
KEVIN AND AVONTE'S LAW OF 2016

DECEMBER 9, 2016.—Ordered to be printed

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

R E P O R T

[To accompany S. 2614]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to which was referred the bill (S. 2614) to amend the Violent Crime Control and Law Enforcement Act of 1994, to reauthorize the Missing Alzheimer's Disease Patient Alert Program, and to promote initiatives that will reduce the risk of injury and death relating to the wandering characteristics of some children with autism, having considered the same, reports favorably thereon, without amendment, and recommends that the bill do pass.

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I. BACKGROUND AND PURPOSE OF KEVIN AND AVONTE'S LAW

Autism, dementia, and other developmental conditions affect numerous families in the United States. Many such families have experienced a loved one wandering away from a supervised setting due to these conditions. The Centers for Disease Control and Prevention (CDC) identified one in sixty-eight children as having autism spectrum disorder, and CDC survey data was used in a widely-cited 2016 study that concluded about a third of these children

wander away from a supervised setting in any given year.¹ The Alzheimer’s Association estimates as many as one in three seniors will die with some form of dementia.² Kevin and Avonte’s Law of 2016 would enhance support for the many American families who have loved ones that go missing due to autism, Alzheimer’s disease, or related conditions. The bill extends a program designed to assist in locating Alzheimer’s disease and dementia patients; it also adds new support for people with autism or other developmental disabilities.

Families with developmentally disabled children and aging parents often experience challenges that others do not face on a daily basis. It is common for many children with autism or seniors with Alzheimer’s disease to wander away from their caregiver’s supervision, sometimes with tragic results. To help meet the needs of Alzheimer’s patients who go missing, Congress years ago authorized \$900,000 annually to establish the Missing Alzheimer’s Disease Patient Alert program,³ a “locally based, proactive program to protect and locate missing patients with Alzheimer’s disease and related dementias.”

Kevin and Avonte’s Law updates and expands this expired program, authorizing \$2 million per year to cover not only those with dementia but also those with developmental disabilities. The legislation calls for the Attorney General to award grants to assist eligible applicants in developing and operating locative tracking technology programs. The locative tracking technology would be used solely to assist in the recovery of children with developmental disabilities in the event of separation from parents or caregivers. The bill also would change the name of the program to the “Missing Americans Alert Program.”

Under this legislation, participation in such a locative tracking technology program would remain entirely voluntary. The Committee intends that a guardian or parent, in consultation with that child’s health care provider, would make any decisions about whether or not to accept a tracking device for their child, and any such device should be the least restrictive option available to help locate the child in the event of a crisis. (Nothing in this Act would require use of tracking technology if a parent or guardian does not believe that use of such a device is not necessary or in the child’s interest.) The Committee further intends that tracking devices assigned to children under this program should be limited to non-invasive, non-permanent devices that do not create an external or internal marker or involve the implantation of a device or other trackable items.

The bill includes additional provisions designed to safeguard the privacy of children who are assigned tracking devices, including a

¹Centers for Disease Control and Prevention, Prevalence and Characteristics of Autism Spectrum Disorder Among Children Aged 8 Years—Autism and Developmental Disabilities Monitoring Network, 11 Sites, United States, 2012 (April 1, 2016), <http://www.cdc.gov/mmwr/volumes/65/ss/ss6503a1.htm>; Bridget Kiely et al., Prevalence and Correlates of Elopement in a Nationally Representative Sample of Children with Developmental Disabilities in the United States. *PLoS ONE* 11(2): e0148337 (Feb. 4, 2016), <http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0148337>; see also Autism Speaks, Study Finds A Third of Schoolkids With Autism Wander from Safety Each Year (Feb. 4, 2016), <http://www.autismspeaks.org/science/science-news/study-finds-third-schoolkids-autism-wander-safety-each-year>.

²Press Release, Alzheimer’s Association, New Alzheimer’s Association Report Reveals 1 in 3 Seniors Dies With Alzheimer’s or Another Dementia (March 19, 2013), https://www.alz.org/national/documents/facts_and_figures_2013_press_release.pdf.

³42 U.S.C. 14181.

requirement that the Attorney General must develop privacy standards and best practices within 120 days after enactment of this legislation. In developing such standards and best practices, the Attorney General is strongly encouraged to ensure that: (1) any collection, use, and retention of data under this program is solely for the purpose of preventing injury or death to the child assigned a tracking device; (2) any tracking data generated by tracking devices issued under this program may not be used by a Federal entity to create a database; and (3) continued participation in this program shall remain entirely voluntary for the participants.

The legislation also authorizes the Attorney General to award competitive grants to State and local law enforcement or public safety agencies and nonprofit organizations to “assist in planning, designing, establishing, or operating locally based, proactive programs to prevent wandering and locate missing individuals with forms of dementia.” Such grants might be used, for example, to develop training and emergency protocols for school officials and first responders; to increase personal safety and survival skills of vulnerable children with developmental disabilities and adults with dementia; or to operate notification systems for alerts and advisories to aid in the recovery of an endangered missing child with developmental disabilities or an adult with dementia.

The bill is named in honor of two young boys from Iowa and New York, each diagnosed with autism. Each boy wandered away from a supervised setting and drowned. One of the two, nine-year-old Kevin Curtis Wills, died in 2008 after jumping into the Raccoon River near his home town of Jefferson, Iowa. The other, fourteen-year-old Avonte Oquendo of Queens, New York, drowned in New York’s East River in 2014. The purpose of the legislation is to equip families and communities with additional tools and resources to help avoid similar tragedies.

II. HISTORY OF THE BILL AND COMMITTEE CONSIDERATION

A. INTRODUCTION OF THE BILL

On March 1, 2016, Senator Charles Schumer introduced Kevin and Avonte’s Law of 2016. Senators Chuck Grassley and Thom Tillis were original cosponsors, and Senators Richard Burr, Chris Coons, Richard Durbin, Amy Klobuchar, and Bill Nelson later joined as cosponsors of the legislation. The bill was referred to the Committee on the Judiciary.

B. COMMITTEE CONSIDERATION

On April 14, 2016, the Committee voted to report Kevin and Avonte’s Law of 2016, without amendment, favorably to the Senate. The Committee proceeded by roll call vote as follows:

Tally: 15 Yeas, 5 Nays

Yeas (15): Hatch (R–UT), Graham (R–SC), Cornyn (R–TX), Vitter (R–LA), Tillis (R–NC), Leahy (D–VT), Feinstein (D–CA), Schumer (D–NY), Durbin (D–IL), Whitehouse (D–RI), Klobuchar (D–MN), Franken (D–MN), Coons (D–DE), Blumenthal (D–CT), Grassley (R–IA).

Nays (5): Sessions (R–AL), Cruz (R–TX), Flake (R–AZ), Perdue (R–GA), Lee (R–UT).

III. SECTION-BY-SECTION SUMMARY OF THE BILL

Section 1. Short title

This section provides that the legislation may be cited as the “Kevin and Avonte’s Law of 2016.”

TITLE I—MISSING ALZHEIMER’S DISEASE PATIENT ALERT PROGRAM REAUTHORIZATION

Sec. 101. Short title

This section provides that this title may be cited as the “Missing Americans Alert Program Act of 2016.”

Sec. 102. Reauthorization of the Missing Alzheimer’s Disease Patient Alert Program

This section adds a grant program support for individuals with autism and other developmental disabilities to the existing Missing Alzheimer’s Disease Patient Alert Program. It provides that grants to reduce injury and death of such individuals shall be awarded to State and local law enforcement, public safety agencies, or non-profit agencies. Such grants may be used to develop, establish, and operate tracking technology programs for individuals with dementia or developmental disabilities. These programs may include informational resources and other necessary training tools for families and guardians of individuals who wander away from a supervised setting due to their condition. The Attorney General shall solicit applications for grants by posting a request on the Department of Justice’s website. The program also calls for priority in grant making to be accorded to agencies that partner with nonprofits having a direct link to individuals or families of individuals with dementia or developmental disabilities.

This section authorizes \$2 million to be appropriated to the program annually in each of fiscal years 2017 through 2021. In that time period, the Inspector General of the Department of Justice will conduct audits of the program. This section also specifies certain requirements for nonprofit organizations seeking a grant award; imposes specified limits on conference expenditures; and requires the Attorney General to take steps to avoid duplicative grants.

TITLE II—EDUCATION AND OUTREACH

Sec. 201. Activities by the National Center for Missing and Exploited Children

This section clarifies that the National Center for Missing and Exploited Children may use a portion of its annual grant from the Department of Justice to provide technical assistance and training to agencies and individuals in the prevention, investigation, prosecution and treatment of cases involving missing children who have developmental disabilities such as autism.

TITLE III—PRIVACY PROTECTIONS

Sec. 301. Definitions

This section defines terms and phrases used in the Act, including “child,” “Indian tribe,” “law enforcement agency,” “State,” and “unit of local government.”

Sec. 302. Standards and best practices for use of tracking devices

This section outlines the process the Attorney General must follow to determine best practices and standards for the locative tracking technology program authorized under this legislation. (Such a process must include establishing a complaint and investigation process; establishing privacy protection procedures; adopting measures to protect the civil rights and liberties of individuals who are assigned tracking devices; establishing criteria to ensure use of the tracking device is the least restrictive alternative to prevent the risk of a child’s injury or death; developing training for law enforcement personnel to recognize signs of child abuse; and determining who may have direct access to the tracking system, among other requirements.) This section also mandates that each entity that receives grant funds must comply with any such standards and best practices established by the Attorney General.

IV. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

The Committee sets forth, with respect to the bill, S. 2614, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

MAY 3, 2016.

Hon. CHUCK GRASSLEY,
Chairman, Committee on the Judiciary
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2614, the Kevin and Avonte’s Law of 2016.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz.

Sincerely,

KEITH HALL, DIRECTOR

Enclosure.

S.2614—Kevin and Avonte’s Law of 2016

Summary: S. 2614 would authorize the appropriation of \$2 million annually over the 2017–2021 period for the Department of Justice (DOJ) to make grants to State and local governments and non-profit organizations for programs to locate missing persons with dementia or developmental disabilities. Assuming appropriation of the authorized amounts and the historical rate of spending for similar activities, CBO estimates that implementing S. 2614 would cost \$7 million over the 2017–2021 period.

Pay-as-you-go procedures do not apply to this legislation because enacting it would not affect direct spending or revenues. CBO estimates that enacting S. 2614 would not increase net direct spending

or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

S. 2614 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

Estimated cost to the Federal Government: The estimated budgetary effects of S. 2614 are shown in the following table. The costs of this legislation fall within budget function 750 (administration of justice).

	By fiscal year, in millions of dollars—					
	2017	2018	2019	2020	2021	2017–2021
Increase In Spending Subject To Appropriations:						
Authorization Level	2	2	2	2	2	10
Estimated Outlays	*	1	2	2	2	7

Note: * = less than \$500,000.

Pay-As-You-Go-considerations: None.

Increase in long term direct spending and deficits: CBO estimates that enacting S. 2614 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

Intergovernmental and private sector impact: S. 2614 contains no intergovernmental or private-sector mandates as defined in UMRA. State and local governments would benefit from grants authorized in the bill. Any costs to those governments would result from complying with conditions of assistance.

Estimate prepared by: Federal Costs: Mark Grabowicz; Impact on State, Local, and Tribal Governments: Rachel Austin; Impact on the Private Sector: Paige Piper/Bach.

Estimate approved by: H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

V. REGULATORY IMPACT EVALUATION

In compliance with rule XXVI of the Standing Rules of the Senate, the Committee finds that no significant regulatory impact will result from the enactment of S. 2614.

VI. CONCLUSION

Kevin and Avonte’s Law of 2016, S.2614, addresses the need for tracking technology for individuals with dementia and developmental disabilities such as autism. It would add additional funding of \$2 million a year to the Missing Alzheimer’s Diseases Patient Alert Program, now called the Missing Americans Alert Program, to plan, design, establish, or operate tracking technology programs for individuals and families of individuals who wander away from a supervised setting due to their condition. This reauthorization measure also seeks to bolster oversight and accountability for the grant program.

VII. CHANGES TO EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S.2614, as reported, are shown as follows (existing law proposed to be omitted

is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

* * * * *

TITLE 42

CHAPTER 136—VIOLENT CRIME CONTROL AND LAW ENFORCEMENT

Subchapter XI—Protections for the Elderly

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SUBCHAPTER XI—PROTECTIONS FOR THE ELDERLY

[SEC. 240001. MISSING ALZHEIMER'S DISEASE PATIENT ALERT PROGRAM]

SEC. 240001. MISSING AMERICANS ALERT PROGRAM.

§ 14181. MISSING [ALZHEIMER'S DISEASE PATIENT] AMERICANS ALERT PROGRAM

[(a) GRANT

][The Attorney General shall, subject to the availability of appropriations, award a grant to an eligible organization to assist the organization in paying for the costs of planning, designing, establishing, and operating a Missing Alzheimer's Disease Patient Alert Program, which shall be a locally based, proactive program to protect and locate missing patients with Alzheimer's disease and related dementias.]

(a) *GRANT PROGRAM TO REDUCE INJURY AND DEATH OF MISSING AMERICANS WITH DEMENTIA AND DEVELOPMENTAL DISABILITIES.—Subject to the availability of appropriations to carry out this section, the Attorney General, through the Bureau of Justice Assistance and in consultation with the Secretary of Health and Human Services—*

(1) shall award grants to State and local law enforcement or public safety agencies to assist such agencies in designing, establishing, and operating locative tracking technology programs for individuals with forms of dementia, such as Alzheimer's Disease, or children with developmental disabilities, such as autism, who have wandered from safe environments; and

(2) shall award competitive grants to State and local law enforcement or public safety agencies and nonprofit organizations to assist such entities in planning, designing, establishing, or operating locally based, proactive programs to prevent wandering and locate missing individuals with forms of dementia, such as Alzheimer's Disease, or developmental disabilities, such as autism, who, due to their condition, wander from safe environments, including programs that—

(A) provide prevention and response information, including online training resources, and referrals to families or guardians of such individuals who, due to their condition, wander from a safe environment;

(B) provide education and training, including online training resources, to first responders, school personnel, clinicians, and the public in order to—

(i) increase personal safety and survival skills for such individuals who, due to their dementia or developmental disabilities, wander from safe environments;

(ii) facilitate the rescue and recovery of individuals who, due to their dementia or developmental disabilities, wander from safe environments; and

(iii) recognize and respond to endangered missing individuals with dementia or developmental disabilities who, due to their condition, wander from safe environments;

(C) provide prevention and response training and emergency protocols for school administrators, staff, and families or guardians of individuals with dementia, such as Alzheimer's Disease, or developmental disabilities, such as autism, to help reduce the risk of wandering by such individuals; and

(D) develop, operate, or enhance a notification or communications systems for alerts, advisories, or dissemination of other information for the recovery of missing individuals with forms of dementia, such as Alzheimer's Disease, or with developmental disabilities, such as autism.

(b) APPLICATION.—To be eligible to receive a competitive grant under subsection (a) of this section, an agency or organization shall submit an application to the Attorney General at such time, in such manner, and containing such information as the Attorney General may require, including, at a minimum, an assurance that the agency or organization will obtain and use assistance from private nonprofit organizations to support the program. *The Attorney General shall periodically solicit applications for grants under this section by publishing a request for applications in the Federal Register and by posting such a request on the website of the Department of Justice.*

[(c) ELIGIBLE ORGANIZATION

[(The Attorney General shall award the grant described in subsection (a) of this section to a national voluntary organization that has a direct link to patients, and families of patients, with Alzheimer's disease and related dementias.

[(d) AUTHORIZATION OF APPROPRIATIONS

[(There are authorized to be appropriated to carry out this section

[(1) \$900,000 for fiscal year 1996;

[(2) \$900,000 for fiscal year 1997; and

[(3) \$900,000 for fiscal year 1998.]

(c) PREFERENCE.—*In awarding grants under subsection (a)(1), the Attorney General shall give preference to law enforcement or public safety agencies that partner with nonprofit organizations that have a direct link to individuals, and families of individuals, with forms of dementia, such as Alzheimer's Disease, or developmental disabilities, such as autism.*

(d) AUTHORIZATION OF APPROPRIATIONS—*There are authorized to be appropriated to carry out this section \$2,000,000 for each of fiscal years 2017 through 2021.*

(e) *GRANT ACCOUNTABILITY.*—All grants awarded by the Attorney General under this section shall be subject to the following accountability provisions:

(1) *AUDIT REQUIREMENT.*—

(A) *DEFINITION.*—In this paragraph, the term ‘unresolved audit finding’ means a finding in the final audit report of the Inspector General of the Department of Justice that the audited grantee has utilized grant funds for an unauthorized expenditure or otherwise unallowable cost that is not closed or resolved within 12 months from the date when the final audit report is issued.

(B) *AUDITS.*—Beginning in the first fiscal year beginning after the date of enactment of this subsection, and in each fiscal year thereafter, the Inspector General of the Department of Justice shall conduct audits of recipients of grants under this section 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.

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

(D) *PRIORITY.*—In awarding grants under this section, the Attorney General shall give priority to eligible applicants that did not have an unresolved audit finding during the 3 fiscal years before submitting an application for a grant under this section.

(E) *REIMBURSEMENT.*—If an entity is awarded grant funds under this section during the 2-fiscal-year period during which the entity is barred from receiving grants under subparagraph (C), the Attorney General shall—

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

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

(2) *NONPROFIT ORGANIZATION REQUIREMENTS.*—

(A) *DEFINITION OF NONPROFIT ORGANIZATION.*—For purposes of this paragraph and the grant programs under this part, 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 may not award a grant under this part 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 this section and uses the procedures prescribed in regulations to create a rebuttable presumption of reasonableness for the compensation of its officers, direc-

tors, 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 subparagraph available for public inspection.

(3) CONFERENCE EXPENDITURES.—

(A) LIMITATION.—No amounts made available to the Department of Justice under this section may be used by the Attorney General, or by any individual or entity awarded discretionary funds through a cooperative agreement under this section, to host or support any expenditure for conferences that uses more than \$20,000 in funds made available by the Department of Justice, unless the head of the relevant agency or department, provides prior written authorization that the funds may be expended to host the 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, beverages, audio-visual equipment, honoraria for speakers, and 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 under this paragraph.

(4) ANNUAL CERTIFICATION.—Beginning in the first fiscal year beginning after the date of enactment of this subsection, the Attorney General shall submit, to the Committee on the Judiciary and the Committee on Appropriations of the Senate and the Committee on the Judiciary and the Committee on Appropriations of the House of Representatives, an annual certification—

(A) indicating whether—

(i) all audits issued by the Office of the Inspector General under paragraph (1) have been completed and reviewed by the appropriate Assistant Attorney General or Director;

(ii) all mandatory exclusions required under paragraph (1)(C) have been issued; and

(iii) all reimbursements required under paragraph (1)(E) have been made; and

(B) that includes a list of any grant recipients excluded under paragraph (1) from the previous year.

(f) PREVENTING DUPLICATIVE GRANTS.—

(1) IN GENERAL.—Before the Attorney General awards a grant to an applicant under this section, the Attorney General shall compare potential grant awards with other grants awarded by the Attorney General to determine if grant awards are or have been awarded for a similar purpose.

(2) REPORT.—If the Attorney General awards grants to the same applicant for a similar purpose the Attorney General shall

submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report that includes—

(A) a list of all such grants awarded, including the total dollar amount of any such grants awarded; and

(B) the reason the Attorney General awarded multiple grants to the same applicant for a similar purpose.

* * * * *

TITLE 42

CHAPTER 72—JUVENILE JUSTICE AND DELINQUENCY PREVENTION

Subchapter IV—Missing Children

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§ 5773. Duties and Functions of the Administrator

(b) ANNUAL GRANT TO NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN.—

(1) IN GENERAL.—The Administrator shall annually make a grant to the Center, which shall be used to—

* * * * *

(H) Provide technical assistance and training to law enforcement agencies, State and local governments, elements of the criminal justice system, public and private nonprofit agencies, and individuals in the prevention, investigation, prosecution, and treatment of cases involving missing and exploited children, *including cases involving children with developmental disabilities such as autism.*

