

S. 3250: The SAFER Act of 2012

Section-by-Section Analysis

The nationwide backlog of untested rape kits is a serious problem with tragic consequences for sexual assault victims. An estimated 400,000 rape kits currently sit untested in labs and on police storage shelves across the nation—each one of them holding the potential to solve a crime, imprison a rapist and provide a victim with the justice they deserve. This legislation will help end the national rape kit backlog with no new spending by better targeting existing funds under the Debbie Smith Act.

Section 1. Short Title.

- ❖ The Sexual Assault Forensic Evidence Reporting Act of 2012.

Section 2. Debbie Smith Grants For Auditing Sexual Assault Evidence Backlogs.

Background

- ❖ There are two distinct rape kit backlogs: (1) the **well-known** backlog of untested kits that have already been submitted to a laboratory for testing; and (2) the **hidden** backlog of kits in law enforcement storage that have not been submitted for testing.
- ❖ According to a February 2011 report by the National Institute of Justice: “Federal programs to reduce backlogs in crime laboratories are not designed to address untested evidence stored in law enforcement agencies.”

Subsection 1

- ❖ This subsection would encourage State and local law enforcement agencies to work to eliminate both the laboratory and storage facility backlog by adding a new purpose area to the Debbie Smith Act grant program allowing grantees to use existing appropriations to conduct audits of all untested sexual assault evidence that is in their possession.
- ❖ Current law (42 U.S. §14135) allows grantees to spend this funding on five different purposes related to the testing of backlogged DNA evidence, but not on conducting audits of their sexual assault evidence backlogs.
- ❖ This subsection would also give State and local governments more flexibility under the Debbie Smith Act by allowing them, at their discretion, to use existing appropriations to ensure that the collection and processing of untested sexual assault evidence is carried out in an appropriate and timely manner, and in accordance with advisory guidelines issued under the Act.

Subsection 2

- ❖ This subsection reserves 5-7% of existing Debbie Smith Act appropriations for the purpose of conducting audits of untested sexual assault evidence in their possession, provided that these reserved funds may not reduce those available to State and local governments for analyzing untested crime scene DNA evidence.

Subsection 3

Audit Grant Conditions

- ❖ Creates a new “subsection (n)” in the Debbie Smith Act.
- ❖ Requires audit grant applicants to submit an audit plan that includes a good-faith estimate of the number of untested sexual assault samples in their possession.
- ❖ Requires audit grantees to complete their audits within 12 months of receiving funds for this purpose. Allows the Attorney General to grant extensions of deadline.
- ❖ Clarifies that audit grantees cannot contract with a non-governmental vendor laboratory to conduct this audit.
- ❖ Ensures that open-government, accountability, and responsibility to each individual victim will be a part of the audit process by requiring audit grantees to file a public report every 60 days for a 12 month period following the completion of an initial count of untested sexual assault evidence in their possession.
- ❖ Grants the sole authority for this report to the chief law enforcement officer of the jurisdiction receiving audit grant funds.
- ❖ This report must include aggregate non-personally identifying information about the size and scope of the rape kit backlog in that jurisdiction, such as:
 - The name of the jurisdiction filing the report;
 - The reporting period;
 - The total number of kits that have been identified by the jurisdiction as awaiting testing;
 - The total number of kits awaiting testing that the jurisdiction has determined should not be tested;
 - The total number of kits awaiting testing that have been sent to a lab for analysis;
 - The total number of kits identified by the audit as awaiting testing that have actually been tested; and
 - The total number of kits awaiting testing for which the relevant statute of limitations will run within 1-year of the report.
- ❖ Allows jurisdictions that are not receiving audit grant funding to voluntarily file reports under this subsection.

Establishment of Advisory Guidelines

- ❖ Creates a new subsection (o) in the Debbie Smith Act.
- ❖ Requires the Attorney General to work with Federal, State, and local law enforcement agencies to produce a set of non-binding advisory guidelines for the accurate, timely, and effective collection and processing of sexual assault evidence that is awaiting testing.
- ❖ Allows for training and technical assistance for jurisdictions who wish to implement some or all of these guidelines.

Section 3. Reports to Congress.

- ❖ Requires the Attorney General to issue a report to Congress within 90 days after the end of each fiscal year for which an audit grant is made that discusses:
 - (1) The names of all audit grantees;
 - (2) The monetary size of each grant;
 - (3) The number of extensions granted by the Attorney General;
 - (4) The status of reported samples of sexual assault evidence, including the number of samples that have not been tested.

Section 4. Reducing the Rape Kit Backlog.

- ❖ Current law (42 U.S. §14135) allows Debbie Smith Act grant funding to be spent on a variety of purposes.
- ❖ This law, however, only requires that 40% of this grant funding be spent on the core purpose area—carrying out DNA analyses of samples from crime scenes.
- ❖ As a result, the Department of Justice has spent a great deal of Debbie Smith Act funds for purposes other than helping State and local governments to test unanalyzed crime scene evidence and reducing the rape kit backlog.
- ❖ A recent Congressional Research Service report found, among other things, that: (1) Congress should consider amending the authorizing statute for Debbie Smith grants so that the Department of Justice is required to award a greater proportion of annual funding for reducing the backlog of forensic casework; and (2) Congress should consider increasing the capacity of state and local laboratories to conduct DNA analyses.

- ❖ This section would therefore instruct the Department of Justice to spend at least 75% of all Debbie Smith Act grant appropriations to analyze untested crime scene DNA evidence, analyze offender samples, and to expand the capacity of labs to test that evidence.

Section 5. Oversight and Accountability.

- ❖ Allows the DOJ Inspector General to conduct audits of SAFER Act grant recipients to prevent waste, fraud, and abuse of funds by grantees.
- ❖ Prohibits SAFER Act grantees with unresolved audit findings from receiving SAFER Act grant funds for a 2-year period.
- ❖ Gives SAFER Act grantee priority to jurisdictions that have not had an unresolved audit finding for the previous 3-years.
- ❖ Ensures that SAFER Act grantees who have improperly received funds are required to reimburse the Federal Government in an amount equal to the improper award.
- ❖ Bars non-profit organizations that hold money in offshore accounts from receiving SAFER Act funds.
- ❖ Prohibits the Attorney General from using any more than 7.5% of SAFER Act funds for administrative expenses.
- ❖ Prohibits the use of SAFER Act funds for conference expenditures, unless expressly authorized in writing by the Deputy Attorney General of appropriate Assistant Attorney General.
- ❖ Prohibits the use of SAFER Act funds for lobbying expenditures.

Section 6. Sunset.

- ❖ Sunsets the SAFER Act audit grants following their authorization period, on December 31, 2018.