

Suspend the Rules and Pass the Bill, S. 3250, With Amendments

(The amendments strike all after the enacting clause and insert a new text and a new title)

112TH CONGRESS
2^D SESSION

S. 3250

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.

IN THE SENATE OF THE UNITED STATES

MAY 24, 2012

Mr. CORNYN (for himself, Mr. BENNET, Mr. KIRK, Ms. KLOBUCHAR, Mr. FRANKEN, and Ms. COLLINS) 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 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 sexual assault evidence that is awaiting
17 testing is carried out in an appropriate and timely
18 manner and in accordance with the advisory guide-
19 lines developed under subsection (o)(1).”;

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

22 “(4) ALLOCATION OF GRANT AWARDS FOR AU-
23 DITS.—For each of fiscal years 2014 through 2017,
24 not less than 5 percent, but not more than 7 per-
25 cent, of the grant amounts distributed under para-
26 graph (1) shall, if sufficient applications to justify

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

8 (3) by adding at the end the following new sub-
9 sections:

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

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

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

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

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

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

5 “(B) shall—

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

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

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

23 “(I) assign a unique numeric or
24 alphanumeric identifier to each sam-
25 ple of sexual assault evidence that is

1 in the possession of the State or unit
2 of local government and is awaiting
3 testing; and

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

11 “(iv) provide that—

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

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

1 mental laboratory or non-govern-
2 mental vendor laboratory; and

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

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

11 “(4) SEXUAL ASSAULT FORENSIC EVIDENCE
12 REPORTS.—

13 “(A) IN GENERAL.—For not less than 12
14 months after the completion of an initial count
15 of sexual assault evidence that is awaiting test-
16 ing during an audit referred to in paragraph
17 (1)(A), a State or unit of local government that
18 receives a grant award under subsection (a)(6)
19 shall, not less than every 60 days, submit a re-
20 port to the Department of Justice, on a form
21 prescribed by the Attorney General, which shall
22 contain the information required under sub-
23 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.
9

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 ADVISORY GUIDELINES,
19 TECHNICAL ASSISTANCE, AND DEFINITIONS.—

20 “(1) ADVISORY GUIDELINES.—Not later than
21 18 months after the date of enactment of the
22 SAFER Act of 2012, the Attorney General, in con-
23 sultation with Federal, State, and local law enforce-
24 ment agencies and government laboratories, shall de-
25 velop and publish a report containing advisory guide-

1 lines the Attorney General considers appropriate for
2 the accurate, timely, and effective collection and
3 processing of sexual assault evidence that is awaiting
4 testing, which shall address appropriate steps in the
5 investigation of cases that might involve sexual as-
6 sault evidence that is awaiting testing, including
7 only—

8 “(A) how to determine—

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

12 “(ii) what information to take into ac-
13 count when establishing the order in which
14 evidence from different cases is to be test-
15 ed;

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

21 “(C) systems to encourage communication
22 within a State or unit of local government
23 among emergency response providers, law en-
24 forcement personnel, prosecutors, courts, crime
25 laboratory personnel, and crime victims regard-

1 ing the status of sexual assault evidence to be
2 tested; and

3 “(D) standards for conducting the audit of
4 the backlog of sexual assault evidence that is
5 awaiting testing required under subsection (n).

6 “(2) TECHNICAL ASSISTANCE AND TRAINING.—
7 The Attorney General shall make available technical
8 assistance and training to support States and units
9 of local government in adopting and implementing
10 the guidelines developed under paragraph (1) on and
11 after the date on which the guidelines are published.

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

15 **SEC. 3. REPORTS TO CONGRESS.**

16 Not later than 90 days after the end of each fiscal
17 year for which a grant is made for the purpose described
18 in section 2(a)(6) of the DNA Analysis Backlog Elimini-
19 nation Act of 2000, as amended by section 2, the Attorney
20 General shall submit to Congress a report that—

21 (1) lists the States and units of local govern-
22 ment that have been awarded such grants and the
23 amount of the grant received by each such State or
24 unit of local government;

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

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

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

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

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

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

17 “(3) For each of fiscal years 2014 through
18 2018, not less than 75 percent of the total grant
19 amounts shall be awarded for a combination of pur-
20 poses under paragraphs (1), (2), and (3) of sub-
21 section (a).”.

22 **SEC. 5. OVERSIGHT AND ACCOUNTABILITY.**

23 All grants awarded by the Department of Justice that
24 are authorized under this Act shall be subject to the fol-
25 lowing:

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

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

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

22 (4) REIMBURSEMENT.—If an entity is awarded
23 grant funds under this Act during the 2-fiscal-year
24 period in which the entity is barred from receiving

1 grants under paragraph (2), the Attorney General
2 shall—

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

7 (B) seek to recoup the costs of the repay-
8 ment to the fund from the grant recipient that
9 was erroneously awarded grant funds.

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

19 (6) NONPROFIT ORGANIZATION REQUIRE-
20 MENTS.—

21 (A) DEFINITION.—For purposes of this
22 section and the grant programs described in
23 this Act, the term “nonprofit organization”
24 means an organization that is described in sec-
25 tion 501(c)(3) of the Internal Revenue Code of

1 1986 and is exempt from taxation under section
2 501(a) of such Code.

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

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

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

7 (8) CONFERENCE EXPENDITURES.—

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

22 (B) WRITTEN APPROVAL.—Written ap-
23 proval under subparagraph (A) shall include a
24 written estimate of all costs associated with the
25 conference, including the cost of all food and

1 beverages, audio/visual equipment, honoraria
2 for speakers, and any entertainment.

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

9 (9) PROHIBITION ON LOBBYING ACTIVITY.—

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

13 (i) lobby any representative of the De-
14 partment of Justice regarding the award of
15 grant funding; or

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

19 (B) PENALTY.—If the Attorney General
20 determines that any recipient of a grant under
21 this Act has violated subparagraph (A), the At-
22 torney General shall—

23 (i) require the grant recipient to repay
24 the grant in full; and

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

4 **SEC. 6. SUNSET.**

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

 Amend the title so as to read: “A bill to amend the
DNA Analysis Backlog Elimination Act of 2000 to pro-
vide for Debbie Smith grants for auditing sexual assault
evidence backlogs, and for other purposes.”.