

SURVIVORS’ BILL OF RIGHTS ACT OF 2016

SEPTEMBER 6, 2016.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. GOODLATTE, from the Committee on the Judiciary,
submitted the following

R E P O R T

[To accompany H.R. 5578]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 5578) to establish certain rights for sexual assault survivors, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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Purpose and Summary

This legislation will provide additional rights to victims of sexual assault and help them better navigate the complicated process that faces them. Currently, basic rights to protect sexual assault survivors and help them fully access justice vary greatly among states

and the Federal criminal justice system, resulting in a patchwork of laws. A sexual assault survivors' bill of rights will help ensure that survivors have commonsense protections and procedures.

Background and Need for the Legislation

The Committee has worked tirelessly on issues of sexual assault, access to forensic medical kits (more commonly known as Rape Kits), and similar items aimed at ensuring timely access to justice for victims of these heinous crimes. This bill continues that tradition by providing specific rights for victims of sexual assault with relation to their medical kit, as well as allowing the Department of Justice to issue grants to states to help notify victims of sexual assault of any similar rights they might have under state law.

Hearings

The Committee on the Judiciary held no hearings on H.R. 5578.

Committee Consideration

On July 7, 2016, the Committee met in open session and ordered the bill H.R. 5578 favorably reported, without amendment, by voice vote, a quorum being present.

Committee Votes

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that there were no recorded votes during the Committee's consideration of H.R. 5578.

Committee Oversight Findings

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

New Budget Authority and Tax Expenditures

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

Congressional Budget Office Cost Estimate

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 5578, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 27, 2016.

Hon. BOB GOODLATTE, CHAIRMAN,
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5578, the “Survivors’ Bill of Rights Act of 2016.”

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz, who can be reached at 226–2860.

Sincerely,

KEITH HALL,
DIRECTOR.

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

H.R. 5578—Survivors’ Bill of Rights Act of 2016.

As ordered reported by the House Committee on the Judiciary
on July 7, 2016.

H.R. 5578 would direct DOJ to establish a working group to develop and disseminate best practices relating to the care and treatment of survivors of sexual assault and the preservation of forensic evidence. Based on the cost of similar activities, CBO estimates that costs for the working group would be less than \$500,000 annually; such spending would be subject to the availability of appropriated funds.

H.R. 5578 also would establish new programs in the Department of Justice (DOJ) to assist the survivors of sexual assault and would authorize the Crime Victims Fund to cover most of the costs of those new programs. Spending from the Crime Victims Fund is permanently appropriated and is classified in the budget as direct spending. CBO estimates that all balances and new deposits into the Crime Victims Fund will be spent on authorized programs under current law; thus, enacting the bill to allow the Crime Victims Fund to pay for the new programs would not significantly change spending from the fund in any year or over the 2017–2026 period.

Because enacting the bill would affect direct spending, pay-as-you-go procedures apply; however, CBO estimates that those costs would not be significant. The legislation would not affect revenues. CBO estimates that enacting H.R. 5578 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

H.R. 5578 would impose intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA). It would require law enforcement agencies to preserve evidence collected in sexual assault kits, notify sexual assault victims about procedures for the preservation and potential disposal of such evidence, and provide victims with the results from evidence testing. The bill would require law enforcement agencies to preserve sexual assault kits for

the maximum applicable statute of limitation or 20 years, whichever is shorter. Most law enforcement agencies retain sexual assault kits for 20 years or longer, and storage costs are inexpensive. Consequently, CBO estimates that the cost of that mandate would be small.

The bill also would prohibit agencies from charging a sexual assault survivor for a medical forensic examination. However, all 50 states, the District of Columbia, and five territories already bear the costs of such examinations as a condition of their participation in the Services Training Officers Prosecutors (STOP) program. Consequently, CBO estimates that state, local, and tribal governments would incur negligible costs to comply with that mandate. CBO estimates that the aggregate costs of the mandates in the bill would fall well below the intergovernmental threshold established in UMRA (\$77 million in 2016, adjusted annually for inflation).

Finally, states would benefit from grants authorized in the bill to assist in informing sexual assault survivors about their rights. State and local governments also would benefit from the reauthorization of grants for verifying the residence locations of registered sex offenders. Any costs to state or local governments associated with participating in those grant programs would result from complying with conditions of assistance.

H.R. 5578 contains no private-sector mandates as defined in UMRA.

On May 19, 2016, CBO transmitted a cost estimate for S. 2613, the “Adam Walsh Reauthorization Act of 2016,” as reported by the Senate Committee on the Judiciary on April 14, 2016. Sections 5 and 6 of S. 2613 are similar to sections 2 and 3 of H.R. 5578, and CBO’s estimate of the budgetary effects of those sections are the same.

The CBO staff contacts for this estimate are Mark Grabowicz (for Federal costs) and Rachel Austin (for intergovernmental mandates). The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

Duplication of Federal Programs

No provision of H.R. 5578 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

Disclosure of Directed Rule Makings

The Committee estimates that H.R. 5578 specifically directs to be completed no specific rule makings within the meaning of 5 U.S.C. § 551.

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 5578 will empower sexual assault victims as they navigate the Federal system.

Advisory on Earmarks

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 5578 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of Rule XXI.

Section-by-Section Analysis

The following discussion describes the bill as reported by the Committee.

Section One: Short Title

This section denotes the short title of the bill as “Survivors’ Bill of Rights.”

Section Two: Survivors’ Rights

This section amends title 18 of the U.S. Code to strengthen and clarify existing law, as well as add additional protections for survivors in Federal sexual assault cases.

The rights in this bill include the right to a) not be prevented from receiving a medical forensic exam; b) not be charged for receiving a medical forensic exam; c) have a kit or its probative contents preserved, without charge, for the statutory limitation period or 20 years, whichever is shorter; d) receive written notice, not later than 60 days before the government’s intention to destroy or dispose of the survivors’ sexual assault evidence collection kit (“kit”) pursuant to the expiration of the statutory limitation period; e) be informed of any result of a kit (which allows survivors access to vital medical information obtained from their kit), if such disclosure would not impede or compromise an investigation; f) be informed in writing of policies governing the collection and preservation of their kit (which improves communication and transparency between law enforcement and survivors to ensure survivors have information necessary to monitor aspects of the investigation); g) upon written request, have their kit or its probative evidence preserved if the government intends to destroy or dispose of their kit before the expiration of the statutory limitation period (survivors throughout the United States have had their evidence destroyed without their knowledge); and h) be informed of the aforementioned rights.

This section also a) clarifies existing law under the Violence Against Women Act to ensure that survivors are allowed access to necessary medical forensic exams; and b) strengthens Federal evidence standards by preventing states from destroying crucial evidence before the statute of limitations for a case has concluded.

Section Three: Notification Grants

This section amends title 42 of the U.S. Code (Victims of Crime Act (VOCA)) to clarify that the U.S. Department of Justice may make grants to entities that provide survivors written notice of their applicable rights and policies pursuant to that entities’ law.

This section also provides that each grant recipient shall make best efforts to ensure it provides survivors, medical facilities, sexual assault service providers, law enforcement, and other related agencies (as well as to make publically accessible on the Internet)

with written notice of applicable rights and policies, including: a) not to be charged fees for or otherwise prevented from pursuing a kit; b) to have a sexual assault medical forensic examination regardless of whether the survivor reports to or cooperates with law enforcement; c) the availability of a sexual assault advocate; d) the availability of protective orders; e) policies regarding the storage, preservation, and disposal of a kit; f) the process, if any, to request preservation of a kit or its probative evidence; and g) the availability of victim compensation and restitution

This section also authorizes the Attorney General to provide technical assistance to grant recipients to meet technical requirements.

Section Four: Working Group

This section creates a working group under the Attorney General, with advice from the Secretary of Health and Human Services (HHS), to develop, coordinate, and disseminate the application of best practices regarding the care and treatment of survivors and kit preservation.

This section also provides that the working group shall consult with various stakeholders, including law enforcement, forensic experts, medical experts, in addition to entities consisting of sexual assault survivors and advocacy groups.

This section also requires the working group to submit a report to Congress, the Attorney General, and the HHS Secretary on its findings and recommendations.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

TITLE 18, UNITED STATES CODE

* * * * *

PART II—CRIMINAL PROCEDURE

Chap.		Sec.
201.	General provisions	3001
	* * * * *	
238.	<i>Sexual assault survivors' rights</i>	3772
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CHAPTER 238—SEXUAL ASSAULT SURVIVORS' RIGHTS

Sec.
3772. *Sexual assault survivors' rights.*

§3772. Sexual assault survivors' rights

(a) *RIGHTS OF SEXUAL ASSAULT SURVIVORS.*—In addition to those rights provided in section 3771, a sexual assault survivor has the following rights:

(1) *The right not to be prevented from, or charged for, receiving a medical forensic examination.*

(2) *The right to—*

(A) *subject to paragraph (3), have a sexual assault evidence collection kit or its probative contents preserved, without charge, for the duration of the maximum applicable statute of limitations or 20 years, whichever is shorter;*

(B) *be informed of any result of a sexual assault evidence collection kit, including a DNA profile match, toxicology report, or other information collected as part of a medical forensic examination, if such disclosure would not impede or compromise an ongoing investigation; and*

(C) *be informed in writing of policies governing the collection and preservation of a sexual assault evidence collection kit.*

(3) *The right to—*

(A) *upon written request, receive written notification from the appropriate official with custody not later than 60 days before the date of the intended destruction or disposal; and*

(B) *upon written request, be granted further preservation of the kit or its probative contents.*

(4) *The right to be informed of the rights under this subsection.*

(b) *APPLICABILITY.*—Subsections (b) through (f) of section 3771 shall apply to sexual assault survivors.

(c) *DEFINITION OF SEXUAL ASSAULT.*—In this section, the term “sexual assault” means any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent.

(d) *FUNDING.*—This section, other than paragraphs (2)(A) and (3)(B) of subsection (a), shall be carried out using funds made available under section 1402(d)(3)(A)(i) of the Victims of Crime Act of 1984 (42 U.S.C. 10601(d)(3)(A)(i)). No additional funds are authorized to be appropriated to carry out this section.

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VICTIMS OF CRIME ACT OF 1984

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CHAPTER XIV—VICTIM COMPENSATION AND ASSISTANCE

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CRIME VICTIMS FUND

SEC. 1402. (a) There is created in the Treasury a separate account to be known as the Crime Victims Fund (hereinafter in this chapter referred to as the “Fund”).

(b) Except as limited by subsection (c), there shall be deposited in the Fund—

(1) all fines that are collected from persons convicted of offenses against the United States except—

(A) fines available for use by the Secretary of the Treasury pursuant to—

(i) section 11(d) of the Endangered Species Act (16 U.S.C. 1540(d)); and

(ii) section 6(d) of the Lacey Act Amendments of 1981 (16 U.S.C. 3375(d)); and

(B) fines to be paid into—

(i) the railroad unemployment insurance account pursuant to the Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.);

(ii) the Postal Service Fund pursuant to sections 2601(a)(2) and 2003 of title 39 of the United States Code and for the purposes set forth in section 404(a)(7) of such title 39;

(iii) the navigable waters revolving fund pursuant to section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321); and

(iv) county public school funds pursuant to section 3613 of title 18 of the United States Code;

(2) penalty assessments collected under section 3013 of title 18 of the United States Code;

(3) the proceeds of forfeited appearance bonds, bail bonds, and collateral collected under section 3146 of title 18 of the United States Code;

(4) any money ordered to be paid into the Fund under section 3671(c)(2) of title 18 of the United States Code; and

(5) any gifts, bequests, or donations to the Fund from private entities or individuals, which the Director is hereby authorized to accept for deposit into the Fund, except that the Director is not hereby authorized to accept any such gift, bequest, or donation that—

(A) attaches conditions inconsistent with applicable laws or regulations; or

(B) is conditioned upon or would require the expenditure of appropriated funds that are not available to the Office for Victims of Crime.

(c) Sums deposited in the Fund shall remain in the Fund and be available for expenditure under this chapter for grants under this chapter without fiscal year limitation. Notwithstanding section 1402(d)(5), all sums deposited in the Fund in any fiscal year that are not made available for obligation by Congress in the subsequent fiscal year shall remain in the Fund for obligation in future fiscal years, without fiscal year limitation.

(d) The Fund shall be available as follows:

(2)(A) Except as provided in subparagraph (B), the first \$10,000,000 deposited in the Fund shall be available for grants under section 1404A.

(B)(i) For any fiscal year for which the amount deposited in the Fund is greater than the amount deposited in the Fund for fiscal year 1998, the \$10,000,000 referred to in subparagraph (A) plus an amount equal to 50 percent of the increase in the amount from fiscal year 1998 shall be available for grants under section 1404A.

(ii) Amounts available under this subparagraph for any fiscal year shall not exceed \$20,000,000.

(3)(A) Of the sums remaining in the Fund in any particular fiscal year after compliance with paragraph (2), such sums as may be necessary shall be available only for—

(i) the United States Attorneys Offices and the Federal Bureau of Investigation to provide and improve services for the benefit of crime victims in the Federal criminal justice system (as described in section 3771 or section 3772, as it relates to direct services, of title 18, United States Code, and section 503 of the Victims' Rights and Restitution Act of 1990 (42 U.S.C. 10607)) through victim coordinators, victims' specialists, and advocates, including for the administrative support of victim coordinators and advocates providing such services; and

(ii) a Victim Notification System.

(B) Amounts made available under subparagraph (A) may not be used for any purpose that is not specified in clause (i) or (ii) of subparagraph (A).

(4) Of the remaining amount to be distributed from the Fund in a particular fiscal year—

(A) 47.5 percent shall be available for grants under section 1403;

(B) 47.5 percent shall be available for grants under section 1404(a); and

(C) 5 percent shall be available for grants under section 1404(c).

(5)(A) In addition to the amounts distributed under paragraphs (2), (3), and (4), the Director may set aside up to \$50,000,000 from the amounts transferred to the Fund in response to the airplane hijackings and terrorist acts that occurred on September 11, 2001, as an antiterrorism emergency reserve. The Director may replenish any amounts obligated from such reserve in subsequent fiscal years by setting aside up to 5 percent of the amounts remaining in the Fund in any fiscal year after distributing amounts under paragraphs (2), (3) and (4). Such reserve shall not exceed \$50,000,000.

(B) The antiterrorism emergency reserve referred to in subparagraph (A) may be used for supplemental grants under section 1404B and to provide compensation to victims of international terrorism under section 1404C.

(C) Amounts in the antiterrorism emergency reserve established pursuant to subparagraph (A) may be carried over from fiscal year to fiscal year. Notwithstanding subsection (c) and section 619 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2001 (and any similar limitation on Fund obligations in any future Act, unless the same should expressly refer to this section), any such amounts carried over shall not be subject to any limitation on obligations from amounts deposited to or available in the Fund.

(e) AMOUNTS AWARDED AND UNSPENT.—Any amount awarded as part of a grant under this chapter that remains unspent at the end of a fiscal year in which the grant is made may be expended for the purpose for which the grant is made at any time during the 3

succeeding fiscal years, at the end of which period, any remaining unobligated sums shall be available for deposit into the emergency reserve fund referred to in subsection (d)(5) at the discretion of the Director. Any remaining unobligated sums shall be returned to the Fund.

(f) As used in this section, the term “offenses against the United States” does not include—

(1) a criminal violation of the Uniform Code of Military Justice (10 U.S.C. 801 et seq.);

(2) an offense against the laws of the District of Columbia; and

(3) an offense triable by an Indian tribal court or Court of Indian Offenses.

(g)(1) The Attorney General shall use 15 percent of the funds available under subsection (d)(2) to make grants for the purpose of assisting Native American Indian tribes in developing, establishing, and operating programs designed to improve—

(A) the handling of child abuse cases, particularly cases of child sexual abuse, in a manner which limits additional trauma to the child victim; and

(B) the investigation and prosecution of cases of child abuse, particularly child sexual abuse.

(2) The Attorney General may use 5 percent of the funds available under subsection (d)(2) (prior to distribution) for grants to Indian tribes to establish child victim assistance programs, as appropriate.

(3) As used in this subsection, the term “tribe” has the meaning given that term in section 4(b) of the Indian Self-Determination and Education Assistance Act.

* * * * *

SEC. 1404F. SEXUAL ASSAULT SURVIVORS’ NOTIFICATION GRANTS.

(a) *IN GENERAL.*—The Attorney General may make grants as provided in section 1404(c)(1)(A) to States to develop and disseminate to entities described in subsection (c)(1) of this section written notice of applicable rights and policies for sexual assault survivors.

(b) *NOTIFICATION OF RIGHTS.*—Each recipient of a grant awarded under subsection (a) shall make its best effort to ensure that each entity described in subsection (c)(1) provides individuals who identify as a survivor of a sexual assault, and who consent to receiving such information, with written notice of applicable rights and policies regarding—

(1) the right not to be charged fees for or otherwise prevented from pursuing a sexual assault evidence collection kit;

(2) the right to have a sexual assault medical forensic examination regardless of whether the survivor reports to or cooperates with law enforcement;

(3) the availability of a sexual assault advocate;

(4) the availability of protective orders and policies related to their enforcement;

(5) policies regarding the storage, preservation, and disposal of sexual assault evidence collection kits;

(6) the process, if any, to request preservation of sexual assault evidence collection kits or the probative evidence from such kits; and

(7) *the availability of victim compensation and restitution.*

(c) *DISSEMINATION OF WRITTEN NOTICE.—Each recipient of a grant awarded under subsection (a) shall—*

(1) *provide the written notice described in subsection (b) to medical centers, hospitals, forensic examiners, sexual assault service providers, State and local law enforcement agencies, and any other State agency or department reasonably likely to serve sexual assault survivors; and*

(2) *make the written notice described in subsection (b) publicly available on the Internet website of the attorney general of the State.*

(d) *PROVISION TO PROMOTE COMPLIANCE.—The Attorney General may provide such technical assistance and guidance as necessary to help recipients meet the requirements of this section.*

(e) *INTEGRATION OF SYSTEMS.—Any system developed and implemented under this section may be integrated with an existing case management system operated by the recipient of the grant if the system meets the requirements listed in this section.*

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