



Legislative Bulletin.....December 17, 2005

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H.R. 3402— Department of Justice Appropriations Authorization Act, Fiscal Years 2006 through 2009—*as amended by the Senate* (Sensenbrenner)

Order of Business: The House passed H.R. 3402 on September 28, 2005, by a vote of 415-4 (<http://clerk.house.gov/evs/2005/roll501.xml>). The Senate passed an amended version of the bill by unanimous consent on December 16th. Today, the House is scheduled to consider this Senate-amended version under a motion to suspend the rule and pass the bill (subject to H.Res. 623, a rule allowing for suspensions to be considered today).

To see the RSC Legislative Bulletin on H.R. 3402 from earlier this autumn, visit these two webpages:

<http://www.house.gov/pence/rsc/doc/LB%2009-28-05--DoJ%20VAWA%20Auth.pdf>
<http://www.house.gov/pence/rsc/doc/LB%2009-28-05--DoJ%20VAWA%20Auth%20Amends.pdf>

Summary (significant changes from the House-passed bill in **red-bold below):** H.R. 3402 would authorize appropriations for the Department of Justice for fiscal years 2006, 2007, 2008, and 2009—and would reauthorize the Violence Against Women Act (VAWA) through fiscal year 2011—as follows:

Violence Against Women Act:

- Reauthorizes the Violence Against Women Act, which was first enacted during the Clinton era in 1994 and was reauthorized in 2000. The Act established the Violence Against Women Office in the Department of Justice and created a host of new funding streams aimed at combating domestic violence, dating violence, stalking, sexual assault, and trafficking in persons.
- Clarifies that any grants or other activities for assistance to victims of domestic violence, dating violence, stalking, sexual assault, or trafficking in persons apply to both male and female victims.

- Sets out the following requirements that would apply to any grant program carried out under the Violence Against Women Act (VAWA):
 - prohibits the disclosure of confidential information;
 - allows collaboration with other federal, state, and local agencies;
 - prohibits VAWA funds from replacing non-federal funds that would otherwise be used;
 - emphasizes that VAWA funds could only be used for the specific purposes for which they are obligated;
 - requires that grantees collect data to evaluate the effectiveness of their activities;
 - prohibits VAWA funds from being used for or related to lobbying; and
 - prohibits VAWA funds from being used to fund civil representation in a lawsuit based on a tort claim.

- Reauthorizes the STOP grant program at ~~\$215~~ **225** million for each of fiscal years ~~2006 through 2010~~ **2007 through 2011** (current law is \$185 million a year). This program, which, according to the Judiciary Committee, “provides State formula grants that bring police and prosecutors in close collaboration with victim services for racial and ethnic minorities and ensures victim confidentiality,” would be modified to condition grants on the grantee not making publicly available on the Internet information regarding protection or restraining orders or injunctions. Law enforcement officials who want to receive STOP grants could not require a polygraph test for proceeding with an investigation or arrest. Matching requirements would be eliminated for smaller law enforcement agencies and victim service providers.

- Reauthorizes at ~~\$65~~ **75** million a year (current law is \$65 million) grants to encourage the arrest of abusers who commit acts of violence or violate protection orders.

- Reauthorizes (at ~~\$55~~ **65** million a year) the legal services grant program for protection orders and family, criminal, immigration, administrative agency, and housing matters. The program allows adult and youth victims of domestic violence, dating violence, stalking, and sexual assault to obtain access to trained attorneys and lay advocacy services, including *pro bono* legal services, as a consequence of violence.

- Creates two new grant programs:
 - a training program to educate the courts and court-related personnel in the areas of domestic violence, dating violence, sexual assault, and stalking; and
 - creating a national curricula for state and tribal judiciaries to use when educating in the areas of domestic violence, dating violence, sexual assault, and stalking (\$25 million over five years for both).
 - ~~--improving court access for teenagers (\$25 million over five years).~~

- Establishes a ~~task force~~ grant program (~~\$5~~ **25** million over five years) to review and report on policies, procedures, and technological issues that may affect the privacy and confidentiality of victims of domestic violence, dating violence, stalking, and sexual assault.

- Authorizes \$5 million over five years for the Attorney General to appoint victim assistants for the prosecution of sex crimes and domestic crimes in DC.
- **Creates a new grant program for law enforcement training (\$50 million over five years).**
- Directs the Comptroller General to report to Congress on the extent to which men, women, youth, and children are victims of domestic violence, dating violence, sexual assault, and stalking and on whether *all* victims have access to shelter, counseling, legal representation, and other services commonly provided to victims of domestic violence.
- Creates a new grant program for underserved populations (\$10 million over five years).
- Diverts 5% from five listed grant programs to a new program aimed at enhancing the culturally and linguistically specific services for victims.
- Creates new grant programs for sexual assault services (~~\$275~~ **250** million over five years):
 - grants to rape crisis centers and other programs for victims of sexual assault;
 - grants to culturally specific organizations combating sexual assault;
 - grants to state and local entities to create and maintain sexual assault coalitions; and
 - grants to American Indians and Alaska Natives for sexual assault services.
- Reauthorizes (~~\$250~~ **275** million over five years) and expands the existing education, training, and services grant programs that address violence against women in rural areas.
- Consolidates programs to provides services for victims of abuse who are elderly or disabled (~~\$102.5~~ **100** million over five years).
- Authorizes \$10 million over five years for new grants to carry out public information campaigns focused on addressing adult or youth domestic violence, dating violence, sexual assault, stalking, or trafficking within underserved communities.
- Establishes **three** new grant programs for young victims of domestic violence:
 - two** to establish collaboration between law enforcement, the courts, and child welfare agencies (**\$50** million over five years);
 - one to advocate for, and respond to, youth who are victims of domestic violence, dating violence, sexual assault, and stalking (**\$50 75** million over five years); and

- Authorizes \$25 million over five years for a new grant program to train school personnel to recognize signs of violence in middle school and high school and establish policies for intervention.
- Reauthorizes a program (at ~~\$75~~ **72** million over five years) to provide grants to colleges and universities to help combat domestic violence, dating violence, sexual assault, and stalking.
- Reauthorizes the Safe Havens program (\$100 million over five years), which is aimed at providing safe places for children in custody situations where there is domestic violence. The bill would refocus the program to ensure the safety of parents and prevent the children from experiencing or witnessing domestic violence.
- Creates a new grant program (~~\$75~~ **100** million over five years) for mitigating the harmful effects (including perpetuation) of children exposed to domestic violence, dating violence, sexual assault, and stalking.
- Creates a new grant program (\$50 million over five years) for building alliances among men, women, and youth to prevent domestic violence, dating violence, sexual assault, and stalking. Authorizes a media campaign for this effort.
- Creates a new grant program (~~\$25~~ **35** million over five years) for creating a unified curriculum and model policies for home visitation providers.
- Authorizes “such sums” over five years for grants to states to carry out a public campaign to increase awareness of issues regarding domestic violence against pregnant women.
- **Creates three new grant programs aimed at strengthening the healthcare system’s response to domestic violence, dating violence, sexual assault, and stalking (funded in total at \$65 million over five years).**
- **Creates two new grant programs and modifies various provisions of current law aimed at addressing the housing needs for battered women and children (funded in total at \$100 million over five years). Instructs housing programs to monitor domestic violence, dating violence, an stalking and take the appropriate actions (detailed in the bill) regarding tenancy.**
- **Creates a new grant program (\$5 million over five years) to establish and operate a national resource center on workplace responses to assist victims of domestic and sexual violence.**
- **Withholds some federal funding from states that do not have laws allowing victims of rape and sexual assault to learn the HIV status of their attacker within 48 hours of an indictment.**

- Provides a variety of new protections and regulatory flexibilities for immigrant victims of violence (who are in this country on a T or U visa). The Judiciary Committee explains that, “U visas are available to victims of certain crimes who cooperate with law enforcement in investigations and/or prosecutions. T visas are available to the victims of trafficking who cooperate with law enforcement in investigations and/or prosecutions. Certain family members of T visa recipients can also receive T visas.”
- Allows the Secretary of Homeland Security to reduce or waive the three-year-physical-presence requirement for the transfer of T-visa status to permanent resident status. Under current law, the Secretary can adjust the status of a T-visa recipient to that of a permanent resident only after three years of physical presence in the U.S. under a T visa or after being granted “continued presence” by federal law enforcement officials.
- Allows a minor child or alien spouse of a U.S. citizen or permanent resident to self-petition for permanent residence, if the abusive parent/spouse has died (or otherwise terminated the parent-child relationship, in the case of a self-petitioning child) within the past two years.
- Extends the ability of an alien to self-petition for permanent residence to the parent of an adult U.S. citizen who resides or has resided with the U.S. citizen son or daughter, if the alien demonstrates that he or she has been battered by, or has been the subject of extreme cruelty perpetrated by, their U.S. citizen son or daughter.
- Allows the Secretary of Homeland Security to defer deportation (or other such action) for an alien who has filed an apparently valid VAWA petition or T- or U-visa application while the application is pending. Employment authorization would be granted for T-visa applicants (U-visa applicants are already granted employment authorizations).
- Ensures that a family member’s eligibility for an immigration status change will not hinge on an abuser’s filing status or on an ongoing relationship with, or marriage to, the abuser.
- Provides an additional variety of flexibilities for T- and U-visa immigrants to afford them greater protections from their abusers under U.S. law.
- **Instructs the Homeland Security Secretary to develop a pamphlet in a variety of languages on the legal rights and resources for immigrant victims of domestic violence and circulate it to K nonimmigrant visa applicants and others.**
- **Implements a variety of regulations and prohibitions on international marriage brokers, including prohibiting the marketing of people under 18 and requiring the collection of certain background information on clients. Sets penalties for violations.**

- Provides that an adopted alien qualifies as a child for immigration purposes, despite not having been in the legal custody of, or having resided with, the adopting parent for at least two years, if the child has been battered or subject to extreme cruelty by the adopting parent or by a family member of the adopting parent residing in the same household.
- Authorizes \$3 million over two years for the Attorney General to prepare two reports to Congress on violence against Indian women.
- Directs the Attorney General to permit Indian law enforcement agencies to enter information into, and obtain information from, federal databases regarding domestic violence, dating violence, sexual assault, and stalking.
- Authorizes \$5 million over five years for the establishment of a national tribal sex offender registry.
- Establishes a division within the Violence Against Women Office to focus on violence on tribal lands and allows for a consolidation of all the tribal set-asides within the VAWA reauthorization.
- **Directs the FBI to expunge the DNA analysis of individuals whose convictions have been overturned.**
- **Authorizes the collection of DNA samples from people arrested or detained under federal authority.**

Authorizations of Appropriations

**** (FY2003 authorization in current law [*italicized*] followed by the FY2006, FY2007, FY2008, and FY2009 authorizations in H.R. 3402 for each item):**

- **General Administration--** *\$121,079,000*; \$161,407,000; \$167,863,000; \$174,578,000; \$181,561,000
- **Administration of pardon and clemency petitions and for immigration-related activities--** *\$198,869,000*; \$216,286,000; \$224,937,000; \$233,934,000; \$243,291,000
- **Office of the Inspector General--** *\$66,288,000*; \$72,828,000; \$75,741,000; \$78,771,000; \$81,922,000 (including \$10,000 in each fiscal year for “unforeseen emergencies of a confidential character”)
- **General legal activities--** *\$659,181,000*; \$679,661,000; \$706,847,000; \$735,121,000; \$764,526,000 (including not less than \$4 million in each fiscal year for Nazi war criminals cases and up to \$20,000 in each fiscal year for confidential emergencies)

- **Antitrust Division**-- \$141,855,000; \$144,451,000; \$150,229,000; \$156,238,000; \$162,488,000
- **United States Attorneys**-- \$1,550,948,000; \$1,626,146,000; \$1,691,192,000; \$1,758,840,000; \$1,829,194,000
- **FBI**-- \$4,323,912,000; \$5,761,237,000; \$5,991,686,000; \$6,231,354,000; \$6,480,608,000 (including up to \$70,000 for confidential emergencies)
- **U.S. Marshals Service**-- \$737,346,000; \$800,255,000; \$832,265,000; \$865,556,000; \$900,178,000
- **Federal Prison System (including National Institute of Corrections)**-- \$4,605,068,000; \$5,065,761,000; \$5,268,391,000; \$5,479,127,000; \$5,698,292,000
- **Drug Enforcement Administration**-- \$1,582,044,000; \$1,716,173,000; \$1,784,820,000; \$1,856,213,000; \$1,930,462,000 (including up to \$70,000 in each fiscal year for confidential emergencies)
- **Bureau of Alcohol, Tobacco, Firearms, and Explosives**—(no authorization in the FY2003 bill); \$923,613,000; \$960,558,000; \$998,980,000; \$1,038,939,000
- **Fees and expenses of witnesses**-- \$156,145,000; \$181,137,000; \$188,382,000; \$195,918,000; \$203,755,000 (including up to \$8 million in each fiscal year for construction of protected witness safe-sites)
- **Interagency crime and drug enforcement**-- \$362,131,000; \$661,940,000; \$688,418,000; \$715,955,000; \$744,593,000
- **Foreign Claims Settlement Commission**-- \$1,194,000; \$1,270,000; \$1,321,000; \$1,374,000; \$1,429,000
- **Community Relations Service**-- \$10,732,000; \$9,759,000; \$10,149,000; \$10,555,000; \$10,977,000
- **Assets Forfeiture Fund**-- \$22,949,000; \$21,468,000; \$22,000,000; \$22,000,000; \$22,000,000
- **United States Parole Commission**-- \$11,355,000; \$11,300,000; \$11,752,000; \$12,222,000; \$12,711,000
- **Federal Detention Trustee**-- \$1,388,583,000; \$1,222,000,000; \$1,405,300,000; \$1,616,095,000; \$1,858,509,000

- **Identification System Integration/ Information Sharing**-- \$24,505,000 (*figure just for ID system integration*); \$181,490,000; \$188,750,000; \$196,300,000; \$204,152,000
- **Costs of conversions to narrowband communications**-- \$149,292,000; \$128,701,000; \$133,849,000; \$139,203,000; \$144,771,000
- **Office of Justice Programs**-- \$215,811,000; \$121,105,000; \$125,949,000; \$130,987,000; \$132,226,000
- **Office on Violence Against Women**—*such sums*; \$14,172,000; \$15,600,000; \$16,224,000; \$16,837,000
- **Office of Community Oriented Policing Services**—(*no specific line-item in FY2003 authorization bill*); \$31,343,000; \$32,597,000; \$33,901,000; \$35,257,000

Establishing and Modifying DoJ Grant Programs:

- Creates a new task force to combat organized retail theft. (Authorized at \$5 million a year for FY2006-FY2009)
- Authorizes \$40 million over four years for the Attorney General to create a United States-Mexico Border Violence Task Force in Laredo, Texas, to combat drug-trafficking, kidnapping, and violence along the U.S.-Mexico border and provide related expertise to existing border authorities.
- Authorizes \$10 million a year (with no end-date) for the creation of a National Gang Intelligence Center under the FBI.
- Consolidates the current Byrne Grant Program (both formula and discretionary) and the Local Law Enforcement Block Grant Programs into one new Edward Byrne Memorial Justice Assistance Grant Program, allowing states and localities to submit one application for this money annually for a four-year term. Grant funds could be used by state or local governments to provide additional personnel, equipment, supplies, contractual support, training, technical assistance, and information systems for laws enforcement, courts, corrections, drug treatment, prevention programs, and other such justice-related activities. Sets new formula for grants and requires that states and localities establish an interest-bearing trust fund in which to deposit amounts received under the program. Authorizes \$1.095 billion for the consolidated program for FY2006 and “such sums as may be necessary” for FY2007-FY2009. According to the Judiciary Committee, the FY2006 figure represents about a 2% increase over the amount appropriated for both programs in FY2003.
- Establishes within the Office of Justice Programs a new Office of Weed and Seed Strategies (replacing the current Executive Office of Weed and Seed) to “prevent, control, and reduce violent crime, criminal drug-related activity, and gang activity in

designated...communities.” Authorizes \$60 million for FY2006 and “such sums as may be necessary” for FY2007-2009. Sets federal share of any funded project at 75%.

- Amends the Crime Victim Assistance Grants Program to allow grants of less than \$10,000 to be made to smaller neighborhood and community-based victim service organizations (non-profits).
- Authorizes \$12 million over four years for the Attorney General, acting through the Bureau of Justice Assistance, to make grants to state and local prosecutors and law enforcement agencies in support of juvenile and young adult witness assistance programs.
- Amends the Juvenile Drug Court Grant Program so that offenders who are convicted of a *violent* misdemeanor may participate in the program (only non-violent offenders can participate under current law). Repeals the requirement that all states must receive a minimum allocation under the program regardless of the quality of its application.
- Repeals five grant programs that have not been funded in recent years: the Criminal Justice Facility Construction Pilot Program; the Local Crime Prevention Block Grant Program; the Assistance for Delinquent and At-Risk Youth Program; the Improved Training and Technical Automation Program; and the Other State and Local Aid Program.
- Repeals the requirement that the Office of Justice Programs (OJP) provide notice, a hearing, and an appeals process for grant applicants whose applications are denied.
- Establishes a new Office of Audit, Assessment, and Management within OJP to audit, exercise corrective actions with respect to, and manage information with respect to, the COPS programs, any grant program carried out by OJP, and any other DOJ grant program that the Attorney General deems appropriate (including establishing and maintaining an automated information management system to track all grants). Funds the new Office from (up to) 3% of all funding made available for the programs covered by the Office.
- Establishes a new Community Capacity Development Office within OJP to provide regional and local training to actual and prospective participants in the COPS programs, any grant program carried out by OJP, and any other DOJ grant program deemed appropriate by the Attorney General. Funds the new Office from (up to) ~~5%~~ **3%** of all funding made available for the programs covered by the Office.
- Establishes a new Office of Applied Law Enforcement Technology within the Office of Science and Technology to “provide leadership and focus to those grants of the Department of Justice that are made for the purpose of using or improving law enforcement computer systems.”

- Requires the Assistant Attorney General of OJP to make two financial management reforms: (1) consolidate all accounting activities of OJP into a single financial management system under the direct management of the Office of the Comptroller by September 30, 2010, and (2) consolidate all procurement activities of OJP into a single procurement system under the direct management of the Office of Administration by September 30, 2008. Sets deadlines for achieving compliance along the way.
- Reauthorizes, at \$1.05 billion a year, the Community Oriented Policing Program (COPS) as a single grant program that would allow states and localities to use a single application process for the funds under a number of different purpose-areas. Removes the school security functions from within the reauthorized COPS program
- Reauthorizes the Juvenile Accountability Block Grants Program.
- Reauthorizes, at \$5 million a year through FY2010, a program to track sex offenders and encourage states to effectively monitor them upon release from prison.
- Makes numerous other clarifications and technical fixes to a variety of DOJ grant programs.

Miscellaneous provisions:

- Requires that the Justice Department, for any predominantly internal training or conference meeting, use only facilities that do not require payment to a private entity.
- Directs the Attorney General to designate a privacy officer (a senior official with the primary responsibility for privacy policy at DOJ, as detailed in the legislation).
- Requires the Director of the Executive Office for United States Trustees to prepare an annual report to the Congress detailing: (1) the number and types of criminal referrals made by the trustee program; (2) the outcomes of each criminal referral; (3) any decrease in the number of criminal referrals from the previous year; and (4) the program's efforts to prevent bankruptcy fraud and abuse, particularly with respect to a debtor's failure to disclose assets.
- Requires the Attorney General to submit an annual report to Congress specifying the number of U.S. citizens or residents detained on suspicion of terrorism.
- Increases penalties for any correctional facility personnel who sexually abuse an individual in the custody of the Bureau of Prisons.
- Extends by one year the time period for the Prison Rape Commission to report its findings to Congress.
- Extends to ten years the statute of limitations for human trafficking-related offenses.

- Authorizes \$25 million over three years for the Attorney General to make use of the services of the nonprofit Center for Criminal Justice Technology.
- Authorizes \$8 16 million over four years for the Attorney General to make grants to the National Consortium for Justice Information and Statistics to carry out the operations of the National Technical Assistance and Training Program.
- Reauthorizes the Gang Resistance Education and Training Projects Program at \$20 million a year through FY2010.
- Authorizes \$11.5 million over four years for the Attorney General to use the services of the National Training Center in Sioux City, IA, to provide training to communities and criminal justice agencies to address the threat from methamphetamine production, trafficking, and use.
- Authorizes \$37.5 million over five years for grants to the American Prosecutors Research Institute for training prosecutors in how to handle child abuse cases.
- ~~➤ Establishes a fixed annual allocation for Victims of Crime Act (VOCA) grants equal to the average amount allocated over the previous three years plus five percent, with the intention that Crime Victims Fund money goes more to direct services for crime victims and less to federal bureaucracy.~~
- Reauthorizes the State Criminal Alien Assistance Program (SCAAP) at \$5.4 billion over six years. Specifies that these funds “may be used only for correctional purposes.”
- Authorizes \$50 million in FY2007 (and such sums in FY2008-FY2009) for the Attorney General to make up to five grants for the purpose of carrying out youth violence demonstration projects to reduce juvenile and young adult violence, homicides, and recidivism among high-risk populations. Sets the federal share of any such project at 90%.

Additional Background: The U.S. Department of Justice was last authorized in 2002 through fiscal year 2003 (H.R. 2215—107th Congress; Public Law 107-273). To read the RSC Legislation Bulletin for the conference report to H.R. 2215 (the version that was signed into law in 2002), please visit this website:
<http://www.house.gov/pence/rsc/doc/Lb92602a.pdf>

Before 2002, the last time the Department of Justice was authorized was in 1979. Last year’s bill (H.R. 3036) was passed by the House but not by the Senate.

Committee Action: On July 27, 2005, the Judiciary Committee marked up and ordered H.R. 3402 favorably reported to the full House by voice vote.

Possible Conservative Concerns: Some conservatives may be concerned at the bill's creation of at least 20 new federal funding programs.

Administration Position: A Statement of Administration Policy (SAP) is not available.

Cost to Taxpayers: CBO is not likely to prepare a cost estimate for the amended version of H.R. 3402. CBO reported that the version of H.R. 3402, as it was reported from the Judiciary Committee earlier this year, would authorize \$22.983 billion in FY2006 and a total of \$98.508 billion over the FY2006-FY2010 period.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes, the bill would create a slew of new federal programs, task forces, and new offices within DoJ. However, the bill would also repeal at least five currently unfunded programs and consolidate several other programs.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: CBO confirmed that the House-committee-reported H.R. 3402 contained no intergovernmental or private-sector mandates, and there is no indication that the amended version contains any.

Constitutional Authority: The Judiciary Committee, in House Report 109-233, cites constitutional authority in Article I, Section 8, but does not cite a specific clause. House Rule XIII, Section 3(d)(1), requires that all committee reports contain "a statement citing the *specific* powers granted to Congress in the Constitution to enact the law proposed by the bill or joint resolution." *[emphasis added]*

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