

Calendar No. 106

117TH CONGRESS }
1st Session }

SENATE

{ REPORT
117-31

REPORTING EFFICIENTLY TO PROPER
OFFICIALS IN RESPONSE TO TERRORISM
ACT OF 2021

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 517

TO PROVIDE FOR JOINT REPORTS BY RELEVANT FEDERAL
AGENCIES TO CONGRESS REGARDING INCIDENTS OF TERRORISM,
AND FOR OTHER PURPOSES



JULY 26, 2021.—Ordered to be printed

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

R E P O R T

[To accompany S. 517]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 517), to provide for joint reports by relevant Federal agencies to Congress regarding incidents of terrorism, 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 S. 517, the Reporting Efficiently to Proper Officials in Response to Terrorism Act of 2021, or REPORT Act, is to require agencies to submit to Congress an unclassified report on each act of terrorism that occurs in the United States within a year of the conclusion of the investigation into the act. The legislation requires the federal agency investigating the act of terrorism to coordinate with the Department of Homeland Security (DHS), the Department of Justice (DOJ), the Federal Bureau of Investigation (FBI), and, as needed, the National Counterterrorism Center

(NCTC). The report must include the facts of the act of terrorism, identified national security gaps that require correction to prevent similar future acts of terrorism, and recommendations for new measures that could strengthen homeland security. A public summary of the report must also accompany the more detailed report for Congress. The DHS Secretary, Attorney General, FBI Director, or NCTC Director can waive this reporting requirement if that individual determines the report could jeopardize an ongoing investigation or prosecution. In such instances, that individual must notify Congress of the waiver before the reporting requirement deadline. The reporting requirement established in this bill expires five years from the date of the bill's enactment.¹

II. BACKGROUND AND NEED FOR THE LEGISLATION

This legislation requires agencies to conduct after-action reviews of terrorist incidents to help policymakers develop evidence-based terrorism prevention policies and procedures. The reports required by this bill will help identify weaknesses in our current security network and provide recommendations for patching gaps. Collaboration and cooperation between government entities is incredibly important when there is a threat to national security. For example, testimony before the House Committee on Homeland Security concerning the attacks on September 11, 2001 found that “excessive secrecy interfered with the detection and prevention of the attacks.”² Moreover, in a 2016 hearing before the Committee concerning frontline responses to terrorism, one government official testified that “there remains an overall lack of a comprehensive ‘unity of effort’ in our information sharing environment,” and this challenge affects “information sharing and communications across all levels [of government].”³

Although some agencies conduct internal reviews after an act of terrorism, these reviews are not mandatory or uniform, and reports are released on varying timelines. In the meantime, potential security weaknesses may persist while they remain unidentified. For example, when Nidal Hasan killed thirteen people at Fort Hood in 2009, the Department of Defense published an independent review in two months,⁴ while the Intelligence Community Inspector General (ICIG) took a year after the 2013 Boston Marathon bombing to release a report on the pre-attack performance of intelligence and information sharing entities.⁵ Further illustrating the dispari-

¹On Nov. 6, 2019, the Committee approved S. 2513, Reporting Efficiently to Proper Officials in Response to Terrorism Act of 2019. That bill is substantially similar to S. 517. Accordingly, this committee report is in many respects similar to the committee report for S. 2513, S. Rept. No. 116–175.

²Subcommittee on Intelligence, Information Sharing, and Terrorism Risk Assessment, House Committee on Homeland Security, Testimony of Meredith Fuchs, General Counsel, the National Security Archive, George Washington University, *Hearing on Overclassification and Pseudo-classification: The Impact on Information Sharing*, 110th Congress, at 14 (Mar. 22, 2007) (<https://www.gpo.gov/fdsys/pkg/CHRG-110hhrg35279/pdf/CHRG-110hhrg35279.pdf>).

³Senate Committee on Homeland Security and Governmental Affairs, Testimony of Mark S. Ghilarducci, Director, California Office of Emergency Services and the Governor's Homeland Security Advisor, *Hearing on Frontline Response to Terrorism in America*, 114th Congress, at 4 (Feb. 2, 2016) (<https://www.hsgac.senate.gov/imo/media/doc/Testimony-Ghilarducci-2016-02-02.pdf>).

⁴Department of Defense Independent Review, *Protecting the Force: Lessons from Fort Hood* (Jan. 2010) (https://www.researchgate.net/publication/264082810_Protecting_the_Force_Lessons_from_Fort_Hood).

⁵The Inspectors General of the Intelligence Community, Central Intelligence Agency, Department of Justice, and Department of Homeland Security, *Unclassified Summary of Information*

ties in reporting timelines, DOJ took nine months after the 2015 San Bernardino attack to report on law enforcement lessons learned.⁶

While many reviews took under a year to complete, DOJ took 18 months to release a review of the Orlando Pulse Nightclub attack in June of 2016.⁷ The Federal Government's investigation into the attack is illustrative of an increasing focus on response rather than prevention. The DOJ announced an investigation into the police response one month after the attack.⁸ The completed review was published in December 2017, 18 months after the incident occurred.⁹ The report focused on the response of the Orlando police department and suggested changes in police protocol and improvements in counterterrorism training for local law enforcement.¹⁰ A reporting requirement after the conclusion of the investigation into an act of terrorism would guarantee that important lessons learned are disclosed in a timely manner.

S. 517 requires the primary government agency investigating an act of terrorism to collaborate with the Secretary of Homeland Security, the Attorney General, the Director of the FBI, and, as appropriate, the Director of NCTC to submit a public report to Congress within one year after such investigation concludes. The Committee understands that these investigations require careful and extensive work, which can include classified information or information affecting ongoing investigations or prosecutions. In consideration of these circumstances, this legislation includes a one year waiting period to allow for careful consideration of disclosure information, the ability to include a classified annex to protect important information, and a waiver option to protect ongoing investigations or prosecutions.

The reports required by S. 517 should include facts about the act, an explanation of any relevant gaps in national security, and recommendations to improve homeland security. These facts include any domestic or international terrorism movement or foreign terrorist organizations implicated by evidence uncovered in the investigation or by homeland security information. Facts should also include information such as the perpetrator's biographical data,

Handling and Sharing Prior to the April 15, 2013 Boston Marathon Bombings (Apr. 10, 2014) (<https://oig.justice.gov/reports/2014/s1404.pdf>).

⁶Braziel, Rick, Frank Straub, George Watson, and Rod Hoops, *Bringing Calm to Chaos: A Critical Incident Review of the San Bernardino Public Safety Response to the December 2, 2015 Terrorist Shooting Incident at the Inland Regional Center* (2016) (<https://www.justice.gov/usao-cdea/file/891996/download>); *A review of the San Bernardino Public Safety Response to 2015 Terrorist Shooting Incident*, Crisis Response (Sep. 23, 2016) (https://crisis-response.com/Articles/593526/A_review_of.aspx).

⁷Straub, Frank, Jack Cambria, Jane Castor, Ben Gorban, Brett Meade, David Waltemeyer, and Jennifer Zeunik, *Rescue, Response, and Resilience: A Critical Incident Review of the Orlando Public Safety Response to the Attack on the Pulse Nightclub* (2017) (<https://www.policefoundation.org/wp-content/uploads/2017/12/Orlando-Pulse.pdf>); Press Release, City of Orlando, *Critical Incident Review of Orlando Public Safety Response to Pulse Tragedy* (Dec. 18, 2017) (<http://www.cityoforlando.net/police/pulsereview/>).

⁸Press Release, Dep't of Justice, *Department of Justice to Conduct After-Action Review of Police Response to Orlando Nightclub Mass Shooting* (July 15, 2016) (<https://www.justice.gov/opa/pr/department-justice-conduct-after-action-review-police-response-orlando-nightclub-mass>).

⁹*Federal Report Sheds New Light on OPD's Pulse Response*, ClickOnOrlando.com (Dec. 18, 2017) (clickorlando.com/news/2017/12/18/federal-report-sheds-new-light-on-opds-pulse-response/).

¹⁰Dep't of Justice Office of Community Oriented Policing Services, *Rescue, Response, and Resilience: A Critical Incident Review of the Orlando Public Safety Response to the Attack on the Pulse Nightclub* (Dec. 18, 2017) (<https://www.policefoundation.org/wp-content/uploads/2017/12/Orlando-Pulse.pdf>); see also Frank Straub, Jennifer Zeunik & Ben Gorban, *Lessons Learned from the Police Response to the San Bernardino and Orlando Terrorist Attacks*, CTC Sentinel (Volume 10, Issue 5), Combatting Terrorism Center at West Point (May 2017) (https://ctc.usma.edu/wp-content/uploads/2017/05/CTC_Sentinel_Vol10Iss515.pdf).

whether the perpetrator is connected to a domestic or foreign terrorist movement, and whether any government program ineffectively vetted the perpetrator.

This legislation also balances the need for transparency with the need for Federal authorities to protect classified information. The bill requires an unclassified report that can be complemented by a classified annex. The unclassified report should be deliverable as a separate document from such annex and available in unclassified office space, meaning it should not contain markings that would limit dissemination. Even transparency efforts to inform the public by requiring an unclassified report can be undermined by the inclusion of controlled unclassified information, which requires safeguarding or dissemination controls.¹¹ Dissemination controls are designed to protect sensitive information. They can, however, also deter sharing with partners who would benefit from transparency and inhibit legitimate public deliberation on counterterrorism policy.¹² In the event the unclassified report does require dissemination controls, this legislation also requires a public summary. Every effort should be made to include as much information in the public summary and unclassified report with as few dissemination controls as possible.

III. LEGISLATIVE HISTORY

Senator Margaret Wood Hassan (D–NH) introduced S. 517 on March 1, 2021. Senator Mike Lee (R–UT) joined as a cosponsor on March 15, 2021. The bill was referred to the Senate Committee on Homeland Security and Governmental Affairs. The Committee considered S. 517 at a business meeting on March 17, 2021. The Committee ordered the bill reported favorably without amendment *en bloc* by voice vote. Senators present for the vote on the bill were: Peters, Rosen, Padilla, Portman, Johnson, Lankford, Romney, Scott, and Hawley.

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

Section 1. Short titles

This section provides that the bill may be cited as “Reporting Efficiently to Proper Officials in Response to Terrorism Act of 2021” or the “REPORT Act.”

Section 2. Duty to report

Subsection (a) establishes the duty to report on acts of terrorism within a year of the completion of the investigation into the act. It requires the primary investigating entity to collaborate with DHS, DOJ, FBI, and, as needed, NCTC. This section requires that the reports be unclassified, but allows a classified annex; it also allows the report to be submitted with the entity’s quarterly report.

Subsection (b) details the required content of the reports. These reports must include a statement of the facts of the terrorist act, an explanation of any national security gaps, any recommendations

¹¹ Controlled Unclassified Information, 32 CFR § 2002.1.

¹² House Committee on Oversight and Reform, Testimony of Scott Amey, General Counsel, Project on Government Oversight, *Hearing on Examining the Costs of Overclassification on Transparency and Security*, 114th Cong. (Dec. 7, 2016) (<https://oversight.house.gov/legislation/hearings/full-committee-hearing-examining-the-costs-of-overclassification-on>).

to improve homeland security, and a summary of the report for public distribution.

Subsection (c) creates an exception to the reporting requirement for certain ongoing investigations and prosecutions. The exception allows the government entity to waive the reporting requirement if the DHS Secretary, Attorney General, FBI Director, or NCTC Director determines that the report could jeopardize an ongoing investigation or prosecution. If this determination is made, the principal who made the decision must notify Congress of the waiver within the 1-year reporting requirement.

Subsection (d) defines “act of terrorism.”

Subsection (e) sunsets the reporting requirement after five years from the date of the bill’s enactment.

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, April 15, 2021.

Hon. GARY C. PETERS,
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. 517, the REPORT Act.

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

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

S. 517 REPORT Act			
As ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on March 17, 2021			
By Fiscal Year, Millions of Dollars	2021	2021-2026	2021-2031
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 2032?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
* = between zero and \$500,000.			

S. 517 would require any federal agency that investigates an act of terrorism committed in the United States to report to the Congress within one year of completing an investigation, identifying weaknesses and recommending measures to improve national security. The bill would direct the investigating agency to collaborate with the Department of Homeland Security and other federal agencies as appropriate.

Using information about similar investigations, CBO expects that few reports would be necessary each year and estimates that preparing all reports would cost less than \$500,000 annually; such spending would be subject to the availability of appropriated funds.

The CBO staff contact for this estimate is Lindsay Wylie. The estimate was reviewed by Leo Lex, Deputy Director of Budget Analysis.

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

This legislation would make no change in existing law, within the meaning of clauses (a) and (b) of subparagraph 12 of rule XXVI of the Standing Rules of the Senate, because this legislation would not repeal or amend any provision of current law.