



National Institute of Justice

S o l i c i t a t i o n

August 2001

Pilot Programs for Prosecutor - Initiated Postconviction DNA Case Review

APPLICATION DEADLINE:

September 28, 2001

U.S. Department of Justice
Office of Justice Programs
810 Seventh Street N.W.
Washington, DC 20531

John D. Ashcroft
Attorney General

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Director, National Institute of Justice

For grant and funding information, contact:
Department of Justice Response Center
800-421-6770

Office of Justice Programs
World Wide Web Site:
<http://www.ojp.usdoj.gov>

National Institute of Justice
World Wide Web Site:
<http://www.ojp.usdoj.gov/nij>

Pilot Programs for Prosecutor - Initiated Postconviction DNA Case Review

I. Introduction

The implications of DNA technology for criminal justice are evident in the context of post-conviction appeals, both in the use of DNA evidence in specific cases and in its broader impact on the criminal justice system. One of the innovative applications of DNA evidence has been in the area of prosecutor-initiated review and DNA testing of postconviction cases. Recognizing the potential for DNA evidence to determine actual innocence in appropriate cases, district attorneys in jurisdictions such as San Diego, California and Travis County, Texas as well as the Attorney General in Ohio have begun to review convictions to determine if DNA testing can and should be applied. Such reviews are being conducted even in the absence of a request by the individual convicted.

Prosecutor-initiated postconviction DNA case review demands a novel approach. Often, statutes that allow for an appeal on the grounds of newly discovered evidence do not address issues relating to preexisting evidence suitable for retesting with more powerful technology.

In addition, many jurisdictions provide only a short time for new trial motions to be filed on the basis of newly discovered evidence. Thus, technology developed years after a conviction may be exonerative in a particular case, but statutory limitations might prevent the filing of a petition.

Furthermore, unlike testimonial proof, DNA evidence does not become less probative with the passage of time. As technological advances and growing databases enhance the potential for the identification of perpetrators and eliminating suspects, the value of DNA increases.

Finally, postconviction relief must be limited to the exceptional case that justice so requires – courts must

be protected from being overwhelmed by a flood of unfounded applications.

In order to discover how these and other issues will affect postconviction review, the National Institute of Justice (NIJ) seeks to fund pilot programs in prosecutors' offices to systematically review postconviction DNA cases and, when warranted, recommend evidence for testing. It is hoped that the information gathered by these studies will serve to aid other prosecutors in developing future postconviction review programs.

Pilot programs can have both policy and logistical implications that serve not only to bring finality and closure, but also may address issues that arise regarding the expansion of potential postconviction DNA testing to a range of criminal cases extending beyond homicide and sexual assault.

II. Background

The National Commission on the Future DNA Evidence provided the community with a number of recommendations and tools to enhance the value of DNA evidence in the criminal justice system. One result of the Commission's work was the publication of *Postconviction DNA Testing: Recommendations for Handling Requests* in September 1999. This document serves as a guide to criminal justice practitioners for their analysis of postconviction appeals in which DNA evidence is used and provides information regarding the scientific foundation on which to make fully informed decisions about pursuing postconviction DNA evidence and on legal approaches needed when DNA may determine the outcome of an appeal.

Precedent has demonstrated that introduction of newly discovered DNA evidence after conviction in appropriate cases may prove to be exonerative. Because of the discriminatory power of DNA

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technology, the decision to oppose or not oppose a motion requesting postconviction relief may now be guided by the existence of more reliable forensic evidence. And, while a convicted individual's continued assertion of innocence based on newly discovered evidence is not new to the criminal justice system, the use of DNA technology may bring a degree of certainty to courtroom proceedings to which neither the defense nor the prosecution are accustomed.

As has been demonstrated in scores of cases, along with the inherent value of exonerating individuals who have been wrongly convicted, it is important to identify when real perpetrators remain unapprehended. In many instances, postconviction exonerations have led to the identification and apprehension of the actual perpetrator, thus preventing future crimes.

III. Required Elements of Programs

NIJ seeks proposals from State and local prosecutors' offices to create pilot programs that will perform systematic postconviction case review for possible exculpatory DNA evidence. Participants will need to document how decisions were made and what the impacts were.

A. Applicants must define the case review selection criteria they will use. Examples might include, but are not limited to: (1) conviction prior to a date when DNA was routinely used to prove a case in your jurisdiction or (2) category of case such as sexual assault, capital or life sentence.

B. The applicant will demonstrate methods for gaining the cooperation of prosecutorial case review with other criminal justice entities, including the laboratory, defense counsel, the courts, law enforcement agency, and the victim (or victim's family), as well as other criminal justice agencies that would be affected by this initiative.

C. The applicant will demonstrate a plan of action if the case review yields a reasonable probability that the defendant would be exonerated as a result of (new or additional) DNA testing. Strategies for

handling these cases should be developed in cooperation with the forensic laboratory, defense counsel, the courts, law enforcement, corrections and any other criminal justice agencies that would be affected by the review programs.

D. Budgetary considerations might include (but are not limited to)

- Wages for law school students or paralegals to conduct preliminary case review (as defined by the applicant)
- Overtime for law enforcement or laboratory personnel
- Administrative items such as travel, long distance, postage, etc.
- Overtime pay for prosecution
- Coordination with existing externship programs

NIJ is reserving at least \$15,000 for testing (or re-testing) to each award recipient. If the grantee does not discover a case(s) that need testing, this funding will be de-obligated at the end of the award period.

In the event that additional funding for DNA analysis is required (above \$15,000) a mechanism will be in place at NIJ to address those needs on a case-by-case basis.

E. Applicants will document how decisions were made and what the impacts were. This documentation will be used to draft a final report to be submitted to NIJ.

The final report will include:

- Detailed description of the criteria used for review and how those criteria were established.
- Detailed description of how the reviews were conducted, including who was involved and what processes and procedures were established.
- The total number of cases reviewed.
- The total number of cases recommended for testing.
- Detailed description of post-recommendation collaboration with district attorneys, law

enforcement agencies, crime laboratories, defense attorneys, and other relevant agencies.

IV. Selection Criteria

NIJ is firmly committed to the competitive process for awarding grants. All proposals are subjected to an independent, peer-review panel evaluation. The panel consists of members with academic, practitioner, technical, and operational expertise in the subject areas of the solicitation. In this review, NIJ will place special emphasis on whether or not proposals promote formal collaboration among the courts, law enforcement, defense bar, laboratory, corrections and victim service providers that will result in policies and protocols that effectively and efficiently manage the postconviction case review (and subsequent testing - appeal) process.

Other selection criteria include:

1. Quality and Technical Merit

- Soundness of methodology and analytic or technical approach
- Innovation and creativity
- Feasibility of proposed project; awareness of pitfalls
- Awareness of existing research and related applications

2. Impact of the Project

- Understanding the importance of the problem
- Planning to include metrics used to measure the impact of the project
- Potential for advancement of scientific understanding of the problem area
- Letters of support from participating agencies

3. Capabilities, Demonstrated Productivity, and Experience of Applicants

- Organizational and implementation planning
- Qualifications and experience of personnel as related to proposed project

- Responsiveness to the goals of the solicitation
- Demonstrated ability to manage proposed effort
- Adequacy of proposed resources to perform effort

4. Budget Considerations

- Total cost relative to perceived benefit
- Appropriate budgets and level of effort
- Cost-effectiveness of program or product for application in the criminal justice system (if applicable)

After peer-review panelists' consideration, Institute staff makes recommendations to NIJ's Director based on the results of the independent reviews. Final decisions are made by the NIJ Director following consultation with Institute staff.

V. How to Apply

Those interested in submitting proposals in response to this solicitation must complete the required application forms and submit related required documents. (See below for how to obtain application forms and guides for completing proposals.)

Applicants must include the following information/forms to qualify for consideration:

- Standard Form (SF) 424—application for Federal assistance
- Geographic Area Affected Worksheet
- Assurances
- Certifications Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (one form)
- Disclosure of Lobbying Activities
- Budget Detail Worksheet
- Budget Narrative
- Negotiated indirect rate agreement (if appropriate)
- Names and affiliations of all key persons from applicant and subcontractor(s), advisors, consultants, and advisory board members. Include name of principal investigator, title, organizational

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affiliation (if any), department (if institution of higher education), address, phone, and fax

- Proposal abstract
- Table of contents
- Program narrative or technical proposal
- Privacy certificate
- Form 310 (Protection of Human Subjects Assurance Identification/Certification/Declaration)
- References
- Letters of cooperation from organizations collaborating in the research project
- Resumés
- Appendices, if any (e.g., list of previous NIJ awards, their status, and products [in NIJ or other publications])

Proposal abstract. The proposal abstract, when read separately from the rest of the application, is meant to serve as a succinct and accurate description of the proposed work. Applicants must concisely describe the goals, objectives, design, and methods for achieving the goals and objectives. Summaries of past accomplishments are to be avoided, and proprietary/confidential information is not to be included. Length is not to exceed 400 words. Use the following two headers:

Project Goals and Objectives:

Proposed Design and Methodology:

Confidentiality of information and human subjects protection. NIJ has adopted new policies and procedures regarding the confidentiality of information and human subjects protection. Please see the Guidelines for Submitting Proposals for National Institute of Justice-Sponsored Research for details on the new requirements.

Information Technology. The Office of Justice Programs encourages integration and interoperability of information technology (IT) systems between all justice agencies and across Federal, State, and local jurisdictional boundaries. IT systems include automated information systems used by each of the justice system components (law enforcement, courts, prosecution, defense, corrections, probation and parole) in their internal day-to-day business and in

communicating with each other. To support State and local justice integration and interoperability of these systems, OJP asked the Governor to designate a "point of contact" to provide information on IT plans and coordination in your. State and local recipients of awards that will be used in whole or in part for information systems may be required by the awarding OJP Bureau to communicate with this point of contact about their information technology plans. By increasing local communication when planning and implementing information technology, OJP funds may be used to support interoperable, rather than isolated, information systems.

The name and address of your State Information Technology Point of Contact can be obtained by calling our customer service line at 1-800-458-0786, or on the OJP web page at <http://www.ojp.usdoj.gov/ec/states.htm>.

Page limit. The maximum page length in the "Program Narrative" is 15 (double-spaced) pages.

Due date. Completed proposals **must be received** at the National Institute of Justice by the close of business on September 28, 2001. Extensions of this deadline will not be permitted.

Award period. In general, NIJ limits its grants and cooperative agreements to a maximum period of 12 or 24 months. The award period defined under this grant will be 18 months from time of notification. However, longer budget periods may be considered on a case-by-case basis.

Number of awards. NIJ anticipates supporting multiple grants under this solicitation.

Award amount. Awards totaling \$500,000 will be made available for this NIJ solicitation.

Applying. Two packets need to be obtained: (1) application forms (including a sample budget worksheet) and (2) guidelines for submitting proposals (including requirements for proposal writers and requirements for grant recipients). To receive them, applicants can:

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- Access the Justice Information Center on the web: <http://www.ncjrs.org/fedgrant.htm#NIJ> or the NIJ web site: <http://www.ojp.usdoj.gov/nij/funding.htm>.

These Web sites offer the NIJ application forms and guidelines as electronic files that may be downloaded to a personal computer.

- Request hard copies of the forms and guidelines by mail from the National Criminal Justice Reference Service at 800-851-3420 or from the Department of Justice Response Center at 800-421-6770 (in the Washington, D.C., area, at 202-307-1480).
- Request copies by fax. Call 800-851-3420 and select option 1, then option 1 again for NIJ. Code is 1023.

Guidance and information. Applicants who wish to receive additional guidance and information may contact the U.S. Department of Justice Response Center at 800-421-6770. Center staff can provide assistance or refer applicants to an appropriate NIJ professional. Applicants may, for example, wish to discuss their prospective research topics with the NIJ professional staff.

Send completed forms to:

Pilot Programs for Prosecutor-Initiated
Postconviction DNA Case Review
National Institute of Justice
Office of Science & Technology
810 Seventh Street N.W.
Washington, DC 20531
[overnight courier ZIP code 20001]

NIJ is streamlining its process to accommodate the volume of proposals anticipated under this and other Crime Act solicitations. Researchers can help in a significant way by sending NIJ a nonbinding letter of intent by September 7, 2001. The Institute will use these letters to forecast the numbers of peer panels it needs and to identify conflicts of interest among potential reviewers. There are two ways to send these letters. You can reach NIJ by Internet by sending e-mail to tellnij@ncjrs.org and identifying the solicitation and section(s) you expect to apply for. You can write a letter with the same information to, Program Manager for Pilot Programs for Prosecutor - Initiated Postconviction DNA Case Review, Office of Science and Technology, National Institute of Justice 810 7th Street N.W., Washington, DC 20531. Help us help you.

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For more information on the National Institute of Justice, please contact:

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