

DHS OPIOID DETECTION RESILIENCE
ACT OF 2019

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

H.R. 4761

TO ENSURE U.S. CUSTOMS AND BORDER PROTECTION OFFICERS,
AGENTS, AND OTHER PERSONNEL HAVE ADEQUATE SYNTHETIC
OPIOID DETECTION EQUIPMENT, THAT THE DEPARTMENT OF
HOMELAND SECURITY HAS A PROCESS TO UPDATE SYNTHETIC
OPIOID DETECTION CAPABILITY, AND FOR OTHER PURPOSES



JULY 29, 2020.—Ordered to be printed

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DHS OPIOID DETECTION RESILIENCE ACT OF 2019

JULY 29, 2020.—Ordered to be printed

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

R E P O R T

[To accompany H.R. 4761]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (H.R. 4761) to ensure U.S. Customs and Border Protection officers, agents, and other personnel have adequate synthetic opioid detection equipment, that the Department of Homeland Security has a process to update synthetic opioid detection capability, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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I. PURPOSE AND SUMMARY

The purpose of H.R. 4761, the DHS Opioid Detection Resilience Act of 2019, is to ensure U.S. Customs and Border Protection (CBP) officers and other personnel within the Department of Homeland Security (DHS or the Department) have access to synthetic opioid detection equipment capable of detecting synthetic opioids below ten percent purity levels.

Specifically, the Act requires the CBP Commissioner to implement a strategy to make certain that chemical screening devices

used in operational environments are able to detect narcotics with purity levels of ten percent or less or provide ports of entry with alternative detection methods capable of detecting narcotics at lower purity levels. The Act also requires CBP to test chemical screening devices prior to procurement. Finally, the Act directs the Secretary of Homeland Security to implement a plan for the long-term development of a centralized spectral database for chemical screening devices. Each of the above requirements must be implemented within 180 days after enactment of this Act.

II. BACKGROUND AND THE NEED FOR LEGISLATION

During 2017, opioids (including synthetic opioids, such as fentanyl) contributed to about 68 percent, or 47,600, of total drug overdose deaths in the United States.¹ This is six times higher than the number of opioid related deaths in 1999.² In response to the sharp rise in opioid-related deaths, on October 26, 2017, President Donald Trump declared the opioid crisis a national health emergency and directed Federal agencies to “use every appropriate emergency authority to fight the opioid crisis”.³ One important component in reducing the number of opioid-related deaths is to reduce the availability of the drug by curbing the flow entering our country.

According to the Drug Enforcement Administration’s (DEA) 2019 National Drug Threat Assessment, fentanyl smuggling into the United States occurs primarily through the southwest border and through international mail.⁴ The DEA explained that traffickers smuggle fentanyl crossing into the U.S. from Mexico in large quantities “that are low in purity (less than ten percent pure on average).”⁵ Furthermore, during 2018, the average purity level for fentanyl seized in the U.S. was 5.3 percent pure, showing the importance of detecting fentanyl and other synthetic opioids with lower purity levels.⁶

In CBP’s March 2019 *Strategy to Combat Opioids*, the agency identified the ability of manufacturers to manipulate fentanyl and therefore create a multitude of analogs as one of the major problems hindering the ability of CBP to detect fentanyl.⁷ CBP has spent more than \$25 million since 2016 on small-scale screening devices to detect opioids.⁸ During fiscal year 2019, CBP seized 2,771 pounds of fentanyl, up from 2,233 pounds in fiscal year 2018.⁹ However, a September 2019 DHS Office of Inspector Gen-

¹ CDC, *Opioid Overdose: Drug Overdose Deaths*, <https://www.cdc.gov/drugoverdose/data/statedeaths.html>.

² CDC, *Opioid Overdose: Understanding the Epidemic*, <https://www.cdc.gov/drugoverdose/epidemic/index.html>.

³ Remarks, The White House, *Remarks by President Trump on Combatting Drug Demand and the Opioid Crisis* (Oct. 26, 2017), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-combatting-drug-demand-opioid-crisis/>.

⁴ U.S. Dep’t of Justice Drug Enforcement Administration, *2019 National Drug Threat Assessment* (Dec. 2019), available at https://www.dea.gov/sites/default/files/2020-01/2019-NDTA-final-01-14-2020_Low_Web-DIR-007-20_2019.pdf.

⁵ *Id.*

⁶ *Id.*

⁷ U.S. Dep’t of Homeland Security, U.S. Customs and Border Protection, *CBP Strategy to Combat Opioids* (March 5, 2019), available at <https://www.cbp.gov/sites/default/files/assets/documents/2019-Mar/CBP-Opioid-Strategy-508.pdf>.

⁸ U.S. Dep’t of Homeland Sec., Office of the Inspector General, *Limitations of CBP OFO’s Screening Device Used to Identify Fentanyl and Other Narcotics* (Sept. 30, 2019), available at <https://www.oig.dhs.gov/sites/default/files/assets/2019-10/OIG-19-67-Sep19.pdf>.

⁹ *CBP Enforcement Statistics FY 2019*, U.S. Customs and Border Protection, <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics-fy2019>.

eral (OIG) report, *Limitations of CBP OFO's Screening Device Used to Identify Fentanyl and Other Narcotics*, found that the devices CBP uses in the field to detect fentanyl were unable to identify fentanyl with purity levels at or below ten percent.¹⁰ Furthermore, the DHS OIG found that CBP Office of Field Operations (OFO) did not perform comprehensive testing on the devices before acquisition.¹¹

H.R. 4761 addresses deficiencies in CBP's opioid detection capabilities by requiring the agency to test new chemical screening devices before acquisition to understand the ability of the devices to detect narcotics at various purity levels. The Act also requires the Commissioner of CBP to create and implement a strategy for ensuring that chemical screening devices used in the field can detect narcotics with purity levels below ten percent. This legislation strengthens CBP's ability to detect narcotics as they enter the U.S. and curb the flow of these narcotics entering our communities.

Finally, because screening devices are only as robust as their libraries, and with new analogs of synthetic opioids being regularly discovered, it is important to keep an updated library for agents and officers in the field. H.R. 4761 requires DHS to implement a plan for developing a centralized database for chemical screening devices as new analogs of synthetic opioids are identified.

III. LEGISLATIVE HISTORY

Representative Clay Higgins (R-LA) introduced H.R. 4761 on October 18, 2019. The House of Representatives passed the Act under suspension of the rules by a roll call vote (393–1) on December 9, 2019. The Act was referred to the Committee on Homeland Security and Governmental Affairs.

The Committee considered H.R. 4761 at a business meeting on March 11, 2020. The Act was ordered reported favorably *en bloc* by voice vote. Senators Johnson, Portman, Lankford, Romney, Scott, Enzi, Hawley, Peters, Carper, Hassan, Harris, Sinema, and Rosen were present for the vote.

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

Section 1. Short title

This section establishes the short title of the Act as the “DHS Opioid Detection Resilience Act of 2019.”

Section 2. Strategy to ensure detection of all opioid purity levels at ports of entry

This section requires the CBP Commissioner to implement a strategy for ensuring that chemical devices at ports of entry can detect narcotics with purity levels of ten percent or less, or provide ports of entry with alternative methods for detecting lower purity levels. In addition, CBP is required to test any new chemical screening devices before acquisition in order to determine the ability of the devices to identify various purity levels of narcotics.

¹⁰U.S. Dep't of Homeland Sec., Office of the Inspector General, *Limitations of CBP OFO's Screening Device Used to Identify Fentanyl and Other Narcotics* (Sept. 30, 2019), available at <https://www.oig.dhs.gov/sites/default/files/assets/2019-10/OIG-19-67-Sep19.pdf>.

¹¹*Id.*

Section 3. Plan to ensure opioid detection equipment resiliency

This section requires the Secretary of Homeland Security to implement a plan for the development of a centralized database for chemical screening devices. This plan must include information on how new spectra are to be collected, stored and distributed to chemical screening devices. Also, the plan must identify parties to be responsible for updating and maintaining this database.

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 Act and determined that the Act will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office's statement that the Act 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, July 23, 2020.

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 H.R. 4761, the DHS Opioid Detection Resilience Act of 2019.

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

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

H.R. 4761, DHS Opioid Detection Resilience Act of 2019			
As ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on March 11, 2020			
By Fiscal Year, Millions of Dollars	2020	2020-2025	2020-2030
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	0	*	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 2031?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
* = between zero and \$500,000			

H.R. 4761 would require Customs and Border Protection (CBP) to develop a strategy to ensure that opioid screening devices can detect narcotics at certain purity levels. The act also would require CBP to develop a plan to ensure the longevity of those devices.

CBP is currently carrying out activities similar to those required by H.R. 4761. Thus, CBO estimates that implementing the act would not have a significant cost; any spending would be subject to the availability of appropriated funds.

On January 15, 2020, CBO transmitted a cost estimate for H.R. 4761, the DHS Opioid Detection Resilience Act of 2019, as passed by the House of Representatives on December 9, 2019. The two versions of the legislation are similar, and CBO's estimates of their budgetary effects are the same.

The CBO staff contact for this estimate is Madeleine Fox. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

VII. CHANGES IN EXISTING LAW MADE BY THE ACT, AS REPORTED

Because this legislation would not repeal or amend any provision of current law, it would not make changes in existing law within the meaning of clauses (a) and (b) of paragraph 12 of rule XXVI of the Standing Rules of the Senate.