

CFSO

THE DEBBIE SMITH ACT HAS PASSED THE HOUSE AND SENATE

The Debbie Smith Act has passed the House and Senate which will reauthorize the program until 2029. This authorization also contains the audits included in the previous versions. Below is the actual text. We have also included below the actual text of Debbie Smith now that the bill has passed. This language will guide the grants from this point on. If you should have any questions, please do not hesitate to ask the CFSO.

**H. R. 1105, AN ACT** to amend the DNA Analysis Backlog Elimination Act of 2000 to reauthorize the Debbie Smith DNA Backlog Grant Program, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Debbie Smith Act of 2023”.

**SEC. 2. REAUTHORIZATION.**

Section 2(j) of the DNA Analysis Backlog Elimination Act of 2000 (34 U.S.C. 40701(j)) is amended by striking “fiscal years 2019 through 2024” and inserting “fiscal years 2024 through 2029”.

**SEC. 3. AUDITS TO PROTECT INTEGRITY OF GRANT AWARDS.**

Section 2(c)(4) of the DNA Analysis Backlog Elimination Act of 2000 (34 U.S.C. 40701(c)(4)) is amended by striking “2022” and inserting “2029”.

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# 34 U.S. Code § 40701 - The Debbie Smith DNA Backlog Grant Program

**(a) Authorization of grants**-The Attorney General may make grants to eligible **States** or units of local government for use by the **State** or unit of local government for the following purposes:

- (1) To carry out, for inclusion in the Combined DNA Index System of the Federal Bureau of Investigation, DNA analyses of samples collected under applicable legal authority.
- (2) To carry out, for inclusion in such Combined DNA Index System, DNA analyses of samples from crime scenes, prioritizing, to the extent practicable consistent with public safety considerations [1] samples from rape kits, samples from other sexual assault evidence, and samples taken in cases without an identified suspect.

(3) To increase the capacity of laboratories owned by the State or by units of local government to carry out DNA analyses of samples specified in paragraph (1) or (2).

(4) To collect DNA samples specified in paragraph (1).

(5) To ensure that DNA testing and analysis of samples from crimes, including sexual assault and other serious violent crimes, are carried out in a timely manner.

(6) To implement a DNA arrestee collection process consistent with subchapter III of this chapter.

(7) To conduct an audit consistent with subsection (n) of the samples of sexual assault evidence that are in the possession of the State or unit of local government and are awaiting testing.

(8) To ensure that the collection and processing of DNA evidence by law enforcement agencies from crimes, in particular, sexual assault and other violent crimes against persons, is carried out in an appropriate and timely manner and in accordance with the protocols and practices developed under subsection (o)(1).

(9) To increase the capacity of State and local prosecution offices to address the backlog of violent crime cases in which suspects have been identified through DNA evidence.

**(b) Eligibility**—For a State or unit of local government to be eligible to receive a grant under this section, the chief executive officer of the State or unit of local government shall submit to the Attorney General an application in such form and containing such information as the Attorney General may require. The application shall, as required by the Attorney General—

(1) provide assurances that the State or unit of local government has implemented, or will implement not later than 120 days after the date of such application, a comprehensive plan for the expeditious DNA analysis of samples in accordance with this section;

(2) include a certification that each DNA analysis carried out under the plan shall be maintained pursuant to the privacy requirements described in section 12592(b)(3) of this title;

(3) include a certification that the State or unit of local government has determined, by statute, rule, or regulation, those offenses under State law that shall be treated for purposes of this section as qualifying State offenses;

(4) specify the allocation that the State or unit of local government shall make, in using grant amounts to carry out DNA analyses of samples, as

between samples specified in subsection (a)(1) and samples specified in subsection (a)(2);

(5) specify that portion of grant amounts that the **State** or unit of local government shall use for the purpose specified in subsection (a)(3);

(6) if submitted by a unit of local government, certify that the unit of local government has taken, or is taking, all necessary steps to ensure that it is eligible to include, directly or through a **State** law enforcement agency, all analyses of samples for which it has requested funding in the Combined DNA Index System;

(7) specify that portion of grant amounts that the **State** or unit of local government shall use for the purpose specified in subsection (a)(4); and

(8) provide assurances that the DNA section of the laboratory to be used to conduct DNA analyses has a written policy that prioritizes the analysis of, to the extent practicable consistent with public safety considerations, samples from homicides and sexual assaults.

**(c) Formula for distribution of grants**

(1) **In general** The Attorney General shall distribute grant amounts, and establish appropriate grant conditions under this section, in conformity with a formula or formulas that are designed to effectuate a distribution of funds among eligible **States** and units of local government that—

(A) maximizes the effective utilization of DNA technology to solve crimes and protect public safety; and

(B) allocates grants among eligible entities fairly and efficiently to address jurisdictions in which significant backlogs exist, by considering—

(i) the number of offender and casework samples awaiting DNA analysis in a jurisdiction;

(ii) the population in the jurisdiction; and

(iii) the number of part 1 violent crimes in the jurisdiction.

(2) **Minimum amount** The Attorney General shall allocate to each **State** not less than 0.50 percent of the total amount appropriated in a fiscal year for grants under this section, except that the United **States** Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands shall each be allocated 0.125 percent of the total appropriation.

(3) **Limitation** Grant amounts distributed under paragraph (1) shall be awarded to conduct DNA analyses of samples from casework or from victims of crime under subsection (a)(2) in accordance with the following limitations:

(A) For fiscal year 2009, not less than 40 percent of the grant amounts shall be awarded for purposes under subsection (a)(2).

(B) For each of the fiscal years 2019 through 2024, not less than 40 percent of the grant amounts shall be awarded for purposes under subsection (a)(2).

(C) For each of fiscal years 2019 through 2024, not less than 75 percent of the total grant amounts shall be awarded for a combination of purposes under paragraphs (1), (2), and (3) of subsection (a).

**(4) Allocation of grant awards for audits** For each of fiscal years 2014 through 2022, not less than 5 percent, but not more than 7 percent, of the grant amounts distributed under paragraph (1) shall, if sufficient applications to justify such amounts are received by the Attorney General, be awarded for purposes described in subsection (a)(7), provided that none of the funds required to be distributed under this paragraph shall decrease or otherwise limit the availability of funds required to be awarded to [States](#) or units of local government under paragraph (3).

**(5) Allocation of grant awards for prosecutors** For each fiscal year, not less than 5 percent, but not more than 7 percent, of the grant amounts distributed under paragraph (1) shall, if sufficient applications to justify such amounts are received by the Attorney General, be awarded for purposes described in subsection (a)(9), provided that none of the funds required to be distributed under this paragraph shall decrease or otherwise limit the availability of funds required to be awarded to [States](#) or units of local government under paragraph (3).

**(d) Analysis of samples**

**(1) In general** A plan pursuant to subsection (b)(1) shall require that, except as provided in paragraph (3), each DNA analysis be carried out in a laboratory that satisfies quality assurance standards and is—

(A) operated by the [State](#) or a unit of local government; or

(B) operated by a private entity pursuant to a contract with the [State](#) or a unit of local government.

**(2) Quality assurance standards**

(A) The Director of the Federal Bureau of Investigation shall maintain and make available to [States](#) and units of local government a description of quality assurance protocols and practices that the Director considers adequate to assure the quality of a forensic laboratory.

(B) For purposes of this section, a laboratory satisfies quality assurance standards if the laboratory satisfies the quality control requirements described in paragraphs (1) and (2) of [section 12592\(b\) of this title](#).

**(3) Use of vouchers or contracts for certain purposes**

**(A)In general** A grant for the purposes specified in paragraph (1), (2), or (5) of subsection (a) may be made in the form of a voucher or contract for laboratory services, even if the laboratory makes a reasonable profit for the services.

**(B)Redemption** A voucher or contract under subparagraph (A) may be redeemed at a laboratory operated on a nonprofit or for-profit basis, by a private entity that satisfies quality assurance standards and has been approved by the Attorney General.

**(C)Payments** The Attorney General may use amounts authorized under subsection (j) to make payments to a laboratory described under subparagraph (B).

**(e)Restrictions on use of funds**

**(1)Nonsupplanting** Funds made available pursuant to this section shall not be used to supplant **State** or local government funds, but shall be used to increase the amount of funds that would, in the absence of Federal funds, be made available from **State** or local government sources for the purposes of this Act.

**(2)Administrative costs** A **State** or unit of local government may not use more than 3 percent of the funds it receives from this section for administrative expenses.

**(f)Reports to the Attorney General** Each **State** or unit of local government which receives a grant under this section shall submit to the Attorney General, for each year in which funds from a grant received under this section is expended, a report at such time and in such manner as the Attorney General may reasonably require, which contains—

**(1)** a summary of the activities carried out under the grant and an assessment of whether such activities are meeting the needs identified in the application; and

**(2)** such other information as the Attorney General may require.

**(g)Reports to Congress** Not later than 90 days after the end of each fiscal year for which grants are made under this section, the Attorney General shall submit to the Congress a report that includes—

**(1)** the aggregate amount of grants made under this section to each **State** or unit of local government for such fiscal year;

**(2)** a summary of the information provided by **States** or units of local government receiving grants under this section; and

**(3)** a description of the priorities and plan for awarding grants among eligible **States** and units of local government, and how such plan will ensure the effective use of DNA technology to solve crimes and protect public safety.

**(h) Expenditure records**

(1) **In general** Each **State** or unit of local government which receives a grant under this section shall keep records as the Attorney General may require to facilitate an effective audit of the receipt and use of grant funds received under this section.

(2) **Access** Each **State** or unit of local government which receives a grant under this section shall make available, for the purpose of audit and examination, such records as are related to the receipt or use of any such grant.

**(i) Definition** For purposes of this section, the term “**State**” means a **State** of the United **States**, the District of Columbia, the Commonwealth of Puerto **Rico**, the United **States** Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

**(j) Authorization of appropriations**

There are authorized to be appropriated to the Attorney General for grants under subsection (a) \$151,000,000 for each of fiscal years 2019 through 2024.

**(k) Use of funds for accreditation and audits** The Attorney General may distribute not more than 1 percent of the grant amounts under subsection (j)—

(1) to **States** or units of local government to defray the costs incurred by laboratories operated by each such **State** or unit of local government in preparing for accreditation or reaccreditation;

(2) in the form of additional grants to **States**, units of local government, or nonprofit professional organizations of persons actively involved in forensic science and nationally recognized within the forensic science community—

(A) to defray the costs of external audits of laboratories operated by such **State** or unit of local government, which participates in the National DNA Index System, to determine whether the laboratory is in compliance with quality assurance standards;

(B) to assess compliance with any plans submitted to the National Institute of Justice, which detail the use of funds received by **States** or units of local government under this Act; and

(C) to support future capacity building efforts; and

(3) in the form of additional grants to nonprofit professional associations actively involved in forensic science and nationally recognized within the forensic science community to defray the costs of training persons who conduct external audits of laboratories operated by **States** and units of local government and which participate in the National DNA Index System.

**(l) Use of funds for other forensic sciences** The Attorney General may award a grant under this section to a **State** or unit of local government to alleviate a backlog

of cases with respect to a forensic science other than DNA analysis if the **State** or unit of local government—

(1) certifies to the Attorney General that in such **State** or unit—

(A) all of the purposes set forth in subsection (a) have been met;

(B) a significant backlog of casework is not waiting for DNA analysis; and

(C) there is no need for significant laboratory equipment, supplies, or additional personnel for timely DNA processing of casework or offender samples; and

(2) demonstrates to the Attorney General that such **State** or unit requires assistance in alleviating a backlog of cases involving a forensic science other than DNA analysis.

**(m) External audits and remedial efforts** In the event that a laboratory operated by a **State** or unit of local government which has received funds under this Act has undergone an external audit conducted to determine whether the laboratory is in compliance with standards established by the Director of the Federal Bureau of Investigation, and, as a result of such audit, identifies measures to remedy deficiencies with respect to the compliance by the laboratory with such standards, the **State** or unit of local government shall implement any such remediation as soon as practicable.

**(n) Use of funds for auditing sexual assault evidence backlogs**

(1) **Eligibility** The Attorney General may award a grant under this section to a **State** or unit of local government for the purpose described in subsection (a)(7) only if the **State** or unit of local government—

(A) submits a plan for performing the audit of samples described in such subsection; and

(B) includes in such plan a good-faith estimate of the number of such samples.

(2) **Grant conditions** A **State** or unit of local government receiving a grant for the purpose described in subsection (a)(7)—

(A) may not enter into any contract or agreement with any non-governmental vendor laboratory to conduct an audit described in subsection (a)(7); and

(B) shall—

(i) not later than 1 year after receiving the grant, complete the audit referred to in paragraph (1)(A) in accordance with the plan submitted under such paragraph;

(ii) not later than 60 days after receiving **possession** of a sample of sexual assault evidence that was not in the **possession** of

the **State** or unit of local government at the time of the initiation of an audit under paragraph (1)(A), subject to paragraph (4)(F), include in any required reports under clause (v), the information listed under paragraph (4)(B);

(iii) for each sample of sexual assault evidence that is identified as **awaiting testing** as part of the audit referred to in paragraph (1)(A)—

(I) assign a unique numeric or alphanumeric identifier to each sample of sexual assault evidence that is in the **possession** of the **State** or unit of local government and is **awaiting testing**; and

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

(iv) provide that—

(I) the chief law enforcement officer of the **State** or unit of local government, respectively, is the individual responsible for the compliance of the **State** or unit of local government, respectively, with the reporting requirements described in clause (v); or

(II) the designee of such officer may fulfill the responsibility described in subclause (I) so long as such designee is an employee of the **State** or unit of local government, respectively, and is not an employee of any governmental laboratory or non-governmental vendor laboratory; and

(v) comply with all grantee reporting requirements described in paragraph (4).

**(3) Extension of initial deadline** The Attorney General may grant an extension of the deadline under paragraph (2)(B)(i) to a **State** or unit of local government that demonstrates that more time is required for compliance with such paragraph.

**(4) Sexual assault forensic evidence reports**

**(A) In general** For not less than 12 months after the completion of an initial count of sexual assault evidence that is **awaiting testing** during an audit referred to in paragraph (1)(A), a **State** or unit of local government that receives a grant award under subsection (a)(7) shall, not less than every 60 days, submit a report to the Department of



Justice, on a form prescribed by the Attorney General, which shall contain the information required under subparagraph (B).

**(B) Contents of reports** A report under this paragraph shall contain the following information:

- (i) The name of the **State** or unit of local government filing the report.
- (ii) The period of dates covered by the report.
- (iii) The cumulative total number of samples of sexual assault evidence that, at the end of the reporting period—
  - (I) are in the **possession** of the **State** or unit of local government at the reporting period;
  - (II) are **awaiting testing**; and
  - (III) the **State** or unit of local government has determined should undergo DNA or other appropriate forensic analyses.
- (iv) The cumulative total number of samples of sexual assault evidence in the **possession** of the **State** or unit of local government that, at the end of the reporting period, the **State** or unit of local government has determined should not undergo DNA or other appropriate forensic analyses, provided that the reporting form shall allow for the **State** or unit of local government, at its sole discretion, to explain the reasoning for this determination in some or all cases.
- (v) The cumulative total number of samples of sexual assault evidence in a total under clause (iii) that have been submitted to a laboratory for DNA or other appropriate forensic analyses.
- (vi) The cumulative total number of samples of sexual assault evidence identified by an audit referred to in paragraph (1)(A) or under paragraph (2)(B)(ii) for which DNA or other appropriate forensic analysis has been completed at the end of the reporting period.
- (vii) The total number of samples of sexual assault evidence identified by the **State** or unit of local government under paragraph (2)(B)(ii), since the previous reporting period.
- (viii) The cumulative total number of samples of sexual assault evidence described under clause (iii) for which the **State** or unit of local government will be barred within 12 months by any applicable statute of limitations from prosecuting a perpetrator of the sexual assault to which the sample relates.

**(C)Publication of reports**Not later than 7 days after the submission of a report under this paragraph by a **State** or unit of local government, the Attorney General shall, subject to subparagraph (D), publish and disseminate a facsimile of the full contents of such report on an appropriate internet website.

**(D)Personally identifiable information**The Attorney General shall ensure that any information published and disseminated as part of a report under this paragraph, which reports information under this subsection, does not include personally identifiable information or details about a sexual assault that might lead to the identification of the individuals involved.

**(E)Optional reporting**The Attorney General shall—

- (i)at the discretion of a **State** or unit of local government required to file a report under subparagraph (A), allow such **State** or unit of local government, at their sole discretion, to submit such reports on a more frequent basis; and
- (ii)make available to all **States** and units of local government the reporting form created pursuant to subparagraph (A), whether or not they are required to submit such reports, and allow such **States** or units of local government, at their sole discretion, to submit such reports for publication.

**(F)Samples exempt from reporting requirement** The reporting requirements described in paragraph (2) shall not apply to a sample of sexual assault evidence that—

- (i)is not considered criminal evidence (such as a sample collected anonymously from a victim who is unwilling to make a criminal complaint); or
- (ii)relates to a sexual assault for which the prosecution of each perpetrator is barred by a statute of limitations.

**(5)Definitions**In this subsection:

**(A)Awaiting testing**The term “**awaiting testing**” means, with respect to a sample of sexual assault evidence, that—

- (i)the sample has been collected and is in the **possession** of a **State** or unit of local government;
- (ii)DNA and other appropriate forensic analyses have not been performed on such sample; and
- (iii)the sample is related to a criminal case or investigation in which **final disposition** has not yet been reached.

**(B)Final disposition** The term “**final disposition**” means, with respect to a criminal case or investigation to which a sample of sexual assault evidence relates—

- (i) the conviction or acquittal of all suspected perpetrators of the crime involved;
- (ii) a determination by the **State** or unit of local government in **possession** of the sample that the case is unfounded; or
- (iii) a declaration by the victim of the crime involved that the act constituting the basis of the crime was not committed.

**(C)Possession**

- (i) **In general** The term “**possession**”, used with respect to **possession** of a sample of sexual assault evidence by a **State** or unit of local government, includes **possession** by an individual who is acting as an agent of the **State** or unit of local government for the collection of the sample.
- (ii) **Rule of construction** Nothing in clause (i) shall be construed to create or amend any Federal rights or privileges for non-governmental vendor laboratories described in regulations promulgated under **section 12591 of this title**.

**(o)Establishment of protocols, technical assistance, and definitions**

**(1)Protocols and practices** Not later than 18 months after March 7, 2013, the Director, in consultation with Federal, **State**, and local law enforcement agencies and government laboratories, shall develop and publish a description of protocols and practices the Director considers appropriate for the accurate, timely, and effective collection and processing of DNA evidence, including protocols and practices specific to sexual assault cases, which shall address appropriate steps in the investigation of cases that might involve DNA evidence, including—

**(A)how to determine—**

- (i) which evidence is to be collected by law enforcement personnel and forwarded for testing;
- (ii) the preferred order in which evidence from the same case is to be tested; and
- (iii) what information to take into account when establishing the order in which evidence from different cases is to be tested;

**(B)the establishment of a reasonable period of time in which evidence is to be forwarded by emergency response providers, law enforcement personnel, and prosecutors to a laboratory for testing;**

(C)the establishment of reasonable periods of time in which each stage of analytical laboratory testing is to be completed;

(D)systems to encourage communication within a State or unit of local government among emergency response providers, law enforcement personnel, prosecutors, courts, defense counsel, crime laboratory personnel, and crime victims regarding the status of crime scene evidence to be tested; and

(E)standards for conducting the audit of the backlog for DNA case work in sexual assault cases required under subsection (n).

**(2)Technical assistance and training**The Director shall make available technical assistance and training to support States and units of local government in adopting and implementing the protocols and practices developed under paragraph (1) on and after the date on which the protocols and practices are published.

**(3)Definitions**In this subsection, the terms “awaiting testing” and “possession” have the meanings given those terms in subsection (n).

(Pub. L. 106–546, § 2, Dec. 19, 2000, 114 Stat. 2726; Pub. L. 108–405, title II, §§ 202, 206, Oct. 30, 2004, 118 Stat. 2266, 2272; Pub. L. 109–162, title X, § 1003, Jan. 5, 2006, 119 Stat. 3085; Pub. L. 110–360, § 2, Oct. 8, 2008, 122 Stat. 4008; Pub. L. 112–253, § 6, Jan. 10, 2013, 126 Stat. 2409; Pub. L. 113–4, title X, §§ 1002, 1004, 1006, Mar. 7, 2013, 127 Stat. 127, 131, 134; Pub. L. 113–182, § 2, Sept. 29, 2014, 128 Stat. 1918; Pub. L. 115–107, § 3(a), Jan. 8, 2018, 131 Stat. 2266; Pub. L. 115–257, § 2(a), Oct. 9, 2018, 132 Stat. 3660; Pub. L. 116–104, § 2, Dec. 30, 2019, 133 Stat. 3272.)