

Calendar No. 640

115TH CONGRESS }
2d Session }

SENATE

{ REPORT
115-353 }

OPIOID ACT OF 2018

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 3047

TO ESTABLISH A NARCOTIC DRUG SCREENING TECHNOLOGY
PILOT PROGRAM TO COMBAT ILLICIT OPIOID IMPORTATION,
AND FOR OTHER PURPOSES



NOVEMBER 13, 2018.—Ordered to be printed

U.S. GOVERNMENT PUBLISHING OFFICE

89-010

WASHINGTON : 2018

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NOVEMBER 13, 2018.—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 S. 3047]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 3047) to establish a narcotic drug screening technology pilot program to combat illicit opioid importation, and for other purposes, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and an amendment to the title and recommends that the bill, as amended, do pass.

CONTENTS

	Page
I. Purpose and Summary	1
II. Background and Need for the Legislation	2
III. Legislative History	5
IV. Section-by-Section Analysis	6
V. Evaluation of Regulatory Impact	6
VI. Congressional Budget Office Cost Estimate	6
VII. Changes in Existing Law Made by the Bill, as Reported	7

I. PURPOSE AND SUMMARY

S. 3047, the Opportunities to Provide for Illicit Opioid Interdiction and Detection (OPIOID) Act of 2018, or the “OPIOID Act of 2018”, directs Department of Homeland Security (DHS) components, including Customs and Border Protection (CBP) and the Science and Technology Directorate (S&T), to coordinate with the United States Postal Service (USPS) and other appropriate Federal agencies to develop new technology to detect illicit substances entering the United States at ports of entry.

II. BACKGROUND AND THE NEED FOR LEGISLATION

The United States is currently in the middle of a drug abuse epidemic, fueled by opioid consumption that is killing a record number of Americans every year.¹ The Centers for Disease Control and Prevention (CDC) estimates that, in 2017, over 70,000 Americans died of drug overdoses.² Since 2016, synthetic opioids—opioids not derived from plant materials—have been responsible for the greatest number of drug overdoses, accounting for over 30 percent of all overdoses in the United States in 2016 alone—nearly double the rate in 2015.³ Synthetic opioids also fall under the larger umbrella of “new psychoactive substances” (NPS), or drugs which are not scheduled under the major international treaties on narcotic control.⁴ According to the Drug Enforcement Administration (DEA), fentanyl is the “most prevalent and most significant synthetic opioid threat to the United States.”⁵

Both the CDC and the DEA have pointed to illicitly-manufactured fentanyl as the primary source of the fentanyl epidemic and increase in overdose deaths.⁶ Illicit fentanyl and its analogues, or chemically similar drugs, are manufactured in China and Mexico, then transported into the United States in parcel packages—either directly or through third countries—smuggled across the southwest border from Mexico.⁷ Fentanyl precursor chemicals, or non-narcotic substances used to produce narcotics, have also been seized at ports of entry, indicating that the final step in fentanyl synthesizing may also be occurring domestically.⁸

CBP, responsible for enforcing U.S. laws at the nation’s borders and at official ports of entry, is seizing an increasing amount of fentanyl.⁹ Through the first half of fiscal year (FY) 2018, CBP seized 984 pounds of fentanyl at ports of entry—nearly twice the amount seized in all of FY 2016.¹⁰ However, without screening every package, car or truck at U.S. ports of entry, CBP cannot quantify how much is being missed. To interdict illicit drugs at ports of entry, CBP primarily relies on processing advanced mani-

¹Data Brief, Center for Disease Control and Prevention, National Center for Health Statistics, Drug Overdose Deaths in the United States, 1999–2016 (Dec. 2017), <https://www.cdc.gov/nchs/products/databriefs/db294.htm>; Data Brief, Center for Disease Control and Prevention, National Center for Health Statistics, Drug Poisoning Deaths in the United States, 1980–2008 (Dec. 2011), <https://www.cdc.gov/nchs/products/databriefs/db81.htm>.

²Center for Disease Control and Prevention, National Center for Health Statistics, Provisional Drug Overdose Death Counts (July 11, 2018), <https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm>.

³Puja Seth, et al., *Overdose Deaths Involving Opioids, Cocaine, and Psychostimulants—United States, 2015–2016*, Centers for Disease Control, Morbidity and Mortality Weekly Report (Mar. 30, 2018), <https://www.cdc.gov/mmwr/volumes/67/wr/mm6712a1.htm>.

⁴Draft Report, The President’s Commission on Combating Drug Addiction and the Opioid Crisis, 26 (Nov. 1, 2017), available at https://www.whitehouse.gov/sites/whitehouse.gov/files/images/Final_Report_Draft_11-1-2017.pdf. The two major international treaties on narcotic control are the Single Convention on Narcotic Drugs (1961) and the Convention on Psychotropic Substances (1971). Single Convention on Narcotic Drugs, Mar. 30, 1961, 18 U.S.T. 1407, 520 U.N.T.S. 204; Convention on Psychotropic Substances, Feb. 21, 1971, 32 U.S.T. 543, 1019 UNTS 175.

⁵Intelligence Brief, Drug Enforcement Admin., Fentanyl Remains the Most Significant Synthetic Opioid Threat and Poses the Greatest Threat to the Opioid User Market in the United States (May 2018), available at <https://www.dea.gov/ops/PRB-DIB-003-18.pdf>.

⁶See *supra* n. 3; see also Dept of Justice and Drug Enforcement Admin., 2017 National Drug Threat Assessment 57 (Oct. 2017), available at https://www.dea.gov/docs/DIR-040-17_2017-NDTA.pdf.

⁷*Id.* at 62, 65.

⁸*Id.* at 62.

⁹Press Release, Customs and Border Protection, Philadelphia Seizes Nearly \$1.7 Million in Fentanyl Shipped from China (June 28, 2018), <https://www.cbp.gov/newsroom/local-media-release/philadelphia-cbp-seizes-nearly-17-million-fentanyl-shipped-china>.

¹⁰*Id.*

fest information of inbound cargo and passengers through the National Targeting Center to identify high-risk cargo or travelers.¹¹

However, in an April 2016 roundtable, CBP shared with this Committee the challenges of identifying high-risk cargo in the international mail environment, where advanced information is sometimes not available or is incomplete.¹² Since then, the Committee has conducted oversight of private express shippers, USPS, and the U.S. Department of State's continued improvements to the quantity and quality of advanced information about international mail arriving at ports of entry.¹³ In a January hearing before the Committee, CBP stated that, in addition to advanced information, which can sometimes be limited or incomplete, it also uses narcotic canine detection, officer experience or country targeting to identify high-risk packages or cargo shipments.¹⁴

After an individual, package, or cargo has been identified as potentially carrying illicit drugs, it is possible to identify any illicit substances using state-of-the-art analysis tools, which are capable of identifying over 14,000 substances.¹⁵ In January 2018, President Trump signed the International Narcotics Trafficking Emergency Response by Detecting Incoming Contraband with Technology (INTERDICT) Act to allow CBP to buy additional chemical identification technology to help quickly identify possible illicit substances at ports of entry.¹⁶ However, there are limits to existing technology.

In November 2017, the President's Commission on Combating Drug and Addiction and the Opioid Crisis (President's Commission) released a report and recommendations to combat the drug addiction crisis in the U.S.¹⁷ The report identified challenges CBP faces with existing processes to detect and interdict fentanyl and its analogues, stating, "fentanyl's ability to be shipped in very small quantities, a low number of available automated detection systems, and the relatively small number of trained canines make intercepting

¹¹ John Davis, *Fighting the Opioid Scourge: CBP disrupts flow of illegal opioids at our borders*, Customs and Border Protection, <https://www.cbp.gov/frontline/fighting-opioid-scourge>.

¹² *Preventing Drug Trafficking through International Mail: Roundtable convened by the S. Comm. on Homeland Sec. and Governmental Affairs*, 114th Cong. (Apr. 19, 2016).

¹³ See Letter from Ron Johnson, Chairman, S. Comm. on Homeland Sec. and Governmental Affairs, et al., to John F. Kerry, Sec'y, Dep't of State (Sep. 15, 2016) available at <https://www.hsgac.senate.gov/imo/media/doc/Letter%20to%20State%20re%20International%20Mail%2009152016.pdf>; Letter from Ron Johnson, Chairman, S. Comm. on Homeland Sec. and Governmental Affairs, and Claire McCaskill, Ranking Member, S. Comm. on Homeland Sec. and Governmental Affairs, to Rex Tillerson, Sec'y, Dep't of State (Nov. 20, 2017) available at <https://www.hsgac.senate.gov/imo/media/doc/2017-11-20%20CMC%20RHJ%20ltr%20to%20State%20re%20fentanyl.pdf>; Letter from Ron Johnson, Chairman, S. Comm. on Homeland Sec. and Governmental Affairs, and Claire McCaskill, Ranking Member, S. Comm. on Homeland Sec. and Governmental Affairs, to Elaine Duke, Acting Sec'y, Dep't of Homeland Sec. (Nov. 20, 2017) available at <https://www.hsgac.senate.gov/imo/media/doc/2017-11-20%20CMC%20RHJ%20ltr%20to%20DHS%20re%20fentanyl.pdf>; letter from Ron Johnson, Chairman, S. Comm. on Homeland Sec. and Governmental Affairs, and Claire McCaskill, Ranking Member, S. Comm. on Homeland Sec. and Governmental Affairs, to Megan Brennan, Postmaster Gen., U.S. Postal Service (Nov. 20, 2017) available at <https://www.hsgac.senate.gov/imo/media/doc/2017-11-20%20CMC%20RHJ%20ltr%20to%20USPS%20re%20fentanyl.pdf>.

¹⁴ *Combating the Opioid Crisis: Exploring Vulnerabilities in International Mail Security: Hearing Before the S. Comm. on Homeland Sec. and Governmental Affairs, Permanent Subcomm. on Investigations*, 115th Cong. (2018) (Written Testimony of Customs and Border Protection Office of Field Operations Executive Assistant Commissioner Todd Owen), <https://www.dhs.gov/news/2018/01/25/written-testimony-cbp-senate-homeland-security-and-governmental-affairs-permanent>.

¹⁵ See *supra* n. 9.

¹⁶ Pub. L. No. 115-112 (2018).

¹⁷ See *supra* n. 4, Draft Report.

fentanyl and fentanyl analogues . . . monumentally difficult.”¹⁸ Further, the President’s Commission acknowledged that “our inability to reliably detect fentanyl at our land borders and at our international mail handling facilities creates untenable vulnerabilities.”¹⁹

The President’s Commission ultimately recommended that Federal agencies coordinate to develop additional technologies to detect and interdict fentanyl and other synthetic opioids at the border and at international mail facilities.²⁰ This recommendation was reflected in S&T’s FY 2019 budget proposal, which included a research project to develop cost-effective “rapid screening-at-speed technologies for the detection and interdiction of opioids/fentanyls.”²¹ With CBP’s collaboration, this project aims to identify and close detection gaps and meet CBP’s operational requirements while not restricting cross-border traffic.²²

Fentanyl and synthetic opioids are not, however, the only drug threat facing the United States. DEA highlights methamphetamine, cocaine, and non-opioid NPS in the 2017 National Drug Threat Assessment.²³ According to the CDC, cocaine overdose deaths increased by over 50 percent from 2015 to 2016, while deaths by “psychostimulants with abuse potential”, including *methamphetamine* and *3, 4-methylenedioxy-methamphetamine* (the chemical name of MDMA or Ecstasy), increased by over 30 percent in the same year.²⁴ In total, nearly 18,000 Americans died of drug overdoses because of substances in those two categories in 2016.²⁵ Further, the DEA and CDC have raised concerns that cocaine is increasingly mixed with fentanyl and fentanyl analogues, increasing the risk of overdose.²⁶

According to DEA, the trafficking routes for cocaine, psychostimulants, and non-opioid NPS are similar to routes used for fentanyl and synthetic opioids. Specifically, cocaine and methamphetamine are traditionally trafficked through ports of entry along the southwest border,²⁷ while NPS are usually trafficked through international mail.²⁸ CBP seizure data supports this: in FY17, 87 percent of cocaine and 83 percent of methamphetamine seized was at ports of entry.²⁹ Given the increasing threat of these drugs, the similar trafficking patterns to fentanyl, and the increasing likelihood that they could be mixed with fentanyl and other synthetic opioids, CBP and S&T should seek to identify technology that is capable of identifying these substances in addition to fentanyl.

In May 2018, the staff of Ranking Member Claire McCaskill, the bill’s sponsor, issued a report finding a rapid increase in fentanyl

¹⁸ *Id.* at 63.

¹⁹ *Id.* at 120.

²⁰ *Id.* at 63–65; *id.* at 120–21.

²¹ Dep’t of Homeland Sec., Science and Tech. Directorate, Budget Overview: Fiscal Year 2019 Congressional Justification 76, *available at* <https://www.dhs.gov/sites/default/files/publications/Science%20and%20Technology%20Directorate.pdf>.

²² *Id.* at 77.

²³ *See supra* n. 6, Dep’t of Justice and Drug Enforcement Admin. at v.

²⁴ *See supra* n. 3.

²⁵ *Id.*

²⁶ *See supra* n. 6, Dep’t of Justice and Drug Enforcement Admin. at 88.

²⁷ *See supra* n. 6, Dep’t of Justice and Drug Enforcement Admin. at 77; *id.* at 91.

²⁸ *Id.* at 122.

²⁹ Customs and Border Protection, *CBP Enforcement Statistics FY2018*, <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics>.

seizures at land border ports of entry and through incoming mail to the United States, and detailing the demands this is placing on CBP's officers.³⁰

To address the recommendations of the President's Commission and to help CBP improve the ability to detect fentanyl and other dangerous narcotics, this bill directs S&T and CBP to coordinate on research for new detection technology for use at ports of entry. The research outlined in the S&T budget proposal satisfies this intent. However, S&T should ensure that new technology is capable of detecting other illicit substances, specifically those that present the greatest risk of deadly overdose in the U.S. Further, the technology should be able to detect precursor chemicals for synthetic drug production to prevent drug traffickers from completing the final steps of production within the United States. Committee amendments to S. 3047 widened the capability of the technology to reflect the Committee work to target cocaine and methamphetamine trafficking and abuse alongside heroin and opioids.³¹

To ensure new technology developed meets the operational goals of CBP, the bill includes an annual reporting requirement. This annual report, required for four years, must summarize research developed within DHS and its components, including any work in coordination with other agencies, as well as any operational processes and procedures needed to implement the new technology. This report should also include an estimated cost of, and timeframe for, implementation; a description of the Federal policy changes needed for implementation; and a description of any potential challenges to implement the bill's requirements fully.

III. LEGISLATIVE HISTORY

Senator Claire McCaskill (D–MO) introduced S. 3047, the Opportunities to Provide for Illicit Opioid Interdiction and Detection Act of 2018, on June 11, 2018, with Senators Angus King (I–ME) and Joe Manchin (D–WV). The bill was referred to the Committee on Homeland Security and Governmental Affairs.

The Committee considered S. 3047 at a business meeting on June 13, 2018. During the business meeting, a twice modified substitute amendment was offered by Senators Ron Johnson, McCaskill, and Heidi Heitkamp, and an amendment to change the title of the bill was offered by Senators Johnsons and McCaskill. Both amendments were accepted by unanimous consent. The bill, as amended, was ordered reported favorably by voice vote *en bloc*. Senators present for the unanimous consent request and vote were Johnson, Portman, Lankford, Enzi, McCaskill, Carper, Peters, Hassan, Harris, and Jones.

³⁰ Minority Staff Report, Senate Committee on Homeland Security and Governmental Affairs, *Combating The Opioid Epidemic: Intercepting Illicit Opioids at Ports of Entry* (May 2018).

³¹ See generally *Border Security—2015: Hearing Before the S. Comm. on Homeland Sec. and Governmental Affairs*, 114th Cong. (2015), available at <https://www.gpo.gov/fdsys/pkg/CHRG-114shrg94901/pdf/CHRG-114shrg94901.pdf>; *Border Security—2015: Hearing Before the S. Comm. on Homeland Sec. and Gov't Aff.*, 114th Cong. (2015), available at <https://www.gpo.gov/fdsys/pkg/CHRG-114shrg94899/pdf/CHRG-114shrg94899.pdf>.

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

Section 1. Short title

This section designates the short title of the bill as the “Opportunities to Provide for Illicit Opioid Interdiction and Detection Act of 2018” or the “OPIOID Act of 2018”.

Sec. 2. Definitions

This section includes definitions of the term “Commissioner” and “Under Secretary” to mean the Commissioner of CBP and Under Secretary of S&T, respectfully. It also defines “covered substances” under the bill to mean specific illicit substances and their precursors, as well as narcotic drugs and psychoactive substances, more broadly.

Sec. 3. Interagency collaboration on research and technology development.

This section directs the Commissioner and the Under Secretary to coordinate with the heads of appropriate Federal agencies, including the Postmaster General of the USPS, to develop technology to detect illicit substances, including fentanyl, synthetic opioids, and precursors, as well as other narcotic drugs. This includes coordination for both substances entering the U.S. by mail, and separately by border ports of entry in either motor vehicles or cargo containers. This section also directs the Commissioner and Under Secretary to conduct outreach to the private sector for information to develop this technology.

This section also requires CBP and S&T, in consultation with the agencies with which each coordinates research, to report to Congress on the technology and related screening procedures developed through the coordinated research. This is an annual report which will sunset after four years.

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, September 11, 2018.

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. 3047, the OPIOID Act of 2018.

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

Sincerely,

KEITH HALL,
Director.

Enclosure.

S. 3047—OPIOID Act of 2018

S. 3047 would direct Customs and Border Protection (CBP), the Postal Service, and other federal agencies to collaborate to develop technology to detect certain drugs that enter the United States in the mail. Using information provided by CBP, CBO estimates that it would cost roughly \$100 million over the 2019–2021 period to deploy drug detection systems at international mail facilities.

The costs of the bill fall within budget function 750 (administration of justice) and are shown in the following table. Estimated outlays are based on the historical rate of spending for similar programs.

	By fiscal year, in millions of dollars—						
	2018	2019	2020	2021	2022	2023	2019– 2023
INCREASES IN SPENDING SUBJECT TO APPROPRIATION							
Estimated Authorization Level	0	100	0	0	0	0	100
Estimated Outlays	0	40	40	20	0	0	100

Enacting S. 3047 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting S. 3047 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

S. 3047 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

On June 6, 2018, CBO transmitted a cost estimate for several bills addressing the opioid crisis that were ordered reported by the House Committee on Ways and Means on May 16, 2018. One of those bills was H.R. 5788, the Securing the International Mail Against Opioids Act of 2018, which contains a provision similar to S. 3047. CBO’s estimates of the budgetary effects of those provisions are the same.

The CBO staff contact for this estimate is Mark Grabowicz. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for 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.