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DNA innocence testing for convicts on back burner

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By Richard Willing, USA TODAY

WASHINGTON — Since 2006, the Justice Department has yet to spend any of the \$8 million set aside by Congress for DNA tests for convicts to prove their innocence while it has used \$214 million to collect DNA from convicted criminals and improve crime labs, records show.

"DNA evidence is such a powerful tool in proving guilt or innocence that it's inexcusable not to use it," says Sen. Patrick Leahy, D-Vt., the chief sponsor of a bill to provide more funding for what is known as innocence testing.

If spent, the \$8 million could affect dozens of cases, says Barry Scheck, a defense lawyer who specializes in using DNA to overturn convictions. Exact costs for a DNA test vary from case to case.

Rules imposed by Congress have made it difficult for states to qualify for post-conviction DNA grants, says the department's National Institute of Justice, which administers the funds. Only Virginia, Connecticut and Arizona have applied.

The law requires a state's attorney general to certify that the state requires police departments to take "reasonable measures" to preserve biological evidence for possible future testing.

But attorneys general can't vouch for every police authority in their state, says John Morgan, the institute's assistant director. The rule has made it "next to impossible" for states to qualify, he says.

Arizona applied for a grant but was turned down in June because the Justice Department determined it did not meet the legal requirements, says Kent Cattani, an assistant attorney general in that state.

Cattani surveyed Arizona crime labs, prosecutors, judges and defense attorneys and found that all had at least unofficial policies to retain evidence. "Other than passing a law, I don't know what more we could have done," he says.

Leahy doesn't think the rules are a problem. His staff has been meeting with Morgan to try to find a way to allow the \$8 million to be spent.

DNA profiles are matched to unsolved crimes through an FBI-controlled network of databases. Testing has also helped cast doubt on convictions obtained before DNA testing came into widespread use in the late 1990s.

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