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S. 2338 – Hutchison/Grassley Alternative to S. 1925, the VAWA Reauthorization Act of 2011

Noteworthy

- The Hutchison/Grassley Alternative addresses [concerns raised about the constitutionality](#) of Section 904 of S. 1925, the Violence Against Women Reauthorization Act of 2011. This section would confer criminal jurisdiction to certain participating Indian tribal governments over all persons in Indian country, including non-Indians. The alternative addresses domestic and dating violence in Indian country without offending the Constitution, by allowing tribal councils to seek protective orders in federal court on behalf of affected Native American women. If a protective order is violated, the alternative carries significant penalties under federal law.
- The alternative uses gender-neutral language to ensure that grantees do not discriminate.
- The alternative directs the Inspector General of the Department of Justice (DOJ) to audit at least 10 percent of grantees each year and limits DOJ salaries and administrative expenses to 7.5 percent of authorized funds. These accountability measures are not in S. 1925.
- The alternative increases funding for rape testing kit backlogs.
- Unlike S. 1925, the alternative does not expand immigration policy. S. 1925 increases the number of U visas provided each year, which CBO estimates would increase spending and the deficit through 2022 (see below). The alternative focuses on reducing fraud in the petition process for benefits under VAWA.
- The alternative gives the U.S. Marshals Service the authority to locate and apprehend fugitive sex offenders in a timely manner, before these fugitives can offend again.
- The alternative maintains funding at the same levels as S. 1925, without adding \$105 million to the deficit.

Key Differences

Section 3 – Universal Definitions and Grant Conditions

Both bills amend 42 U.S.C. § 13925, which contains two subsections that apply to all VAWA programs: definitions (§ 13925(a)) and grant conditions (§ 13925(b)). Most of the definitions in the alternative remain the same, but differences include:

- 1) The alternative does not include a definition of “tribal coalition.”
- 2) S. 1925 defines “youth” as anyone between the ages of 11 and 24. The alternative caps the age range at 20 years.

Like S. 1925, this section modifies some of the conditions to which all VAWA programs must adhere as set forth in (§ 13925(b)). Most of the definitions remain the same, except:

- 1) Both bills direct the Inspector General of the Department of Justice to audit grantees. The alternative requires at least 10 percent of grantees to be audited each year, whereas S. 1925 allows the IG to decide how many audits to conduct.
- 2) The alternative forbids more than 7.5 percent of authorized funds to be used by the Department of Justice for salaries and administrative expenses.

Title I – Enhancing Judicial and Law Enforcement Tools to Combat Violence Against Women

- The alternative updates Section 101 dealing with STOP grants. This section makes the STOP grant authorization language gender neutral. Authorized funding under this section remains the same as S. 1925, except that bill requires 20 percent of funding to be allocated for addressing sexual assault (meaning various types of rape), while the alternative increases this requirement to 30 percent.
- Section 102 of S. 1925 expands the issuance of “Arrest” grants, including grants for training law enforcement on the appropriate use of U and T visa applications for incidents of domestic violence, stalking, sexual assault, and dating violence. The alternative has no requirement that grants be used for training related to the appropriate use of U and T visas.
- The alternative deletes a provision of Section 103 that funds civil legal assistance programs for *pro se* victims.
- The alternative includes a new provision, Section 111, to help victims recover restitution and other money resulting from a judgment or sentence. This provision amends the tax code to require the chief justice of the highest court of any state to designate an independent entity that would communicate with the Secretary of the Treasury to collect past-due, legally enforceable state judicial debts. Treasury would pay the debt from any tax refund due to the person. This provision is identical to S. 755, a bill with [bipartisan support](#).

Title II – Improving Services for Victims of Domestic Violence, Dating Violence, Sexual Assault, and Stalking

- The alternative raises the qualifying age of a victim under Section 204 from 50 years to 60 years in order to prioritize grant money for vulnerable elderly victims and not the larger population.

Title III – Services, Protection, and Justice for Young Victims of Violence

- The alternative adds an additional grant requirement for CHOOSE grants, in Section 302. It requires that all educational materials be scientifically sound as determined by an accredited outside entity.
- Section 304 of the alternative does not include requirements that the policies of higher education institutions include prevention and awareness education programs.
- Section 304 of the alternative also changes the procedures for institutional disciplinary action required in S. 1925 in order to protect due process rights of the accused.

Title IV – Violence Reduction Practices

No significant changes.

Title V – Strengthening the Health Care System’s Response to Domestic Violence, Dating Violence, Sexual Assault, and Stalking

No significant changes.

Title VI – Safe Homes for Victims of Domestic Violence, Dating Violence, Sexual Assault, and Stalking

No significant changes.

Title VII – Economic Security for Victims of Violence

No significant changes.

Title VIII – Protection for Battered Immigrants

The alternative removes Sections 801 to 806, and 809 of S. 1925.

Section 801 – Application of Special Rule for Battered Spouse or Child

This section amends 8 U.S.C. § 1229(b) in an effort to prevent fraud in the VAWA self-petitioning process. It requires U.S. Citizenship and Immigration Services to review applications for completeness and any indicators of fraud or material misrepresentations of fact. In addition, it requires in-person interviews, where possible. This section also requires adjudicators to prioritize

ongoing law enforcement and immigration investigations, requiring those investigations to be completed before a self-petition could be adjudicated. In the event a self-petition has made a material misrepresentation on the application, the petition will be denied and the alien will be ineligible for immigration benefits.

Section 802 – Clarification of the Requirements Applicable to U Visas

This section attempts to ensure that aliens who apply for U visas actually assist law enforcement and prosecutions. It amends 8 U.S.C. § 1184(p)(1) to require that a petition meet the following criteria before a U visa can be granted:

- 1) The alien report the criminal activity to law enforcement within 120 days of its occurrence;
- 2) The statute of limitations for prosecuting an offense based on the criminal activity has not lapsed;
- 3) The criminal activity is actively under investigation or a prosecution has begun;
- 4) The alien has information that will assist in identifying the perpetrator of the criminal activity or the perpetrator's identity is known.

Section 803 – Protections for a Fiancée or Fiancé of a Citizen

This section amends 8 U.S.C. § 1184 to require disclosure of protective or restraining orders issued against a petitioner for a K visa. This section also expands the list of specific criminal convictions that a petitioner must disclose when petitioning for a K visa. This section is similar to Section 807 of S. 1925.

Section 804 – Regulation of International Marriage Brokers

This section requires the Attorney General to submit to Congress within 90 days of enactment, a report that identifies the component of the DOJ responsible for prosecuting violations of International Marriage Broker Regulation Act. It also increases the regulation of international marriage brokers by requiring them to obtain the foreign national's birth certificate or other proof of age, to keep the original certificate/document for five years, and to produce the certificate/document upon request from an appropriate authority. This section is similar to Section 808 of S. 1925.

Section 805 – GAO Report

This section requires the Comptroller General of the United States to submit to the Senate and House Judiciary Committees a report assessing the U visa and VAWA self-petitioning processes.

Title IX – Safety for Indian Women

Sections 908 and 909 of S. 1925 are not in the alternative.

Section 901 – Grants to Indian Tribal Governments

This section is substantially the same as S. 1925.

Section 902 – Grants to Indian Tribal Coalitions

This section adds a purpose area to the existing tribal coalition grant program that would allow grant money to be directed toward developing policies that promote best practices for responding to domestic violence, dating violence, sexual assault, sex trafficking, and stalking. S. 1925 also does this, but it creates a new, unnecessary, funding formula for these grants.

Section 903 – Consultation

This section is substantially the same as S. 1925.

Section 904 – Amendments to the Federal Assault Statute

This section is substantially the same as Section 906 of S. 1925.

Section 905 – Analysis and Research on Violence Against Women

This section is substantially the same as Section 907 of S. 1925, except funding is \$500,000 instead of the \$1 million provided for in S. 1925.

Section 906 – Effective Date

This section makes the amendments of Title IX to be effective on the date of enactment.

Section 907 – Tribal Protection Orders

This section amends 18 U.S.C. § 2265(e) to allow Indian tribes to petition a U.S. district court for an “appropriately tailored protection order excluding any person from areas within the Indian country of the tribe.” For such an order to be issued, the petitioning tribe must show:

- 1) That the person to be excluded has assaulted:
 - a. an Indian spouse or intimate partner who resides or works in Indian country, or;
 - b. an Indian child who resides with or is in the care or custody of such spouse or intimate partner.
- 2) And a protection order is reasonably necessary to protect the safety and well being of the spouse, intimate partner, or child identified in the petition.

This section requires the district court to consider such factors as the residence, place of work, or school of both the person to be excluded and the victim or child identified in the petition.

Finally, where a district court issues such a protective order and it is violated, the violator shall be punished according to 18 U.S.C. §2261(b), the federal interstate domestic violence statute.

Title X – Violent Crime Against Women

This title removes Sections 1003, 1004, 1005, and 1006 of S. 1925 and replaces them with other provisions.

Section 1001 – Criminal Provisions Relating to Sexual Abuse

This section is substantially the same as S. 1925, but does not include any new, overly-broad, criminal offenses contained in S. 1925 for sexual contact, that could potentially allow for the prosecution of a prison guard who was merely performing official duties.

Section 1002 – Sexual Abuse In Custodial Settings

This section is the same as in S. 1925.

Section 1003 – Report on Compliance with the DNA Fingerprint Act of 2005

This section requires the Department of Homeland Security to report to Congress within 180 days on its progress complying with the 42 U.S.C. § 14135a(e)(1). This section is not in S. 1925.

Section 1004 – Reducing The Rape Kit Backlog

This section amends 42 U.S.C. § 14135a(c)(3)(B) to require that 75 percent of all Debbie Smith Act grant funds be spent on analyzing untested DNA evidence from crime scenes, or enhancing the capacity of labs to do so. Current law only requires 40 percent of Debbie Smith Act funds to be spent on these core purpose areas. S. 1925 does not contain this provision.

Section 1005 – Report on Capacity Utilization

This section requires a study and report to Congress within two years on the availability of services for victims of domestic violence, dating violence, sexual assault, and stalking. This section is not in S. 1925.

Section 1006 – Mandatory Minimum Sentence for Aggravated Sexual Abuse

This section amends 18 U.S.C. § 2241(a) to require a 10-year mandatory minimum sentence to the crime of aggravated sexual assault by force or threat. S. 1925 only requires a five-year mandatory minimum sentence.

This section also amends 18 U.S.C. § 2241(b) to require a five-year mandatory minimum sentence for the crime of aggravated sexual assault by drugging, intoxication, or otherwise rendering the victim unconscious. S. 1925 does not impose a mandatory minimum sentence.

Section 1007 – Removal of Drunk Drivers

This section amends 8 U.S.C. § 1101(a)(43)(F) to include a third drunk driving conviction to the list of aggravated felonies for which an alien may be deported. Unlike S. 1925, the alternative recognizes prior drunk-driving convictions, while also requiring a new drunk-driving conviction for an alien to be deported.

Section 1008 – Enhanced Penalties for Interstate Domestic Violence Resulting in Death, Life-Threatening Bodily Injury, Permanent Disfigurement, and Serious Bodily Injury

This section amends 18 U.S.C. § 2261(b) to:

- Create a 15-year mandatory minimum sentence for violations of this offense resulting in death (under subsection (b)(1) of § 2261);
- Increase the statutory maximum penalty from 20 years to 25 years for permanent disfigurement or life threatening bodily injury (under subsection (b)(2) of § 2261);
- Increase the statutory maximum penalty from 10 years to 15 years for serious bodily injury or if a dangerous weapon was used (under subsection (b)(3) of § 2261).

Section 1009 – Finding Fugitive Sex Offenders

This section addresses the needs of the U.S. Marshals Service in locating and apprehending fugitive sex offenders. This section amends 18 U.S.C. § 3486(a)(1) and 28 U.S.C. § 566(e)(1) to provide the Service’s director with the authority to issue administrative subpoenas in investigations of fugitive sex offenders who attempt to evade detection by failing to register under the Sex Offender Registration and Notification Act. Under the Adam Walsh Act, the Marshals Service has primary jurisdiction to locate and apprehend unregistered sex offenders who have crossed state lines or had earlier been convicted under federal law. This provision would grant marshals the authority they need for the lawful and timely collection of evidence in these multi-jurisdictional, fast-moving investigations, and would save crucial time in locating a missing child or preventing a fugitive from re-offending.

Section 1010 – Minimum Penalties for the Possession of Child Pornography

This section amends 18 U.S.C. § 2252(b)(2) and 18 U.S.C. 2252A(b)(2) to require that a mandatory minimum sentence of one year be imposed for possession of a visual depiction of a minor under the age of 12 engaging in sexually explicit conduct.

Section 1011 – Audit of Office for Victims of Crime

This section requires the Comptroller General to audit the expenditure of funds by the Office for Victims of Crime (OVC) and submit a report to the Senate and House Committees on the Judiciary within 9 months of enactment. The report will address whether:

1. OVC provides funds to individuals or entities who are not victims of crime;
2. OVC is authorized to provide funds to individuals or entities that are not victims;
3. OVC provides funds for legal services for victims of crime and, if not, why not.

Title XI – The Safer Act

This Title is not included in S. 1925.

Section 1101 – Short Title

The Sexual Assault Forensics Registry Act of 2012.

Section 1102 – Debbie Smith Grants for Auditing Sexual Assault Evidence Backlogs

This section amends 42 U.S.C. §14135 to allocate seven percent of Debbie Smith Grant funds for state and local law enforcement to audit untested rape kits. Current law does not allow grantees to use funds for such audits. To receive these funds, an entity would have to submit a plan that includes a good faith estimate of the number of untested sexual assault samples to be tested.

Section 1103 – Sexual Assault Forensic Evidence Registry

This section requires the Attorney General to use one percent of existing Debbie Smith Act appropriations to establish a Sexual Assault Forensic Evidence Registry. Entities would be required to include the following information about each untested sample of sexual assault evidence:

- 1) The date of the crime to which the sample relates;
- 2) The jurisdiction in which the crime occurred;
- 3) The date on which the sample was collected;
- 4) Status of the progress of the sample through testing and other stages of the evidentiary handling process, including the identity of the entity in possession of the sample;
- 5) The date or dates after which the state or unit of local government would be barred by any applicable statute of limitations from prosecuting the criminal act to which the sample relates; and
- 6) The date on which information relating to the sample was entered into the registry.

The section also prohibits the entry of personally identifiable information that might lead to the identification of the individuals involved.

This section also requires the Attorney General to provide technical assistance to states and localities that wish to participate in the registry.

Section 1104 – Reports to Congress

This section requires the Attorney General to issue a report to Congress within 90 days after the end of each fiscal year for which an audit grant is made that discusses:

- 1) The names of all audit grantees;
- 2) The monetary size of each grant;
- 3) The number of extensions granted by the Attorney General;
- 4) The status of samples of sexual assault evidence that have been entered into the registry, including the number of samples that have not been tested.

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