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IMPROVING ASSISTANCE TO DOMESTIC AND SEXUAL VIOLENCE VICTIMS ACT OF 2009

OCTOBER 1, 2009.—Ordered to be printed

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

R E P O R T

together with

MINORITY VIEWS

[To accompany S. 327]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to which was referred the bill (S. 327), to amend the Violence Against Women Act of 1994 and the Omnibus Crime Control and Safe Streets Act of 1968 to improve assistance to domestic and sexual violence victims and provide for technical corrections, having considered the same, reports favorably thereon, with an amendment, and recommends that the bill, as amended, do pass.

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89–010

I. BACKGROUND AND PURPOSE OF THE IMPROVING ASSISTANCE TO DOMESTIC AND SEXUAL VIOLENCE VICTIMS ACT OF 2009

A. BACKGROUND

The Violence Against Women Act of 1994 was enacted as Title IV of the Violent Crime Control and Law Enforcement Act of 1994.[1] This legislation was Congress' initial effort to address the problem of gender-related violence in the United States, and its recognition of the severity and significance of domestic violence in American society. The Act was amended twice subsequent to the passage of the original law[2] to reauthorize existing grant programs and to enact new initiatives directed at discrete issues such as dating violence, sexual assault, and stalking.

The Violence Against Women Act is the centerpiece of Federal Government's effort to combat and ameliorate domestic violence and its effects on society. The Improving Assistance to Domestic and Sexual Violence Victims Act of 2009, S. 327, makes technical and other amendments to several areas of the current law in order to improve the administration and effectiveness of the Violence Against Women Act.

B. PURPOSE OF THE LEGISLATION

The bill seeks to make technical and other amendments to resolve issues identified in the current law so that the law's provisions may be carried out as effectively and efficiently as possible. Victim service providers and other non-governmental organizations play an instrumental role in the implementation of the Violence Against Women Act. Suggested improvements from experts in the field concerning the efficacy of the law are essential to congressional efforts to improve the law. As a result of substantial input from domestic violence organizations and practitioners in the field, as well as from the Department of Justice's Office on Violence Against Women, S. 327 addresses several areas for technical and substantive improvement in the current law. The Committee believes that these areas for improvement merit attention prior to a broader congressional reauthorization of the law.

The legislation makes substantial improvements to the current law's provisions for victim-requested HIV testing of an alleged sexual assault offender.[3] Under current law, unless a State can certify to the Attorney General that it has a law or regulation that requires the State, at a sexual assault victim's request, to administer an HIV test to an alleged offender within a certain period of time, the State forfeits five percent of its funding under VAWA's Grants to Encourage Arrest Policies and Enforcement of Protection Orders program. As the result of substantial opposition among the States to implementing a law or regulation requiring invasive medical testing of a non-convicted alleged offender, very few States and local jurisdictions have complied with this section of the law,[4] and thus have not fully benefited from the law's grant programs.

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[1] Pub. L. No. 103–322, 108 Stat. 1902, 42 U.S.C. § 13701 (2006).
[2] Pub. L. No. 106–386; Pub. L. No. 109–162.
[3] 42 U.S.C. § 3796hh (2006).
[4] According to data obtained from the Department of Justice's Office on Violence Against Women, of the 209 State and local jurisdictions (courts and Indian Tribal governments are excluded from the requirement) that have active grants under the Grants to Encourage Arrest Policies and Enforcement of Protection Orders Program (Arrest Program), only 32, or 16 percent,

The bill seeks to ameliorate this situation. The bill retains provisions allowing States to continue or implement a mechanism to permit a victim to request HIV testing of an alleged offender, but also allows a State, as an alternative to meeting the statutory requirement, to implement a testing and treatment regime for the victim of a sexual assault. In addition to victim testing, the bill would also provide, at no cost to the victim, counseling about disease transmission and treatment, as well as prophylaxis in accordance with guidance set forth by the Centers for Disease Control and Prevention. Under the bill, a State's implementation of either an offender testing mechanism, or a victim testing and treatment mechanism, would satisfy the certification requirement in order to maintain full funding eligibility under VAWA.

Along with providing a victim-focused alternative to the current law's requirements, the bill amends current provisions relating to offender testing. For offender testing, the bill establishes three alternative criteria that must be met before the State is required to carry out the requested testing within 48 hours: (1) the request must be made by the victim; (2) there has been a finding of probable cause that the alleged offender carried out the assault, and (3) the alleged offender is in custody or otherwise available for testing.

The purpose of this change is to address what the Committee believes are practical problems with the current law's provisions that allow for offender testing within 48 hours only after an indictment or information has been returned. Under current law, in order for a State to avoid a five percent penalty on Federal grant funding, the State must test an offender within 48 hours of indictment or information. Where an offender is unavailable for testing, despite an indictment or information, substantial practical problems are presented for a jurisdiction in complying with the law. Moreover, testing an offender within 48 hours of an indictment or information, which may be long after an assault, does little to address the medical needs of an assault victim who has been exposed to a disease.

The Committee believes that providing States with alternative or complementary means to meet the current certification requirements, in a manner focused on the needs of a sexual assault victim, will better respect the policy making process of the States in matters squarely within the State police power. The rigid imposition under current law of a single policy choice on the States through the withholding of important Federal funding has not resulted in significant compliance. The Committee therefore believes that additional flexibility for State policy makers in this regard is warranted.

The bill also clarifies the intent of the 2005 VAWA legislation, which sought to remove a grant matching requirement previously required of non-governmental victim service providers. After 2005, the Department of Justice interpreted these changes such that the matching requirement formerly paid by victim service providers was assumed by the State. This legislation clarifies that intent by making clear that States are not expected to assume grant match-

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have met the certification requirement at 42 U.S.C. § 3796hh. Of 27 State grantees under the Arrest program, 17 have not met the certification requirement. Of 182 local grantees under the Arrest program, 160 have not met the requirement.

ing requirements formerly required of victim service providers, as is currently the practice.

The legislation strengthens the limitation in current law related to the publication of protection orders on the internet to further protect the privacy of a victim of domestic violence.

The legislation expands the National Baseline Study on violence against Indian women to ensure that Alaska Native women are included in the study.

The legislation makes important improvements to provisions of Federal immigration law that serve to protect and obtain the assistance in criminal prosecutions of immigrant victims of trafficking and other serious crimes. The legislation ensures that immigrant trafficking victims who have been granted a visa will be able to petition to adjust their immigration status even where their temporary visa has expired. Due to a delay in the Department of Homeland Security's issuance of regulations for T visa adjustment of status, some T visa holders saw their legal status expire prior to the issuance of agency rules that were to contain a mechanism for an adjustment prior to visa expiration. This legislation would permit those whose T visas had expired prior to the publication of the rules to petition for adjustment of status.

The legislation streamlines the application standard for T and U visa applicants, makes a technical amendment to the 2005 VAWA legislation to ensure that derivative minor siblings of U visa recipients are eligible for the benefits intended by the 2005 VAWA legislation, and makes a conforming amendment to the Housing and Community Development Act to ensure that immigrant victims of domestic violence are eligible for housing benefits, as Congress intended.

The changes described above are among several important improvements to the Violence Against Women Act. As the legislative history of the Violence Against Women Act demonstrates, Congress has consistently responded with amendments to the law as societal needs evolve and as new challenges emerge. The bill continues Congress' efforts to continually improve the Violence Against Women Act as an important tool to combat domestic violence, sexual assault, and other related forms of violent crime.

II. History of the Bill and Committee Consideration

A. Introduction of the Bill

Senator Leahy introduced S. 327, the Improving Assistance to Domestic and Sexual Violence Victims Act of 2009, on January 26, 2009, and was subsequently joined by Senators Hatch, Klobuchar and Kaufman as cosponsors. The bill was referred to the Judiciary Committee.

B. Committee Consideration

1. Committee hearing

On June 10, 2009, the Committee held a hearing on "The Continued Importance of the Violence Against Women Act." This hearing addressed not only the merits of S. 327, but also the importance of examining the strengths and weaknesses of the Violence Against Women Act in preparation for the Act's upcoming reauthorization.

At the hearing, six witnesses testified in two panels: Acting Director of the Department of Justice's Office on Violence Against Women, Catherine Pierce, testified on Panel I; Actress and Advocate, Gabrielle Union; Executive Director of the Vermont Coalition Against Domestic and Sexual Violence, Karen Tronsgard-Scott; President and Founder of the Lindsay Ann Burke Foundation, Anna Burke, RN, M.Ed.; National Chair of Force 100, Collene Campbell; and Chief Assistant of the Office of the Maricopa County Attorney, Sally Wolfgang Wells, all testified on Panel II.

2. Executive business meetings

On April 23, 2009, the Committee held an executive business meeting to consider S. 327 and other measures, but the business meeting ended prior to the bill's consideration.

On May 7, 2009, the Committee adopted by unanimous consent a complete substitute to the bill offered by the Chairman. The complete substitute made several technical corrections and clarifications to the bill requested by the Department of Justice in a views letter. Senator Kyl offered an amendment to set a mandatory minimum sentence of 10 years in prison for those convicted of aggravated sexual abuse. Senator Feinstein offered a second-degree amendment, reducing the minimum to five years. The Committee accepted the second-degree amendment and then accepted the Kyl amendment by a voice vote.

The Committee then voted to report the Improving Assistance to Domestic and Sexual Violence Victims Act of 2009, as amended, favorably to the Senate by voice vote.

III. Section-by-Section Summary of the Bill

Section 101. Short title

This section provides that the legislation may be cited as the "Improving Assistance to Domestic and Sexual Violence Victims Act of 2009."

Section 102. Effective date

This section provides that the amendments in the Act shall take effect at the beginning of fiscal year 2010.

Section 103. Definitions and universal grant conditions under VAWA

This Section makes various amendments to 42 U.S.C. § 13925(a) and (b).

Section 103(a) clarifies the term "youth" to be defined as ages 12–24, which is consistent with other Federal grant programs.

Section 103(b) provides a definition for "Trained Examiner" in order to permit rural and Tribal areas that do not have the benefit of a Sexual Assault Nurse Examiner (SANE) the ability to receive STOP grants to purchase rape kits. Under current law, the use of STOP grant funding for the purchase of rape kits was contingent upon the presence of a SANE nurse.

Section 103(c) clarifies the definition such that the personal information specified in the current definition is personal regardless whether it is encrypted or otherwise protected.

Section 103(d) adds a new requirement for Technical Assistance grant funding such that entities receiving Technical Assistance grants must possess expertise in the purposes and other aspects of the grant program for which the technical assistance is being provided.

Section 103(e) clarifies that states are not required to pay the share of matching funds that victim services providers are no longer required to pay. In the 2005 VAWA reauthorization, the provision exempting victim service providers from matching Federal funds was not written to require States to then step in and match Federal funds. The intent of that legislation was to eliminate the matching requirement altogether, not to transfer it to the States. The VAWA 2005 provision has been construed by the Department of Justice to require the States to assume the matching requirement formerly required of victim service providers. This section also clarifies that VAWA grants to victim service providers awarded as sub-grants by other VAWA grantees do not require matching funds.

Section 103(f) strengthens existing privacy provisions in the current law. This section also clarifies that nothing in the law prohibits a grantee or sub-grantee from reporting child abuse, elder abuse, or neglect to relevant authorities, and that where State law permits or mandates reporting, nothing shall prevent a grantee or sub-grantee from reporting. The section expressly does not preempt State laws more protective of privacy interests than the Federal law.

Section 103(g) clarifies that with respect to the release of personal information, a minor or person with a court-appointed guardian that is eligible to receive services under the law without the consent of a parent or guardian is also eligible to release personal information without the consent of a parent or guardian.

Section 104. Criminal justice

Section 104(a) amends section 2007(d) of the Omnibus Crime Control and Safe Streets Act of 1968 (Omnibus Crime Control Act) (42 U.S.C. § 3796gg–1(d)) to strengthen limitations on internet publication of protection orders by requiring grantees to prove compliance with new section 2013A, which sets limitations on such publication.

Section 104(b) amends section 2007(f) of the Omnibus Crime Control Act (42 U.S.C. 3796gg–1(f)) to clarify the grant matching requirements at that section.

Section 104(c) amends section 2265(d) of title 18 to strike paragraph (3), which is incorporated into the amendment made by section 104(d).

Section 104(d) amends Part T of the Omnibus Crime Control Act (42 U.S.C. § 3796gg et seq.) to add new section 2103A concerning limitations on the internet publication of protective orders.

Section 104(e) amends section 2010 of the Omnibus Crime Control Act (42 U.S.C. § 3796gg–4) to add the term "Territory".

Section 104(f) amends section 40002(a)(22) of the Violence Against Women Act of 1994 (VAWA) (42 U.S.C. § 13925(a)(22) by changing the population threshold for a rural state from 150,000 to 200,000.

Section 104(g) amends section 2011(a)(1) of the Omnibus Crime Control Act (42 U.S.C. § 3796gg–5(a)(1)) by adding the term "dating violence" to the section.

Section 104(h) amends section 2101(c)(4) of the Omnibus Crime Control Act (42 U.S.C. § 3796hh(c)(4)) by adding the term "dating violence" to the section.

Section 104(i) provides an effective date for sections (g) and (h) above that is two years after the date of enactment of the legislation.

Section 105. Families

Section 105(a) amends section 41304 of VAWA (42 U.S.C. § 14043d–3) to move the home visitation program created in the 2005 VAWA reauthorization from the Department of Justice to the Department of Health and Human Services to align the jurisdiction of the program with other similar home visitation programs under the authority of HHS.

Section 106. Housing

Section 106(a) amends section 6(u)(1)(A) of the United States Housing Act of 1937 (42 U.S.C. § 1437d) to permit the use of third-party certifications on behalf of a domestic violence victim seeking Federal housing benefits.

Section 107. Economic security

Section 107(a) amends section 41501(a) of VAWA (42 U.S.C. § 14043f(a)) to expand the national resource center on workplace responses to assist victims of domestic and sexual violence to permit additional entities to receive information and assistance through the resource center. Victim service providers, community-based organizations, State domestic violence, sexual assault, and tribal coalitions are included as recipients of resource center benefits.

Section 107(b) amends section 41501(c)(1) of VAWA (42 U.S.C. § 14043f(c)(1)) to expand the list of entities eligible to provide assistance under the resource center provisions to include victim service providers, community-based organizations, State domestic violence and sexual assault coalitions and tribal coalitions.

Section 108. Tribal issues

Section 108 amends section 2015 of the Omnibus Crime Control Act (42 U.S.C. § 3796gg–10) by providing that funds available under the section shall remain available until expended, the use of which is limited to the activities described in the section.

Section 108 also provides that a grant provided under the section to be amended shall be for a period of 24 months.

Section 109. Sexual assault nurse examiners

Section 109(a) amends section 2101(b) of the Omnibus Crime Control Act (42 U.S.C. § 3796hh(b)) to include the provision of Sexual Assault Nurse Examiners through this grant program in order to improve the availability of SANE nurses who are specially trained in evidence collection and documentation and contribute significantly to successful prosecution of sexual assault offenders.

Section 110. Sexually transmitted infection testing and treatment

Section 110 amends section 2101 of the Omnibus Crime Control Act (42 U.S.C. § 3796hh) to refine current procedures that allow a sexual assault victim to request medical testing of an alleged offender such that a sexual assault victim may request testing of an alleged offender within 48 hours of the alleged offender's being available for testing and after a finding of probable cause that the alleged offender committed the assault.

Section 110 also adds a new provision allowing a sexual assault victim to request their own testing, along with counseling and prophylaxis in accordance with Centers for Disease Control and Prevention guidance.

Section 111. Clarification of the term culturally and linguistically specific

Section 111(a) provides definitions at section 40002(a) of VAWA (42 U.S.C. § 13925(a)) for the terms "culturally specific", "culturally and linguistically specific", "culturally and linguistically specific services", and "culturally specific services".

Sections 111(b)–(d) amend various sections of VAWA and the Omnibus Crime Control Act by striking "linguistically and culturally" and inserting "culturally and linguistically".

Section 111(e) makes amendments to section 2014 of the Omnibus Crime Control Act (42 U.S.C. § 3796gg–9) concerning sexual assault victims.[5]

Section 111(f) amends the Violence Against Women and Department of Justice Reauthorization Act of 2005 (42 U.S.C. § 14045a) by incorporating the term "culturally and linguistically specific" within the section.

Section 112. National Resource Center grants technical amendment

Section 112 makes a minor technical revision to section 41501(b)(3) of the Violence Against Women Act (42 U.S.C. § 14043f(b)(3)) by striking extraneous language ("for materials").

Section 113. Analysis and research on violence against Indian women

Section 113 amends 42 U.S.C. § 3796gg–10 note) to clarify that the National Baseline Study concerning violence against Indian women shall include Alaska Native women. This section also requires the Department of Justice to submit annual reports, and upon completion of the study, a final report to Congress.

Section 114. Extension of T nonimmigrant status

Section 114(a) amends section 214(o)(7) of the Immigration and Nationality Act (INA) (8 U.S.C. § 1184(o)(7)) to permit an alien to apply retroactively, after expiration of nonimmigrant status under INA Section 101(a)(15)(T), for an extension of that status.

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[5] Note that the reference at section 111(e) to 42 U.S.C. § 3796gg–9 is incorrect. This section was repealed by Pub. L. 109–271, 3(a), Aug. 12, 2006, 120 Stat. 754, and placed at a different location within the Code. The section to be amended now appears at 42 U.S.C. 14043g, and contains language identical to that formerly located at 42 U.S.C. § 3796gg–9. This is a drafting error.

Section 114(b) provides an effective date upon the section's enactment, which shall apply to applications filed before, on, or after that date.

Section 115. T and U nonimmigrant protections

Section 115(a) amends section 107(b)(1)(E)(i)(II)(aa) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7105(b)(1)(E)(i)(II)(aa)) by replacing the term "bona fide" with "prima facie".

Section 115(b) makes a conforming amendment at section 214(p)(6) of the INA (8 U.S.C. § 1184(p)(6)) by replacing the term "bona fide" with "prima facie".

Section 115(c) provides an effective date upon the section's enactment, which shall apply to applications filed before, on, or after that date.

Section 116. U nonimmigrant adjustment of status

Section 116(a) amends section 245(m)(3) of the INA (8 U.S.C. § 1255(m)(3)) by including an "unmarried sibling under 18 years of age" within the scope of that section.

Section 116(b) provides an effective date upon the section's enactment, which shall apply to applications filed before, on, or after that date.

Section 117. Conforming amendment confirming housing assistance for qualified aliens

Section 117(a) amends section 214 of the Housing and Community Development Act of 1980 (42 U.S.C. § 1436a) to include qualified aliens described at section 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. § 1641) within the scope of that section.

Section 117(b) provides an effective date upon enactment of the section, and provides that the amendment shall apply to applications for public benefits provided on or after the date of enactment and without regard to whether regulations to carry out the amendment have been implemented.

Section 118. Funding clarification for stop grants

Section 118 amends section 2007(c)(3) of the Omnibus Crime Control Act (42 U.S.C. § 3796gg–1(c)(3)) to require that grant funds awarded under the section to assist State courts, but which remain unobligated for a period of 18 months after receipt, shall be redirected to victim services as provided by the section.

Section 201. Aggravated sexual abuse

Section 201 amends section 2241(a) of title 18 of the United States Code to provide for a term of imprisonment under that section not less than 5 years.

IV. Congressional Budget Office Cost Estimate

The Committee sets forth, with respect to the bill, S. 327, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

JUNE 16, 2009.

Hon. PATRICK J. LEAHY,
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. 327, the Improving Assistance to Domestic and Sexual Violence Victims Act of 2009.

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

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

S. 327—Improving Assistance to Domestic and Sexual Violence Victims Act of 2009

S. 327 would make mostly technical changes to the Violence Against Women and Department of Justice Reauthorization Act of 2005 (Public Law 109–162). The bill also would make it easier for foreign victims of trafficking and certain other crimes to maintain U.S. residence. CBO estimates that enacting the bill would increase direct spending by $1 million annually. S. 327 would have no significant effect on revenues.

Section 114 of S. 327 would permit certain foreign victims of trafficking to apply for retroactive extensions of their visas (known as "T" visas) if they were unable to adjust their status to legal permanent resident before their visas expired. Based on information from the Department of Homeland Security, CBO estimates that 300 aliens with expired T visas would apply for retroactive extension of their visas under the bill. Once restored to lawful status, T visa holders would regain eligibility for certain federal benefits that are also available to refugees, such as Medicaid, the Special Nutrition Assistance Program (formerly known as Food Stamps), and Supplemental Security Income. Based on information from the Department of Health and Human Services about refugees' use of such public benefits, we estimate that enacting section 114 would increase federal outlays for those programs by $1 million per year and $10 million over the 2010–2019 period.

Enacting S. 327 could have a small effect on collections of visa fees and direct spending of those fees by the Departments of State and Homeland Security. Some visa fees collected by the Department of State are classified as revenues. CBO estimates that any effects on direct spending and revenues would not be significant in any year.

S. 327 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no significant costs on state, local, or tribal governments.

The CBO staff contacts for this estimate are David Rafferty (for effects on federal benefit programs) and Mark Grabowicz (for other effects). The estimate was approved by Theresa Gullo, 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. 327.

VI. Conclusion

The last reauthorization of the Violence Against Women Act strengthened and made many improvements to the Act. Sufficient time has passed to monitor the bill's implementation, and some inconsistencies or unintended consequences have been identified. Senate Bill 327 addresses these immediate problems through a number of technical amendments. These amendments will significantly improve the law's operation and execution. This legislation has been created with the assistance of advocates and those in the field who work with the Violence Against Women Act every day. It is clear that the minor changes in this bill will enable victim service providers to do their jobs more effectively, and will make meaningful improvements to the lives of victims everywhere. The Committee believes that Congress should take swift action to strengthen our efforts to combat violence against women by passing S. 327 without delay.

VII. MINORITY VIEWS

MINORITY VIEWS FROM SENATOR COBURN

Although I support the goals of S. 327, I have some concerns that caused me to withhold my support of this bill in the Senate Judiciary Committee. In particular, I am concerned about a provision that would effectively gut existing protections for victims of sexual assault who wish to have their offender tested for HIV. As a physician, I know that such timely testing can lead to effective treatment of a victim, significantly reducing the chance of infection. Moreover, I am concerned about the funding structure of VAWA grants, specifically with respect to the "matching" formulas that determine the amount of federal to state money that is required. It is my view that these aspects of S. 327 can and should be improved, and that doing so will prove beneficial to the victims it aims to serve.

HIV TESTING AND PROPHYLAXIS

In 2005, the Violence Against Women and Department of Justice Reauthorization Act ("VAWA Reauthorization Act") passed with an important provision intended to protect women who have already been victimized once by sexual assault from being assaulted again by either AIDS or the legal system which may deny them potentially life-saving information. This provision encouraged states and local governments to implement laws that provide victims of sexual assault and rape the ability to know if the person indicted for the attack is infected with HIV. It required the Attorney General to withhold 5% of the funding under the Grants to Encourage Arrest Policies and Enforcement of Protection Orders to a state or local government grantee that does not implement such laws. Such laws must require the defendant to undergo testing no later than 48 hours after the date on which the information or indictment is presented, and as soon thereafter as is practicable, the results of the test must be made available to the victim.

S. 327, the Improving Assistance to Domestic and Sexual Violence Victims Act of 2009, strikes the 2005 language and restructures the HIV testing requirements to allegedly "shift the focus of the . . . provision to the needs of the victim, instead of focusing on the alleged perpetrator." [1] The result of the bill's changes could not be further from that goal. I agree that victims of sexual assault and rape should be the focus of HIV testing requirements. In 2005, many states had no laws that required testing of rape suspects for HIV, and the 2005 VAWA Reauthorization Act changed that. This

[1] Summary of changes to S. 327, circulated by Democrat staff Wednesday, May 6, 2009, at 4.

bill, however, would hamper the ability of victims to receive immediate treatment, which is vital to fight off HIV.

S. 327 restructures the HIV testing requirements to allow a state or local government grantee to be eligible for full funding if it **EITHER**: (1) certifies it has a law or regulation that requires the state or local government to provide HIV testing of the *victim* at the *request of the victim* **OR** (2) certifies it has a law or regulation that requires that state or local government to administer an HIV test *to an offender* at the *request of the victim*.

This language has two major problems. First, some claim that the bill does not eliminate the original language since the bill still allows a state to meet the grant's provisions by requiring HIV testing of the offender. Although it is true that such testing technically remains an option, the bill allows a state or local government to fulfill the requirements for full grant funding by EITHER testing the victim OR the offender. It is likely that states will choose to test the victim because it is easier; however, this fails to accomplish the goal of protecting victims from contracting HIV/AIDS because it is the timely testing of the offender that reveals crucial information about how a victim should be treated. Second, even if a state chooses to meet the requirements of the bill by testing the offender, the time period allowed for compliance effectively eliminates what was required in the 2005 VAWA Reauthorization Act, which would have mandated compliance by 2007, and provides an extension to non-complying grantees by 4 years (2011).

From a medical perspective, it is vitally important that those who are victims of rape do not also become victims of HIV/AIDS, and that requires timely medical attention, *including prompt testing of the offender*. Treatment with AIDS drugs in the immediate aftermath, usually within 72 hours, of exposure can significantly reduce the chance of infection. However, because of the toxicity and long-term side effects, these drugs should not be administered for long periods of time without knowing if HIV exposure has occurred.

Victims cannot rely solely on testing themselves because it can take weeks, sometimes months, before HIV antibodies can be detected. Therefore, testing the assailant is the **only** timely manner in which to determine if someone has been exposed to HIV. Furthermore, rapid tests are now available that can diagnose HIV infection within 20 minutes with more than 99% accuracy.

The American Medical Association supports this policy because "early knowledge that a defendant is HIV infected would allow the victim to gain access to the ever growing arsenal of new HIV treatment options. In addition, knowing that the defendant was HIV infected would help the victim avoid contact which might put others at risk of infection."[2] Furthermore, the violent nature of the forced sexual contact actually increases the chances of transmission.

For example, Eliina Nicole Keitelman testified how she was raped at the age of 14 by a 40 year old online predator. Incredibly, the uncertainty regarding the HIV status of her assailant required Ms. Keitelman to continue living as a victim and extended the punishment of the sexual assault. As Ms. Keitelman testified:

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[2] Passage of the Violence Against Women Act of 2005 and Protecting Rape Survivors from HIV/AIDS, Extension of Remarks, Senator Tom Coburn, M.D., December 15, 2005.

> My early teen years were spent getting tested and retested for HIV and pregnancy. It was completely humiliating for me to be a child of 14 and 15 going to see the doctor to be tested for HIV and then worrying for days that I could have been infected with HIV by my attacker. When I asked if it would be easier for him to be tested, I was informed that he could not be touched, while I was being poked, prodded and humiliated over and over again.

Sadly, Ms. Keitelman's situation is not unique. Deidre Raver, a survivor of sexual assault and the Co-Founder of Women Against Violence, also explained how receiving HIV information quickly is essential to protecting a victim of sexual assault: "The HIV status of an accused rapist provides necessary medical information that allows a victim or a child victim's parents and/or legal guardians to make appropriate life saving decisions."

Thus, obtaining timely HIV information is essential to protecting victims of sexual assault. If any change should be made to this legislation, it should strengthen the ability of assault victims to obtain HIV information. Sadly, S. 327 takes away any meaningful hope of victims to obtain this information. By allowing state and local governments to meet their funding requirements by creating a law or regulation that requires the testing of the *victim* of the sexual assault, this provision eviscerates the bipartisan HIV testing amendment agreed to in 2005. It also allows state and local governments to provide the victim with incomplete information—the victim's HIV status—rather than the assailant's HIV status.

As Ms. Raver testified, "[t]esting the victim for HIV does not provide accurate information until a much later time period because of the time it takes for infection. Denying this data to victims is an outrage and is unacceptable. Half of all rapes remain unreported. Is it any wonder why, given that the privacy rights of rapists continue to be more sacred than the rights of rape victims?" The Children's AIDS Fund has stated that "when it is a child—either a little girl or little boy—that has been brutalized, raped or sodomized the need to reduce lifetime negative psychological and emotional damage is equally great or greater."

It is clear that testing the offender rather than the victim has incredible benefits to the victim. I realize that some believe testing only the offender is somehow not in the best interest of the victim, or that somehow, as the ACLU claimed in 2005, "forced HIV testing, even of those convicted of a crime, infringes on constitutional rights and can only be justified by a compelling governmental interest. No such interest is present in the case of a rapist and his victim because the result of a rapist's HIV test, even if accurate, will not indicate whether the rape victim has been infected." However, the medical facts are quite obvious why knowledge of HIV exposure is vital to victims of sexual assault, and it is astonishing that anyone would argue otherwise. In fact, numerous court decisions have concluded it is constitutional to test indicted rapists.[3]

When I worked successfully with Senators Specter and Biden to include HIV testing of offenders in the 2005 VAWA Reauthoriza-

[3] *See, e.g.*, State in Interest of J.G., 701 A.2d 1260 (N.J. 1997); *Fosman* v. *State*, 664 So. 2d 1163 (Fla.App. 4 Dist., 1995).

tion Act, he received numerous letters from individuals and organizations such as the AMA and Women Against Violence, providing countless examples of why it is so important for offenders to be tested as quickly as possible after an attack. In addition, this year's hearing on S. 327 drew comments from several organizations and witnesses confirming the need for prompt offender testing. Organizations such as the Children's AIDS Fund and the AIDS Healthcare Foundation submitted letters opposing the changes proposed by S. 327, and hearing witnesses, Ms. Keitelman and Ms. Raver, testified to the consequences of offender only HIV testing.

For example, in some circumstances, rape defendants have even used agreement to submit to and report the results of an HIV test to a victim something that could save the life of the person they victimized—AE1as a plea bargaining tool to reduce their sentence. Ms. Raver testified that "[t]he information concerning the HIV status of an accused rapist can be used to reduce sentencing during plea bargaining and has been used as a tool in the past." What could be more offensive to a victim than to know her assailant will serve less time merely because he submitted to a test that could be vital to her survival?

Not only were offender HIV testing provisions adopted in the 2005 VAWA Reauthorization, they were also recently accepted unanimously in February 2008 in the Indian Health Care bill, and were included in the Ryan White CARE Act for emergency responders and firefighters from 1994 until 2006, when they were removed. However, in May 2009, the Homeland Security and Government Affairs Committee re-adopted the Ryan White language. This language would allow firefighters and emergency responders who are exposed to infectious diseases, including HIV, when treating someone to have that person tested for infectious diseases within 48 hours. If we believe it is important for firefighters to be able to have a person whom they were actually helping be tested, is it not even more important and obvious that it would be in a sexual assault victim's best interest to be given timely information after having been forcibly exposed to the bodily fluids of someone potentially infected with a life-threatening disease like HIV?

In the end, this is about victims. It is about their right to make the choice whether to have their assailant tested. The original language was intentionally drafted narrowly to ensure the *indicted* offender is only tested *at the request of the victim*. If sufficient evidence exists to arrest and jail a rape suspect, the victim should have the right to request that suspect be tested for HIV. Testing the victim immediately is too early for HIV to manifest itself in the victim, and waiting until the offender is *convicted* is too late for life-saving treatment if the victim is, in fact, infected.

I strongly oppose language in S. 327 that significantly alters the current HIV offender testing regime. In fact, Section 110 would effectively gut the existing requirements, by allowing state laws that provide victim-rather than offender-testing to pass muster. This is a disservice to victims and an unjustifiable change in current law.

Additionally, I am disappointed that this legislation does not encourage state and local law enforcement agencies to use DNA testing more proactively. Several witnesses testified in detail regarding the suffering they endured as victims of sexual assault. For exam-

ple, Eliina Nicole Keitelman testified that, as the investigation and trial of her assailant dragged on over three years, she "felt like [she] was being victimized over and over again." DNA testing helps identify the attackers who inflict this suffering, protect the innocent, and provide law enforcement with the tools to respond to serial offenders.

Indeed, the testimony of several witnesses illustrates the importance of this tool. In her testimony, Michelle de la Calle described how she was repeatedly raped by a stranger she met at a small house party. Ms. de la Calle also explained how the DNA evidence she collected helped confirm her assailant's identity and guilt. Collene Campbell, who testified about the murder of her loved ones, urged us to "[i]ncrease the ability of the nation's law enforcement agencies to solve crimes through an increased reliance on DNA testing. Every person arrested should be required to submit a DNA sample. DNA sampling protects the innocent and helps identify the guilty." Sally Wolfgang Wells, who brought a prosecutor's perspective to the hearing, testified that "DNA testing of suspects ensures that suspects are identified as early as possible. . . . Sexual offenses are often repetitive crimes. The ability to link crimes to specific individuals and to specific geographic areas helps law enforcement to put an end to serial offenses sooner."

VAWA GRANT PROGRAMS

VAWA grant programs are designed to assist states, Indian tribes, victim service providers and other grantees in effectively reaching out to victims and providing vital services to help them recover from all types of abuse. While I seriously question the constitutionality of supplying federal funds to states and other local grantees for these purposes, since they are already in place, I believe the states and other grantees should participate significantly in funding services for victims in their communities.

The only way these grantees can ensure fiscal vitality in the future is to reduce their dependence on federal funding. This can be accomplished by requiring the grantee to match the federal portion of VAWA grants. However, current law does not require matching for any VAWA grant, except for the Special Training Officers and Prosecutors (STOP) grants, which requires a 25% match by grantees.

No doubt VAWA grantees want future funding to be consistent. With our federal debt at $11.7 trillion and skyrocketing by the day, coupled with Congress' inability to control and reduce federal spending on lower priorities, grantees should be very concerned about availability of future federal funding. Requiring grantees to match federal funds in these grants will ensure more fiscal stability for them in the future.

In addition, grantees, especially states, should be able to afford their matching portion, as states typically have surplus budgets. In 2007, states had a surplus of $65.9 billion[4] and in fiscal year 2008, those balances totaled $50.8 billion.[5] Based on fiscal year 2009 en-

[4] The Fiscal Survey of States, National Association of State Budget Officers, December 2008, p. viii.
[5] *Id.*

acted budgets, states still maintain a budget *surplus* of $48 billion.[6] Yet, the federal deficit grew by $593 million[7] just in the first 4 months of 2009, and now stands at $11.7 trillion.[8] The federal government's fiscal strength is questionable at best.

Thus, when a grantee can contribute a higher percentage of the total funding, it will likely be more secure financially by relying less on the federal government. Also, as a grantee invests additional funds into its services, *it is more likely to remain truly committed to developing new and innovative strategies to help victims of crime*. The easiest way to ensure this occurs is to require the federal government to provide no more than 50% of the grant amount. Matching is common in many pieces of legislation, and a 50–50 match was recently incorporated into the Second Chance Act and the PRO–IP Act of 2008.

As mentioned above, STOP Grants are the only VAWA grants that require matching from the grantee. That 25% match can be provided by the state (the primary grantee) or the subgrantee to which the state awards federal funds. Often, the state provides the match for the subgrantee.

However, this bill would allow grantees that are Indian tribes or victim service providers to be exempt from the matching requirement. These grants provide federal funds to benefit victims in state and local communities and within Indian tribes. Those administering the services and receiving federal funds should, at the very least, provide funding equal to the federal government's share, so that their victims can reap important benefits that will not disappear when federal funds are no longer available—a highly probable outcome with the federal government's deficit and out of control spending. Again, the only way these grantees can ensure fiscal vitality and consistent support of victims in the future is to reduce their dependence on federal funding.

Nowhere in the Constitution is the federal government tasked with providing states, localities, and private organizations with basic funding. Although many of these causes are laudable, they are not federal responsibilities. At the very least, grantees should share equally when the federal government provides funding to support their activities.

TOM COBURN.

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[6] *Id.*
[7] CBO Estimate of the President's budget, tables 1–2, 1–3, and 1–4.
[8] National Debt Counter, *available at* www.coburn.senate.gov.

MINORITY VIEWS FROM SENATOR SESSIONS

A number of the immigration provisions in this bill are emblematic of the underlying immigration problem. At least three of those provisions should be modified or removed.

Section 114 of the bill adds a provision that would allow an alien to apply for an extension of a T (victims of trafficking) visa retroactively after it has expired. While it is a desirable and admirable goal to protect those who have legitimately been victims of trafficking, we must also ensure that our immigration system is not subject to fraud. Because of a delay by DHS in issuing certain regulations, some T visa holders fell out of status due to no fault of their own. We should allow those impacted by DHS' delay to apply for an extension of status even though their visa has expired. The bill as drafted would place no limit on when those extensions must be filed and would excuse those not impacted by the DHS error indefinitely. It is an open invitation for fraud and administratively unworkable.

Additionally, section 115 amends 22 U.S.C. § 7105(b)(1)(E)(i)(II)(aa) and 8 U.S.C. § 1184(p)(6) to strike "bona fide," or good faith, with "prima facie" for certification purposes when individuals make applications for T or U visas. This lessens the degree of scrutiny for those making applications in these visa categories. Unfortunately, our immigration system is rife with fraud and until administrative changes are made to remedy this, we should not lower the standards which must be met for people to come into the country. We certainly should not do so under the current circumstances.

Finally, section 116 opens up chain migration in the U visa category. Section 245(m) of the Immigration and Nationality Act allows the Secretary of DHS to adjust the status of U nonimmigrant visa holders to Legal Permanent Resident status if certain requirements are met. It also allows the Secretary to adjust the status of the U visa holder's spouse, child or parent (if it is an alien child under 21). Section 116 would add unmarried siblings under to the category of those related to the U visa holder whose status can be adjusted to LPR. There is no limit on these "unmarried" siblings from later petitioning others. While family is an important component to immigration, our limited resources limit the ability to allow everyone affiliated with a visa holder to enter the country.

Additionally, I endorse the minority views of Senator Coburn regarding HIV testing and grant structure.

JEFF SESSIONS.

VIII. 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. 327, 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 8—ALIENS AND NATIONALITY

* * * * * * *

CHAPTER 12—IMMIGRATION AND NATIONALITY

* * * * * * *

Subchapter II—Immigration

* * * * * * *

PART II—ADMISSION QUALIFICATIONS FOR ALIENS; TRAVEL CONTROL OF CITIZENS AND ALIENS

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§ 1184. Admission of nonimmigrants

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(o) TRAFFICKING IN PERSONS; CONDITIONS OF NONIMMIGRANT STATUS.—

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(D) An alien may apply for extension of status under subparagraph (B) retroactively after the expiration of non-immigrant status under subparagraph 101(a)(15)(T).

(p) REQUIREMENTS APPLICABLE TO SECTION 1101(A)(15)(U) VISAS.—

* * * * * * *

(6) DURATION OF STATUS.—The authorized period of status of an alien as a nonimmigrant under section 1101(a)(15)(U) of this title shall be for a period of not more than 4 years, but shall be extended upon certification from a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating or prosecuting criminal activity described in section 1101(a)(15)(U)(iii) of this title that the alien's presence in the United States is required

to assist in the investigation or prosecution of such criminal activity. The Secretary of Homeland Security may extend, beyond the 4-year period authorized under this section, the authorized period of status of an alien as a nonimmigrant under section 1101(a)(15)(U) of this title if the Secretary determines that an extension of such period is warranted due to exceptional circumstances. Such alien's nonimmigrant status shall be extended beyond the 4-year period authorized under this section if the alien is eligible for relief under section 1255(m) of this title and is unable to obtain such relief because regulations have not been issued to implement such section and shall be extended during the pendency of an application for adjustment of status under section 1255(m) of this title. The Secretary may grant work authorization to any alien who has a pending, [bona fide] *prima facie* application for nonimmigrant status under section 1101(a)(15)(U) of this title.

* * * * * * *

PART V—ADJUSTMENT AND CHANGE OF STATUS

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§ 1255. Adjustment of Status of Nonimmigrant to that of person admitted for permanent residence

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(m) ADJUSTMENT OF STATUS FOR VICTIMS OF CRIMES AGAINST WOMEN.—

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(3) Upon approval of adjustment of status under paragraph (1) of an alien described in section 1101(a)(15)(U)(i) of this title the Secretary of Homeland Security may adjust the status of or issue an immigrant visa to a spouse, a child, or, in the case of an alien child, a parent *or an unmarried sibling under 18 years of age on the date of such application for adjustment of status under paragraph (1)*, who did not receive a nonimmigrant visa under section 1101(a)(15)(U)(ii) of this title if the Secretary considers the grant of such status or visa necessary to avoid extreme hardship.

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TITLE 18—CRIMES AND CRIMINAL PROCEDURE

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PART I—CRIMES

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CHAPTER 109A—SEXUAL ABUSE

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§ 2241. Aggravated sexual abuse

(a) BY FORCE OF THREAT.—

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(2) by threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping; or attempts to do so, shall be fined under [this title, imprisoned for any term of year or life, or both] *this title and imprisoned for any term of years not less than 5, or for life.*

CHAPTER 110A—DOMESTIC VIOLENCE AND STALKING

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§ 2265. Full faith and credit given to protection orders

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(d) NOTIFICATION AND REGISTRATION.—

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[(3) Limits on Internet publication of registration information.—A State, Indian tribe, or territory shall not make available publicly on the Internet any information regarding the registration, filing of a petition for, or issuance of a protection order, restraining order or injunction, restraining order, or injunction in either the issuing or enforcing State, tribal or territorial jurisdiction, if such publication would be likely to publicly reveal the identity or location of the party protected under such order. A State, Indian tribe, or territory may share court-generated and law enforcement-generated information contained in secure, governmental registries for protection order enforcement purposes.]

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TITLE 22—FOREIGN RELATIONS AND INTERCOURSE

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CHAPTER 78—TRAFFICKING VICTIMS PROTECTION ACT

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§ 7105. Protection and assistance for victims of trafficking

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(b) VICTIMS IN THE UNITED STATES.—

(1) ASSISTANCE.—

* * * * * * *

(E) CERTIFICATION.—

(i) IN GENERAL.—

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(II)(aa) has made a [bona fide] *prima facie* application for a visa under section 1101(a)(15)(T) of Title 8, as added by subsection (e) of this section, that has not been denied; or

* * * * * * *

TITLE 42—THE PUBLIC HEALTH AND WELFARE

* * * * * * *

CHAPTER 8—LOW-INCOME HOUSING

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§ 1436a. Restriction on use of assisted housing by non-resident aliens

(a) CONDITIONS FOR ASSISTANCE.—

* * * * * * *

(6) an alien lawfully admitted for temporary or permanent residence under section 1255a of Title 8; [or]

(7) a qualified alien described in section 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1641); or

[(7)] *(8)* an alien who is lawfully resident in the United States and its territories and possessions under section 141 of the Compacts of Free Association between the Government of the United States and the Governments of the Marshall Islands, the Federated States of Micronesia (48 U.S.C. 1901 note) and Palau (48 U.S.C. 1931 note) while the applicable section is in effect: Provided, That, within Guam any such alien shall not be entitled to a preference in receiving assistance under this Act over any United States citizen or national resident therein who is otherwise eligible for such assistance.

* * * * * * *

(c) PRESERVATION OF FAMILIES; STUDENTS.—

(1) If, following completion of the applicable hearing process, financial assistance for any individual receiving such assistance on February 5, 1988, is to be terminated, the public housing agency or other local governmental entity involved (in the case of public housing or assistance under section 8 of the United States Housing Act of 1937 [42 U.S.C.A. § 1437f]) or the applicable Secretary (in the case of any other financial assistance) shall take one of the following actions:

(A) Permit the continued provision of financial assistance, if necessary to avoid the division of a family in which the head of household or spouse is a citizen of the United States, a national of the United States, or an alien resident of the United States described in any of paragraphs (1) through [(6)] *(7)* of subsection (a) of this section. For purposes of this paragraph, the term "family" means a head of household, any spouse, any parents of the head of

household, any parents of the spouse, and any children of the head of household or spouse. Financial assistance continued under this subparagraph for a family may be provided only on a prorated basis, under which the amount of financial assistance is based on the percentage of the total number of members of the family that are eligible for that assistance under the program of financial assistance and under this section.

* * * * * * *

(2) Notwithstanding any other provision of law, the applicable Secretary may not make financial assistance available for the benefit of—

(A) any alien *other than a qualified alien described in section 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1641)* who—

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Subchapter I—General Program of Assisted Housing

* * * * * * *

§ 1437d. Contract provisions and requirements; loans and annual contributions

* * * * * * *

(u) CERTIFICATION AND CONFIDENTIALITY.—

(1) CERTIFICATION.—

(A) IN GENERAL.—A public housing agency responding to subsection (l)(5) and (6) of this section may request that an individual certify via a HUD approved certification form, *as described in subparagraph (C)*, that the individual is a victim of domestic violence, dating violence, or stalking, and that the incident or incidents in question are bona fide incidents of such actual or threatened abuse and meet the requirements set forth in the aforementioned paragraphs. Such certification shall include the name of the perpetrator. The individual shall provide such certification within 14 business days after the individual receives a request for such certification from the public housing agency.

* * * * * * *

§ 1437f. Low-income housing assistance

* * * * * * *

(ee) CERTIFICATION AND CONFIDENTIALITY.—

(1) CERTIFICATION.—

(A) IN GENERAL.—An owner, manager, or public housing agency responding to subsections (c)(9), (d)(1)(B)(ii), (d)(1)(B)(iii), (o)(7)(C), (o)(7)(D), (o)(20), and (r)(5) of this section may request that an individual certify via a HUD approved certification form, *as described in subparagraph (C),* that the individual is a victim of domestic violence, dating violence, or stalking, and that the incident or incidents in question are bona fide incidents of such actual or threatened abuse and meet the requirements set forth in

the aforementioned paragraphs. Such certification shall include the name of the perpetrator. The individual shall provide such certification within 14 business days after the individual receives a request for such certification from the owner, manager, or public housing agency.

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CHAPTER 46—JUSTICE SYSTEM IMPROVEMENT

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Subchapter XII–H. Grants to Combat Violent Crimes Against Women

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§ 3796gg–1. State grants

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(c) QUALIFICATION.—

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(3) OF THE AMOUNT GRANTED.—

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(C) not less than 5 percent shall be allocated for State and local courts (including juvenile courts); **[**and**]** *except that if funds allocated under subparagraph (A) or (C) are not obligated within 18 months of receipt of the funds, the Attorney General may direct the State to allocate those funds for victim services, as provided by subparagraph (B); and*

* * * * * * *

(d) APPLICATION REQUIREMENTS.—

* * * * * * *

(3) proof of compliance with the requirements for paying filing and service fees for domestic violence cases provided in section 3796gg–5 of this title; **[**and**]**

(4) documentation showing that tribal, territorial, State or local prosecution, law enforcement, and courts have consulted with tribal, territorial, State, or local victim service programs during the course of developing their grant applications in order to ensure that proposed services, activities and equipment acquisitions are designed to promote the safety, confidentiality, and economic independence of victims of domestic violence, sexual assault, stalking, and dating violence**[**.**]***; and*

(5) proof of compliance with the requirements prohibiting the publication or protection order information on the Internet under section 2013A.

* * * * * * *

(e) DISBURSEMENT.—

* * * * * * *

(2) REGULATIONS.—

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(D) recognize and meaningfully respond to the needs of underserved populations and ensure that monies set aside to fund [linguistically and culturally] *culturally and linguistically* specific services and activities for underserved populations are distributed equitably among those populations.

* * * * * * *

(f) FEDERAL SHARE.—

[The Federal share of a grant made under this subchapter may not exceed 75 percent of the total costs of the projects described in the application submitted.]

(1) IN GENERAL.—Except as provided under paragraph (2), the Federal share of a grant made under this part may not exceed 75 percent of the total costs of the projects described in the application submitted.

(2) EXEMPTION FROM MATCHING FUNDS.—No matching funds shall be required for that portion of a grant under this part that is subgranted to any Indian tribal government for victims services.

* * * * * * *

§ 3796gg–5. Costs for criminal charges and protection orders

(a) IN GENERAL.—A State, Indian tribal government, or unit of local government, shall not be entitled to funds under this subchapter unless the State, Indian tribal government, or unit of local government—

(1) certifies that its laws, policies, and practices do not require, in connection with the prosecution of any misdemeanor or felony domestic violence offense, or in connection with the filing, issuance, registration, or service of a protection order, or a petition for a protection order, to protect a victim of domestic violence, *dating violence*, stalking, or sexual assault, that the victim bear the costs associated with the filing of criminal charges against the offender, or the costs associated with the filing, issuance, registration, or service of a warrant, protection order, petition for a protection order, or witness subpoena, whether issued inside or outside the State, tribal, or local jurisdiction; or

* * * * * * *

§ 3796hh. Grants

* * * * * * *

(c) ELIGIBILITY.—

* * * * * * *

(4) certify that their laws, policies, and practices do not require, in connection with the prosecution of any misdemeanor or felony domestic violence offense, or in connection with the filing, issuance, registration, or service of a protection order, or a petition for a protection order, to protect a victim of domestic violence, *dating violence*, stalking, or sexual assault, that the victim bear the costs associated with the filing of criminal charges against the offender, or the costs associated with the

filing, issuance, registration, or service of a warrant, protection order, petition for a protection order, or witness subpoena, whether issued inside or outside the State, tribal, or local jurisdiction; and

* * * * * * *

§ 3796gg–8. Polygraph testing prohibition

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SEC. 2013A. LIMITS ON INTERNET PUBLICATION OF PROTECTION ORDER INFORMATION.

(a) IN GENERAL.—A State, Indian tribal government, or unit of local government shall not be eligible to receive funds under this part unless the State, Indian tribal government, or unit of local government certifies that it does not make available publicly on the Internet any information regarding the filing for or issuance, modification, registration, extension, or enforcement of a protection order, restraining order, or injunction in the issuing or enforcing State, tribal, or territorial jurisdiction, if such publication would be likely to publicly reveal the identity or location of the party protected under such order or injunction.

(b) EXCEPTION.—A State, Indian tribe, or territory may share court-generated and law enforcement-generated information about an order or injunction described in subsection (a) for purposes of enforcing such orders and injunctions, if such information is contained in a secure, governmental registry.

(c) EFFECTIVE DATE—A State, Indian tribal government, or unit of local government shall meet the requirements of subsections (a) and (b) by not later than the later of—

(1) 2 years after the date of enactment of the Improving Assistance to Domestic and Sexual Violence Victims Act of 2009; or

(2) the date on which the next session of the State legislature ends.

* * * * * * *

§ 3796gg–4. Rape exam payments

(a) RESTRICTION OF FUNDS.—

(1) IN GENERAL.—A State, *Territory*, Indian tribal government, or unit of local government, shall not be entitled to funds under this subchapter unless the State, *Territory,* Indian tribal government, unit of local government, or another governmental entity incurs the full out-of-pocket cost of forensic medical exams described in subsection (b) of this section for victims of sexual assault.

(2) REDISTRIBUTION.—Funds withheld from a State, *Territory,* or unit of local government under paragraph (1) shall be distributed to other States, *Territories,* or units of local government pro rata. Funds withheld from an Indian tribal government under paragraph (1) shall be distributed to other Indian tribal governments pro rata.

(b) MEDICAL COSTS.—A State, *Territory*, Indian tribal government, or unit of local government shall be deemed to incur the full

out-of-pocket cost of forensic medical exams for victims of sexual assault if any government entity—

* * * * * * *

(D) the State, *Territory,* Indian tribal government, unity of local government, or reimbursing governmental entity provides information at the time of the exam to all victims, including victims with limited or no English proficiency, regarding how to obtain reimbursement.

(c) USE OF FUNDS.—A State, *Territory,* or Indian tribal government may use Federal grant funds under this subchapter to pay for forensic medical exams performed by trained examiners for victims of sexual assault, except that such funds may not be used to pay for forensic medical exams by and State, *Territory,* Indian tribal government, or territorial government that requires victims of sexual assault to seek reimbursement for such exams from their insurance carriers.

* * * * * * *

(e) JUDICIAL NOTIFICATION.—

(1) IN GENERAL.—A State, *Territory,* or unit of local government shall not be entitled to funds under this subchapter unless the State, *Territory,* or unit of local government—

* * * * * * *

§ 3796gg–10. Grants to Indian tribal governments

(a) GRANTS.—The Attorney General may make grants to Indian tribal governments or authorized designees of Indian tribal governments to—

(1) develop and enhance effective governmental strategies to curtail violent crimes against and increase the safety of Indian women **[**consistent with tribal law and custom;**]**.

* * * * * * *

[(4) enhance services to Indian women victimized by domestic violence, dating violence, sexual assault, and stalking;**]** *(4) REPORT.—Beginning not later than 2 years after the date of enactment of the Act, the Attorney General shall submit an annual report, an upon completion a final report, that describes the progress, results, and recommendations of the study under this subsection to the Committee on Indian Affairs of the Senate, the Committee on the Judiciary of the Senate, and the Committee on the Judiciary of the House of Representatives.*

* * * * * * *

(c) AVAILABILITY.—Funds available under this section shall remain available until expended and may only be used for the activities described in this section.

(d) DURATION.—A grant made under this section shall be for a period of 24 months.

* * * * * * *

Subchapter XII–I—Grants To Encourage Arrest Policies and Enforcement of Protection Orders

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§ 3796hh. Grants

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(b) GRANT AUTHORITY.—The Attorney General may make grants to eligible States, Indian tribal governments State, tribal, territorial, and local courts (including juvenile courts), or units of local government for the following purposes:

* * * * * * *

(14) To provide for sexual assault forensic medical personnel examiners in the collection and preservation of evidence, expert testimony, and treatment of trauma related to sexual assault.

(15) To develop human immunodeficiency virus, Hepatitis B, Hepatitis C, and sexually transmitted infection testing and treatment programs for sexual assault victims that include notification, treatment, counseling, and confidentiality protocols.

* * * * * * *

[(d) SPEEDY NOTICE TO VICTIMS.—A State or unit of local government shall not be entitled to 5 percent of the funds allocated under this part unless the State or unit of local government—

(1) certifies that it has a law or regulation that requires—

(A) the State or unit of local government at the request of a victim to administer to a defendant, against whom an information or indictment is presented for a crime in which by force or threat of force the perpetrator compels the victim to engage in sexual activity, testing for the immunodeficiency virus (HIV) not later than 48 hours after the date on which the information or indictment is presented;

(B) as soon as practicable notification to the victim, or parent and guardian of the victim, and defendant of the testing results; and

(C) follow-up tests for HIV as may be medically appropriate, and that as soon as practicable after each such test the results be made available in accordance with subparagraph (B); or

(2) gives the Attorney General assurances that its laws and regulations will be in compliance with requirements of paragraph (1) within the later of—

(A) the period ending on the date on which the next session of the State legislature ends; or

(B) 2 years.]

(d) HIV TESTING AND PHOPHYLAXIS.—A State or unit of local government shall not be entitled to 5 percent of the funds allocated under this part unless the State or unit of local government—

(1) certifies that it has a law or regulation that requires—

(A) the State or unit of local government to provide immediately and without charge, at the request of a victim of sexual assault that carries the risk of transmission of the

human immunodeficiency virus (in this subsection referred to as "HIV"), to the victim—

(i) an HIV test;

(ii) counseling regarding the risk of transmission of HIV and available treatments; and

(iii) HIV prophylaxis, as described in guidance set forth by the Centers for Disease Control and Prevention;

(B) notification as soon as practicable of the testing results of testing described in subparagraph (A) to the victim or parent and guardian of the victim, if the victim is a minor or has a court-appointed guardian; and

(C) followup tests for HIV as may be medically appropriate and that, as soon as practicable after each test, the results be made available in accordance with subparagraph (B);

(2) certifies that it has a law or regulation that requires—

(A) the State or unit of local government to administer HIV testing to an offender not later than 48 hours after a request described in clause (i) if—

(i) requested by a victim of a sexual assault that carries the risk of transmission of HIV;

(ii) there has been a finding of probably cause that the offender committed the sexual assault; and

(iii) the offender is in custody or otherwise available for testing;

(B) notification as soon as practicable of the results of testing described in subparagraph (A) to the victim or parent and guardian of the victim, if the victim is a minor or has a court-appointed guardian, and offender; and

(C) followup tests for HIV as may be medically appropriate and that, as soon as practicable after each such test, the results be made available in accordance with subparagraph (B); or

(3) gives the Attorney General assurances that its law and regulations will be in compliance with the requirements of paragraph (1) or (2) not later than the later of—

(A) the date on which the next session of the State legislature ends; or

(B) 2 years after the date of enactment of the Improving Assistance to Domestic and Sexual Violence Victims Act of 2009.

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CHAPTER 136—VIOLENT CRIME CONTROL AND LAW ENFORCEMENT

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Subchapter III—Violence Against Women

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§ 13925. Definitions and grant provisions

(a) DEFINITIONS.—

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(6) CULTURALLY SPECIFIC.—The terms "culturally specific" and "culturally and linguistically specific" mean specific to racial and ethnic minority groups (as defined in section 1707(g) of the Public Health Service Act (42 U.S.C. 300u–6(g))).

(7) CULTURALLY AND LINGUISTICALLY SPECIFIC SERVICES.—The terms "culturally and linguistically specific services" and "culturally specific services" mean community-based services that offer full linguistic access and culturally specific services and resources, including outreach, collaboration, and support mechanisms primarily directed toward culturally specific communities.

[(6)**]** *(8)* DOMESTIC VIOLENCE.—

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[(7)**]** *(9)* DATING PARTNER.—

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[(8)**]** *(10)* DATING VIOLENCE.—

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[(9)**]** *(11)* ELDER ABUSE.—

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[(10)**]** *(12)* INDIAN.—

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[(11)**]** *(13)* INDIAN COUNTRY.—

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[(12)**]** *(14)* INDIAN HOUSING.—

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[(13)**]** *(15)* INDIAN TRIBE.—

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[(14)**]** *(16)* INDIAN LAW ENFORCEMENT.—

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[(15)**]** *(17)* LAW ENFORCEMENT.—

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[(16)**]** *(18)* LEGAL ASSISTANCE.—

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[(17) LINGUISTICALLY AND CULTURALLY SPECIFIC SERVICES.—The term "linguistically and culturally specific services" means community-based services that offer full linguistic access and culturally specific services and resources, including outreach, collaboration, and support mechanisms primarily directed toward underserved communities.**]**

[(18)**]** *(19)* PERSONALLY IDENTIFYING INFORMATION OR PERSONAL INFORMATION.—The term "personally identifying information" or "personal information" means individually identifying information for or about an individual including information for or about an individual including information likely to

disclose the location of a victim of domestic violence, dating violence, sexual assault, or stalking, *regardless of whether the information is encoded, encrypted, hashed, or otherwise protected,* including—

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[(19)**]** *(20)* PROSECUTION.—

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[(20)**]** *(21)* PROTECTION ORDER OR RESTRAINING ORDER.—

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[(21)**]** *(22)* RURAL AREA AND RURAL COMMUNITY.—

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[(22)**]** *(23)* RURAL STATE.—The term "rural State" means a State that has a population density of 52 of fewer persons per square mile or a State in which the largest county has fewer than **[**150,000**]** *200,000* people, based on the most recent decennial census.

[(23)**]** *(24)* SEXUAL ASSAULT.—

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[(24)**]** *(25)* STALKING.—

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[(25)**]** *(26)* STATE.—

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[(26)**]** *(27)* STATE DOMESTIC VIOLENCE COALITION.—

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[(27)**]** *(28)* STATE SEXUAL ASSAULT COALITION.—

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[(28)**]** *(29)* TERRITORIAL DOMESTIC VIOLENCE OR SEXUAL ASSAULT COALITION.—

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[(29)**]** *(30)* TRIBAL COALITION.—

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[(30)**]** *(31)* TRIBAL GOVERNMENT.—

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[(31)**]** *(32)* TRIBAL NONPROFIT ORGANIZATION.—

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[(32)**]** *(33)* TRIBAL ORGANIZATION.—

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[(33)**]** *(34)* UNDERSERVED POPULATIONS.—

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[(34)**]** *(35)* VICTIM ADVOCATE.—

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[(35)**]**] (*36*) VICTIM ASSISTANT.—

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[(36)] *(37)* VICTIM SERVICES OR VICTIM SERVICE PROVIDER.—

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[(37) YOUTH.—The term "youth" means teen and young adult victims of domestic violence, dating violence, sexual assault, or stalking.] *(38) YOUTH.—The term "youth" means an individual who is between 12 and 24 years of age.*

(39) TRAINED EXAMINER.—The term "trained examiner" means a health care professional who has received specialized training specific to sexual assault victims which includes both gathering forensic evidence and medical needs.

(b) GRANT CONDITIONS.—

(1) MATCH.—No matching funds shall be required for any grant or subgrant made under this [Act] *title* for—

(A) any tribe, territory, or victim service provider; or

(B) any other entity, including a State, [that—] *that the Attorney General determines has adequately demonstrated financial need.*

[(i) petitions for a waiver of any match condition imposed by the Attorney General or the Secretaries of Health and Human Services or Housing and Urban Development; and

(ii) whose petition for waiver is determined by the Attorney General or the Secretaries of Health and Human Services or Housing and Urban Development to have adequately demonstrated the financial need of the petitioning entity.]

(2) NONDISCLOSURE OF CONFIDENTIAL OR PRIVATE INFORMATION.—

(A) IN GENERAL.—In order to ensure the *privacy and* safety of adult, youth, and child victims of domestic violence, dating violence, sexual assault, or stalking, and their families, grantees and subgrantees under this subchapter shall protect the confidentiality and privacy of persons receiving services.

(B) NONDISCLOSURE.—Subject to subparagraphs (C) [and (D)], (*D*), (*E*), (*F*), (*G*), and (H), grantees and subgrantees shall not—

(i) disclose, *reveal, or release*, any personally indentifying information or individual information, *regardless of whether the information is encoded, encrypted, hashed, or otherwise protected*, collected in connection with services requested, utilized, or denied through grantees' and subgrantees' programs; or

(ii) [reveal] *disclose*, *reveal*, *or release* individual client information without the informed, written, reasonably time-limited [consent] *consent or authorization* of the person (or in the case of an unemancipated minor, the minor and the parent or guardian or in the case of [persons with disabilities] *a person with a court-appointed guardian*, the guardian) about whom information is sought, whether for this program or any other Federal, State, tribal, or territorial grant program, except that [consent] *consent or authorization* for release may not be given by the abuser of the minor,

person with disabilities, or the abuser of the other parent of the minor.

(C) RELEASE.—If *disclosure, revelation*, or release of information described in subparagraph (B) is compelled by statutory or court mandate—

(i) grantees and subgrantees shall make reasonable attempts to provide notice to victims affected by the disclosure, *revelation, or release* of information; and

(ii) grantees and subgrantees shall name steps necessary to protect the privacy and safety of the persons affected by the *disclosure, revelation, or* release of the information.

(D) INFORMATION SHARING.—

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(E) STATUTORILY PERMITTED REPORTS OF ABUSE OR NEGLECT.—Nothing in this paragraph shall prohibit a grantee or subgrantee from reporting abuse and neglect, as those terms are defined by law, and where mandated or expressly permitted by the State, tribe, or territory involved.

(F) PREEMPTION.—This paragraph shall not supersede any other provision of Federal, State, tribal, territorial, or local law relating to the privacy or confidentiality of information to the extent to which such other provision provides greater privacy or confidentiality protection than this paragraph for victims of domestic violence, dating violence, sexual assault, or stalking.

(G) CERTAIN MINORS AND PERSONS WITH GUARDIANS.—If a minor or a person with a court-appointed guardian is permitted by law to receive services without the parent's or guardian's consent or authorization, the minor or person with a court-appointed guardian may consent to a disclosure, revelation, or release of information. In no case may consent or authorization for release of information be given by the abuser of the minor, or person with a court-appointed guardian, or the abuse of the other parent of a minor.

[(E)**]** (*H*) OVERSIGHT.—Nothing in this paragraph shall prevent the Attorney General from disclosing grant activities authorized in this Act to the chairman and ranking members of the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate exercising Congressional oversight authority. All disclosures shall protect confidentiality and omit personally identifying information, including location information about individuals.

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(11) TECHNICAL ASSISTANCE.—Of the total amounts appropriated under this subchapter, not less than 3 percent and up to 8 percent, unless otherwise noted, shall be available for providing training and technical assistance relation to the purposes of this subchapter to improve the capacity of grantees, subgrantees, and other entities. If there is a demonstrated history that the Office on Violence Against Women has previous

set aside amounts greater than 8 percent for technical assistance and training relation to grant programs authorized under this subchapter, the Office has the authority to continue setting aside amounts greater than 8 percent. *The Director of the Office on Violence Against Women shall ensure that training or technical assistance will be developed and provided by entities having demonstrated expertise in the purposes, uses of funds, and other aspects of the grant program for which such training or technical assistance is provided.*

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Subchapter III—Violence Against Women

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PART L—STRENGTHENING AMERICA'S FAMILIES BY PREVENTING VIOLENCE AGAINST WOMEN AND CHILDREN

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§ 14043d–3. Development of curricula and pilot programs for home visitation projects

(a) GRANTS AUTHORIZED.—

(1) IN GENERAL.—The [Attorney General, acting through the Director of the Office on Violence Against Women, and in collaboration with the Department of Health and Human Services,] *Secretary of Health and Human Services (in this section referred to as the "Secretary"), acting through the Administration for Children, Youth, and Families*, shall award grants on a competitive basis to home visitation programs, in collaboration with victim service providers, for the purposes of developing and implementing model policies and procedures to train home visitation service providers on addressing domestic violence, dating violence, sexual assault, and stalking in families experiencing violence, or at risk of violence, to reduce the impact of that violence on children, maintain safety, improve parenting skills, and break intergenerational cycles of violence.

(2) TERM.—The [Director] *Secretary* shall make the grants under this section for a period of 2 fiscal years.

(3) AWARD BASIS.— The [Director] *Secretary* shall—

* * * * * * *

(d) GRANTEE REQUIREMENTS.—Under this section, an entity shall—

(1) prepare and submit to the [Director] *Secretary* an application at such time, in such manner, and containing such information as the [Director] *Secretary* may require; and

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PART M—ADDRESSING THE HOUSING NEEDS OF VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, AND STALKING

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§ 14043e–3. Collaborative grants to increase the long-term stability of victims

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(f) UNDERSERVED POPULATIONS AND PRIORITIES.—In awarding grants under this section, the Secretary of Health and Human Services shall—

(1) give priority to [linguistically and culturally] *culturally and linguistically* specific services;

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§ 14043e–4. Grants to combat violence against women in public and assisted housing

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(c) ELIGIBLE GRANTEES.—

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(2) SUBMISSION REQUIRED FOR ALL GRANTEES.—

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(D) plans are developed that establish meaningful consultation and coordination with local victim service providers, tenant organizations, [linguistically and culturally] *culturally and linguistically* specific service providers, State domestic violence and sexual assault coalitions, and, where they exist, tribal domestic violence and sexual assault coalitions; and

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PART N—NATIONAL RESOURCE CENTER

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§ 14043f. Grant for national resource center on workplace responses to assist victims of domestic and sexual violence

(a) AUTHORITY.—

[The Attorney General] *(1) IN GENERAL.—The Attorney General,* acting through the Director of the Office on Violence Against Women, may award a grant to an eligible nonprofit nongovernmental entity or tribal organization, in order to provide for the establishment and operation of a national resource center on workplace responses to assist victims of domestic and sexual violence. [The resource center shall provide information and assistance to employers and labor organizations to aid in their efforts to develop and implement responses to such violence.]

(2) INFORMATION AND ASSISTANCE.—The resource center established under paragraph (1) shall provide information and assistance to—

(A) employers and labor organizations to aid in their efforts to develop and implement responses to such violence; and

(B) victim service providers, including community-based organizations, State domestic violence coalitions, State sexual assault coalitions, and tribal coalitions, to enable to the providers to provide resource materials or other assistance to employers, labor organizations, or employees.

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(b) APPLICATIONS.—

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(3) a plan for developing materials and training [for materials] for employers that address the needs of employees in cases of domestic violence, dating violence, sexual assault, and stalking impacting the workplace, including the needs of underserved communities.

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(c) USE OF GRANT AMOUNT.—

(1) IN GENERAL.—An entity or organization that receives a grant under this section may use the funds made available through the grant for staff salaries, travel expenses, equipment, printing, and other reasonable expenses necessary to develop, maintain, and disseminate to employers [and labor organizations], *labor organizations, victim service providers, community-based organizations, State domestic violence coalitions, State sexual assault coalitions, and tribal coalitions,* described in subsection (a) of this section, information and assistance concerning workplace responses to assist victims of domestic or sexual violence.

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PART N–1—SEXUAL ASSAULT SERVICES

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§ 14043g. Sexual assault services program [1]

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(b) GRANTS TO STATES AND TERRITORIES.—

(1) GRANTS AUTHORIZED.—The Attorney General shall award grants to States and territories to support the establishment, maintenance, and expansion of rape crisis centers [and other programs and projects] to assist those victimized by sexual assault.

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[1] Note that the reference at Section 111(e) to 42 U.S.C. § 3796gg–9 is incorrect. This section was repealed by Pub.L. 109–271, § 3(a), Aug. 12, 2006, 120 Stat. 754, and placed at a different location within the Code. The section to be amended now appears at 42 U.S.C. § 14043g, and contains language identical to that formerly located at 42 U.S.C. § 3796gg–9. This is a drafting error.

(2) ALLOCATION AND USE OF FUNDS.—

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(B) GRANT FUNDS.—Any funds received by a State or territory under this subsection that are not used for administrative costs shall be used to provide grants to rape crisis centers [and other nonprofit, nongovernmental organizations for programs and activities] within such State or territory that provide direct intervention and related assistance *to sexual assault victims.*

(C) INTERVENTION AND RELATED ASSISTANCE.—

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(v) community-based, [linguistically and culturally] *culturally and linguistically* specific services and support mechanisms, including outreach activities for underserved communities; and

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(c) GRANTS FOR CULTURALLY SPECIFIC PROGRAMS ADDRESSING SEXUAL ASSAULT.—

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(2) ELIGIBLE ENTITIES.—To be eligible to receive a grant under this section, an entity shall—

(A) be a private nonprofit organization [that focuses primarily on] *whose primary mission is to address one or more* culturally specific communities;

* * * * * * *

(C) have expertise in the development of community-based, [linguistically and culturally] *culturally and linguistically* specific outreach and intervention services relevant for the specific communities to whom assistance would be provided or have the capacity to link to existing services in the community tailored to the needs of culturally specific populations; and

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(4) DISTRIBUTION.—

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(B) Up to 5 percent of funds appropriated under this subsection in any year shall be available for technical assistance by a national, nonprofit, nongovernmental organization or organizations whose primary focus and expertise is in addressing sexual assault within [underserved] culturally specific populations.

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PART P—MISCELLANEOUS AUTHORITIES

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§ 14045a. Enhancing culturally and linguistically specific services for victims of domestic violence, dating violence, sexual assault, and stalking

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(b) PURPOSE OF PROGRAM AND GRANTS.—

(1) GENERAL PROGRAM PURPOSE.—The purpose of the program required by this section is to promote:

(A) The maintenance and replication of existing successful services in domestic violence, dating violence, sexual assault, and stalking community-based programs providing culturally and linguistically specific services and other resources *for culturally and linguistically specific populations.*

(B) The development of innovative culturally and linguistically specific strategies and projects to enhance access to services and *culturally and linguistically specific* resources for victims of domestic violence, dating violence, sexual assault, and stalking who face obstacles to using more traditional services and resources.

(2) PURPOSES FOR WHICH GRANTS MAY BE USED.—

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(G) providing **[**culturally and linguistically**]** *culturally and linguistically* specific resources and services that address the safety, economic, housing, and workplace needs of victims of domestic violence, dating violence, sexual assault, or stalking, including emergency assistance; or

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