

111TH CONGRESS
1ST SESSION

S. 2736

To reduce the rape kit backlog and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 5, 2009

Mr. FRANKEN (for himself, Mr. GRASSLEY, Mrs. FEINSTEIN, and Mr. HATCH)
introduced the following bill; which was read twice and 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.

10 (2) The Department of Justice reports that in
11 2006, there were an estimated 261,000 rapes and

1 sexual assaults, and studies show only $\frac{1}{3}$ of rapes
2 are reported.

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

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

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

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

22 (7) Certain States cap reimbursement for rape
23 kits at levels that are less than $\frac{1}{2}$ the average cost
24 of a rape kit in those States. Yet, section 2010 of
25 title I of the Omnibus Crime Control and Safe

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

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

11 **SEC. 3. PURPOSE.**

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

18 **SEC. 4. RAPE KIT BACKLOGS.**

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

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

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

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

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

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

18 (2) in subsection (b)—

19 (A) paragraph (6), by striking “and” at
20 the end;

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

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

24 “(8) if the State or unit of local government
25 has a rape kit backlog, include a plan to eliminate

1 the rape kit backlog that includes performance
2 measures to assess progress of the State or local
3 unit of government toward a 50 percent reduction in
4 the rape kit backlog over a 2-year period; and

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

10 (3) in subsection (f)—

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

13 (B) by redesignating paragraph (2) as
14 paragraph (3); and

15 (C) by inserting after paragraph (1) the
16 following:

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

20 (4) by striking subsection (i) and inserting the
21 following:

22 “(i) DEFINITIONS.—In this section:

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

1 “(A) sexual assault (as defined in section
2 40002(a) of the Violence Against Women Act of
3 1994 (42 U.S.C. 13925(a))); or

4 “(B) conduct described in section 2251,
5 2251A, or 2252 of chapter 110 of title 18,
6 United States Code, regardless of whether the
7 conduct affects interstate commerce.

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

11 “(A) a law enforcement agency; or

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

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

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

21 “(A) has not undergone forensic analysis;

22 and

23 “(B) for a combined total of not less than
24 60 days, has been in the possession or control
25 of—

1 “(i) a law enforcement agency; or

2 “(ii) a public or private crime labora-
3 tory.”.

4 (c) ADJUSTING BYRNE GRANT FUNDS FOR COMPLI-
5 ANCE AND NONCOMPLIANCE; STATISTICAL REVIEW.—

6 Section 505 of title I of the Omnibus Crime Control and
7 Safe Streets Act of 1968 (42 U.S.C. 3755) is amended
8 by adding at the end the following:

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

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

15 “(2) ADDITIONAL FUNDS FOR COMPLIANCE.—

16 “(A) REDUCTION OF RAPE KIT BACK-
17 LOG.—

18 “(i) 50 PERCENT REDUCTION.—For
19 any fiscal year beginning after the date of
20 enactment of this subsection, a State or
21 unit of local government shall receive an
22 allocation under this section in an amount
23 equal to 110 percent of the otherwise ap-
24 plicable allocation to the State or unit of
25 local government if the State or unit of

1 local government reduced the rape kit
2 backlog by not less than 50 percent, as
3 compared to the date of enactment of this
4 subsection.

5 “(ii) 75 PERCENT REDUCTION.—For
6 any fiscal year beginning after the date of
7 enactment of this subsection—

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

20 “(II) a State or unit of local gov-
21 ernment that has not received addi-
22 tional funds under clause (i) in any
23 previous fiscal year shall receive an al-
24 location under this section in an
25 amount equal to 120 percent of the

1 otherwise applicable allocation to the
2 State or unit of local government if
3 the State or unit of local government
4 reduced the rape kit backlog by not
5 less than 75 percent, as compared to
6 the date of enactment of this sub-
7 section.

8 “(iii) 95 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 (ii) 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 95 per-
21 cent, as compared to the date of en-
22 actment of this subsection;

23 “(II) a State or unit of local gov-
24 ernment that has received additional
25 funds under clause (i) in any previous

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

13 “(III) a State or unit of local
14 government that has not received ad-
15 ditional funds under clause (i) or (ii)
16 in any previous fiscal year shall re-
17 ceive an allocation under this section
18 in an amount equal to 130 percent of
19 the otherwise applicable allocation to
20 the State or unit of local government
21 if the State or unit of local govern-
22 ment reduced the rape kit backlog by
23 not less than 95 percent, as compared
24 to the date of enactment of this sub-
25 section.

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

15 “(3) WITHHOLDING OF GRANT FUNDS FOR
16 NONCOMPLIANCE.—

17 “(A) FAILURE TO REDUCE RAPE KIT
18 BACKLOG.—

19 “(i) YEAR 1.—For the first fiscal year
20 after the date for implementation, a State
21 or unit of local government shall receive an
22 allocation under this section in an amount
23 equal to 90 percent of the otherwise appli-
24 cable allocation to the State or unit of local

1 government if the State or unit of local
2 government—

3 “(I) has a rape kit backlog;

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

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

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

19 “(I) has a rape kit backlog;

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

23 “(III) has failed to reduce the
24 rape kit backlog by not less than 75

1 percent, as compared to the date of
2 enactment of this subsection.

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

12 “(I) has a rape kit backlog;

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

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

20 “(B) TIMELY PROCESSING.—For the sec-
21 ond fiscal year beginning after the date for im-
22 plementation, and each fiscal year thereafter, a
23 State or unit of local government that, during
24 the previous fiscal year, tested less than 95 per-
25 cent of the rape kits collected from a victim

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

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

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

17 “(2) REPORT OF DATA TO DIRECTOR.—Each
18 law enforcement agency of the Federal Government
19 or of a State or unit of local government receiving
20 a grant under this subpart (in this subsection re-
21 ferred to as a ‘covered law enforcement agency’)
22 shall record and report to the Director the number
23 of untested rape kits administered by or on behalf
24 of, or in the possession or control of, the covered law
25 enforcement agency at the end of each fiscal year.

1 “(3) REPORT TO CONGRESS AND THE
2 STATES.—

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

10 “(B) SUBSEQUENT ANNUAL REPORTS.—
11 The Director shall include, in the second report,
12 under subparagraph (A), and each subsequent
13 report, the percentage change in the number of
14 untested rape kits for each covered law enforce-
15 ment agency, as compared to the previous year.

16 “(4) PENALTY.—For fiscal year 2011, and each
17 fiscal year thereafter, if a State or unit of local gov-
18 ernment has received a grant under this subpart,
19 and a covered law enforcement agency of the State
20 or local government has failed to report the data re-
21 quired under paragraph (2), the State or unit of
22 local government shall receive an allocation under
23 this section in an amount equal to 95 percent of the
24 otherwise applicable allocation to the State or unit
25 of local government.

1 “(k) DEFINITIONS.—In this section:

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

4 “(A) sexual assault (as defined in section
5 40002(a) of the Violence Against Women Act of
6 1994 (42 U.S.C. 13925(a))); or

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

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

14 “(A) a law enforcement agency; or

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

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

19 “(A) has not undergone forensic analysis;
20 and

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

23 “(i) a law enforcement agency; or

24 “(ii) a public or private crime labora-
25 tory.”.

1 **SEC. 5. RAPE KIT BILLING.**

2 (a) COORDINATION WITH REGIONAL HEALTH CARE
 3 PROVIDERS.—Section 2010(a)(1) of title I of the Omnibus
 4 Crime Control and Safe Streets Act of 1968 (42 U.S.C.
 5 3796gg–4(a)(1)) is amended by striking “assault.” and in-
 6 serting “assault and coordinates with regional health care
 7 providers to notify victims of sexual assault of the avail-
 8 ability of rape exams at no cost to the victims.”.

9 (b) REPEAL OF REIMBURSEMENT OPTION.—Effec-
 10 tive 2 years after the date of enactment of this Act, section
 11 2010(b) of title I of the Omnibus Crime Control and Safe
 12 Streets Act of 1968 (42 U.S.C. 3796gg–4(b)) is amend-
 13 ed—

14 (1) by striking paragraph (3);

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

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

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

26 “(d) NONCOOPERATION.—

1 “(1) IN GENERAL.—A State, Indian tribal gov-
2 ernment, or unit of local government shall not be in
3 compliance with this section unless the State, Indian
4 tribal government, or unit of local government com-
5 plies with subsection (b) without regard to whether
6 the victim cooperates with the law enforcement
7 agency investigating the offense.”.

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

9 (a) DEFINITION.—Section 40002(a) of the Violence
10 Against Women Act of 1994 (42 U.S.C. 13925(a)) is
11 amended—

12 (1) by redesignating paragraphs (29) through
13 (37) as paragraphs (30) through (38), respectively;
14 and

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

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

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

1 “(14) To provide for sexual assault forensic
2 medical personnel examiners to collect and preserve
3 evidence, provide expert testimony, and provide
4 treatment of trauma relating to sexual assault.”.

5 **SEC. 7. SEXUAL ASSAULT NURSE AVAILABILITY AT INDIAN**
6 **HEALTH SERVICES STUDY.**

7 (a) **STUDY.**—The Comptroller General of the United
8 States shall conduct a study of the availability of sexual
9 assault nurse examiners and trained examiners (as defined
10 in section 40002(a) of the Violence Against Women Act
11 of 1994 (42 U.S.C. 13925(a)), as amended by this Act),
12 at all Indian Health Service facilities operated pursuant
13 to contracts under the Indian Self-Determination and
14 Education Assistance Act (25 U.S.C. 450 et seq.).

15 (b) **REPORT AND RECOMMENDATIONS.**—Not later
16 than 1 year after the date of enactment of this Act, the
17 Comptroller General of the United States shall submit to
18 the Committee on the Judiciary and to the Committee on
19 Indian Affairs of the Senate and to the Committee on the
20 Judiciary and the Committee on Natural Resources of the
21 House of Representatives a report containing the findings
22 of the study conducted under subsection (a), and rec-
23 ommendations for improving the availability of sexual as-
24 sault nurse examiners and trained examiners (as defined

1 in section 40002(a) of the Violence Against Women Act
2 of 1994 (42 U.S.C. 13925(a)), as amended by this Act).

○