

Calendar No. 402

116TH CONGRESS }
2d Session }

SENATE

{ REPORT
116-193

LUKE AND ALEX SCHOOL SAFETY ACT OF
2019

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 2779

TO ESTABLISH THE FEDERAL CLEARINGHOUSE ON SCHOOL
SAFETY BEST PRACTICES, AND FOR OTHER PURPOSES



JANUARY 6, 2020.—Ordered to be printed

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Mr. JOHNSON, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 2779]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 2779) to establish the Federal Clearinghouse on School Safety Best Practices, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

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I. PURPOSE AND SUMMARY

The purpose of S. 2779, the Luke and Alex School Safety Act of 2019 (LASSA), is to codify the Federal Clearinghouse on School Safety Best Practices (“Clearinghouse”). The Clearinghouse will help inform school and community officials and parents on the best practices for school safety measures, as well as available resources for implementing such measures in their schools and specify criteria for best practices and a process for the clearinghouse. Specifically this bill would create a codified structure for the Clearinghouse, which would “be the primary resource of the Federal Government to identify and publish the best practices and rec-

ommendations for school safety for use by State and local educational agencies, institutions of higher education, State and local law enforcement agencies, health professionals, and the general public.”¹ The bill also requires the Federal agencies involved in the development of the Clearinghouse—the Department of Homeland Security (DHS), Department of Justice (DOJ), the Department of Health and Human Services (HHS), and the Department of Education (Education)—to notify their state counterparts of the Clearinghouse and to identify available Federal and state grant programs for implementing Clearinghouse best practices.

II. BACKGROUND AND THE NEED FOR LEGISLATION

On February 14, 2018, a former student entered Marjory Stoneman Douglas High School (MSDHS) in Parkland, Florida and killed 17 teachers and students and injured 17 others.² After the attack, then-Florida Governor Rick Scott signed the Marjory Stoneman Douglas High School Public Safety Act. The Act established the Marjory Stoneman Douglas High School Public Safety Commission (the Florida commission).³ The Florida commission was tasked to “analyze information from the MSDHS shooting and other mass violence incidents, and provide recommendations and system improvements to help mitigate the impacts from and prevent future school shootings.”⁴

The Florida commission issued an initial report on January 2, 2019,⁵ followed by a second report on November 1, 2019.⁶ The 439-page initial report found many causes that contributed to the magnitude of the MSDHS shooting:

The causes include [the shooter’s] mental and behavioral health issues, people not reporting warning signs or reporting signs that were not acted on by those whom actionable information was reported, and how [the shooter’s] behavioral and discipline issues were addressed (or not addressed) by Broward County Public Schools. Also contributing, was the overall lack of adequate or effective physical site security and unenforced or non-existent security measures and policies at MSDHS, as well as the ineffective behavioral threat assessment process at MSDHS.⁷

In both reports, the Florida Commission recommended a wide range of safety measures to be implemented in Florida schools.⁸ These recommendations include physical security improvements, as well as best practices on community engagement and threat assessment that, had they been in place at MSDHS, could have prevented or mitigated the harm of the tragic attack.⁹

¹ S. 2779, 116th Cong. (2019).

² Marjory Stoneman Douglas High School Public Safety Comm’n, Initial Report 7 (2019), available at <http://www.fdle.state.fl.us/MSDHS/CommissionReport.pdf> [hereinafter “January 2019 Report”].

³ *Id.*

⁴ Marjory Stoneman Douglas High School Public Safety Comm’n, Second Report 4 (2019), available at <http://www.fdle.state.fl.us/MSDHS/MSD-Report-2-Public-Version.pdf> [hereinafter “November 2019 Report”].

⁵ January 2019 Report, *supra* note 2.

⁶ November 2019 Report, *supra* note 4 at 2.

⁷ January 2019 Report, *supra* note 2 at 4.

⁸ *Id.* See also November 2019 Report, *supra* note 4.

⁹ *Id.*

Operating concurrently with the Florida commission was the Federal Commission on School Safety (Federal commission). President Trump established the Federal commission on March 12, 2018, to “review safety practices and make meaningful and actionable recommendations of best practices to keep students safe.”¹⁰ The Federal commission was led by Education, HHS, DHS, and DOJ.¹¹ The commission held public field visits, listening sessions, and full commission meetings in Washington, D.C., and across the nation.¹²

The Federal commission released its final report on December 18, 2018. Like the Florida commission report, the Federal commission reported its findings and made dozens of recommendations for school safety measures ranging from improved mental health services to school building security to law enforcement training.¹³ Among these findings, the Federal commission reported:

One of the biggest concerns raised by schools and school districts since the Parkland shooting has been their inability to easily sift through the multitude of security options, equipment, technologies, etc., that are available to their schools. As a way to address this, many individuals in the school security community have suggested the establishment of a federal clearinghouse that could assess, identify, and share best practices on school security. The federal government should develop a clearinghouse to assess, identify, and share best practices related to school security measures, technologies, and innovations.¹⁴

The Federal commission report emphasized that local communities must decide what school safety measures work for them:

While Washington has an important role to play, it can play that role more successfully by acknowledging a truth understood by people across the country: What works in Wyoming may not work in New York, and what is effective in an urban setting may not be effective in rural communities. One size does not fit all.¹⁵

On July 25, 2019, the Committee held a hearing titled “Examining State and Federal Recommendations for Enhancing School Safety Against Targeted Violence.”¹⁶ The Committee heard testimony from three members of the Florida Commission—Max Schachter, Tom Hoyer, and Sheriff Bob Gualtieri, chair of the Florida Commission—as well as Dr. Deborah Temkin of Education Child Trends.¹⁷ Mr. Schachter’s son, Alex, and Mr. Hoyer’s son, Luke, were killed in the MSDHS attack. During the hearing, Sheriff Gualtieri stated:

¹⁰Fed. Comm’n on School Safety, Final Report of the Fed. Comm’n on School Safety 6 (2018), <https://www2.ed.gov/documents/school-safety/school-safety-report.pdf>.

¹¹*Id.*

¹²*Id.* at 6–7.

¹³*Id.*

¹⁴*Id.* at 126.

¹⁵*Id.* at 155.

¹⁶*Examining State and Federal Recommendations for Enhancing School Safety Against Targeted Violence*: Hearing before the S. Comm. On Homeland Security and Governmental Affairs, 116th Cong. (2019).

¹⁷*Id.* (statement of Sheriff Gualtieri, Chairman, Marjory Stoneman Douglas High School Public Safety Commission).

It is debatable whether the incident at [MSDHS] was entirely avoidable, but what is not debatable, in my view, based on the evidence, is whether the harm could have been mitigated. Simply put, the shooting did not have to be as bad as it was Missed intervention opportunities, ineffective safety on the part of the school, and an ineffective law enforcement response contributed to the magnitude of this tragedy. At the time of the shooting, the Broward County Public Schools did not have an active shooter response policy. There had been no active shooter drills on the [MSDHS] campus in the year before the shooting. There had been only one minimal one hour of training for school staff, and that occurred just a few weeks before the shooting. There had been no formal training for the students. Gates at [MSDHS] campus were left open and unattended, building and classroom doors unlocked, and teachers and staff lacked adequate communication infrastructure People simply did not know what to do or how to do it because there were no policies, no drills, and little to no training. Please keep in mind that this was the state of school security in Broward County, Florida, the second largest school district in the third largest State, 19 years after Columbine and 6 years after Sandy Hook.¹⁸

Mr. Schachter shared during his testimony:

After I buried my son, my next priority was to make sure my other three children were safe in their schools. I traveled the country and came to realize that in all of the 139,000 K–12 schools in this country, each principal has to now become an expert in door locks, access control, cameras, et cetera. It made no sense to me that each school had to go and reinvent the wheel. The idea that crystallized for me was the need to create National School Safety Best Practices at the Federal level. Those best practices would be housed on a clearinghouse website so that all schools had a one-stop shop for all of the most relevant and important school safety information.¹⁹

Mr. Hoyer emphasized the need for a best practices clearinghouse, stating “[o]ur schools need a clearinghouse of best practices that they can use as a tool, and our country needs Federal minimum school safety standards such as a single point of entry on a school campus.”²⁰ During the hearing, Ranking Member Gary Peters asked Mr. Schachter what “specific aspects that you believe are most critical for us to use as a tool and you are hoping to see in the best practices.” Mr. Schachter answered:

All the stakeholders [mental health, law enforcement, superintendents] need to be at the table so that we can sit down and come up with national school safety best practices. There are common-sense solutions that—you know

¹⁸ *Id.* (statement of Sheriff Gualtieri, Chairman, Marjory Stoneman Douglas High School Public Safety Commission).

¹⁹ *Id.* (statement of Max Schachter, Founder and Chief Executive Officer, Safe Schools for Alex).

²⁰ *Id.* (statement of Tom Hoyer, Treasurer, Stand with Parkland).

lessons learned that came out of Columbine, Sandy Hook, and now Parkland that need to be implemented. And so if we have everybody agreeing and have buy-in, I am hoping that, you know, once we establish these best practices, it will be put up on a Federal website, and then that will be implemented through all States and into school districts across the country.²¹

This bill acts on the recommendations of the Federal Commission on School Safety, Mr. Schachter, and Stand with Parkland by establishing the Federal Clearinghouse on School Safety Best Practices. The bill requires Education, HHS, DHS, and DOJ to coordinate in establishing and maintaining the Clearinghouse to inform the public on the best practices for school safety measures, as well as ensure the Clearinghouse contents remain current and responsive to evolving best practices. The bill also requires the agencies to notify their state and local level partners about the Clearinghouse and to survey existing grant programs or resources which can be used to improve school safety. The Clearinghouse is further required to develop materials to assist parents seeking to identify the best practices in place in their schools and how to engage with appropriate school and community officials for implementing best practices.

III. LEGISLATIVE HISTORY

Chairman Ron Johnson introduced S. 2779, the Luke and Alex School Safety Act, on November 5, 2019, with Senators Marco Rubio and Rick Scott as co-sponsors. The bill was referred to the Senate Committee on Homeland Security and Governmental Affairs, and the Committee considered S. 2779 at a business meeting on November 6, 2019.

At the business meeting, Senator Johnson offered an amendment that clarified the Clearinghouse did not create, satisfy, or waive any Federal civil rights laws as they apply to schools.

Senator Hassan and Ranking Member Peters offered an amendment to require the Clearinghouse publish only evidence- or research-based best practices. Chairman Johnson offered a second degree amendment to the Hassan amendment that does not restrict the best practices the Clearinghouse can publish, but does require the Clearinghouse to publish any evidence- or research-based rationales supporting the Clearinghouse's determination that a safety measure is a best practice.

S. 2779, as amended by the Johnson Amendment 1 and the Hassan-Peters Amendment as modified by the Johnson Second Degree Amendment, was approved en bloc by voice vote with Senators Johnson, Portman, Paul, Lankford, Romney, Scott, Enzi, Hawley, Peters, Carper, Hassan, Sinema, and Rosen present. Consistent with Committee rules, the bill is reported with a technical amendment.

²¹*Id.* (testimony of Max Schachter, Founder and Chief Executive Officer, Safe Schools for Alex).

IV. SECTION-BY-SECTION ANALYSIS OF THE BILL, AS REPORTED

Section 1. Short title

This section establishes the short title of the bill as the “Luke and Alex School Safety Act of 2019.”

Section 2. Federal Clearinghouse on school safety best practices

This section establishes the Clearinghouse in the Homeland Security Act of 2002. The Clearinghouse is required to be developed by DHS, in coordination with Education, DOJ, HHS, and will serve as the primary resource of the Federal Government to identify and publish the best practices and recommendations for school safety. The Clearinghouse best practices and recommendations must involve comprehensive school safety measures to improve the safety posture of a school if implemented, include any evidence or research supporting how the best practice will improve the safety posture of a school, and include information on available Federal grants or resources to help implement the best practice. This section exempts the Clearinghouse from the Paperwork Reduction Act and the Federal Advisory Committee Act to increase and facilitate engagement with non-governmental entities.

The bill allows the Clearinghouse to consult with a variety of officials, experts, and stakeholders in developing the Clearinghouse, such as parents, state, local, and Tribal officials, school security officers, security industry professionals, psychologists and mental health professionals, and architects and design professionals. The Clearinghouse is also required to consider recommendations of past commissions on school safety.

This section requires the Clearinghouse to continuously update and improve its contents. To accomplish this, the Clearinghouse is required to establish an external advisory board consisting of government, private sector, and nongovernmental organizations, including school parents. This board will provide feedback on the implementation of Clearinghouse best practices, as well as challenges faced in implementation, and propose additional safety measures for potential inclusion as a Clearinghouse best practice. This section also requires the Clearinghouse to create materials specifically for parents to identify Clearinghouse best practices in their schools and to engage with relevant school and government officials on implementation of best practices.

Section 3. Notification of Clearinghouse

This section requires DHS, DOJ, HHS, and Education to issue written notification to their state and local government counterparts about the Clearinghouse, as well as to every appropriate partner that serves a role in school safety.

Section 4. Grant program review

This section requires Education, HHS, DHS, and the Attorney General to review and report to Congress on all Federal grant programs that could be used to implement any best practices of the Clearinghouse. The agencies must also try to identify such grant programs administered by each state. Additionally, the Clearinghouse must identify any recommendations for which there is not a

Federal grant program that could be used to implement a best practice.

Section 5. Rule of construction

This section clarifies that nothing in this bill creates, satisfies, or waives any requirement under title II of the Americans with Disabilities Act of 1990, the Rehabilitation Act of 1973, title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, and the Age Discrimination Act of 1975.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill and determined that the bill will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office's statement that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 19, 2019.

Hon. RON JOHNSON,
Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2779, the Luke and Alex School Safety Act of 2019.

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

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

S. 2779, Luke and Alex School Safety Act of 2019			
As ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on November 6, 2019			
By Fiscal Year, Millions of Dollars	2020	2020-2024	2020-2029
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	*	5	not estimated
Statutory pay-as-you-go procedures apply?	No	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2030?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
* = between zero and \$500,000.			

S. 2779 would require the Department of Homeland Security (DHS), in coordination with other federal agencies, to disseminate information on school safety measures to state and local education agencies. The bill would direct DHS to work with other federal agencies to identify existing grant programs that can support school safety improvements.

The bill also would require DHS to establish an advisory board to provide external feedback and recommendations for additional school safety resources.

On the basis of information from DHS about the costs of similar activities, CBO estimates that staff salaries, travel costs, and other expenses would be about \$1 million each year and \$5 million over the 2020–2024 period; such spending would be subject to the availability of appropriations.

The CBO staff contact for this estimate is Aldo Prospero. The estimate was reviewed by Leo Lex, Deputy Assistant Director for Budget Analysis.

VII. CHANGES IN 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 the bill, as reported, are shown as follows: (existing law proposed to be omitted is enclosed in brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

HOMELAND SECURITY ACT OF 2002

* * * * *

SEC. 1. SHORT TITLE; TABLE OF CONTENTS.

(a) * * *

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. * * *

* * * * *

TITLE XXII—CYBERSECURITY AND INFRASTRUCTURE SECURITY AGENCY

* * * * *
 2215. *Federal Clearinghouse on School Safety and Best Practices.*
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**TITLE XXII—CYBERSECURITY AND
 INFRASTRUCTURE SECURITY AGENCY**

* * * * *

**Subtitle A—Cybersecurity and Infrastructure
 Security**

* * * * *

SEC. 2215. FEDERAL CLEARINGHOUSE ON SCHOOL SAFETY BEST PRACTICES.

(a) *ESTABLISHMENT.*—

(1) *IN GENERAL.*—*The Secretary, in coordination with the Secretary of Education, the Attorney General, and the Secretary of Health and Human Services, shall establish a Federal Clearinghouse on School Safety Best Practices (in this section referred to as the “Clearinghouse”) within the Department.*

(2) *PURPOSE.*—*The Clearinghouse shall be the primary resource of the Federal Government to identify and publish the best practices and recommendations for school safety for use by State and local educational agencies, institutions of higher education, State and local law enforcement agencies, health professionals, and the general public.*

(3) *PERSONNEL.*—

(A) *ASSIGNMENTS.*—*The Clearinghouse shall be assigned such personnel and resources as the Secretary considers appropriate to carry out this section.*

(B) *DETAILEES.*—*The Secretary of Education, the Attorney General, and the Secretary of Health and Human Services may detail personnel to the Clearinghouse.*

(4) *EXEMPTIONS.*—

(A) *PAPERWORK REDUCTION ACT.*—*Chapter 35 of title 44, United States Code (commonly known as the ‘Paperwork Reduction Act’) shall not apply to any rulemaking or information collection required under this section.*

(B) *FEDERAL ADVISORY COMMITTEE ACT.*—*The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply for the purposes of carrying out this section.*

(b) *CLEARINGHOUSE CONTENTS.*—

(1) *CONSULTATION.*—*In identifying the best practices and recommendations for the Clearinghouse, the Secretary may consult with appropriate Federal, State, local, Tribal, private sector, and nongovernmental organizations.*

(2) *CRITERIA FOR BEST PRACTICES AND RECOMMENDATIONS.*—*The best practices and recommendations of the Clearinghouse shall, at a minimum—*

(A) *involve comprehensive school safety measures, including threat prevention, preparedness, protection, mitigation,*

incident response, and recovery to improve the safety posture of a school upon implementation;

(B) include any evidence or research rationale supporting the determination of the Clearinghouse that the best practice or recommendation has been shown to have a significant effect on improving the health, safety, and welfare of persons in school settings, including—

(i) evidence from an experimental or quasi-experimental study;

(ii) high-quality research findings or a positive evaluation that such activity, strategy, or intervention is likely to improve the health, safety, and welfare of persons in school settings;

(iii) findings and data from previous Federal or State commissions relating to school climate, health, safety, and welfare; and

(iv) any other supporting evidence or findings relied upon by the Clearinghouse in determining best practices and recommendations; and

(C) include information on Federal grant programs for which implementation of each best practice or recommendation is an eligible use for the program.

(3) PAST COMMISSION RECOMMENDATIONS.—To the greatest extent practicable, the Clearinghouse shall present, as appropriate, Federal, State, local, Tribal, private sector, and nongovernmental organization issued best practices and recommendations and identify any best practice or recommendation of the Clearinghouse that was previously issued by any such organization or commission.

(c) ASSISTANCE AND TRAINING.—The Secretary may produce and publish materials on the Clearinghouse to assist and train educational agencies and law enforcement agencies on the implementation of the best practices and recommendations.

(d) CONTINUOUS IMPROVEMENT.—The Secretary shall—

(1) collect for the purpose of continuous improvement of the Clearinghouse—

(A) Clearinghouse data analytics;

(B) user feedback on the implementation of resources, best practices, and recommendations identified by the Clearinghouse; and

(C) any evaluations conducted on the best practices and recommendations of the Clearinghouse; and

(2) in coordination with the Secretary of Education, the Secretary of Health and Human Services, and the Attorney General—

(A) regularly assess and identify Clearinghouse best practices and recommendations for which there are no resources provided by Federal Government programs for implementation; and

(B) establish an external advisory board, which shall be comprised of appropriate State, local, private sector, and nongovernmental organizations, including organizations representing parents of elementary and secondary school students, to—

(i) provide feedback on the implementation of best practices and recommendations of the Clearinghouse; and

(ii) propose additional recommendations for best practices for inclusion in the Clearinghouse.

(e) PARENTAL ASSISTANCE.—The Clearinghouse shall produce materials to assist parents and legal guardians of students with identifying relevant Clearinghouse resources and engaging with appropriate officials to support the implementation of Clearinghouse best practices and recommendations.

* * * * *

