

**Statement Of Senator Patrick Leahy,
Chairman, Senate Judiciary Committee,
On Introduction Of The “Criminal Justice And Forensic Science Reform Act Of 2011”
January 25, 2011**

I am proud today to introduce the Criminal Justice and Forensic Science Reform Act of 2011. This legislation is an important first step toward guaranteeing the effectiveness and scientific integrity of forensic evidence used in criminal cases, and in ensuring that Americans can have faith in their criminal justice system.

In March of 2009, the Senate Judiciary Committee began its examination of serious issues concerning forensic science, which is at the heart of our criminal justice system. The Committee has studied the problem exhaustively, and has worked with a wide array of experts and stakeholders. The legislation I introduce today is a product of this process. It seeks to strengthen our confidence in the criminal justice system, and the evidence it relies upon, by ensuring that forensic evidence and testimony is accurate, credible, and scientifically grounded.

The National Academy of Science published a report in February 2009 asserting that the field of forensic science has significant problems that urgently need to be addressed. The report suggested that basic research establishing the scientific validity of many forensic science disciplines has never been done in a comprehensive way. It suggested that the forensic sciences lack uniform and unassailable standards governing the accreditation of laboratories, the certification of forensic practitioners, and the testing and analysis of evidence.

The National Academy of Science’s report was an urgent call to action. It has been hailed and widely cited since its release. It has also been criticized by many. I did not view the Academy’s report as the final word on this issue, but rather as the starting point for a searching review of the state of forensic science in this country.

Last Congress, the Judiciary Committee held two hearings on the issue. Committee members and staff spent countless hours talking to prosecutors, defense attorneys, law enforcement officers, judges, forensic practitioners, academic experts, and many, many others to learn as much as we could about what is happening in the forensic sciences and what needs to be done. As this effort has progressed, I have been disturbed to learn about still more cases in which innocent people may have been convicted, and perhaps even executed, in part due to faulty forensic evidence. It is a double tragedy when an innocent person is convicted. An innocent person suffers, and a guilty person remains free, leaving us all less safe. We must do everything we can to avoid that untenable outcome.

At the same time, through the course of this inquiry, it has become abundantly clear that the men and women who test and analyze forensic evidence do tremendous work that is vital to our criminal justice system. I remember their important contributions and hard work from my days as a prosecutor, when some of the forensic disciplines we have now did not even exist. Their work is even more important today, and we need to strengthen the field of forensics – and the justice system’s confidence in it – so that their hard work can be consistently relied upon, as it should be.

It is beyond question that everyone recognizes the need for forensic evidence that is accurate and reliable. Prosecutors and law enforcement officers want evidence that can be relied upon to determine guilt and prove it beyond a reasonable doubt in a court of law. Defense attorneys want strong evidence that can be used to exclude innocent people from suspicion. Forensic science practitioners want their work to have as much certainty as possible and to be given deserved

deference. All scientists and all attorneys who care about these issues want the science that is admitted as evidence in the courtroom to match the science that is proven through rigorous testing and research in the laboratory.

There is also general agreement that the forensic sciences can be improved through strong and unassailable research to test and establish the validity of the forensic disciplines, as well as the application of consistent and regular standards in the field. There is a dire need for well managed and appropriately directed funding for research, development, training, and technical assistance. It is a good investment, as it will lead to fewer trials and appeals, and will reduce crime by ensuring that those who commit serious offenses are promptly captured and convicted. There is also broad consensus that all forensic laboratories should be required to meet rigorous accreditation standards and that forensic practitioners should be required to obtain meaningful certification.

The bill I introduce today seeks to address these widely recognized needs. It requires that all forensic science laboratories that receive Federal funding or Federal business be accredited according to rigorous standards. It requires all relevant personnel who perform forensic work for any laboratory or agency that gets Federal money to become certified in their fields, which will mean meeting basic proficiency, education, and training requirements.

The bill sets up a rigorous process to determine the most serious needs for research to establish the basic validity of the forensic disciplines, and establishes grant programs to provide for peer-reviewed scientific research to answer fundamental questions and promote innovation. It also sets up a process for this research to lead to appropriate standards and best practices in each discipline. The bill funds research into new technologies and techniques that will allow forensic testing to be done more quickly, more efficiently, and more accurately. I believe these are proposals that will be widely supported by those on all sides of this issue.

There have been of course some areas of disagreement, particularly as to who should oversee these vital reforms to the field of forensics. Some have argued that, because the purpose of forensic science is primarily to produce evidence to be used in the investigation and prosecution of criminal cases, it is vital that those regulating and evaluating forensics must have expertise in criminal justice. They have said that at the Federal level, the Department of Justice is the natural place for an office to examine and oversee the forensic sciences and have emphasized the need for forensic science practitioners to have substantial input in evaluating research and standards. Others have argued that, for forensic science to truly engender our trust and confidence, its validity must be established by independent scientific research, and standards must be determined by scientists with no possible conflict of interest. They have argued for protections to ensure independent scientific decision making, as well as the significant involvement of Federal scientific agencies.

I find both of these arguments persuasive. I know firsthand the importance of understanding how the criminal justice system works when evaluating the needs and practices in forensic science. I also understand that it is absolutely essential that forensic science be grounded in independent scientific research in order to avoid any question of convictions being based on faulty forensic work.

This legislation attempts to address both of these concerns with a hybrid structure that ensures both criminal justice expertise and scientific independence. It establishes an Office of Forensic Science in the Office of the Deputy Attorney General within the Department of Justice. That office will have a Director who will make all final decisions about research priorities, standards, and structure and who will implement and enforce the systems set up by the legislation.

It also establishes a Forensic Science Board composed of forensic and academic scientists, prosecutors and defense attorneys, and other key stakeholders. The Board will have a careful balance, and a majority of its members will be scientists. It will recommend all research priorities and standards and other key definitions and structures before the Director of the Office of Forensic Science makes a decision. The bill will include important protections to encourage the Director to defer to the recommendations of the Board and to ensure that he or she explains to Congress and to the public, with opportunities for comment, any decision to disregard the Board's recommendations.

The bill also establishes committees of scientists to examine each individual forensic science discipline to determine research needs and standards. It includes protections to ensure that the committees' recommendations receive significant deference, and the committees will be overseen by the National Institute of Standards and Technology (NIST), a respected scientific agency. NIST will also implement grant programs for research into the forensic sciences premised on the research priorities established by the Forensic Science Board and the Office of Forensic Science. The National Science Foundation will help to ensure that the grant programs are run properly, with rigorous scientific peer review and without any bias.

This bill aims to carefully balance the competing considerations that are so important to getting a review of forensics right. It also capitalizes on existing expertise and structures, rather than calling for the creation of a costly new agency. It seeks to proceed modestly and cost effectively, with ample oversight, checks, and controls. I am committed to exploring ways to use existing resources so that this urgent work will not negatively impact the budget. Ultimately, improvements in the forensic sciences will save money, reduce the number of costly appeals, shorten investigations and trials, and help to eliminate wrongful imprisonments.

I understand that sweeping forensic reform and criminal justice reform legislation not only should, but must, be bipartisan. There is no reason for a partisan divide on this issue; fixing this problem does not advance the interests of only prosecutors or defendants, or of Democrats or Republicans, but the interests of justice. I have worked closely with interested Republican Senators on this vital issue. I will continue to work diligently with Senators on both sides of the aisle to ensure that this becomes the consensus bipartisan legislation that it ought to be. I hope many will cosponsor this legislation, and work with me to ensure its passage.

I want to thank the forensic science practitioners, experts, advocates, law enforcement personnel, judges, and so many others whose input forms the basis for this legislation. Your passion for this issue and for getting it right gives me confidence that we will work together successfully to make much needed progress.

I hope all Senators will join me in advancing this important legislation to bolster confidence in the forensic sciences and the criminal justice system.

I ask unanimous consent that the text of the Criminal Justice and Forensic Science Reform Act be printed in the Record.