

112TH CONGRESS
2^D SESSION

S. 3250

AN ACT

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 Registry, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Sexual Assault Foren-
3 sic Evidence Reporting Act of 2012” or the “SAFER Act
4 of 2012”.

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

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

9 (1) in subsection (a), by adding at the end the
10 following new paragraph:

11 “(6) To conduct an audit consistent with sub-
12 section (n) of the samples of sexual assault evidence
13 that are in the possession of the State or unit of
14 local government and are awaiting testing.

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

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

24 “(4) ALLOCATION OF GRANT AWARDS FOR AU-
25 DITS.—For each of fiscal years 2014 through 2017,
26 not less than 5 percent, but not more than 7 per-

1 cent, of the grant amounts distributed under para-
2 graph (1) shall, if sufficient applications to justify
3 such amounts are received by the Attorney General,
4 be awarded for purposes described in subsection
5 (a)(6), provided that none of the funds required to
6 be distributed under this paragraph shall decrease or
7 otherwise limit the availability of funds required to
8 be awarded to States or units of local government
9 under paragraph (3).”; and

10 (3) by adding at the end the following new sub-
11 sections:

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

14 “(1) ELIGIBILITY.—The Attorney General may
15 award a grant under this section to a State or unit
16 of local government for the purpose described in
17 subsection (a)(6) only if the State or unit of local
18 government—

19 “(A) submits a plan for performing the
20 audit of samples described in such subsection;
21 and

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

1 “(2) GRANT CONDITIONS.—A State or unit of
2 local government receiving a grant for the purpose
3 described in subsection (a)(6)—

4 “(A) may not enter into any contract or
5 agreement with any non-governmental vendor
6 laboratory to conduct an audit described in sub-
7 section (a)(6); and

8 “(B) shall—

9 “(i) not later than 1 year after receiv-
10 ing the grant, complete the audit referred
11 to in paragraph (1)(A) in accordance with
12 the plan submitted under such paragraph;

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

22 “(iii) for each sample of sexual as-
23 sault evidence that is identified as awaiting
24 testing as part of the audit referred to in
25 paragraph (1)(A)—

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“(I) assign a unique numeric or alphanumeric identifier to each sample of sexual assault evidence that is in the possession of the State or unit of local government and is awaiting testing; and

“(II) identify the date or dates after which the State or unit of local government would be barred by any applicable statutes of limitations from prosecuting a perpetrator of the sexual assault to which the sample relates;

“(iv) provide that—

“(I) the chief law enforcement officer of the State or unit of local government, respectively, is the individual responsible for the compliance of the State or unit of local government, respectively, with the reporting requirements described in clause (v); or

“(II) the designee of such officer may fulfill the responsibility described in subclause (I) so long as such designee is an employee of the State or

1 unit of local government, respectively,
2 and is not an employee of any govern-
3 mental laboratory or non-govern-
4 mental vendor laboratory; and

5 “(v) comply with all grantee reporting
6 requirements described in paragraph (4).

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

13 “(4) SEXUAL ASSAULT FORENSIC EVIDENCE
14 REPORTS.—

15 “(A) IN GENERAL.—For not less than 12
16 months after the completion of an initial count
17 of sexual assault evidence that is awaiting test-
18 ing during an audit referred to in paragraph
19 (1)(A), a State or unit of local government that
20 receives a grant award under subsection (a)(6)
21 shall, not less than every 60 days, submit a re-
22 port to the Department of Justice, on a form
23 prescribed by the Attorney General, which shall
24 contain the information required under sub-
25 paragraph (B).

1 “(B) CONTENTS OF REPORTS.—A report
2 under this paragraph shall contain the following
3 information:

4 “(i) The name of the State or unit of
5 local government filing the report.

6 “(ii) The period of dates covered by
7 the report.

8 “(iii) The cumulative total number of
9 samples of sexual assault evidence that, at
10 the end of the reporting period—

11 “(I) are in the possession of the
12 State or unit of local government at
13 the reporting period;

14 “(II) are awaiting testing; and

15 “(III) the State or unit of local
16 government has determined should
17 undergo DNA or other appropriate fo-
18 rensic analyses.

19 “(iv) The cumulative total number of
20 samples of sexual assault evidence in the
21 possession of the State or unit of local gov-
22 ernment that, at the end of the reporting
23 period, the State or unit of local govern-
24 ment has determined should not undergo
25 DNA or other appropriate forensic anal-

1 yses, provided that the reporting form shall
2 allow for the State or unit of local govern-
3 ment, at its sole discretion, to explain the
4 reasoning for this determination in some
5 or all cases.

6 “(v) The cumulative total number of
7 samples of sexual assault evidence in a
8 total under clause (iii) that have been sub-
9 mitted to a laboratory for DNA or other
10 appropriate forensic analyses.

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

18 “(vii) The total number of samples of
19 sexual assault evidence identified by the
20 State or unit of local government under
21 paragraph (2)(B)(ii), since the previous re-
22 porting period.

23 “(viii) The cumulative total number of
24 samples of sexual assault evidence de-
25 scribed under clause (iii) for which the

1 State or unit of local government will be
2 barred within 12 months by any applicable
3 statute of limitations from prosecuting a
4 perpetrator of the sexual assault to which
5 the sample relates.

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

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

22 “(E) OPTIONAL REPORTING.—The Attor-
23 ney General shall—

24 “(i) at the discretion of a State or
25 unit of local government required to file a

1 report under subparagraph (A), allow such
2 State or unit of local government, at their
3 sole discretion, to submit such reports on
4 a more frequent basis; and

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

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

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

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

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

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

4 “(i) the sample has been collected and
5 is in the possession of a State or unit of
6 local government;

7 “(ii) DNA and other appropriate fo-
8 rensic analyses have not been performed on
9 such sample; and

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

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

17 “(i) the conviction or acquittal of all
18 suspected perpetrators of the crime in-
19 volved;

20 “(ii) a determination by the State or
21 unit of local government in possession of
22 the sample that the case is unfounded; or

23 “(iii) a declaration by the victim of
24 the crime involved that the act constituting
25 the basis of the crime was not committed.

1 “(C) POSSESSION.—

2 “(i) IN GENERAL.—The term ‘possession’, used with respect to possession of a
3 sample of sexual assault evidence by a
4 State or unit of local government, includes
5 possession by an individual who is acting
6 as an agent of the State or unit of local
7 government for the collection of the sam-
8 ple.
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10 “(ii) RULE OF CONSTRUCTION.—
11 Nothing in clause (i) shall be construed to
12 create or amend any Federal rights or
13 privileges for non-governmental vendor lab-
14 oratories described in regulations promul-
15 gated under section 210303 of the DNA
16 Identification Act of 1994 (42 U.S.C.
17 14131).

18 “(o) ESTABLISHMENT OF PROTOCOLS, TECHNICAL
19 ASSISTANCE, AND DEFINITIONS.—

20 “(1) PROTOCOLS AND PRACTICES.—Not later
21 than 18 months after the date of enactment of the
22 SAFER Act of 2012, the Director, in consultation
23 with Federal, State, and local law enforcement agen-
24 cies and government laboratories, shall develop and
25 publish a description of protocols and practices the

1 Director considers appropriate for the accurate,
2 timely, and effective collection and processing of
3 DNA evidence, including protocols and practices spe-
4 cific to sexual assault cases, which shall address ap-
5 propriate steps in the investigation of cases that
6 might involve DNA evidence, including—

7 “(A) how to determine—

8 “(i) which evidence is to be collected
9 by law enforcement personnel and for-
10 warded for testing;

11 “(ii) the preferred order in which evi-
12 dence from the same case is to be tested;
13 and

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

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

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

1 “(D) systems to encourage communication
2 within a State or unit of local government
3 among emergency response providers, law en-
4 forcement personnel, prosecutors, courts, de-
5 fense counsel, crime laboratory personnel, and
6 crime victims regarding the status of crime
7 scene evidence to be tested; and

8 “(E) standards for conducting the audit of
9 the backlog for DNA case work in sexual as-
10 sault cases required under subsection (n).

11 “(2) TECHNICAL ASSISTANCE AND TRAINING.—

12 The Director shall make available technical assist-
13 ance and training to support States and units of
14 local government in adopting and implementing the
15 protocols and practices developed under paragraph
16 (1) on and after the date on which the protocols and
17 practices are published.

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

21 **SEC. 3. REPORTS TO CONGRESS.**

22 Not later than 90 days after the end of each fiscal
23 year for which a grant is made for the purpose described
24 in section 2(a)(6) of the DNA Analysis Backlog Elim-

1 nation Act of 2000, as amended by section 2, the Attorney
2 General shall submit to Congress a report that—

3 (1) lists the States and units of local govern-
4 ment that have been awarded such grants and the
5 amount of the grant received by each such State or
6 unit of local government;

7 (2) states the number of extensions granted by
8 the Attorney General under section 2(n)(3) of the
9 DNA Analysis Backlog Elimination Act of 2000, as
10 added by section 2; and

11 (3) summarizes the processing status of the
12 samples of sexual assault evidence identified in Sex-
13 ual Assault Forensic Evidence Reports established
14 under section 2(o)(4) of the DNA Analysis Backlog
15 Act of 2000, including the number of samples that
16 have not been tested.

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

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

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

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

23 “(3) For each of fiscal years 2014 through
24 2018, not less than 75 percent of the total grant
25 amounts shall be awarded for a combination of pur-

1 poses under paragraphs (1), (2), and (3) of sub-
2 section (a).”.

3 **SEC. 5. OVERSIGHT AND ACCOUNTABILITY.**

4 All grants awarded by the Department of Justice that
5 are authorized under this Act shall be subject to the fol-
6 lowing:

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

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

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

1 violation in the terms or conditions of a Department
2 of Justice grant program.

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

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

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

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

24 (6) NONPROFIT ORGANIZATION REQUIRE-
25 MENTS.—

1 (A) DEFINITION.—For purposes of this
2 section and the grant programs described in
3 this Act, the term “‘nonprofit organization’”
4 means an organization that is described in sec-
5 tion 501(c)(3) of the Internal Revenue Code of
6 1986 and is exempt from taxation under section
7 501(a) of such Code.

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

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

1 comparability data used, and contemporaneous
2 substantiation of the deliberation and decision.
3 Upon request, the Attorney General shall make
4 the information disclosed under this subsection
5 available for public inspection.

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

12 (8) CONFERENCE EXPENDITURES.—

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

1 thorization that the funds may be expended to
2 host a conference.

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

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

15 (9) PROHIBITION ON LOBBYING ACTIVITY.—

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

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

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

1 (B) PENALTY.—If the Attorney General
2 determines that any recipient of a grant under
3 this Act has violated subparagraph (A), the At-
4 torney General shall—

5 (i) require the grant recipient to repay
6 the grant in full; and

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

10 **SEC. 6. SUNSET.**

11 Effective on December 31, 2018, subsections (a)(6)
12 and (n) of section 2 of the DNA Analysis Backlog Elimini-
13 nation Act of 2000 (42 U.S.C. 14135(a)(6) and (n)) are
14 repealed.

Passed the Senate December 30, 2012.

Attest:

Secretary.

112TH CONGRESS
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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 Registry, and for other purposes.