

116TH CONGRESS
1ST SESSION

S. 855

To amend title 18, United States Code, to make it a criminal offense for individuals to engage in sexual acts while acting under color of law or with individuals in their custody, to encourage States to adopt similar laws, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 25, 2019

Mr. BLUMENTHAL (for himself, Mr. BOOKER, and Ms. ERNST) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, to make it a criminal offense for individuals to engage in sexual acts while acting under color of law or with individuals in their custody, to encourage States to adopt similar laws, 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 “Closing the Law En-
5 forcement Consent Loophole Act of 2019”.

1 **SEC. 2. PROHIBITION ON ENGAGING IN SEXUAL ACTS**
 2 **WHILE ACTING UNDER COLOR OF LAW.**

3 (a) IN GENERAL.—Section 2243 of title 18, United
 4 States Code, is amended—

5 (1) in the section heading, by adding at the end
 6 the following: “**or by any person acting**
 7 **under color of law**”;

8 (2) by redesignating subsections (c) and (d) as
 9 subsections (d) and (e), respectively;

10 (3) by inserting after subsection (b) the fol-
 11 lowing:

12 “(c) OF AN INDIVIDUAL BY ANY PERSON ACTING
 13 UNDER COLOR OF LAW.—

14 “(1) IN GENERAL.—Whoever, acting under
 15 color of law, knowingly engages in a sexual act with
 16 an individual, including an individual who is under
 17 arrest, in detention, or otherwise in the actual cus-
 18 tody of any Federal law enforcement officer, shall be
 19 fined under this title, imprisoned not more than 15
 20 years, or both.

21 “(2) DEFINITION.—In this subsection, the term
 22 ‘sexual act’ has the meaning given the term in sec-
 23 tion 2246.”; and

24 (4) in subsection (d), as so redesignated, by
 25 adding at the end the following:

1 “(3) In a prosecution under subsection (c), it is not
 2 a defense that the other individual consented to the sexual
 3 act.”.

4 (b) DEFINITION.—Section 2246 of title 18, United
 5 States Code, is amended—

6 (1) in paragraph (5), by striking “and” at the
 7 end;

8 (2) in paragraph (6), by striking the period at
 9 the end and inserting “; and”; and

10 (3) by inserting after paragraph (6) the fol-
 11 lowing:

12 “(7) the term ‘Federal law enforcement officer’
 13 has the meaning given the term in section 115.”.

14 (c) CLERICAL AMENDMENT.—The table of sections
 15 for chapter 109A of title 18, United States Code, is
 16 amended by amending the item related to section 2243
 17 to read as follows:

“2243. Sexual abuse of a minor or ward or by any person acting under color
 of law.”.

18 **SEC. 3. INCENTIVES FOR STATES.**

19 (a) AUTHORITY TO MAKE GRANTS.—The Attorney
 20 General is authorized to make grants to States that have
 21 in effect a law that—

22 (1) makes it a criminal offense for any person
 23 acting under color of law of the State to engage in
 24 a sexual act with an individual, including an indi-

1 vidual who is under arrest, in detention, or otherwise
2 in the actual custody of any law enforcement officer;
3 and

4 (2) prohibits a person charged with an offense
5 described in paragraph (1) from asserting the con-
6 sent of the other individual as a defense.

7 (b) REPORTING REQUIREMENT.—A State that re-
8 ceives a grant under this section shall submit to the Attor-
9 ney General, on an annual basis, information on—

10 (1) the number of reports made to law enforce-
11 ment agencies in that State regarding persons en-
12 gaging in a sexual act while acting under color of
13 law during the previous year; and

14 (2) the disposition of each case in which sexual
15 misconduct by a person acting under color of law
16 was reported during the previous year.

17 (c) APPLICATION.—A State seeking a grant under
18 this section shall submit an application to the Attorney
19 General at such time, in such manner, and containing
20 such information as the Attorney General may reasonably
21 require, including information about the law described in
22 subsection (a).

23 (d) GRANT AMOUNT.—The amount of a grant to a
24 State under this section shall be in an amount that is not
25 greater than 10 percent of the average of the total amount

1 of funding of the 3 most recent awards that the State re-
2 ceived under the following grant programs:

3 (1) Part T of title I of the Omnibus Crime Con-
4 trol and Safe Streets Act of 1968 (34 U.S.C. 10441
5 et seq.) (commonly referred to as the “STOP Vio-
6 lence Against Women Formula Grant Program”).

7 (2) Section 41601 of the Violence Against
8 Women Act of 1994 (34 U.S.C. 12511) (commonly
9 referred to as the “Sexual Assault Services Pro-
10 gram”).

11 (e) GRANT TERM.—

12 (1) IN GENERAL.—The Attorney General shall
13 provide an increase in the amount provided to a
14 State under the grant programs described in sub-
15 section (d) for a 2-year period.

16 (2) RENEWAL.—A State that receives a grant
17 under this section may submit an application for a
18 renewal of such grant at such time, in such manner,
19 and containing such information as the Attorney
20 General may reasonably require.

21 (3) LIMIT.—A State may not receive a grant
22 under this section for more than 4 years.

23 (f) USES OF FUNDS.—A State that receives a grant
24 under this section shall use—

1 (1) 25 percent of such funds for any of the per-
 2 missible uses of funds under the grant program de-
 3 scribed in paragraph (1) of subsection (d); and

4 (2) 75 percent of such funds for any of the per-
 5 missible uses of funds under the grant program de-
 6 scribed in paragraph (2) of subsection (d).

7 (g) AUTHORIZATION OF APPROPRIATIONS.—There
 8 are authorized to be appropriated to carry out this chapter
 9 \$5,000,000 for each of fiscal years 2020 through 2024.

10 **SEC. 4. REPORTS TO CONGRESS.**

11 (a) REPORT BY ATTORNEY GENERAL.—Not later
 12 than 1 year after the date of enactment of this Act, and
 13 each year thereafter, the Attorney General shall submit
 14 to Congress a report containing—

15 (1) the information required to be reported to
 16 the Attorney General under section 3(b); and

17 (2) information on—

18 (A) the number of reports made during the
 19 previous year, to Federal law enforcement agen-
 20 cies regarding persons engaging in a sexual act
 21 while acting under color of law; and

22 (B) the disposition of each case in which
 23 sexual misconduct by a person acting under
 24 color of law was reported.

1 (b) REPORT BY GAO.—Not later than 1 year after
2 the date of enactment of this Act, and each year there-
3 after, the Comptroller General of the United States shall
4 submit to Congress a report on any violations of section
5 2243(c) of title 18, United States Code, as amended by
6 section 2, committed during the 1-year period covered by
7 the report.

8 **SEC. 5. DEFINITION.**

9 In this Act, the term “sexual act” has the meaning
10 given the term in section 2246 of title 18, United States
11 Code.

