

***In the House of Representatives, U. S.,***

*January 2, 2013.*

*Resolved*, That the bill from the Senate (S. 3250) entitled “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.”, do pass with the following

**AMENDMENTS:**

Strike out all after the enacting clause and insert:

1 ***SECTION 1. SHORT TITLE.***

2 *This Act may be cited as the “Sexual Assault Forensic*  
3 *Evidence Reporting Act of 2012” or the “SAFER Act of*  
4 *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 local*  
14 *government and are awaiting testing.*

1           “(7) To ensure that the collection and processing  
2 of sexual assault evidence that is awaiting testing is  
3 carried out in an appropriate and timely manner  
4 and in accordance with the advisory guidelines devel-  
5 oped under subsection (o)(1).”;

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

8           “(4) ALLOCATION OF GRANT AWARDS FOR AU-  
9 DITS.—For each of fiscal years 2014 through 2017,  
10 not less than 5 percent, but not more than 7 percent,  
11 of the grant amounts distributed under paragraph (1)  
12 shall, if sufficient applications to justify such  
13 amounts are received by the Attorney General, be  
14 awarded for purposes described in subsection (a)(6),  
15 provided that none of the funds required to be distrib-  
16 uted under this paragraph shall decrease or otherwise  
17 limit the availability of funds required to be awarded  
18 to States or units of local government under para-  
19 graph (3).”; and

20           (3) by adding at the end the following new sub-  
21 sections:

22           “(n) USE OF FUNDS FOR AUDITING SEXUAL ASSAULT  
23 EVIDENCE BACKLOGS.—

24           “(1) ELIGIBILITY.—The Attorney General may  
25 award a grant under this section to a State or unit

1 *of local government for the purpose described in sub-*  
2 *section (a)(6) only if the State or unit of local govern-*  
3 *ment—*

4 *“(A) submits a plan for performing the*  
5 *audit of samples described in such subsection;*  
6 *and*

7 *“(B) includes in such plan a good-faith esti-*  
8 *mate of the number of such samples.*

9 *“(2) GRANT CONDITIONS.—A State or unit of*  
10 *local government receiving a grant for the purpose de-*  
11 *scribed in subsection (a)(6)—*

12 *“(A) may not enter into any contract or*  
13 *agreement with any non-governmental vendor*  
14 *laboratory to conduct an audit described in sub-*  
15 *section (a)(6); and*

16 *“(B) shall—*

17 *“(i) not later than 1 year after receiv-*  
18 *ing the grant, complete the audit referred to*  
19 *in paragraph (1)(A) in accordance with the*  
20 *plan submitted under such paragraph;*

21 *“(ii) not later than 60 days after re-*  
22 *ceiving possession of a sample of sexual as-*  
23 *sault evidence that was not in the possession*  
24 *of the State or unit of local government at*  
25 *the time of the initiation of an audit under*

1 paragraph (1)(A), subject to paragraph  
2 (4)(F), include in any required reports  
3 under clause (v), the information listed  
4 under paragraph (4)(B);

5 “(iii) for each sample of sexual assault  
6 evidence that is identified as awaiting test-  
7 ing as part of the audit referred to in para-  
8 graph (1)(A)—

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

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

21 “(iv) provide that—

22 “(I) the chief law enforcement of-  
23 ficer of the State or unit of local gov-  
24 ernment, respectively, is the individual  
25 responsible for the compliance of the

1                    *State or unit of local government, re-*  
2                    *spectively, with the reporting require-*  
3                    *ments described in clause (v); or*

4                    *“(II) the designee of such officer*  
5                    *may fulfill the responsibility described*  
6                    *in subclause (I) so long as such des-*  
7                    *ignee is an employee of the State or*  
8                    *unit of local government, respectively,*  
9                    *and is not an employee of any govern-*  
10                   *mental laboratory or non-governmental*  
11                   *vendor laboratory; and*

12                   *“(v) comply with all grantee reporting*  
13                   *requirements described in paragraph (4).*

14                   *“(3) EXTENSION OF INITIAL DEADLINE.—The At-*  
15                   *torney General may grant an extension of the dead-*  
16                   *line under paragraph (2)(B)(i) to a State or unit of*  
17                   *local government that demonstrates that more time is*  
18                   *required for compliance with such paragraph.*

19                   *“(4) SEXUAL ASSAULT FORENSIC EVIDENCE RE-*  
20                   *PORTS.—*

21                   *“(A) IN GENERAL.—For not less than 12*  
22                   *months after the completion of an initial count*  
23                   *of sexual assault evidence that is awaiting test-*  
24                   *ing during an audit referred to in paragraph*  
25                   *(1)(A), a State or unit of local government that*

1           *receives a grant award under subsection (a)(6)*  
2           *shall, not less than every 60 days, submit a re-*  
3           *port to the Department of Justice, on a form*  
4           *prescribed by the Attorney General, which shall*  
5           *contain the information required under subpara-*  
6           *graph (B).*

7           “(B) *CONTENTS OF REPORTS.—A report*  
8           *under this paragraph shall contain the following*  
9           *information:*

10                   “(i) *The name of the State or unit of*  
11                   *local government filing the report.*

12                   “(ii) *The period of dates covered by the*  
13                   *report.*

14                   “(iii) *The cumulative total number of*  
15                   *samples of sexual assault evidence that, at*  
16                   *the end of the reporting period—*

17                           “(I) *are in the possession of the*  
18                           *State or unit of local government at*  
19                           *the reporting period;*

20                           “(II) *are awaiting testing; and*

21                           “(III) *the State or unit of local*  
22                           *government has determined should un-*  
23                           *dergo DNA or other appropriate foren-*  
24                           *sic analyses.*

1           “(iv) *The cumulative total number of*  
2           *samples of sexual assault evidence in the*  
3           *possession of the State or unit of local gov-*  
4           *ernment that, at the end of the reporting pe-*  
5           *riod, the State or unit of local government*  
6           *has determined should not undergo DNA or*  
7           *other appropriate forensic analyses, pro-*  
8           *vided that the reporting form shall allow for*  
9           *the State or unit of local government, at its*  
10          *sole discretion, to explain the reasoning for*  
11          *this determination in some or all cases.*

12          “(v) *The cumulative total number of*  
13          *samples of sexual assault evidence in a total*  
14          *under clause (iii) that have been submitted*  
15          *to a laboratory for DNA or other appro-*  
16          *priate forensic analyses.*

17          “(vi) *The cumulative total number of*  
18          *samples of sexual assault evidence identified*  
19          *by an audit referred to in paragraph (1)(A)*  
20          *or under paragraph (2)(B)(ii) for which*  
21          *DNA or other appropriate forensic analysis*  
22          *has been completed at the end of the report-*  
23          *ing period.*

24          “(vii) *The total number of samples of*  
25          *sexual assault evidence identified by the*

1           *State or unit of local government under*  
2           *paragraph (2)(B)(ii), since the previous re-*  
3           *porting period.*

4           “(viii) *The cumulative total number of*  
5           *samples of sexual assault evidence described*  
6           *under clause (iii) for which the State or*  
7           *unit of local government will be barred*  
8           *within 12 months by any applicable statute*  
9           *of limitations from prosecuting a pepe-*  
10          *trator of the sexual assault to which the*  
11          *sample relates.*

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

19          “(D) *PERSONALLY IDENTIFIABLE INFORMA-*  
20          *TION.—The Attorney General shall ensure that*  
21          *any information published and disseminated as*  
22          *part of a report under this paragraph, which re-*  
23          *ports information under this subsection, does not*  
24          *include personally identifiable information or*

1           *details about a sexual assault that might lead to*  
2           *the identification of the individuals involved.*

3           “(E) *OPTIONAL REPORTING.—The Attorney*  
4           *General shall—*

5                   “(i) *at the discretion of a State or unit*  
6                   *of local government required to file a report*  
7                   *under subparagraph (A), allow such State*  
8                   *or unit of local government, at their sole*  
9                   *discretion, to submit such reports on a more*  
10                  *frequent basis; and*

11                   “(ii) *make available to all States and*  
12                   *units of local government the reporting form*  
13                   *created pursuant to subparagraph (A),*  
14                   *whether or not they are required to submit*  
15                   *such reports, and allow such States or units*  
16                   *of local government, at their sole discretion,*  
17                   *to submit such reports for publication.*

18           “(F) *SAMPLES EXEMPT FROM REPORTING*  
19           *REQUIREMENT.—The reporting requirements de-*  
20           *scribed in paragraph (2) shall not apply to a*  
21           *sample of sexual assault evidence that—*

22                   “(i) *is not considered criminal evi-*  
23                   *dence (such as a sample collected anony-*  
24                   *mously from a victim who is unwilling to*  
25                   *make a criminal complaint); or*

1           “(i) relates to a sexual assault for  
2           which the prosecution of each perpetrator is  
3           barred by a statute of limitations.

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

5           “(A) AWAITING TESTING.—The term ‘await-  
6           ing testing’ means, with respect to a sample of  
7           sexual assault evidence, that—

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

11          “(ii) DNA and other appropriate fo-  
12          rensic analyses have not been performed on  
13          such sample; and

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

17          “(B) FINAL DISPOSITION.—The term ‘final  
18          disposition’ means, with respect to a criminal  
19          case or investigation to which a sample of sexual  
20          assault evidence relates—

21          “(i) the conviction or acquittal of all  
22          suspected perpetrators of the crime involved;

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

1           “(iii) a declaration by the victim of the  
2           crime involved that the act constituting the  
3           basis of the crime was not committed.

4           “(C) POSSESSION.—

5           “(i) IN GENERAL.—The term ‘possession’, used with respect to possession of a  
6           sample of sexual assault evidence by a State  
7           or unit of local government, includes possession by an individual who is acting as an  
8           agent of the State or unit of local government for the collection of the sample.  
9  
10  
11

12           “(ii) RULE OF CONSTRUCTION.—Nothing in clause (i) shall be construed to create  
13           or amend any Federal rights or privileges  
14           for non-governmental vendor laboratories  
15           described in regulations promulgated under  
16           section 210303 of the DNA Identification  
17           Act of 1994 (42 U.S.C. 14131).  
18

19           “(o) ESTABLISHMENT OF ADVISORY GUIDELINES,  
20           TECHNICAL ASSISTANCE, AND DEFINITIONS.—

21           “(1) ADVISORY GUIDELINES.—Not later than 18  
22           months after the date of enactment of the SAFER Act  
23           of 2012, the Attorney General, in consultation with  
24           Federal, State, and local law enforcement agencies  
25           and government laboratories, shall develop and pub-

1        *lish a report containing advisory guidelines the Attor-*  
2        *ney General considers appropriate for the accurate,*  
3        *timely, and effective collection and processing of sex-*  
4        *ual assault evidence that is awaiting testing, which*  
5        *shall address appropriate steps in the investigation of*  
6        *cases that might involve sexual assault evidence that*  
7        *is awaiting testing, including only—*

8                *“(A) how to determine—*

9                        *“(i) which evidence is to be collected by*  
10                      *law enforcement personnel and forwarded*  
11                      *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 tested;*

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

20                *“(C) systems to encourage communication*  
21                *within a State or unit of local government*  
22                *among emergency response providers, law en-*  
23                *forcement personnel, prosecutors, courts, crime*  
24                *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 terms*  
 13           *‘awaiting testing’ and ‘possession’ have the meanings*  
 14           *given those terms in subsection (n).”.*

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

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

21           *(1) lists the States and units of local government*  
 22           *that have been awarded such grants and the amount*  
 23           *of the grant received by each such State or unit of*  
 24           *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 sam-  
6           ples of sexual assault evidence identified in Sexual  
7           Assault Forensic Evidence Reports established under  
8           section 2(o)(4) of the DNA Analysis Backlog Act of  
9           2000, including the number of samples that have not  
10          been tested.

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

12          Section 2(c)(3) of the DNA Analysis Backlog Elimi-  
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 2018,  
18                 not less than 75 percent of the total grant amounts  
19                 shall be awarded for a combination of purposes under  
20                 paragraphs (1), (2), and (3) of subsection (a).”.

21 **SEC. 5. OVERSIGHT AND ACCOUNTABILITY.**

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

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

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

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

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

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

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

8           (5) *DEFINED TERM.*—In this section, the term  
9 “unresolved audit finding” means an audit report  
10 finding in the final audit report of the Inspector Gen-  
11 eral of the Department of Justice that the grantee has  
12 utilized grant funds for an unauthorized expenditure  
13 or otherwise unallowable cost that is not closed or re-  
14 solved within a 12-month period beginning on the  
15 date when the final audit report is issued.

16           (6) *NONPROFIT ORGANIZATION REQUIRE-*  
17 *MENTS.*—

18           (A) *DEFINITION.*—For purposes of this sec-  
19 tion and the grant programs described in this  
20 Act, the term “nonprofit organization” means an  
21 organization that is described in section  
22 501(c)(3) of the Internal Revenue Code of 1986  
23 and is exempt from taxation under section  
24 501(a) of such Code.

1           (B) *PROHIBITION.*—*The Attorney General*  
2           *shall not award a grant under any grant pro-*  
3           *gram described in this Act to a nonprofit organi-*  
4           *zation that holds money in offshore accounts for*  
5           *the purpose of avoiding paying the tax described*  
6           *in section 511(a) of the Internal Revenue Code*  
7           *of 1986.*

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

24          (7) *ADMINISTRATIVE EXPENSES.*—*Unless other-*  
25          *wise explicitly provided in authorizing legislation,*

1       *not more than 7.5 percent of the amounts authorized*  
2       *to be appropriated under this Act may be used by the*  
3       *Attorney General for salaries and administrative ex-*  
4       *penses of the Department of Justice.*

5           (8) *CONFERENCE EXPENDITURES.—*

6           (A) *LIMITATION.—No amounts authorized*  
7       *to be appropriated to the Department of Justice*  
8       *under this Act may be used by the Attorney Gen-*  
9       *eral or by any individual or organization*  
10       *awarded discretionary funds through a coopera-*  
11       *tive agreement under this Act, to host or support*  
12       *any expenditure for conferences that uses more*  
13       *than \$20,000 in Department funds, unless the*  
14       *Deputy Attorney General or the appropriate As-*  
15       *stant Attorney General, Director, or principal*  
16       *deputy as the Deputy Attorney General may des-*  
17       *ignate, provides prior written authorization that*  
18       *the funds may be expended to host a conference.*

19           (B) *WRITTEN APPROVAL.—Written ap-*  
20       *proval under subparagraph (A) shall include a*  
21       *written estimate of all costs associated with the*  
22       *conference, including the cost of all food and bev-*  
23       *erages, audio/visual equipment, honoraria for*  
24       *speakers, and any entertainment.*

1           (C) *REPORT.*—*The Deputy Attorney Gen-*  
2           *eral shall submit an annual report to the Com-*  
3           *mittee on the Judiciary of the Senate and the*  
4           *Committee on the Judiciary of the House of Rep-*  
5           *resentatives on all conference expenditures ap-*  
6           *proved by operation of this paragraph.*

7           (9) *PROHIBITION ON LOBBYING ACTIVITY.*—

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

11                 (i) *lobby any representative of the De-*  
12                 *partment of Justice regarding the award of*  
13                 *grant funding; or*

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

17           (B) *PENALTY.*—*If the Attorney General de-*  
18           *termines that any recipient of a grant under this*  
19           *Act has violated subparagraph (A), the Attorney*  
20           *General shall—*

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

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

1 **SEC. 6. SUNSET.**

2       *Effective on December 31, 2018, subsections (a)(6) and*  
3 *(n) of section 2 of the DNA Analysis Backlog Elimination*  
4 *Act of 2000 (42 U.S.C. 14135(a)(6) and (n)) are repealed.*

Amend the title so as to read: “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 for other purposes.”.

Attest:

*Clerk.*



112<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**S. 3250**

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**AMENDMENTS**