you about the importance of this grant program. It can make the difference between the House agreeing to the $15million or the two sides dividing the difference and compromising with a final number of $7.5million. We encourage you to let **your** Members of Congress know how important these funds are to you. Provide examples of how it has made a difference to your particular office. Please go to http://www.house.gov/representatives/find/ and type in your zip code to find your Member of Congress.

Call your Member's Office and ask for the staff point of contact that handles forensics and law enforcement issues.

> Advise that staff person who you are, ask them to have the Member of Congress weigh in with the House Commerce, Justice, Science Appropriations Subcommittee about the need for the House to "recede to the Senate amount on the Paul Coverdell Grants", and explain to them why it is important to your office.

DNA: The House and Senate both provided $125 million for funding of DNA. This means that there is no conference issue and the final outcome will be $125million.

Forensic Initiative: The White House proposed funding of $9million for a forensic initiative. The original request would have 100% of the funding come out of the Department of Justice but be distributed (with the exception of $1million for the Commission) to NIST and NSF to create Forensic Science Research Centers and for the development of standards. At first glance what is of concern to the CFSO is that Coverdell did not receive funds but this did. Further, the Commission has not begun and the IWG recommendations have not been published so how can one determine what such administrative structures for the Research Centers need to be created.

However, the House did not fund this initiative and the Senate moved the funding as well as providing language to clarify matters. Specifically:

- $5million to NIST (no longer out of DOJ budget) for Forensic Centers of Excellence to create “collaborations between NIST, academic, and industry specialists on research focused on innovations in measurement science and new technology developments.” with at least one Center “with a focus on forensic measurement science, technology, and standards.”

- $5million to NIST for measurement science and standards in support of forensic science and the Senate directs them to coordinate its activities with the Department of Justice and the National Science Foundation.

- $1million to DOJ for the Forensic Science Advisory Committee (we are told this is the Commission).

- $5 million to NSF for Forensic research Centers.

FINAL THOUGHTS

As always if you have thoughts, concerns, questions or ideas, please let us know by contacting your organization representative. Contact information is listed on the front page side bar. September appears to be a busy month so please make yourself knowledgeable on the subject, understand how these issues will affect you and your laboratory, and finally, get involved…call your Members.

HOUSE BUDGET REPORT

DNA Initiative.—The recommendation includes $125,000,000 for DNA-related and forensic programs and activities, an increase of $25,000,000 above the request. Within the funding provided, the Committee provides $4,000,000 each for Post-Conviction DNA Testing grants and Sexual Assault Forensic Exam Program grants. The Committee expects OJP will make funding for DNA analysis and capacity enhancement a priority to meet the purposes of the Debbie Smith DNA Backlog Grant Program. The Committee directs the Department to submit, no later than 45 days after enactment of this Act, a plan for the use of all funds appropriated for DNA- related and forensic programs and a report on the alignment of appropriated funds with the authorized purposes of the Debbie Smith DNA Backlog Grant Program.

Katie Sepich Enhanced DNA Collection Act.—In January 2013, the President signed into law the Katie Sepich Enhanced DNA Collection Act (Public Law 112–253), which authorizes grants to assist States with the costs of collecting arrestee DNA. The Committee expects the Department to fund these activities within the amount provided for the DNA initiative. The Department shall report to the Committee no later than 45 days after enactment of this Act on the status of this program.

Computer Forensics and Digital Evidence Training.—The Committee is concerned with the impact of budgetary constraints on computer forensics training assistance for State and local law enforcement, in light of increased use of technology to commit crimes and the subsequent need of law enforcement to acquire and exploit digital evidence. The Committee is concerned that State and local justice systems often lack the skills and knowledge needed to investigate, prosecute and try cases involving cybercrimes and digital evidence. The FBI has significant expertise in computer forensics and State and local training and coordination, and the Committee encourages the FBI to leverage its efforts by

coordinating with other Federal partners, such as the U.S. Secret Service, to support and train State and local investigators, prosecutors and judges.

SENATE BUDGET REPORT

Centers of Excellence.—The Committee supports the administration's proposal to create Centers of Excellence that will produce collaborations between NIST, academic, and industry specialists on research focused on innovations in measurement science and new technology developments. Similar collaborations have already yielded significant benefits in areas of nanomaterials, healthcare, batteries and electrochemical energy conversion, and advanced photo-voltaic devices.

As NIST begins the process of establishing those Centers, the Committee encourages NIST to create at least one Center of Excellence with a focus on forensic measurement science, technology, and standards. Interdisciplinary research to enhance forensic science was one of the recommendations made by the 2009 National Academy of Sciences report ''Strengthening Forensic Science in the United States: A Path Forward.'' Enhanced science, technology, and standards in the areas of forensic science, especially computer forensics, are critical for the accurate collection, evaluation, and processing of evidence that is needed to strengthen our forensic science disciplines and to combat burgeoning Internet crime networks.

As part of the agency's 2014 spending plan, NIST is directed to provide an updated framework for creating an appropriate number of new centers of excellence from within the funds provided.

Forensic Science.—In lieu of the funding requested to be provided to the Department of Justice and transferred to NIST, the Committee has added $5,000,000 for measurement science and standards in support of forensic science and directs NIST to coordinate its activities with the Department of Justice and the National Science Foundation. This funding is in addition to $5,000,000 for forensic science included in NIST's request.

Forensic Initiative: $6million ($5million moved to NSF)

Forensic Sciences.—The Committee provides $6,000,000 for a forensics initiative, of which $1,000,000 is to support the Forensic Science Advisory Committee, to be chaired by the Attorney General and the Director of the National Institute of Standards and Technology [NIST], and $5,000,000 is for the National Science Foundation [NSF] for a forensic science grant program, to be developed and administered in consultation with NIJ, that establishes forensic science research centers. In lieu of the budget request that proposed to transfer funds from DOJ to NIST for measurement science and standards in support of forensic science, the Committee elects to provide that funding directly to NIST. The Committee directs DOJ to coordinate its activities with NIST and NSF.

The Committee is concerned that the administration's forensic sciences proposal lacks the involvement of the State and local practitioner community, making the community an observer—not a participant—in addressing forensic reform, and that it will not take into consideration existing, proven standards and processes used within the community. The

Committee expects the Forensic Science Advisory Committee to consider the need to exercise independent scientific judgment and, among other factors, recommendations from leading scientific organizations and leading professional organizations in the field of forensic science. The Committee expects the Forensic Science Advisory Committee to consult with key and relevant stakeholder groups prior to advancing forensic science solutions or reforms.

Building Digital Forensics Capabilities.—The Committee continues to stress the importance of training and equipping State and local law enforcement with the tools and expertise needed to investigate and prosecute electronic crime. As smartphones and the Internet have become fundamental parts of daily life, these technologies have also become a fundamental part of criminal acts and enterprises, including drug deals and murder hits by text, to ATM heists via laptops, to child pornography Web sites.

Given that more than 95 percent of all criminal cases are investigated and prosecuted at the State and local levels, the Committee remains concerned that the ability of State and local law enforcement to investigate and effectively prosecute cases involving digital evidence and computer-based crimes will diminish without the Department's support of training and research. The Committee encourages the Department to prioritize State and local assistance toward computer forensics and digital evidence training and investigations surrounding drug, violent, and financial crimes, and crimes against children. If merited, the Department should consider establishing one or more centers of excellence in the field of digital forensics so that this valuable expertise is developed and researched in a sustained, coordinated, and focused manner.

Paul Coverdell Forensic Science ….....$15m

DNA Analysis Backlog Reduction/Crime Labs.....$125m

Debbie Smith DNA Backlog grants..... ($117m)

Kirk Bloodsworth Post-Conviction DNA Testing grants..... ($4m)

Sexual Assault Nurse Examiners…… ($4m)

DNA Backlog/Crime Lab Improvements.—The Committee continues its strong support for DNA backlog and crime lab improvements by recommending $125,000,000 to strengthen and improve Federal and State DNA collection and analysis systems that can be used to accelerate the prosecution of the guilty while simultaneously protecting the innocent from wrongful prosecution. Within the funds provided, $117,000,000 is for Debbie Smith DNA Backlog Reduction grants, $4,000,000 is for Kirk Bloodsworth Post-Conviction DNA Testing grants, and $4,000,000 is for Sexual Assault Nurse Examiner grants. From within the funding provided for Debbie Smith DNA Backlog Reduction grants, the Committee expects the Department to prioritize reducing rape kit backlogs, given that is the primary reason why the Committee continues to provide robust funding for these grants.

DNA evidence is playing a larger role than ever before in criminal cases, both to convict the guilty and to exonerate those wrongly accused or convicted. This increased role places greater importance on the ability of investigators and

prosecutors to handle crime scene DNA evidence to avoid contamination or destruction. Therefore, of the amounts provided in the bill for Debbie Smith DNA Backlog Reduction grants, up to 4 percent may be used to make grants to provide training, technical assistance, education, and information regarding the identification, collection, preservation, analysis, and use of DNA evidence and samples for law enforcement and corrections personnel and court officers, and forensic science professionals. This is a minimal investment aimed at providing a maximum value return.

The Committee expects that OJP will make funding for DNA analysis and capacity enhancement a priority to meet the purposes of the Debbie Smith DNA Backlog Grant Program. The Committee notes that, according to DOJ, roughly 77 percent of DNA funding provided in fiscal year 2013 will go to crime labs for DNA analysis to increase capacity and reduce DNA backlogs. The Committee directs the Department to submit to the Committee as part of its spending plan for State and Local Law Enforcement Activities a plan with respect to funds appropriated for DNA-related and forensic programs, including the alignment of appropriated funds with the authorized purposes of the Debbie Smith DNA Backlog Grant Program.