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116TH CONGRESS }
2d Session }

SENATE

{ REPORT
116-247

RODCHENKOV ANTI-DOPING ACT OF 2019

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

H.R. 835



AUGUST 6, 2020.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SIXTEENTH CONGRESS

SECOND SESSION

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Mr. WICKER, from the Committee on Commerce, Science, and
Transportation, submitted the following

R E P O R T

[To accompany H.R. 835]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (H.R. 835) to impose criminal sanctions on certain persons involved in international doping fraud conspiracies, to provide restitution for victims of such conspiracies, and to require sharing of information with the United States Anti-Doping Agency to assist its fight against doping, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 835, the Rodchenkov Anti-Doping Act of 2019, as reported, is to provide United States law enforcement with the authority to investigate and prosecute certain persons involved in international doping fraud conspiracies affecting international sport competitions governed by the World Anti-Doping Agency (WADA) Code. In particular, the bill would establish extraterritorial jurisdiction for such crimes, provide restitution for victims, and would authorize Federal agencies to share information with the United States Anti-Doping Agency (USADA) regarding doping investigations. The bill would also set criminal penalties and a statute of limitations for such conspiracies.

BACKGROUND AND NEEDS

Dr. Grigory Rodchenkov is the former head of Russia's national anti-doping laboratory, the Moscow Anti-Doping Center.¹ The laboratory was suspended by WADA in November 2015 for facilitating Russia's elaborate state-sponsored doping program.² Rodchenkov helped develop and distribute banned performance-enhancing substances for thousands of Russian Olympians from 2006 to 2015 and facilitate the Sochi doping scandal.³ The drugs reportedly helped athletes recover quickly from training and allowed them to compete in top form over successive days.⁴

Following the 2014 Sochi Winter Games, WADA issued a report that found systematic doping among Russian track and field athletes.⁵ Within days, Rodchenkov was forced to resign from the lab and fled to Los Angeles fearing for his safety.⁶ He made headlines in 2016 as a whistleblower, helping expose Russia's doping program.⁷ The information Rodchenkov provided to *The New York Times* for these stories was also confirmed by an independent study known as the McLaren Report.⁸ The McLaren Report led to Russia's partial ban from the 2016 Summer Olympics and total ban from the 2018 Winter Olympics, although Russian nationals were still permitted to compete under a neutral flag.⁹

In November 2019, the compliance and review committee for WADA recommended a 4-year sports ban for Russia that would bar the country from representing its flag in the 2020 Tokyo Summer Games and 2022 Beijing Winter Games.¹⁰ This recommendation came after allegations of Russian officials manipulating a database to delete some test results and fabricate other data from the beginning of the year.¹¹ On December 9, 2019, WADA's 12-member executive committee announced that it had voted unanimously to endorse a 4-year international sports ban, recommended by the independent Compliance Review Committee on Russia.¹² Russia has

¹Daniel Arken, "Russian Doping Whistleblower Grigory Rodchenkov Countersues 3 Athletes," *NBC News*, Apr. 30, 2018 (<https://www.nbcnews.com/news/us-news/russian-doping-whistleblower-grigory-rodchenkov-countersues-three-athletes-n870136>) (accessed Jun. 29, 2020); and Adam Chandler, "A List of Russia's Responses to the Doping Scandal," *The Atlantic*, Nov. 10, 2015 (<https://www.theatlantic.com/international/archive/2015/11/russia-wada-doping-response/415242/>) (accessed Jun. 29, 2020).

²World Anti-Doping Agency, "WADA Acts Immediately to Suspend Accreditation of Moscow Laboratory," Nov. 10, 2015 (<https://www.wada-ama.org/en/media/news/2015-11/wada-acts-immediately-to-suspend-accreditation-of-moscow-laboratory>) (accessed Jun. 29, 2020).

³World Anti-Doping Agency Independent Commission, *The Independent Commission Report #1*, Nov. 9, 2015 (https://www.wada-ama.org/sites/default/files/resources/files/wada_independent_commission_report_1_en.pdf) (accessed Jun. 29, 2020).

⁴Rebecca R. Ruiz and Michael Schwartz, "Russian Insider Says State-Run Doping Fueled Olympic Gold," *The New York Times*, May 12, 2016 (<https://www.nytimes.com/2016/05/13/sports/russia-doping-sochi-olympics-2014.html>) (accessed Jun. 29, 2020).

⁵Id.

⁶Id.

⁷Id.

⁸Richard H. McLaren, *Independent Person WADA Investigation of Sochi Allegations*, Dec. 9, 2016 (https://www.wada-ama.org/sites/default/files/resources/files/mclaren_report_part_ii_2.pdf) (accessed Jun. 29, 2020).

⁹Id.

¹⁰Letter on file with the Committee.

¹¹World Anti-Doping Agency, "WADA Executive Committee Unanimously Endorses Four-year Period of Non-compliance for the Russian Anti-Doping Agency," Dec. 9, 2019 (<https://www.wada-ama.org/en/media/news/2019-12/wada-executive-committee-unanimously-endorses-four-year-period-of-non-compliance#:text=9%20December%202019-,WADA%20Executive%20Committee%20unanimously%20endorses%20four%20year%20period%20of%20non,the%20Russian%20Anti%20Doping%20Agency&text=The%20blatant%20breach%20by%20the,what%20has%20been%20delivered%20today>) (accessed Jun. 29, 2020).

¹²Id.

appealed WADA's decision to the Court of Arbitration for Sport.¹³ If implemented, WADA's decision would effectively prevent Russia from having any formal presence at both the delayed 2020 Summer Games in Tokyo and the 2022 Winter Games in Beijing. However, Russian teams and athletes will still be allowed to compete as long as they are not linked to positive doping tests or the data tampering case, and will compete under a neutral flag.¹⁴ Given these exceptions for Russian athletes, USADA and other athlete representatives have argued WADA's sanctions do not go far enough to dissuade organized doping, and that all Russian athletes should be prevented from participating in the delayed 2020 and 2022 Olympic Games.¹⁵

SUMMARY OF PROVISIONS

H.R. 835 would do the following:

- Declare it unlawful for any person, other than an athlete, to engage in, attempt to engage in, or conspire with another person to engage in a scheme in commerce to influence any major international sports competition through the use of a prohibited substance or method.
- Establish extraterritorial Federal jurisdiction for events that:
 - involve U.S. athletes;
 - accept sponsorship or financial support from an organization doing business in the United States;
 - receive compensation for the right to broadcast their competitions in the United States; or
 - include a competition that qualifies competitors to receive an award.
- Set criminal penalties for violators at not more than 10 years imprisonment, a fine of not more than \$250,000 for an individual, or a fine of not more than \$1,000,000 for an entity other than an individual.
- Allow for the forfeiture of property used, or intended to be used, to facilitate the violation, or that constitutes or is traceable to proceeds of the violation.
- Establish a 10-year statute of limitations for violations of the Act.
- Add the offense described in section 3 of the Act to the list of Federal crimes in section 3663A of title 18, United States Code, for which restitution for victims is available.
- Direct relevant law enforcement agencies to coordinate with and share information with USADA with regard to investigations of violations of the Act.

LEGISLATIVE HISTORY

H.R. 835, the Rodchenkov Anti-Doping Act of 2019, was introduced on January 29, 2019, by Rep. Jackson Lee (for herself and Representatives Burgess, Cohen, Hudson, DeGette, King [of New York], Hastings, Long, Johnson [of Georgia], Smith [of New Jer-

¹³BBC Sport, "Russia Doping Ban: Appeal Against Wada Decision Set for May," *BBC*, Feb. 27, 2020 (<https://www.bbc.com/sport/51666252>) (accessed Jun. 29, 2020).

¹⁴*Id.*

¹⁵USADA, *Statement from USADA CEO Travis Tygart on the WADA Executive Committee's Decision on Russia*, Dec. 9, 2019 (<https://www.usada.org/statement/travis-tygart-statement-wada-executive-committee-russia-decision/>) (accessed Jun. 29, 2020).

sey], Moore, Rush, and Tonko) and was referred to the Committees on the Judiciary, and Energy and Commerce of the House of Representatives. On October 22, 2019, H.R. 835 was discharged from the Committee on Energy and Commerce and passed the House, as amended, by voice vote. On October 23, 2019, the bill was referred to the Committee on Commerce, Science, and Transportation of the Senate. On March 11, 2020, the Committee met in open Executive Session and, by voice vote, ordered H.R. 835 reported favorably without amendment.

A companion bill, S. 259, was introduced on January 29, 2019, by Senator Whitehouse (for himself and Senators Wicker, Cardin, and Rubio) and was referred to the Committee on Commerce, Science, and Transportation of the Senate. There are eight additional cosponsors.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

H.R. 835, Rodchenkov Anti-Doping Act of 2019			
As ordered reported by the Senate Committee on Commerce, Science, and Transportation on March 11, 2020			
By Fiscal Year, Millions of Dollars	2020	2020-2025	2020-2030
Direct Spending (Outlays)	*	*	*
Revenues	*	*	*
Increase or Decrease (-) in the Deficit	*	*	*
Spending Subject to Appropriation (Outlays)	0	0	not estimated
Statutory pay-as-you-go procedures apply?	Yes	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 -\$500,000 and \$500,000.			

H.R. 835 would establish a new federal crime related to the use of prohibited substances to influence the outcome of certain international sports competitions. People who violate the act's provisions could be subject to criminal fines, so the federal government might collect additional fines under the legislation. Criminal fines are recorded in the budget as revenues, deposited in the Crime Victims Fund, and later spent without further appropriation. CBO expects any additional revenues and associated direct spending would not be significant because relatively few additional cases probably would be affected by the act.

On November 1, 2019, CBO transmitted a cost estimate for H.R. 835, the Rodchenkov Anti-Doping Act of 2019, as passed by the House of Representatives on October 22, 2019. The two versions of the legislation are similar and CBO's estimated costs are the same.

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

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

H.R. 835 would declare it unlawful for certain persons to engage in international doping fraud conspiracies. As such, the bill would not authorize any new regulations and would not subject any individuals or businesses to new regulations.

ECONOMIC IMPACT

H.R. 835 would not have an adverse economic impact on the Nation. It is expected that the deterrent effect against conducting international doping fraud conspiracies would contribute to improved faith in clean sport, benefiting the economic activities associated with international competitions.

PRIVACY

H.R. 835 would not have any adverse impact on the personal privacy of individuals. The bill does not grant any investigative powers to law enforcement officials beyond those they currently possess.

PAPERWORK

H.R. 835 would not increase paperwork requirements for private individuals or businesses.

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title.

This section would provide that the bill may be cited as the “Rodchenkov Anti-Doping Act of 2019”.

Section 2. Definitions.

This section would define the following terms: “anti-doping organization”, “athlete”, “Code”, “Convention”, “Major International Sport Competition”, “person”, “prohibited method”, “prohibited substance”, “scheme in commerce”, “USADA”, and “WADA”.

Section 3. Major international doping fraud conspiracies.

This section would declare it unlawful for any person other than an athlete to knowingly carry out, attempt to carry out, or conspire

to carry out a scheme in commerce to influence a major international sports competition by use of a prohibited substance or method.

This section would establish extraterritorial Federal jurisdiction over such an offense.

The Committee intends for this Act to address prohibited acts that may arise in conjunction with events involving amateur and Olympic international competition. The Committee does not intend for this Act to apply to games or events organized or sanctioned by a professional sports league with a drug testing program that has been collectively bargained under the rules, requirements, and protections of Federal law.

Section 4. Criminal penalties and statute of limitations.

This section would set the criminal penalties for a person who violates section 3 at not more than 10 years imprisonment, a \$250,000 fine for an individual or a \$1 million fine for a defendant other than an individual, or both. This section would also establish that property that is used to facilitate the violation of section 3, or that constitutes the proceeds of the violation, may be seized and criminally forfeited to the United States.

This section would also set the statute of limitations for a violation of section 3 as within 10 years after the date on which the offense was completed.

Section 5. Restitution.

This section would amend section 3663A of title 18, United States Code, to include “an offense described in section 3 of the Rodchenkov Anti-Doping Act of 2019” to the list of certain crimes to which victims are entitled mandatory restitution.

Section 6. Coordination and sharing of information with USADA.

This section would direct the Department of Justice, the Department of Homeland Security, and the Food and Drug Administration to coordinate with USADA and share all relevant information with regard to investigations into potential section 3 violations, except where otherwise prohibited by law or in cases in which the integrity of the criminal investigation would be affected.

The Committee does not intend for the potential sharing of information envisioned under section 6 of this Act to include information involving events outside the scope of section 3 of this Act.

Section 7. Determination of budgetary effects.

This section would declare that the budgetary effects of this Act for the purposes of complying with the Statutory Pay-As-You-Go Act of 2010 shall be determined by reference to the latest Budgetary Effects of PAYGO Legislation statement submitted by the Chairman of the House Budget Committee for this Act.

CHANGES IN EXISTING LAW

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 black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

* * * * *

TITLE 18—CRIMES AND CRIMINAL PROCEDURE

* * * * *

PART II—CRIMINAL PROCEDURE

* * * * *

CHAPTER 232—MISCELLANEOUS SENTENCING PROVISIONS

* * * * *

§ 3663A. Mandatory restitution to victims of certain crimes

(a)(1) * * *

(b) * * *

(c)(1) This section shall apply in all sentencing proceedings for convictions of, or plea agreements relating to charges for, any offense—

(A) that is—

(i) a crime of violence, as defined in section 16;

(ii) an offense against property under this title, or under section 416(a) of the Controlled Substances Act (21 U.S.C. 856(a)), including any offense committed by fraud or deceit;

(iii) *an offense described in section 3 of the Rodchenkov Anti-Doping Act of 2019;*

[(iii)](iv) an offense described in section 1365 (relating to tampering with consumer products); or

[(iv)](v) an offense under section 670 (relating to theft of medical products); and

(B) in which an identifiable victim or victims has suffered a physical injury or pecuniary loss.

(2) In the case of a plea agreement that does not result in a conviction for an offense described in paragraph (1), this section shall apply only if the plea specifically states that an offense listed under such paragraph gave rise to the plea agreement.

(3) This section shall not apply in the case of an offense described in paragraph (1)(A)(ii) *or (iii)* if the court finds, from facts on the record, that—

(A) the number of identifiable victims is so large as to make restitution impracticable; or

(B) determining complex issues of fact related to the cause or amount of the victim's losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim is outweighed by the burden on the sentencing process.

(d) An order of restitution under this section shall be issued and enforced in accordance with section 3664.

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