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113TH CONGRESS
1ST SESSION

H. R. 354

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 HOUSE OF REPRESENTATIVES

JANUARY 23, 2013

Mr. POE of Texas (for himself and Mrs. CAROLYN B. MALONEY of New York) introduced the following bill; which was referred to the Committee on the Judiciary

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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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Sexual Assault Forensic Evidence Reporting Act of 2013'' or the ''SAFER Act of 2013''.

SEC. 2. DEBBIE SMITH GRANTS FOR AUDITING SEXUAL ASSAULT EVIDENCE BACKLOGS.

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

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

"(7) To conduct an audit consistent with subsection (n) of the samples of sexual assault evidence that are in the possession of the State or unit of local government and are awaiting testing.

"(8) To ensure that the collection and processing of DNA evidence by law enforcement agencies from crimes, including sexual assault and other violent crimes against persons, is carried out in an appropriate and timely manner and in accordance with the protocols and practices developed under subsection (o)(1).";

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

"(4) ALLOCATION OF GRANT AWARDS FOR AUDITS.—For each of fiscal years 2014 through 2017, not less than 5 percent, but not more than 7 percent, of the grant amounts distributed under paragraph (1) shall, if sufficient applications to justify such amounts are received by the Attorney General, be awarded for purposes described in subsection

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

(3) by adding at the end the following new subsections:

''(n) USE OF FUNDS FOR AUDITING SEXUAL ASSAULT EVIDENCE BACKLOGS.—

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

''(A) submits a plan for performing the audit of samples described in such subsection; and

''(B) includes in such plan a good-faith estimate of the number of such samples.

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

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

laboratory to conduct an audit described in subsection (a)(7); and

"(B) shall—

"(i) not later than 1 year after receiving the grant, complete the audit referred to in paragraph (1)(A) in accordance with the plan submitted under such paragraph;

"(ii) not later than 60 days after receiving possession of a sample of sexual assault evidence that was not in the possession of the State or unit of local government at the time of the initiation of an audit under paragraph (1)(A), subject to paragraph (4)(F), include in any required reports under clause (v), the information listed under paragraph (4)(B);

"(iii) for each sample of sexual assault evidence that is identified as awaiting testing as part of the audit referred to in paragraph (1)(A)—

"(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 unit of local government, respectively, and is not an employee of any governmental laboratory or non-governmental vendor laboratory; and

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

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

"(4) SEXUAL ASSAULT FORENSIC EVIDENCE REPORTS.—

"(A) IN GENERAL.—For not less than 12 months after the completion of an initial count of sexual assault evidence that is awaiting testing during an audit referred to in paragraph (1)(A), a State or unit of local government that receives a grant award under subsection (a)(7) shall, not less than every 60 days, submit a report to the Department of Justice, on a form prescribed by the Attorney General, which shall contain the information required under subparagraph (B).

"(B) CONTENTS OF REPORTS.—A report under this paragraph shall contain the following information—

"(i) the name of the State or unit of local government filing the report;

"(ii) the period of dates covered by the report;

"(iii) the cumulative total number of samples of sexual assault evidence that, at the end of the reporting period—

"(I) are in the possession of the State or unit of local government at the reporting period;

"(II) are awaiting testing; and

"(III) the State or unit of local government has determined should undergo DNA or other appropriate forensic analyses;

"(iv) the cumulative total number of samples of sexual assault evidence in the possession of the State or unit of local government that, at the end of the reporting period, the State or unit of local government has determined should not undergo DNA or other appropriate forensic analyses, provided that the reporting form shall allow for the State or unit of local government, at its sole discretion, to explain the

reasoning for this determination in some or all cases;

"(v) the cumulative total number of samples of sexual assault evidence in a total under clause (iii) that have been submitted to a laboratory for DNA or other appropriate forensic analyses;

"(vi) the cumulative total number of samples of sexual assault evidence identified by an audit referred to in paragraph (1)(A) or under paragraph (2)(B)(ii) for which DNA or other appropriate forensic analysis has been completed at the end of the reporting period;

"(vii) the total number of samples of sexual assault evidence identified by the State or unit of local government under paragraph (2)(B)(ii), since the previous reporting period; and

"(viii) the cumulative total number of samples of sexual assault evidence described under clause (iii) for which the State or unit of local government will be barred within 12 months by any applicable statute of limitations from prosecuting a

perpetrator of the sexual assault to which the sample relates.

"(C) PUBLICATION OF REPORTS.—Not later than 7 days after the submission of a report under this paragraph by a State or unit of local government, the Attorney General shall, subject to subparagraph (D), publish and disseminate a facsimile of the full contents of such report on an appropriate internet website.

"(D) PERSONALLY IDENTIFIABLE INFORMATION.—The Attorney General shall ensure that any information published and disseminated as part of a report under this paragraph, which reports information under this subsection, does not include personally identifiable information or details about a sexual assault that might lead to the identification of the individuals involved.

"(E) OPTIONAL REPORTING.—The Attorney General shall—

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

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

"(ii) make available to all States and units of local government the reporting form created pursuant to subparagraph (A), whether or not they are required to submit such reports, and allow such States or units of local government, at their sole discretion, to submit such reports for publication.

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

"(i) is not considered criminal evidence (such as a sample collected anonymously from a victim who is unwilling to make a criminal complaint); or

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

"(5) DEFINITIONS.—In this subsection:

"(A) AWAITING TESTING.—The term 'awaiting testing' means, with respect to a sample of sexual assault evidence, that—

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

"(ii) DNA and other appropriate forensic analyses have not been performed on such sample; and

"(iii) the sample is related to a criminal case or investigation in which final disposition has not yet been reached.

"(B) FINAL DISPOSITION.—The term 'final disposition' means, with respect to a criminal case or investigation to which a sample of sexual assault evidence relates—

"(i) the conviction or acquittal of all suspected perpetrators of the crime involved;

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

"(iii) a declaration by the victim of the crime involved that the act constituting the basis of the crime was not committed.

"(C) POSSESSION.—

"(i) IN GENERAL.—The term 'possession', used with respect to possession of a

sample of sexual assault evidence by a State or unit of local government, includes possession by an individual who is acting as an agent of the State or unit of local government for the collection of the sample.

"(ii) RULE OF CONSTRUCTION.—Nothing in clause (i) shall be construed to create or amend any Federal rights or privileges for non-governmental vendor laboratories described in regulations promulgated under section 210303 of the DNA Identification Act of 1994 (42 U.S.C. 14131).

"(o) ESTABLISHMENT OF PROTOCOLS, TECHNICAL ASSISTANCE, AND DEFINITIONS.—

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

cific to sexual assault cases, which shall address appropriate steps in the investigation of cases that might involve DNA evidence, including—

"(A) how to determine—

"(i) which evidence is to be collected by law enforcement personnel and forwarded for testing;

"(ii) the preferred order in which evidence from the same case is to be tested; and

"(iii) what information to take into account when establishing the order in which evidence from different cases is to be tested;

"(B) the establishment of a reasonable period of time in which evidence is to be forwarded by emergency response providers, law enforcement personnel, and prosecutors to a laboratory for testing;

"(C) the establishment of reasonable periods of time in which each stage of analytical laboratory testing is to be completed;

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

forcement personnel, prosecutors, courts, defense counsel, crime laboratory personnel, and crime victims regarding the status of crime scene evidence to be tested; and

"(E) standards for conducting the audit of the backlog for DNA case work in sexual assault cases required under subsection (n).

"(2) TECHNICAL ASSISTANCE AND TRAINING.—The Director shall make available technical assistance and training to support States and units of local government in adopting and implementing the protocols and practices developed under paragraph (1) on and after the date on which the protocols and practices are published.

"(3) DEFINITIONS.—In this subsection, the terms 'awaiting testing' and 'possession' have the meanings given those terms in subsection (n).".

SEC. 3. REPORTS TO CONGRESS.

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

(1) lists the States and units of local government that have been awarded such grants and the

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

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

(3) summarizes the processing status of the samples of sexual assault evidence identified in Sexual Assault Forensic Evidence Reports established under section 2(n)(4) of the DNA Analysis Backlog Elimination Act of 2000, including the number of samples that have not been tested.

SEC. 4. REDUCING THE RAPE KIT BACKLOG.

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

(a) in subparagraph (B), by striking ''2014'' and inserting ''2018''; and

(b) by adding at the end the following:

''(C) For each of fiscal years 2014 through 2018, not less than 75 percent of the total grant amounts shall be awarded for a combination of purposes under paragraphs (1), (2), and (3) of subsection (a).''.

SEC. 5. OVERSIGHT AND ACCOUNTABILITY.

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

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

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

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

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

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

(B) seek to recoup the costs of the repayment to the fund from the grant recipient that was erroneously awarded grant funds.

(5) DEFINED TERM.—In this section, the term ''unresolved audit finding'' means an audit report finding in the final audit report of the Inspector General of the Department of Justice that the grantee has utilized grant funds for an unauthorized expenditure or otherwise unallowable cost that is not closed or resolved within a 12-month period beginning on the date when the final audit report is issued.

(6) NONPROFIT ORGANIZATION REQUIREMENTS.—

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

this Act, the term ''nonprofit organization'' means an organization that is described in section 501(c)(3) of the Internal Revenue Code of 1986 and is exempt from taxation under section 501(a) of such Code.

(B) PROHIBITION.—The Attorney General shall not award a grant under any grant program described in this Act to a nonprofit organization that holds money in offshore accounts for the purpose of avoiding paying the tax described in section 511(a) of the Internal Revenue Code of 1986.

(C) DISCLOSURE.—Each nonprofit organization that is awarded a grant under a grant program described in this Act and uses the procedures prescribed in regulations to create a rebuttable presumption of reasonableness for the compensation of its officers, directors, trustees and key employees, shall disclose to the Attorney General, in the application for the grant, the process for determining such compensation, including the independent persons involved in reviewing and approving such compensation, the comparability data used, and contemporaneous substantiation of the deliberation and decision.

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

(7) ADMINISTRATIVE EXPENSES.—Unless otherwise explicitly provided in authorizing legislation, not more than 7.5 percent of the amounts authorized to be appropriated under this Act may be used by the Attorney General for salaries and administrative expenses of the Department of Justice.

(8) CONFERENCE EXPENDITURES.—

(A) LIMITATION.—No amounts authorized to be appropriated to the Department of Justice under this Act may be used by the Attorney General or by any individual or organization awarded discretionary funds through a cooperative agreement under this Act, to host or support any expenditure for conferences that uses more than $20,000 in Department funds, unless the Deputy Attorney General or the appropriate Assistant Attorney General, Director, or principal deputy as the Deputy Attorney General may designate, provides prior written authorization that the funds may be expended to host a conference.

(B) WRITTEN APPROVAL.—Written approval under subparagraph (A) shall include a written estimate of all costs associated with the conference, including the cost of all food and beverages, audio/visual equipment, honoraria for speakers, and any entertainment.

(C) REPORT.—The Deputy Attorney General shall submit an annual report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives on all conference expenditures approved by operation of this paragraph.

(9) PROHIBITION ON LOBBYING ACTIVITY.—

(A) IN GENERAL.—Amounts authorized to be appropriated under this Act may not be utilized by any grant recipient to—

(i) lobby any representative of the Department of Justice regarding the award of grant funding; or

(ii) lobby any representative of a Federal, State, local, or tribal government regarding the award of grant funding.

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

this Act has violated subparagraph (A), the Attorney General shall—

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

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

SEC. 6. SUNSET.

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

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