

# ENHANCING SUSPICIOUS ACTIVITY REPORTING INITIATIVE ACT

MARCH 19, 2018.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. McCAUL, from the Committee on Homeland Security,  
submitted the following

## R E P O R T

[To accompany H.R. 5094]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security, to whom was referred the bill (H.R. 5094) to direct the Secretary of Homeland Security to improve suspicious activity reporting to prevent acts of terrorism, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Enhancing Suspicious Activity Reporting Initiative Act”.

**SEC. 2. ENHANCING DEPARTMENT OF HOMELAND SECURITY SUSPICIOUS ACTIVITY REPORTING OPERATIONS.**

(a) **STRATEGY REQUIRED.**—Not later than one year after the date of the enactment of this Act, the Secretary of Homeland Security, in consultation with other appropriate Federal officials, shall develop a strategy to improve the operations and activities of the Department of Homeland Security related to training, outreach, and information sharing for suspicious activity reporting to prevent acts of terrorism.

(b) **CONTENTS OF STRATEGY.**—The strategy required under subsection (a) shall include the following:

(1) A description and examples of the types of information that would meet the definition of critical information for the purpose of suspicious activity reporting as well as information, including information associated with racial, religious or national origin, that would not meet the definition of critical information.

(2) Training for appropriate personnel of State and major urban area fusion centers, emergency response providers, and, as appropriate, the private sector on—

(A) methods for identifying, analyzing, and disseminating critical information, including the indicators of terrorism;

(B) methods to protect privacy and civil liberties, including preventing racial, religious, or national origin discrimination; and

(C) response protocols for submitting suspicious activity reports.

(3) Methods to improve outreach to appropriate State and major urban area fusion centers, emergency response providers, and the private sector related to suspicious activity reporting to prevent acts of terrorism.

(4) A plan to ensure that critical information is shared in a timely manner with State and major urban area fusion centers, emergency response providers, and the private sector, as appropriate, including nationwide trend analysis and other information related to terrorist threats.

(5) Methods to measure the effectiveness of the activities conducted under the strategy with respect to improving the operations and activities of the Department related to training, outreach, and information sharing to prevent acts of terrorism that have been validated through peer-reviewed empirical studies to the extent practicable.

(c) **WORKING GROUP RECOMMENDATIONS.**—In developing the strategy required under subsection (a) the Secretary shall take into consideration the recommendations of the working group established under section 3.

(d) **CONGRESSIONAL NOTIFICATION.**—Not less than 30 days before the release of the strategy required pursuant to subsection (a), the Secretary shall provide to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a notification of the release of the strategy and a copy of the strategy. Such notification shall include the recommendations provided by the working group established under section 3 and how such recommendations were incorporated into the strategy.

**SEC. 3. SUSPICIOUS ACTIVITY REPORTING WORKING GROUP.**

(a) **ESTABLISHMENT.**—

(1) **IN GENERAL.**—The Secretary of Homeland Security shall establish a working group on suspicious activity reporting.

(2) **DEPARTMENT LIAISONS.**—The Secretary shall appoint as liaisons to the working group—

(A) the Chief Privacy Officer of the Department of Homeland Security;

(B) the Officer for Civil Rights and Civil Liberties of the Department; and

(C) such other officials of the Department as the Secretary determines appropriate.

(b) **RESPONSIBILITIES.**—The working group established under subsection (a) shall carry out the following responsibilities:

(1) Provide advice to the Secretary regarding improvements to the operations and activities related to suspicious activity reporting to prevent acts of terrorism.

(2) At the request of the Secretary, for purposes of section 2(c), develop recommendations to improve suspicious activity reporting to prevent acts of terrorism with respect to—

- (A) outreach to relevant stakeholders;
- (B) information sharing;
- (C) protecting personally identifiable information;
- (D) protecting the privacy, civil rights, and civil liberties of individuals who report suspicious activity and individuals who are the subjects of such reports;
- (E) preventing racial, religious, or national origin discrimination;
- (F) training for emergency response providers and the private sector; and
- (G) other matters, as determined by the Secretary.

(c) **WORKING GROUP MEMBERSHIP.**—Not later than 180 days after the date of the enactment of this Act, the Secretary shall seek the voluntary participation of not more than 20 individuals representing at least 12 diverse regions of the United States to serve as members of the working group. Members of the working group shall serve without pay. The Secretary shall seek to ensure that the working group includes members who are representatives from each of the following:

- (1) State and major urban area fusion centers.
- (2) State, local, tribal and territorial law enforcement agencies.
- (3) Firefighters.
- (4) Emergency medical services.
- (5) Private sector security professionals.
- (6) Nongovernmental privacy and civil liberty organizations.
- (7) Any other group the Secretary determines appropriate.

(d) **CONGRESSIONAL BRIEFING.**—Upon request, the Secretary shall provide to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a briefing on the operations and activities of the Department of Homeland Security related to training, outreach, and information sharing for suspicious activity reporting to prevent acts of terrorism, including copies of materials developed under this section.

(e) **TERMINATION.**—The working group under this section shall terminate on the date that is two years after the date of the enactment of this Act, except that the Secretary may extend such working group if the Secretary determines necessary.

(f) **NONAPPLICABILITY OF FACCA.**—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the working group established under this section.

## PURPOSE AND SUMMARY

H.R. 5094, the Enhancing Suspicious Activity Reporting Initiative Act, directs the Secretary of Homeland Security to develop a strategy for improving the Department of Homeland Security operations and activities related to training, outreach, and information sharing for suspicious activity reporting to prevent acts of terrorism, as well as to establish a suspicious activity reporting working group to develop recommendations for improvement that will be utilized to develop this strategy.

## BACKGROUND AND NEED FOR LEGISLATION

The Committee on Homeland Security has conducted significant oversight over the purpose and programs related to suspicious activity reporting and efforts to engage state and local agencies, as well as the private sector and individual citizens, to be alert for possible indicators of terrorism and other threats to public safety. The Committee Majority staff has released multiple reports highlighting the importance of suspicious activity reporting (SARs) and the See Something Say Something campaign and held an oversight hearing in September 2017.

In 2015, the Committee on Homeland Security of the House of Representatives released a follow-up Majority staff report entitled “Preventing Another Boston Marathon Bombing: Reviewing the Lessons Learned from the 2013 Terror Attack.” This report identified seven recommendations to help strengthen the Federal Gov-

ernment's counterterrorism efforts.<sup>1</sup> The sixth recommendation emphasized that efforts to educate the public on terrorist threats, efforts that include the Nationwide Suspicious Activity Reporting (SAR) Initiative (NSI), need to be refined and evaluated.<sup>2</sup> As the report noted, the public plays a crucial role in identifying and reporting potential terrorist activity to law enforcement, and therefore law enforcement must work with community groups and the public to gain their trust. As articulated by current Boston Police Commissioner William B. Evans in testimony provided before the Committee on Homeland Security of the House of Representatives, "only through continued and persistent engagement with our community can police build trust, leading to increased cooperation from the community."<sup>3</sup>

In December 2016, the Committee released a Majority staff report on the Department of Homeland Security Intelligence Enterprise (DHS IE), which included a review of the Department's role in the Nationwide SARS Initiative (NSI). The report recommended that DHS advocate on behalf of fusion centers to ensure they have direct access to federal databases with SAR information.<sup>4</sup>

Nearly a year later, the Committee released a Majority staff report on the Department's support to the National Network of Fusion Centers.<sup>5</sup> Two of the 24 recommendations in the report directly related to NSI and SARs. The Committee recommended that conduct an assessment of NSI and provide additional training and assistance to address program gaps. Additionally, DHS and other agencies should implement procedures to provide feedback to fusion centers on the investigative value of SARs.<sup>6</sup>

Most recently, on September 13, 2017, the Subcommittee on Counterterrorism and Intelligence held a hearing entitled, "Sixteen Years After 9/11: Assessing Suspicious Activity Reporting Efforts." The Committee Members received testimony from DHS, which does not administer the nation-wide SAR Initiative, but works as a partner with FBI, which is the lead agency in charge, as well as State and local law enforcement on the NSI process and value of promoting awareness on suspicious activity. During the hearing, a representative from DHS testified that since 2010, more than 100,000 SARs have been submitted, of which 1,200 initiated a new FBI investigation or enhanced an existing one.<sup>7</sup> Additionally, over 1,000 SARs during the same time period led to terrorism watchlist en-

<sup>1</sup>*Preventing Another Boston Marathon Bombing: Reviewing Lessons Learned from the 2013 Terror Attack*, The House Homeland Security Committee, April 2015, at 13. <https://homeland.house.gov/files/documents/041415-Boston-Marathon-Bombing-Report.pdf>

<sup>2</sup>Id at 13-16.

<sup>3</sup>United States House of Representatives Committee on Homeland Security, *Sixteen Years After 9/11: Assessing Suspicious Activity Reporting Efforts*, September 13, 2017, 115th Congress, testimony provided by Boston Police Commissioner William B. Evans.

<sup>4</sup>*Reviewing the Department of Homeland Security's Intelligence Enterprise*, The House Homeland Security Committee, December 2016, at 45. <https://homeland.house.gov/wp-content/uploads/2017/01/reviewing-dhs-intelligence-enterprise-report.pdf>

<sup>5</sup>*Advancing the Homeland Security Information Sharing Environment: A Review of the National Network of Fusion Centers*, House Homeland Security Committee, November 2017. <https://homeland.house.gov/wp-content/uploads/2017/11/Committee-on-Homeland-Security-Fusion-Center-Report.pdf>

<sup>6</sup>Id at 6.

<sup>7</sup>Remarks of Mr. Robin Taylor, Acting Deputy Secretary for Intelligence Operations in the Office of Intelligence and Analysis at the Department of Homeland Security, during a Subcommittee on Counterterrorism and Intelligence hearing, "Sixteen Years After 9/11: Assessing Suspicious Activity Reporting," September 13, 2017. <https://homeland.house.gov/hearing/sixteen-years-after-911-assessing-suspicious-activity-reporting-efforts/>

hancements.<sup>8</sup> Witnesses also testified regarding how the program has matured and initiatives for further development, including greater private sector outreach.<sup>9</sup>

H.R. 5094 adds new responsibilities to the Secretary of Homeland Security to enable the Department to continue to foster community participation and engagement by strengthening existing training and outreach programs. Under this new legislation, the Secretary is required to develop a strategy designed to improve the operations and activities related to suspicious activity reporting as they pertain to training, outreach, and information sharing with key partners, including appropriate law enforcement officers, the State and major urban area fusion centers, emergency response providers, and the private sector.

The bill also empowers the Secretary to establish a stakeholder working group to develop recommendations to improve SARs activities. The bill includes important privacy and civil liberty safeguards. Additionally, the reporting requirement ensures that the Secretary will provide this strategy and an evaluation of its effectiveness, as well as a description of the recommendations provided by the working group and how these recommendations were incorporated into the strategy, with the Congress.

#### COMMITTEE CONSIDERATION

The Committee met on March 7, 2018, to consider H.R. 5094, and ordered the measure to be reported to the House with a favorable recommendation, as amended, by unanimous consent. The Committee took the following actions:

The following amendment was offered:

An amendment offered by MR. KING of New York (#1); was AGREED TO by unanimous consent.

#### COMMITTEE VOTES

Clause 3(b) of Rule XIII of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto.

No recorded votes were requested during consideration of H.R. 5094.

#### COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of Rule XIII of the Rules of the House of Representatives, the Committee has held oversight hearings and made findings that are reflected in this report.

#### NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of Rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 5094, the Enhancing Suspicious Activity Reporting Initiative Act, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

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<sup>8</sup>Id.

<sup>9</sup>Id.

## CONGRESSIONAL BUDGET OFFICE ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, March 14, 2018.*

Hon. MICHAEL MCCAUL,  
*Chairman, Committee on Homeland Security,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5094, the Enhancing Suspicious Activity Reporting Initiative Act.

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.

*H.R. 5094—Enhancing Suspicious Activity Reporting Initiative Act*

H.R. 5094 would require the Department of Homeland Security (DHS) to develop a strategy to improve its handling of tips or information relating to possible terrorist activity. The bill also would direct DHS to form a working group (including participants from nongovernmental entities) to further enhance its response to such reports. Because the department is currently carrying out activities similar to those required by the bill, CBO estimates that implementing H.R. 5094 would not have a significant effect on spending by DHS.

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

CBO estimates that enacting H.R. 5094 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 5094 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

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

## STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of Rule XIII of the Rules of the House of Representatives, H.R. 5094 contains the following general performance goals and objectives, including outcome related goals and objectives authorized.

The bill also establishes a working group to develop recommendations for improvements to suspicious activity reporting that will be used to develop such strategy.

#### DUPLICATIVE FEDERAL PROGRAMS

Pursuant to clause 3(c) of Rule XIII, the Committee finds that H.R. 5094 does not contain any provision that establishes or reauthorizes a program known to be duplicative of another Federal program.

#### CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with Rule XXI of the Rules of the House of Representatives, this bill, as reported, contains no congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of the Rule XXI.

#### FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

#### PREEMPTION CLARIFICATION

In compliance with section 423 of the Congressional Budget Act of 1974, requiring the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt State, local, or Tribal law, the Committee finds that H.R. 5094 does not preempt any State, local, or Tribal law.

#### DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that H.R. 5094 would require no directed rule makings.

#### ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

#### APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

#### SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

##### *Section 1. Short Title.*

This section provides that this bill may be cited as the “Enhancing Suspicious Activity Reporting Initiative Act”.

##### *Sec. 2. Enhancing Department of Homeland Security Suspicious Activity Reporting Operations.*

This section requires the Secretary of Homeland Security to develop a strategy within one year to improve the operations and activities related to training, outreach, and information sharing for suspicious activity reporting to prevent acts of terrorism. This

strategy shall include plans for: (1) providing training for State and major urban area fusion centers, emergency response providers, and the private sector on identifying, analyzing, and disseminating critical information, including the indicators of terrorism, as well as training on privacy and civil liberty protections; (2) conducting outreach to appropriate State and major urban area fusion centers, emergency response providers, and the private sector; (3) ensuring that critical information is shared in a timely manner with State and major urban area fusion centers, emergency response providers, and the private sector, as appropriate, including nationwide trend analysis and other information related to terrorist threats; and (4) measuring the effectiveness of the activities conducted under the strategy.

In developing this strategy, the Secretary shall take into consideration the recommendations of the working group established under Section 3 of this Act. Not later than one year after the date of the enactment, the Secretary shall submit to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a report on this strategy.

The Committee acknowledges that while the Department does not administer the National SARs Initiative, it is an important facilitator for representatives of the Nation Network of Fusion Centers and others to report suspicious activity to the FBI. Importantly, the bill requires the Secretary to provide guidance and examples on what types of information would be and would not be considered critical information.

### *Sec. 3. Suspicious Activity Reporting Working Group.*

This section requires the Secretary to establish a suspicious activity reporting working group. This working group will be responsible for providing advice to the Secretary regarding the suspicious activity reporting operations and developing recommendations for outreach, information sharing, protecting personally identifiable information, protecting privacy and civil rights, training for emergency response providers and the private sector; and other matters, as determined by the Secretary to improve suspicious activity reporting to prevent acts of terrorism.

This section also requires the Secretary to appoint liaisons from the Department to the Working Group, including the Chief Privacy Officer, the Officer for Civil Rights and Civil Liberties and other appropriate individuals.

The Secretary shall seek the voluntary participation of not more than 20 individuals representing at least 12 diverse regions of the United States to serve as members of the working group. The Secretary shall seek representatives from each of the following: (1) State and major urban area fusion centers; (2) State, local, tribal and territorial law enforcement agencies; (3) Firefighters; (4) Emergency medical services; (5) Private sector security professionals; and (6) Any other group the Secretary determines appropriate. Upon request, the Secretary shall provide a briefing to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate on the information and recommendations provided by the working group. The working group shall terminate after two



years unless the Secretary extends the term. The Federal Advisory Committee Act does not apply to the working group.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

As reported, H.R. 5094 makes no changes to existing law.

