

113TH CONGRESS
1ST SESSION

S. 80

To amend the DNA Analysis Backlog Elimination Act of 2000 to provide for Debbie Smith grants for auditing sexual assault evidence backlogs and to establish a Sexual Assault Forensic Evidence Reporting System, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 23 (legislative day, JANUARY 3), 2013

Mr. CORNYN (for himself, Mr. BENNET, Ms. KLOBUCHAR, Mr. BURR, and Mr. KIRK) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the DNA Analysis Backlog Elimination Act of 2000 to provide for Debbie Smith grants for auditing sexual assault evidence backlogs and to establish a Sexual Assault Forensic Evidence Reporting System, 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 “Sexual Assault Foren-
5 sic Evidence Reporting Act of 2013” or the “SAFER Act
6 of 2013”.

1 **SEC. 2. DEBBIE SMITH GRANTS FOR AUDITING SEXUAL AS-**
2 **SAULT EVIDENCE BACKLOGS.**

3 Section 2 of the DNA Analysis Backlog Elimination
4 Act of 2000 (42 U.S.C. 14135) is amended—

5 (1) in subsection (a), by adding at the end the
6 following new paragraphs:

7 “(7) To conduct an audit consistent with sub-
8 section (n) of the samples of sexual assault evidence
9 that are in the possession of the State or unit of
10 local government and are awaiting testing.

11 “(8) To ensure that the collection and proc-
12 essing of DNA evidence by law enforcement agencies
13 from crimes, including sexual assault and other vio-
14 lent crimes against persons, is carried out in an ap-
15 propriate and timely manner and in accordance with
16 the protocols and practices developed under sub-
17 section (o)(1).”;

18 (2) in subsection (c), by adding at the end the
19 following new paragraph:

20 “(4) ALLOCATION OF GRANT AWARDS FOR AU-
21 DITS.—For each of fiscal years 2014 through 2017,
22 not less than 5 percent, but not more than 7 per-
23 cent, of the grant amounts distributed under para-
24 graph (1) shall, if sufficient applications to justify
25 such amounts are received by the Attorney General,
26 be awarded for purposes described in subsection

1 (a)(7), provided that none of the funds required to
2 be distributed under this paragraph shall decrease or
3 otherwise limit the availability of funds required to
4 be awarded to States or units of local government
5 under paragraph (3).”; and

6 (3) by adding at the end the following new sub-
7 sections:

8 “(n) USE OF FUNDS FOR AUDITING SEXUAL AS-
9 SAULT EVIDENCE BACKLOGS.—

10 “(1) ELIGIBILITY.—The Attorney General may
11 award a grant under this section to a State or unit
12 of local government for the purpose described in
13 subsection (a)(7) only if the State or unit of local
14 government—

15 “(A) submits a plan for performing the
16 audit of samples described in such subsection;
17 and

18 “(B) includes in such plan a good-faith es-
19 timate of the number of such samples.

20 “(2) GRANT CONDITIONS.—A State or unit of
21 local government receiving a grant for the purpose
22 described in subsection (a)(7)—

23 “(A) may not enter into any contract or
24 agreement with any non-governmental vendor

1 laboratory to conduct an audit described in sub-
2 section (a)(7); and

3 “(B) shall—

4 “(i) not later than 1 year after receiv-
5 ing the grant, complete the audit referred
6 to in paragraph (1)(A) in accordance with
7 the plan submitted under such paragraph;

8 “(ii) not later than 60 days after re-
9 ceiving possession of a sample of sexual as-
10 sult evidence that was not in the posses-
11 sion of the State or unit of local govern-
12 ment at the time of the initiation of an
13 audit under paragraph (1)(A), subject to
14 paragraph (4)(F), include in any required
15 reports under clause (v), the information
16 listed under paragraph (4)(B);

17 “(iii) for each sample of sexual as-
18 sult evidence that is identified as awaiting
19 testing as part of the audit referred to in
20 paragraph (1)(A)—

21 “(I) assign a unique numeric or
22 alphanumeric identifier to each sam-
23 ple of sexual assault evidence that is
24 in the possession of the State or unit

1 of local government and is awaiting
2 testing; and

3 “(II) identify the date or dates
4 after which the State or unit of local
5 government would be barred by any
6 applicable statutes of limitations from
7 prosecuting a perpetrator of the sex-
8 ual assault to which the sample re-
9 lates;

10 “(iv) provide that—

11 “(I) the chief law enforcement of-
12 ficer of the State or unit of local gov-
13 ernment, respectively, is the individual
14 responsible for the compliance of the
15 State or unit of local government, re-
16 spectively, with the reporting require-
17 ments described in clause (v); or

18 “(II) the designee of such officer
19 may fulfill the responsibility described
20 in subclause (I) so long as such des-
21 ignee is an employee of the State or
22 unit of local government, respectively,
23 and is not an employee of any govern-
24 mental laboratory or non-govern-
25 mental vendor laboratory; and

1 “(v) comply with all grantee reporting
2 requirements described in paragraph (4).

3 “(3) EXTENSION OF INITIAL DEADLINE.—The
4 Attorney General may grant an extension of the
5 deadline under paragraph (2)(B)(i) to a State or
6 unit of local government that demonstrates that
7 more time is required for compliance with such para-
8 graph.

9 “(4) SEXUAL ASSAULT FORENSIC EVIDENCE
10 REPORTS.—

11 “(A) IN GENERAL.—For not less than 12
12 months after the completion of an initial count
13 of sexual assault evidence that is awaiting test-
14 ing during an audit referred to in paragraph
15 (1)(A), a State or unit of local government that
16 receives a grant award under subsection (a)(7)
17 shall, not less than every 60 days, submit a re-
18 port to the Department of Justice, on a form
19 prescribed by the Attorney General, which shall
20 contain the information required under sub-
21 paragraph (B).

22 “(B) CONTENTS OF REPORTS.—A report
23 under this paragraph shall contain the following
24 information—

1 “(i) the name of the State or unit of
2 local government filing the report;

3 “(ii) the period of dates covered by
4 the report;

5 “(iii) the cumulative total number of
6 samples of sexual assault evidence that, at
7 the end of the reporting period—

8 “(I) are in the possession of the
9 State or unit of local government at
10 the reporting period;

11 “(II) are awaiting testing; and

12 “(III) the State or unit of local
13 government has determined should
14 undergo DNA or other appropriate fo-
15 rensic analyses;

16 “(iv) the cumulative total number of
17 samples of sexual assault evidence in the
18 possession of the State or unit of local gov-
19 ernment that, at the end of the reporting
20 period, the State or unit of local govern-
21 ment has determined should not undergo
22 DNA or other appropriate forensic anal-
23 yses, provided that the reporting form shall
24 allow for the State or unit of local govern-
25 ment, at its sole discretion, to explain the

1 reasoning for this determination in some
2 or all cases;

3 “(v) the cumulative total number of
4 samples of sexual assault evidence in a
5 total under clause (iii) that have been sub-
6 mitted to a laboratory for DNA or other
7 appropriate forensic analyses;

8 “(vi) the cumulative total number of
9 samples of sexual assault evidence identi-
10 fied by an audit referred to in paragraph
11 (1)(A) or under paragraph (2)(B)(ii) for
12 which DNA or other appropriate forensic
13 analysis has been completed at the end of
14 the reporting period;

15 “(vii) the total number of samples of
16 sexual assault evidence identified by the
17 State or unit of local government under
18 paragraph (2)(B)(ii), since the previous re-
19 porting period; and

20 “(viii) the cumulative total number of
21 samples of sexual assault evidence de-
22 scribed under clause (iii) for which the
23 State or unit of local government will be
24 barred within 12 months by any applicable
25 statute of limitations from prosecuting a

1 perpetrator of the sexual assault to which
2 the sample relates.

3 “(C) PUBLICATION OF REPORTS.—Not
4 later than 7 days after the submission of a re-
5 port under this paragraph by a State or unit of
6 local government, the Attorney General shall,
7 subject to subparagraph (D), publish and dis-
8 seminate a facsimile of the full contents of such
9 report on an appropriate internet website.

10 “(D) PERSONALLY IDENTIFIABLE INFOR-
11 MATION.—The Attorney General shall ensure
12 that any information published and dissemi-
13 nated as part of a report under this paragraph,
14 which reports information under this sub-
15 section, does not include personally identifiable
16 information or details about a sexual assault
17 that might lead to the identification of the indi-
18 viduals involved.

19 “(E) OPTIONAL REPORTING.—The Attor-
20 ney General shall—

21 “(i) at the discretion of a State or
22 unit of local government required to file a
23 report under subparagraph (A), allow such
24 State or unit of local government, at their

1 sole discretion, to submit such reports on
2 a more frequent basis; and

3 “(ii) make available to all States and
4 units of local government the reporting
5 form created pursuant to subparagraph
6 (A), whether or not they are required to
7 submit such reports, and allow such States
8 or units of local government, at their sole
9 discretion, to submit such reports for pub-
10 lication.

11 “(F) SAMPLES EXEMPT FROM REPORTING
12 REQUIREMENT.—The reporting requirements
13 described in paragraph (2) shall not apply to a
14 sample of sexual assault evidence that—

15 “(i) is not considered criminal evi-
16 dence (such as a sample collected anony-
17 mously from a victim who is unwilling to
18 make a criminal complaint); or

19 “(ii) relates to a sexual assault for
20 which the prosecution of each perpetrator
21 is barred by a statute of limitations.

22 “(5) DEFINITIONS.—In this subsection:

23 “(A) AWAITING TESTING.—The term
24 ‘awaiting testing’ means, with respect to a sam-
25 ple of sexual assault evidence, that—

1 “(i) the sample has been collected and
2 is in the possession of a State or unit of
3 local government;

4 “(ii) DNA and other appropriate fo-
5 rensic analyses have not been performed on
6 such sample; and

7 “(iii) the sample is related to a crimi-
8 nal case or investigation in which final dis-
9 position has not yet been reached.

10 “(B) FINAL DISPOSITION.—The term ‘final
11 disposition’ means, with respect to a criminal
12 case or investigation to which a sample of sex-
13 ual assault evidence relates—

14 “(i) the conviction or acquittal of all
15 suspected perpetrators of the crime in-
16 volved;

17 “(ii) a determination by the State or
18 unit of local government in possession of
19 the sample that the case is unfounded; or

20 “(iii) a declaration by the victim of
21 the crime involved that the act constituting
22 the basis of the crime was not committed.

23 “(C) POSSESSION.—

24 “(i) IN GENERAL.—The term ‘posses-
25 sion’, used with respect to possession of a

1 sample of sexual assault evidence by a
2 State or unit of local government, includes
3 possession by an individual who is acting
4 as an agent of the State or unit of local
5 government for the collection of the sam-
6 ple.

7 “(ii) RULE OF CONSTRUCTION.—
8 Nothing in clause (i) shall be construed to
9 create or amend any Federal rights or
10 privileges for non-governmental vendor lab-
11 oratories described in regulations promul-
12 gated under section 210303 of the DNA
13 Identification Act of 1994 (42 U.S.C.
14 14131).

15 “(o) ESTABLISHMENT OF PROTOCOLS, TECHNICAL
16 ASSISTANCE, AND DEFINITIONS.—

17 “(1) PROTOCOLS AND PRACTICES.—Not later
18 than 18 months after the date of enactment of the
19 SAFER Act of 2013, the Director, in consultation
20 with Federal, State, and local law enforcement agen-
21 cies and government laboratories, shall develop and
22 publish a description of protocols and practices the
23 Director considers appropriate for the accurate,
24 timely, and effective collection and processing of
25 DNA evidence, including protocols and practices spe-

1 cific to sexual assault cases, which shall address ap-
2 propriate steps in the investigation of cases that
3 might involve DNA evidence, including—

4 “(A) how to determine—

5 “(i) which evidence is to be collected
6 by law enforcement personnel and for-
7 warded for testing;

8 “(ii) the preferred order in which evi-
9 dence from the same case is to be tested;
10 and

11 “(iii) what information to take into
12 account when establishing the order in
13 which evidence from different cases is to be
14 tested;

15 “(B) the establishment of a reasonable pe-
16 riod of time in which evidence is to be for-
17 warded by emergency response providers, law
18 enforcement personnel, and prosecutors to a
19 laboratory for testing;

20 “(C) the establishment of reasonable peri-
21 ods of time in which each stage of analytical
22 laboratory testing is to be completed;

23 “(D) systems to encourage communication
24 within a State or unit of local government
25 among emergency response providers, law en-

1 enforcement personnel, prosecutors, courts, de-
2 fense counsel, crime laboratory personnel, and
3 crime victims regarding the status of crime
4 scene evidence to be tested; and

5 “(E) standards for conducting the audit of
6 the backlog for DNA case work in sexual as-
7 sult cases required under subsection (n).

8 “(2) TECHNICAL ASSISTANCE AND TRAINING.—
9 The Director shall make available technical assist-
10 ance and training to support States and units of
11 local government in adopting and implementing the
12 protocols and practices developed under paragraph
13 (1) on and after the date on which the protocols and
14 practices are published.

15 “(3) DEFINITIONS.—In this subsection, the
16 terms ‘awaiting testing’ and ‘possession’ have the
17 meanings given those terms in subsection (n).”.

18 **SEC. 3. REPORTS TO CONGRESS.**

19 Not later than 90 days after the end of each fiscal
20 year for which a grant is made for the purpose described
21 in section 2(a)(7) of the DNA Analysis Backlog Elimini-
22 nation Act of 2000, as amended by section 2, the Attorney
23 General shall submit to Congress a report that—

24 (1) lists the States and units of local govern-
25 ment that have been awarded such grants and the

1 amount of the grant received by each such State or
2 unit of local government;

3 (2) states the number of extensions granted by
4 the Attorney General under section 2(n)(3) of the
5 DNA Analysis Backlog Elimination Act of 2000, as
6 added by section 2; and

7 (3) summarizes the processing status of the
8 samples of sexual assault evidence identified in Sex-
9 ual Assault Forensic Evidence Reports established
10 under section 2(n)(4) of the DNA Analysis Backlog
11 Elimination Act of 2000, including the number of
12 samples that have not been tested.

13 **SEC. 4. REDUCING THE RAPE KIT BACKLOG.**

14 Section 2(c)(3) of the DNA Analysis Backlog Elimini-
15 nation Act of 2000 (42 U.S.C. 14135(c)(3)) is amended—

16 (a) in subparagraph (B), by striking “2014” and in-
17 serting “2018”; and

18 (b) by adding at the end the following:

19 “(C) For each of fiscal years 2014 through
20 2018, not less than 75 percent of the total
21 grant amounts shall be awarded for a combina-
22 tion of purposes under paragraphs (1), (2), and
23 (3) of subsection (a).”.

1 **SEC. 5. OVERSIGHT AND ACCOUNTABILITY.**

2 All grants awarded by the Department of Justice that
3 are authorized under the SAFER Act of 2013 shall be
4 subject to the following:

5 (1) **AUDIT REQUIREMENT.**—Beginning in fiscal
6 year 2013, and each fiscal year thereafter, the In-
7 spector General of the Department of Justice shall
8 conduct audits of recipients of grants under this Act
9 to prevent waste, fraud, and abuse of funds by
10 grantees. The Inspector General shall determine the
11 appropriate number of grantees to be audited each
12 year.

13 (2) **MANDATORY EXCLUSION.**—A recipient of
14 grant funds under this Act that is found to have an
15 unresolved audit finding shall not be eligible to re-
16 ceive grant funds under this Act during the 2 fiscal
17 years beginning after the 12-month period described
18 in paragraph (5).

19 (3) **PRIORITY.**—In awarding grants under this
20 Act, the Attorney General shall give priority to eligi-
21 ble entities that, during the 3 fiscal years before
22 submitting an application for a grant under this Act,
23 did not have an unresolved audit finding showing a
24 violation in the terms or conditions of a Department
25 of Justice grant program.

1 (4) REIMBURSEMENT.—If an entity is awarded
2 grant funds under this Act during the 2-fiscal-year
3 period in which the entity is barred from receiving
4 grants under paragraph (2), the Attorney General
5 shall—

6 (A) deposit an amount equal to the grant
7 funds that were improperly awarded to the
8 grantee into the General Fund of the Treasury;
9 and

10 (B) seek to recoup the costs of the repay-
11 ment to the fund from the grant recipient that
12 was erroneously awarded grant funds.

13 (5) DEFINED TERM.—In this section, the term
14 “unresolved audit finding” means an audit report
15 finding in the final audit report of the Inspector
16 General of the Department of Justice that the
17 grantee has utilized grant funds for an unauthorized
18 expenditure or otherwise unallowable cost that is not
19 closed or resolved within a 12-month period begin-
20 ning on the date when the final audit report is
21 issued.

22 (6) NONPROFIT ORGANIZATION REQUIRE-
23 MENTS.—

24 (A) DEFINITION.—For purposes of this
25 section and the grant programs described in

1 this Act, the term “nonprofit organization”
2 means an organization that is described in sec-
3 tion 501(c)(3) of the Internal Revenue Code of
4 1986 and is exempt from taxation under section
5 501(a) of such Code.

6 (B) PROHIBITION.—The Attorney General
7 shall not award a grant under any grant pro-
8 gram described in this Act to a nonprofit orga-
9 nization that holds money in offshore accounts
10 for the purpose of avoiding paying the tax de-
11 scribed in section 511(a) of the Internal Rev-
12 enue Code of 1986.

13 (C) DISCLOSURE.—Each nonprofit organi-
14 zation that is awarded a grant under a grant
15 program described in this Act and uses the pro-
16 cedures prescribed in regulations to create a re-
17 buttable presumption of reasonableness for the
18 compensation of its officers, directors, trustees
19 and key employees, shall disclose to the Attor-
20 ney General, in the application for the grant,
21 the process for determining such compensation,
22 including the independent persons involved in
23 reviewing and approving such compensation, the
24 comparability data used, and contemporaneous
25 substantiation of the deliberation and decision.

1 Upon request, the Attorney General shall make
2 the information disclosed under this subsection
3 available for public inspection.

4 (7) ADMINISTRATIVE EXPENSES.—Unless oth-
5 erwise explicitly provided in authorizing legislation,
6 not more than 7.5 percent of the amounts author-
7 ized to be appropriated under this Act may be used
8 by the Attorney General for salaries and administra-
9 tive expenses of the Department of Justice.

10 (8) CONFERENCE EXPENDITURES.—

11 (A) LIMITATION.—No amounts authorized
12 to be appropriated to the Department of Justice
13 under this Act may be used by the Attorney
14 General or by any individual or organization
15 awarded discretionary funds through a coopera-
16 tive agreement under this Act, to host or sup-
17 port any expenditure for conferences that uses
18 more than \$20,000 in Department funds, un-
19 less the Deputy Attorney General or the appro-
20 priate Assistant Attorney General, Director, or
21 principal deputy as the Deputy Attorney Gen-
22 eral may designate, provides prior written au-
23 thorization that the funds may be expended to
24 host a conference.

1 (B) WRITTEN APPROVAL.—Written ap-
2 proval under subparagraph (A) shall include a
3 written estimate of all costs associated with the
4 conference, including the cost of all food and
5 beverages, audio/visual equipment, honoraria
6 for speakers, and any entertainment.

7 (C) REPORT.—The Deputy Attorney Gen-
8 eral shall submit an annual report to the Com-
9 mittee on the Judiciary of the Senate and the
10 Committee on the Judiciary of the House of
11 Representatives on all conference expenditures
12 approved by operation of this paragraph.

13 (9) PROHIBITION ON LOBBYING ACTIVITY.—

14 (A) IN GENERAL.—Amounts authorized to
15 be appropriated under this Act may not be uti-
16 lized by any grant recipient to—

17 (i) lobby any representative of the De-
18 partment of Justice regarding the award of
19 grant funding; or

20 (ii) lobby any representative of a Fed-
21 eral, State, local, or tribal government re-
22 garding the award of grant funding.

23 (B) PENALTY.—If the Attorney General
24 determines that any recipient of a grant under

1 this Act has violated subparagraph (A), the At-
2 torney General shall—

3 (i) require the grant recipient to repay
4 the grant in full; and

5 (ii) prohibit the grant recipient from
6 receiving another grant under this Act for
7 not less than 5 years.

8 **SEC. 6. SUNSET.**

9 Effective on December 31, 2018, subsections (a)(7)
10 and (n) of section 2 of the DNA Analysis Backlog Elimini-
11 nation Act of 2000 (42 U.S.C. 14135(a)(7) and (n)) are
12 repealed.

○