

111TH CONGRESS
1ST SESSION

H. R. 4114

To reduce the rape kit backlog, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 19, 2009

Mrs. MALONEY (for herself, Mr. HELLER, Mr. NADLER of New York, Mr. KENNEDY, Mrs. CAPPES, Mr. WAXMAN, Ms. SPEIER, Mr. MCGOVERN, Mr. ISRAEL, Mr. GRIJALVA, Ms. RICHARDSON, Mr. PERRIELLO, Mr. ENGEL, Mr. DELAHUNT, Mr. COSTA, Ms. WATSON, Mr. HALL of New York, Mr. STARK, Ms. CHU, Ms. NORTON, Mr. MOORE of Kansas, Mr. HOLT, and Mr. SCHIFF) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To reduce the rape kit backlog, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Justice for Survivors
5 of Sexual Assault Act of 2009”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) Rape is a serious problem in the United
9 States.

1 (2) The Department of Justice reports that in
2 2006, there were an estimated 261,000 rapes and
3 sexual assaults, and studies show only $\frac{1}{3}$ of rapes
4 are reported.

5 (3) The collection and testing of DNA evidence
6 is a critical tool in solving rape cases. Law enforce-
7 ment officials using the Combined DNA Index Sys-
8 tem have matched unknown DNA evidence taken
9 from crime scenes with known offender DNA pro-
10 files in the State and National DNA database 2,371
11 times.

12 (4) Despite the availability of funding under the
13 amendments made by the Debbie Smith Act of 2004
14 (title II of Public Law 108–405; 118 Stat. 2266)
15 there exists a significant rape kit backlog in the
16 United States.

17 (5) A 1999 study commissioned by the National
18 Institute of Justice estimated that there was an an-
19 nual backlog of 180,000 rape kits that had not been
20 analyzed.

21 (6) No agency regularly collects information re-
22 garding the scope of the rape kit backlog in the
23 United States.

24 (7) Certain States cap reimbursement for rape
25 kits at levels that are less than $\frac{1}{2}$ the average cost

1 of a rape kit in those States. Yet, section 2010 of
2 title I of the Omnibus Crime Control and Safe
3 Streets Act of 1968 (42 U.S.C. 3796gg–4) requires
4 that in order to be eligible for grants under part T
5 of the Omnibus Crime Control and Safe Streets Act
6 of 1968 (42 U.S.C. 3796gg et seq.) (commonly
7 known as “STOP Grants”) States shall administer
8 rape kits to survivors free of charge or provide full
9 reimbursement.

10 (8) There is a lack of sexual assault nurse ex-
11 aminers and health professionals who have received
12 specialized training specific to sexual assault victims.

13 **SEC. 3. PURPOSE.**

14 The purpose of this Act is to seek appropriate means
15 to address the problems surrounding forensic evidence col-
16 lection in cases of sexual assault, including rape kit back-
17 logs, reimbursement for or free provision of rape kits, and
18 the availability of trained health professionals to admin-
19 ister rape kit examinations.

20 **SEC. 4. RAPE KIT BACKLOGS.**

21 (a) **ADDITIONAL PROTOCOL REQUIREMENT FOR RE-**
22 **CEIVING EDWARD BYRNE GRANTS.**—Section 502 of title
23 I of the Omnibus Crime Control and Safe Streets Act of
24 1968 (42 U.S.C. 3752) is amended—

1 (1) by redesignating paragraph (5) as para-
2 graph (6); and

3 (2) by inserting after paragraph (4) the fol-
4 lowing:

5 “(5) A certification that the applicant has im-
6 plemented a policy requiring all rape kits collected
7 by or on behalf of the applicant to be sent to crime
8 laboratories for forensic analysis.”.

9 (b) ADDITIONAL DEBBIE SMITH GRANT REQUIRE-
10 MENTS; DEFINITIONS.—Section 2 of the DNA Analysis
11 Backlog Elimination Act of 2000 (42 U.S.C. 14135) is
12 amended—

13 (1) in subsection (a)(2), by striking “samples
14 from rape kits, samples from other sexual assault
15 evidence, and samples taken in cases without an
16 identified suspect.” and inserting “to eliminate a
17 rape kit backlog and to ensure that DNA analyses
18 of samples from rape kits are carried out in a timely
19 manner.”;

20 (2) in subsection (b)—

21 (A) paragraph (6), by striking “and” at
22 the end;

23 (B) in paragraph (7), by striking the pe-
24 riod at the end and inserting a semicolon; and

25 (C) by adding at the end the following:

1 “(8) if the State or unit of local government
2 has a rape kit backlog, include a plan to eliminate
3 the rape kit backlog that includes performance
4 measures to assess progress of the State or local
5 unit of government toward a 50 percent reduction in
6 the rape kit backlog over a 2-year period; and

7 “(9) specify the portion of the amounts made
8 available under the grant under this section that the
9 State or unit of local government shall use for the
10 purpose of DNA analyses of samples from untested
11 rape kits.”;

12 (3) in subsection (f)—

13 (A) in paragraph (1), by striking “and” at
14 the end;

15 (B) by redesignating paragraph (2) as
16 paragraph (3); and

17 (C) by inserting after paragraph (1) the
18 following:

19 “(2) the amount of funds from a grant under
20 this section expended for the purposes of DNA anal-
21 yses for untested rape kits; and”;

22 (4) by striking subsection (i) and inserting the
23 following:

24 “(i) DEFINITIONS.—In this section:

1 “(1) RAPE KIT.—The term ‘rape kit’ means
2 DNA evidence relating to—

3 “(A) sexual assault (as defined in section
4 40002(a) of the Violence Against Women Act of
5 1994 (42 U.S.C. 13925(a))); or

6 “(B) conduct described in section 2251,
7 2251A, or 2252 of chapter 110 of title 18,
8 United States Code, regardless of whether the
9 conduct affects interstate commerce.

10 “(2) RAPE KIT BACKLOG.—The term ‘rape kit
11 backlog’ means untested rape kits that are in the
12 possession or control of—

13 “(A) a law enforcement agency; or

14 “(B) a public or private crime laboratory.

15 “(3) STATE.—The term ‘State’ means a State
16 of the United States, the District of Columbia, the
17 Commonwealth of Puerto Rico, the United States
18 Virgin Islands, American Samoa, Guam, and the
19 Northern Mariana Islands.

20 “(4) UNTESTED RAPE KIT.—The term ‘untest-
21 ed rape kit’ means a rape kit collected from a victim
22 that—

23 “(A) has not undergone forensic analysis;

24 and

1 “(B) for a combined total of not less than
2 60 days, has been in the possession or control
3 of—

4 “(i) a law enforcement agency; or

5 “(ii) a public or private crime labora-
6 tory.”.

7 (c) ADJUSTING BYRNE GRANT FUNDS FOR COMPLI-
8 ANCE AND NONCOMPLIANCE; STATISTICAL REVIEW.—
9 Section 505 of title I of the Omnibus Crime Control and
10 Safe Streets Act of 1968 (42 U.S.C. 3755) is amended
11 by adding at the end the following:

12 “(i) ADJUSTING BYRNE GRANT FUNDS FOR COMPLI-
13 ANCE AND NONCOMPLIANCE.—

14 “(1) DEFINITION.—In this subsection the term
15 ‘date for implementation’ means the last day of the
16 second fiscal year beginning after the date of enact-
17 ment of this subsection.

18 “(2) ADDITIONAL FUNDS FOR COMPLIANCE.—

19 “(A) REDUCTION OF RAPE KIT BACK-
20 LOG.—

21 “(i) 50 PERCENT REDUCTION.—For
22 any fiscal year beginning after the date of
23 enactment of this subsection, a State or
24 unit of local government shall receive an
25 allocation under this section in an amount

1 equal to 110 percent of the otherwise ap-
2 plicable allocation to the State or unit of
3 local government if the State or unit of
4 local government reduced the rape kit
5 backlog by not less than 50 percent, as
6 compared to the date of enactment of this
7 subsection.

8 “(ii) 75 PERCENT REDUCTION.—For
9 any fiscal year beginning after the date of
10 enactment of this subsection—

11 “(I) a State or unit of local gov-
12 ernment that has received additional
13 funds under clause (i) in any previous
14 fiscal year shall receive an allocation
15 under this section in an amount equal
16 to 110 percent of the otherwise appli-
17 cable allocation to the State or unit of
18 local government if the State or unit
19 of local government reduced the rape
20 kit backlog by not less than 75 per-
21 cent, as compared to the date of en-
22 actment of this subsection; and

23 “(II) a State or unit of local gov-
24 ernment that has not received addi-
25 tional funds under clause (i) in any

1 previous fiscal year shall receive an al-
2 location under this section in an
3 amount equal to 120 percent of the
4 otherwise applicable allocation to the
5 State or unit of local government if
6 the State or unit of local government
7 reduced the rape kit backlog by not
8 less than 75 percent, as compared to
9 the date of enactment of this sub-
10 section.

11 “(iii) 95 PERCENT REDUCTION.—For
12 any fiscal year beginning after the date of
13 enactment of this subsection—

14 “(I) a State or unit of local gov-
15 ernment that has received additional
16 funds under clause (ii) in any previous
17 fiscal year shall receive an allocation
18 under this section in an amount equal
19 to 110 percent of the otherwise appli-
20 cable allocation to the State or unit of
21 local government if the State or unit
22 of local government reduced the rape
23 kit backlog by not less than 95 per-
24 cent, as compared to the date of en-
25 actment of this subsection;

1 “(II) a State or unit of local gov-
2 ernment that has received additional
3 funds under clause (i) in any previous
4 fiscal year, and has not received addi-
5 tional funds under clause (ii) in any
6 previous fiscal year, shall receive an
7 allocation under this section in an
8 amount equal to 120 percent of the
9 otherwise applicable allocation to the
10 State or unit of local government if
11 the State or unit of local government
12 reduced the rape kit backlog by not
13 less than 95 percent, as compared to
14 the date of enactment of this sub-
15 section; and

16 “(III) a State or unit of local
17 government that has not received ad-
18 ditional funds under clause (i) or (ii)
19 in any previous fiscal year shall re-
20 ceive an allocation under this section
21 in an amount equal to 130 percent of
22 the otherwise applicable allocation to
23 the State or unit of local government
24 if the State or unit of local govern-
25 ment reduced the rape kit backlog by

1 not less than 95 percent, as compared
2 to the date of enactment of this sub-
3 section.

4 “(B) TIMELY PROCESSING.—For the first
5 fiscal year beginning after the date of enact-
6 ment of this subsection, and each fiscal year
7 thereafter, a State or unit of local government
8 that, during the previous fiscal year, tested 95
9 percent of all rape kits collected from a victim
10 during that previous fiscal year not later than
11 60 days after the date the rape kit was taken
12 into the possession or control of a law enforce-
13 ment agency of the State or unit of local gov-
14 ernment shall receive an allocation under this
15 section in an amount equal to 105 percent of
16 the otherwise applicable allocation to the State
17 or unit of local government.

18 “(3) WITHHOLDING OF GRANT FUNDS FOR
19 NONCOMPLIANCE.—

20 “(A) FAILURE TO REDUCE RAPE KIT
21 BACKLOG.—

22 “(i) YEAR 1.—For the first fiscal year
23 after the date for implementation, a State
24 or unit of local government shall receive an
25 allocation under this section in an amount

1 equal to 90 percent of the otherwise appli-
2 cable allocation to the State or unit of local
3 government if the State or unit of local
4 government—

5 “(I) has a rape kit backlog;

6 “(II) received a grant under this
7 subpart during each of the 2 previous
8 fiscal years; and

9 “(III) has failed to reduce the
10 rape kit backlog by not less than 50
11 percent, as compared to the date of
12 enactment of this subsection.

13 “(ii) YEAR 3.—For the third fiscal
14 year beginning after the date for imple-
15 mentation, a State or unit of local govern-
16 ment shall receive an allocation under this
17 section in an amount equal to 90 percent
18 of the otherwise applicable allocation to the
19 State or unit of local government if the
20 State or unit of local government—

21 “(I) has a rape kit backlog;

22 “(II) received a grant under this
23 subpart during the previous fiscal
24 year; and

1 “(III) has failed to reduce the
2 rape kit backlog by not less than 75
3 percent, as compared to the date of
4 enactment of this subsection.

5 “(iii) YEARS 5, 7, AND 9.—For each of
6 the fifth, seventh, and ninth fiscal years
7 beginning after the date for implementa-
8 tion, a State or unit of local government
9 shall receive an allocation under this sec-
10 tion in an amount equal to 90 percent of
11 the otherwise applicable allocation to the
12 State or unit of local government if the
13 State or unit of local government—

14 “(I) has a rape kit backlog;

15 “(II) received a grant under this
16 subpart during the previous fiscal
17 year; and

18 “(III) has failed to reduce the
19 rape kit backlog by not less than 95
20 percent, as compared to the date of
21 enactment of this subsection.

22 “(B) TIMELY PROCESSING.—For the sec-
23 ond fiscal year beginning after the date for im-
24 plementation, and each fiscal year thereafter, a
25 State or unit of local government that, during

1 the previous fiscal year, tested less than 95 per-
2 cent of the rape kits collected from a victim
3 during that previous fiscal year not later than
4 90 days after the date the rape kit was taken
5 into the possession or control of a law enforce-
6 ment agency of the State or unit of local gov-
7 ernment shall receive an allocation under this
8 section in an amount equal to 95 percent of the
9 otherwise applicable allocation to the State or
10 unit of local government.

11 “(j) ANNUAL STATISTICAL REVIEW AND REPORT.—

12 “(1) IN GENERAL.—The Director of the Na-
13 tional Institute of Justice of the Department of Jus-
14 tice (in this subsection referred to as the ‘Director’)
15 shall conduct an annual comprehensive statistical re-
16 view of the number of untested rape kits collected by
17 Federal, State, local, and tribal law enforcement
18 agencies.

19 “(2) REPORT OF DATA TO DIRECTOR.—Each
20 law enforcement agency of the Federal Government
21 or of a State or unit of local government receiving
22 a grant under this subpart (in this section referred
23 to as ‘covered law enforcement agency’) shall certify
24 to the Director, at the end of each fiscal year, the
25 number of untested rape kits in the possession or

1 control of the covered law enforcement agency, and
2 the length of time such kits have been waiting to be
3 processed by or on behalf of such agency. This re-
4 port shall be tabulated every January 1 and posted
5 on the Department of Justice Web site in a format
6 and manner that the Director shall determine.

7 “(3) REPORT TO CONGRESS AND THE
8 STATES.—

9 “(A) INITIAL REPORT.—Not later than 2
10 years after the date of enactment of this sub-
11 section, and annually thereafter, the Director
12 shall submit to Congress and the States a re-
13 port regarding the number of untested rape kits
14 administered by or on behalf of, or in the pos-
15 session of, a covered law enforcement agency.

16 “(B) SUBSEQUENT ANNUAL REPORTS.—
17 The Director shall include, in the second report,
18 under subparagraph (A), and each subsequent
19 report, the percentage change in the number of
20 untested rape kits for each covered law enforce-
21 ment agency, as compared to the previous year.

22 “(4) PENALTY.—For fiscal year 2011, and each
23 fiscal year thereafter, if a State or unit of local gov-
24 ernment has received a grant under this subpart,
25 and a covered law enforcement agency of the State

1 or local government has failed to report the data re-
2 quired under paragraph (2), the State or unit of
3 local government shall receive an allocation under
4 this section in an amount equal to 95 percent of the
5 otherwise applicable allocation to the State or unit
6 of local government.

7 “(k) DEFINITIONS.—In this section:

8 “(1) RAPE KIT.—The term ‘rape kit’ means
9 DNA evidence relating to—

10 “(A) sexual assault (as defined in section
11 40002(a) of the Violence Against Women Act of
12 1994 (42 U.S.C. 13925(a))); or

13 “(B) conduct described in section 2251,
14 2251A, or 2252 of chapter 110 of title 18,
15 United States Code, regardless of whether the
16 conduct affects interstate commerce.

17 “(2) RAPE KIT BACKLOG.—The term ‘rape kit
18 backlog’ means untested rape kits that are in the
19 possession or control of—

20 “(A) a law enforcement agency; or

21 “(B) a public or private crime laboratory.

22 “(3) UNTESTED RAPE KIT.—The term ‘untest-
23 ed rape kit’ means a rape kit collected from a victim
24 that—

1 “(A) has not undergone forensic analysis;
2 and

3 “(B) for a combined total not less than 60
4 days, has been in the possession or control of—

5 “(i) a law enforcement agency; or

6 “(ii) a public or private crime labora-
7 tory.”.

8 **SEC. 5. RAPE KIT BILLING.**

9 (a) **COORDINATION WITH REGIONAL HEALTH CARE**
10 **PROVIDERS.**—Section 2010(a)(1) of title I of the Omnibus
11 Crime Control and Safe Streets Act of 1968 (42 U.S.C.
12 3796gg–4(a)(1)) is amended by striking “assault.” and in-
13 serting “assault and coordinates with regional health care
14 providers to notify victims of sexual assault of the avail-
15 ability of rape exams at no cost to the victims.”.

16 (b) **REPEAL OF REIMBURSEMENT OPTION.**—Effec-
17 tive 2 years after the date of enactment of this Act, section
18 2010(b) of title I of the Omnibus Crime Control and Safe
19 Streets Act of 1968 (42 U.S.C. 3796gg–4(b)) is amend-
20 ed—

21 (1) by striking paragraph (3);

22 (2) in paragraph (1), by inserting “or” after
23 “victim;”; and

24 (3) in paragraph (2), by striking “victims; or”
25 and inserting “victims.”.

1 (c) PROVISION OF RAPE KITS REGARDLESS OF CO-
2 OPERATION WITH LAW ENFORCEMENT.—Section 2010(d)
3 of title I of the Omnibus Crime Control and Safe Streets
4 Act of 1968 (42 U.S.C. 3796gg–4(d)) is amended by strik-
5 ing “(d) RULE OF CONSTRUCTION” and all that follows
6 through the end of paragraph (1) and inserting the fol-
7 lowing:

8 “(d) NONCOOPERATION.—

9 “(1) IN GENERAL.—A State, Indian tribal gov-
10 ernment, or unit of local government shall not be in
11 compliance with this section unless the State, Indian
12 tribal government, or unit of local government com-
13 plies with subsection (b) without regard to whether
14 the victim—

15 “(A) participates in the criminal justice
16 system; or

17 “(B) cooperates with law enforcement.”.

18 **SEC. 6. SEXUAL ASSAULT NURSE EXAMINER TRAINING.**

19 (a) DEFINITION.—Section 40002(a) of the Violence
20 Against Women Act of 1994 (42 U.S.C. 13925(a)) is
21 amended—

22 (1) by redesignating paragraphs (29) through
23 (37) as paragraphs (30) through (38), respectively;
24 and

25 (2) inserting after paragraph (28) the following:

1 “(29) TRAINED EXAMINER.—The term ‘trained
2 examiner’ means a health care professional who has
3 received specialized training specific to sexual as-
4 sault victims, including training regarding gathering
5 forensic evidence and medical needs.”.

6 (b) ADDITIONAL PERSONNEL.—Section 2101(b) of
7 title I of the Omnibus Crime Control and Safe Streets Act
8 of 1968 (42 U.S.C. 3796hh(b)) is amended by adding at
9 the end the following:

10 “(14) To provide for sexual assault forensic
11 medical personnel examiners to collect and preserve
12 evidence, provide expert testimony, and provide
13 treatment of trauma relating to sexual assault.”.

14 **SEC. 7. SEXUAL ASSAULT NURSE AVAILABILITY AT INDIAN**
15 **HEALTH SERVICES STUDY.**

16 (a) STUDY.—The Comptroller General of the United
17 States shall conduct a study of the availability of sexual
18 assault nurse examiners and trained examiners (as defined
19 in section 40002(a) of the Violence Against Women Act
20 of 1994 (42 U.S.C. 13925(a)), as amended by this Act),
21 at all Indian Health Service facilities operated pursuant
22 to contracts under the Indian Self-Determination and
23 Education Assistance Act (25 U.S.C. 450 et seq.).

24 (b) REPORT AND RECOMMENDATIONS.—Not later
25 than 1 year after the date of enactment of this Act, the

1 Comptroller General of the United States shall submit to
2 the Committee on the Judiciary and to the Committee on
3 Indian Affairs of the Senate and to the Committee on the
4 Judiciary and the Committee on Natural Resources of the
5 House of Representatives a report containing the findings
6 of the study conducted under subsection (a), and rec-
7 ommendations for improving the availability of sexual as-
8 sault nurse examiners and trained examiners (as defined
9 in section 40002(a) of the Violence Against Women Act
10 of 1994 (42 U.S.C. 13925(a)), as amended by this Act).

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