

111TH CONGRESS
1ST SESSION

H. R. 68

To increase the evidentiary standard required to convict a person for a drug offense, to require screening of law enforcement officers or others acting under color of law participating in drug task forces, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 6, 2009

Ms. JACKSON-LEE of Texas introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To increase the evidentiary standard required to convict a person for a drug offense, to require screening of law enforcement officers or others acting under color of law participating in drug task forces, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “No More Tulias: Drug
5 Law Enforcement Evidentiary Standards Improvement
6 Act of 2009”.

7 **SEC. 2. FINDINGS; SENSE OF CONGRESS.**

8 (a) FINDINGS.—Congress finds the following:

1 (1) In recent years it has become clear that
2 programs funded by the Edward Byrne Memorial
3 Justice Assistance Grant program (referred to in
4 this Act as the “Byrne grants program”) have per-
5 petuated racial disparities, corruption in law enforce-
6 ment, and the commission of civil rights abuses
7 across the country. This is especially the case when
8 it comes to the program’s funding of hundreds of re-
9 gional antidrug task forces because the grants for
10 these antidrug task forces have been dispensed to
11 State governments with very little Federal oversight
12 and have been prone to misuse and corruption.

13 (2) Numerous Government Accountability Of-
14 fice reports have found that the Department of Jus-
15 tice has inadequately monitored grants provided
16 under the Byrne grants program. A 2001 General
17 Accounting Office report found that one-third of the
18 grants did not contain required monitoring plans.
19 Seventy percent of files on such grants did not con-
20 tain required progress reports. Forty-one percent of
21 such files did not contain financial reports covering
22 the full grant period. A 2002 report by the Heritage
23 Foundation reported that “there is virtually no evi-
24 dence” that the Byrne grants program has been suc-

1 cessful in reducing crime and that the program lacks
2 “adequate measures of performance”.

3 (3) A 2002 report by the American Civil Lib-
4 erties Union of Texas identified 17 recent scandals
5 involving antidrug task forces in Texas that receive
6 funds under the Byrne grants program. Such scan-
7 dals include cases of the falsification of government
8 records, witness tampering, fabricating evidence,
9 false imprisonment, stealing drugs from evidence
10 lockers, selling drugs to children, large-scale racial
11 profiling, sexual harassment, and other abuses of of-
12 ficial capacity. Recent scandals in other States in-
13 clude the misuse of millions of dollars in Byrne
14 grants program money in Kentucky and Massachu-
15 setts, wrongful convictions based on police perjury in
16 Missouri, and negotiations with drug offenders to
17 drop or lower their charges in exchange for money
18 or vehicles in Alabama, Arkansas, Georgia, Massa-
19 chusetts, New York, Ohio, and Wisconsin.

20 (4) The most well-known Byrne-funded task
21 force scandal occurred in Tulia, Texas, where dozens
22 of African-American residents (totaling over 16 per-
23 cent of the town’s African-American population)
24 were arrested, prosecuted, and sentenced to decades
25 in prison, based solely on the uncorroborated testi-

1 mony of one undercover officer whose background
2 included past allegations of misconduct, sexual har-
3 assment, unpaid debts, and habitual use of a racial
4 epithet. The undercover officer was allowed to work
5 alone, and not required to provide audiotapes, video
6 surveillance, or eyewitnesses to corroborate his alle-
7 gations. Despite the lack of physical evidence or cor-
8 roboration, the charges were vigorously prosecuted.
9 After the first few trials resulted in convictions and
10 lengthy sentences, many defendants accepted plea
11 bargains. Suspicions regarding the legitimacy of the
12 charges eventually arose after two of the accused de-
13 fendants were able to produce convincing alibi evi-
14 dence to prove that they were out of State or at
15 work at the time of the alleged drug purchases.
16 Texas Governor Rick Perry eventually pardoned the
17 Tulia defendants (after four years of imprisonment),
18 but these kinds of scandals continue to plague Byrne
19 grant program spending.

20 (5) A case arose in a Federal court in Waco,
21 Texas concerning the wrongful arrests of 28 Afri-
22 can-Americans out of 4,500 other residents of
23 Hearne, Texas. In November 2000, these individuals
24 were arrested on charges of possession or distribu-
25 tion of crack cocaine, and they subsequently filed a

1 case against the county government. On May 11,
2 2005, a magistrate judge found sufficient evidence
3 that a Byrne-funded antidrug task force had rou-
4 tinely targeted African-Americans to hold the county
5 liable for the harm suffered by the plaintiffs. Plain-
6 tiffs in that lawsuit alleged that for the past 15
7 years, based on the uncorroborated tales of inform-
8 ants, task force members annually raided the Afri-
9 can-American community in eastern Hearne to ar-
10 rest the residents identified by the confidential in-
11 formants, resulting in the arrest and prosecution of
12 innocent citizens without cause. On the eve of trial
13 the counties involved in the Hearne task force scan-
14 dal settled the case, agreeing to pay financial dam-
15 ages to the plaintiffs.

16 (6) Scandals related to the Byrne grants pro-
17 gram have grown so prolific that the Texas legisla-
18 ture has passed several reforms in response to them,
19 including outlawing racial profiling and changing
20 Texas law to prohibit drug offense convictions based
21 solely on the word of an undercover informant. The
22 Criminal Jurisprudence Committee of the Texas
23 House of Representatives issued a report in 2004
24 recommending that all of the State's federally fund-
25 ed antidrug task forces be abolished because they

1 are inherently prone to corruption. The Committee
2 reported, “Continuing to sanction task force oper-
3 ations as stand-alone law enforcement entities—with
4 widespread authority to operate at will across mul-
5 tiple jurisdictional lines—should not continue. The
6 current approach violates practically every sound
7 principle of police oversight and accountability appli-
8 cable to narcotics interdiction.” The Texas legisla-
9 ture passed a law that ends the ability of a narcotics
10 task force to operate as an entity with no clear ac-
11 countability. The legislation transfers authority for
12 multicounty drug task forces to the Department of
13 Public Safety and channels one-quarter of asset for-
14 feiture proceeds received by the task forces to a spe-
15 cial fund to support drug abuse prevention pro-
16 grams, drug treatment, and other programs de-
17 signed to reduce drug use in the county where the
18 assets are seized.

19 (7) Texas’s “corroboration” law was passed
20 thanks to a coalition of Christian conservatives and
21 civil rights activists. As one Texas preacher related,
22 requiring corroboration “puts a protective hedge
23 around the ninth commandment, ‘You shall not bear
24 false witness against your neighbor.’ As long as peo-

1 ple bear false witness against their neighbors, this
2 Biblical law will not be outdated.”

3 (8) During floor debate, conservative Texas leg-
4 islators pointed out that Mosaic law requires cor-
5 roborations: “One witness shall not rise up against a
6 man for any iniquity, or for any sin, in any sin that
7 he sinneth: at the mouth of two witnesses, or at the
8 mouth of three witnesses, shall the matter be estab-
9 lished.” Deuteronomy 19:15. Jesus concurred with
10 the corroboration rule: “If thy brother shall trespass
11 against thee, go and tell him his fault between thee
12 and him alone. . . . But if he will not hear thee,
13 then take with thee one or two more, that in the
14 mouth of two or three witnesses every word may be
15 established.” Matthew 18:15–16.

16 (9) Texas’s “corroboration” law had an imme-
17 diate positive impact. Once prosecutors needed more
18 than just the word of one person to convict someone
19 of a drug offense they began scrutinizing law en-
20 forcement tactics. This new scrutiny led to the un-
21 covering of massive corruption and civil rights abuse
22 by the Dallas police force. In what became known
23 nationally as the “Sheetrock” scandal, Dallas police
24 officers and undercover informants were found to
25 have set up dozens of innocent people, mostly Mexi-

1 can immigrants, by planting fake drugs on them
2 consisting of chalk-like material used in Sheetrock
3 and other brands of wallboard. The revelations led
4 to the dismissal of over 40 cases (although some of
5 those arrested were already deported). In April
6 2005, a former Dallas narcotics detective was sen-
7 tenced to five years in prison for his role in the
8 scheme. Charges against others are pending.

9 (10) Many regional antidrug task forces receive
10 up to 75 percent of their funding from the Byrne
11 grant program. As such, the United States Govern-
12 ment is accountable for corruption and civil rights
13 abuses inherent in their operation.

14 (b) SENSE OF CONGRESS.—It is the sense of Con-
15 gress that—

16 (1) grants under the Byrne grants program
17 should be prohibited for States that do not exercise
18 effective control over antidrug task forces;

19 (2) at a minimum, no State that fails to pro-
20 hibit criminal convictions based solely on the testi-
21 mony of a law enforcement officer or informants
22 should receive a grant under such program; and

23 (3) corroborative evidence, such as video or
24 audio tapes, drugs, and money, should always be re-
25 quired for such criminal convictions to be sustained.

1 **SEC. 3. LIMITATION ON RECEIPT OF BYRNE GRANT FUNDS**
2 **AND OTHER DEPARTMENT OF JUSTICE LAW**
3 **ENFORCEMENT ASSISTANCE.**

4 (a) LIMITATION.—For any fiscal year, a State shall
5 not receive any amount that would otherwise be allocated
6 to that State under section 505(a) of the Omnibus Crime
7 Control and Safe Streets Act of 1968 (42 U.S.C.
8 3755(a)), or any amount from any other law enforcement
9 assistance program of the Department of Justice, unless
10 the State—

11 (1) does not fund any antidrug task forces for
12 that fiscal year; or

13 (2) has in effect throughout the State laws that
14 ensure—

15 (A) a person is not convicted of a drug of-
16 fense unless the fact that a drug offense was
17 committed, and the fact that the person com-
18 mitted that offense, are each supported by evi-
19 dence other than the eyewitness testimony of a
20 law enforcement officer or an individual acting
21 on behalf of a law enforcement officer; and

22 (B) a law enforcement officer does not par-
23 ticipate in an antidrug task force unless the
24 honesty and integrity of that officer is evalu-
25 ated and found to be at an appropriately high
26 level.

1 (b) REGULATIONS.—The Attorney General shall pre-
 2 scribe regulations to carry out subsection (a).

3 (c) REALLOCATION.—Amounts not allocated by rea-
 4 son of subsection (a) shall be reallocated to States not dis-
 5 qualified by failure to comply with such subsection.

6 **SEC. 4. COLLECTION OF DATA.**

7 (a) IN GENERAL.—A State that receives Federal
 8 funds pursuant to eligibility under section 3(a)(2), with
 9 respect to a fiscal year, shall collect data, for the most
 10 recent year for which funds were allocated to such State,
 11 with respect to the—

12 (1) racial distribution of charges made during
 13 that year;

14 (2) nature of the criminal law specified in the
 15 charges made; and

16 (3) city or law enforcement jurisdiction in
 17 which the charges were made.

18 (b) REPORT.—As a condition of receiving Federal
 19 funds pursuant to section 3(a)(2), a State shall submit
 20 to Congress the data collected under subsection (a) by not
 21 later than the date that is 180 days prior to the date on
 22 which such funds are awarded for a fiscal year.

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