

115TH CONGRESS
2D SESSION

S. 3688

To amend title 18, United States Code, to make it a criminal offense for individuals to engage in sexual acts while acting under color of law or with individuals in their custody, to encourage States to adopt similar laws, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 29, 2018

Mr. BLUMENTHAL (for himself and Mr. BOOKER) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, to make it a criminal offense for individuals to engage in sexual acts while acting under color of law or with individuals in their custody, to encourage States to adopt similar laws, 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 “Closing the Law En-
5 forcement Consent Loophole Act of 2018”.

1 **SEC. 2. PROHIBITION ON ENGAGING IN SEXUAL ACTS**
2 **WHILE ACTING UNDER COLOR OF LAW.**

3 (a) IN GENERAL.—Section 2243 of title 18, United
4 States Code, is amended—

5 (1) in the section heading, by adding at the end
6 the following: “**or by any person acting**
7 **under color of law**”;

8 (2) by redesignating subsections (c) and (d) as
9 subsections (d) and (e), respectively;

10 (3) by inserting after subsection (b) the fol-
11 lowing:

12 “(c) OF AN INDIVIDUAL BY ANY PERSON ACTING
13 UNDER COLOR OF LAW.—

14 “(1) IN GENERAL.—Whoever, acting under
15 color of law, knowingly engages in a sexual act with
16 an individual, including an individual who is under
17 arrest, in detention, or otherwise in the actual cus-
18 tody of any Federal law enforcement officer, shall be
19 fined under this title, imprisoned not more than 15
20 years, or both.

21 “(2) DEFINITION.—In this subsection, the term
22 ‘sexual act’—

23 “(A) has the meaning given the term in
24 section 2246; and

25 “(B) includes the penetration, however
26 slight, of the mouth of another by a hand or

1 finger or by any object, with an intent to abuse,
2 humiliate, harass, degrade, or arouse or gratify
3 the sexual desire of any person.”; and

4 (4) in subsection (d), as so redesignated, by
5 adding at the end the following:

6 “(3) In a prosecution under subsection (c), it is not
7 a defense that the other individual consented to the sexual
8 act.”.

9 (b) DEFINITION.—Section 2246 of title 18, United
10 States Code, is amended—

11 (1) in paragraph (5), by striking “and” at the
12 end;

13 (2) in paragraph (6), by striking the period at
14 the end and inserting “; and”; and

15 (3) by inserting after paragraph (6) the fol-
16 lowing:

17 “(7) the term ‘Federal law enforcement officer’
18 has the meaning given the term in section 115.”.

19 (c) CLERICAL AMENDMENT.—The table of sections
20 for chapter 109A of title 18, United States Code, is
21 amended by amending the item related to section 2243
22 to read as follows:

 “2243. Sexual abuse of a minor or ward or by any person acting under color
 of law.”.

1 **SEC. 3. INCENTIVES FOR STATES.**

2 (a) **AUTHORITY TO MAKE GRANTS.**—The Attorney
3 General is authorized to make grants to States that have
4 in effect a law that—

5 (1) makes it a criminal offense for any person
6 acting under color of law of the State to engage in
7 a sexual act with an individual, including an indi-
8 vidual who is under arrest, in detention, or otherwise
9 in the actual custody of any law enforcement officer;
10 and

11 (2) prohibits a person charged with an offense
12 described in paragraph (1) from asserting the con-
13 sent of the other individual as a defense.

14 (b) **REPORTING REQUIREMENT.**—A State that re-
15 ceives a grant under this section shall submit to the Attor-
16 ney General, on an annual basis, information on—

17 (1) the number of reports made to law enforce-
18 ment agencies in that State regarding persons en-
19 gaging in a sexual act while acting under color of
20 law during the previous year; and

21 (2) the disposition of each case in which sexual
22 misconduct by a person acting under color of law
23 was reported during the previous year.

24 (c) **APPLICATION.**—A State seeking a grant under
25 this section shall submit an application to the Attorney
26 General at such time, in such manner, and containing

1 such information as the Attorney General may reasonably
2 require, including information about the law described in
3 subsection (a).

4 (d) GRANT AMOUNT.—The amount of a grant to a
5 State under this section shall be in an amount that is not
6 greater than 10 percent of the average of the total amount
7 of funding of the 3 most recent awards that the State re-
8 ceived under the following grant programs:

9 (1) Part T of title I of the Omnibus Crime Con-
10 trol and Safe Streets Act of 1968 (34 U.S.C. 10441
11 et seq.) (commonly referred to as the “STOP Vio-
12 lence Against Women Formula Grant Program”).

13 (2) Section 41601 of the Violence Against
14 Women Act of 1994 (34 U.S.C. 12511) (commonly
15 referred to as the “Sexual Assault Services Pro-
16 gram”).

17 (e) GRANT TERM.—

18 (1) IN GENERAL.—The Attorney General shall
19 provide an increase in the amount provided to a
20 State under the grant programs described in sub-
21 section (d) for a 2-year period.

22 (2) RENEWAL.—A State that receives a grant
23 under this section may submit an application for a
24 renewal of such grant at such time, in such manner,

1 and containing such information as the Attorney
2 General may reasonably require.

3 (3) LIMIT.—A State may not receive a grant
4 under this section for more than 4 years.

5 (f) USES OF FUNDS.—A State that receives a grant
6 under this section shall use—

7 (1) 25 percent of such funds for any of the per-
8 missible uses of funds under the grant program de-
9 scribed in paragraph (1) of subsection (d); and

10 (2) 75 percent of such funds for any of the per-
11 missible uses of funds under the grant program de-
12 scribed in paragraph (2) of subsection (d).

13 (g) AUTHORIZATION OF APPROPRIATIONS.—There
14 are authorized to be appropriated to carry out this chapter
15 \$5,000,000 for each of fiscal years 2019 through 2023.

16 **SEC. 4. REPORT TO CONGRESS.**

17 Not later than 1 year after the date of enactment
18 of this Act, and each year thereafter, the Attorney General
19 shall submit to Congress a report containing—

20 (1) the information required to be reported to
21 the Attorney General under section 3(b); and

22 (2) information on—

23 (A) the number of reports made, during
24 the previous year, to Federal law enforcement

1 agencies regarding persons engaging in a sexual
2 act while acting under color of law; and

3 (B) the disposition of each case in which
4 sexual misconduct by a person acting under
5 color of law was reported.

6 **SEC. 5. DEFINITION.**

7 In this Act, the term “sexual act” has the meaning
8 given the term in section 2243(c)(2) of title 18, United
9 States Code, as added by this Act.

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