

114TH CONGRESS
1ST SESSION

S. 1864

To improve national security by developing metrics to measure the effectiveness of security between ports of entry, at points of entry, and along the maritime border.

IN THE SENATE OF THE UNITED STATES

JULY 27, 2015

Mr. JOHNSON (for himself, Mr. MCCAIN, and Mr. CORNYN) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To improve national security by developing metrics to measure the effectiveness of security between ports of entry, at points of entry, and along the maritime border.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Department of Home-
5 land Security Border Security Metrics Act of 2015”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1 (1) APPROPRIATE CONGRESSIONAL COMMIT-
2 TEES.—The term “appropriate congressional com-
3 mittees” means—

4 (A) the Committee on Homeland Security
5 and Governmental Affairs of the Senate;

6 (B) the Committee on Homeland Security
7 of the House of Representatives;

8 (C) the Committee on the Judiciary of the
9 Senate; and

10 (D) the Committee on the Judiciary of the
11 House of Representatives.

12 (2) CONSEQUENCE DELIVERY SYSTEM.—The
13 term “Consequence Delivery System” means the se-
14 ries of consequences applied by the Border Patrol to
15 persons unlawfully entering the United States to
16 prevent unlawful border crossing recidivism.

17 (3) GOT AWAY.—The term “got away” means
18 an unlawful border crosser who—

19 (A) is directly or indirectly observed mak-
20 ing an unlawful entry into the United States;
21 and

22 (B) is not a turn back and is not appre-
23 hended.

(4) KNOWN MIGRANT FLOW.—The term “known migrant flow” means the sum of the number of undocumented migrants—

(A) interdicted at sea;

(B) identified at sea, but not interdicted;

(C) that successfully entered the United States through the maritime border; or

(D) not described in subparagraph (A), (B), or (C), which were otherwise reported, with a significant degree of certainty, as having entered, or attempted to enter, the United States through the maritime border.

(5) MAJOR VIOLATOR.—The term “major violator” means a person or entity that has engaged in serious criminal activities at any land, air, or sea port of entry, including—

(A) possession of illicit drugs;

(B) smuggling of prohibited products;

(C) human smuggling;

(D) weapons possession;

(E) use of fraudulent United States documents; or

(F) other offenses that are serious enough to result in arrest.

1 (6) SITUATIONAL AWARENESS.—The term “sit-
2 uational awareness” means knowledge and unified
3 understanding of current unlawful cross-border ac-
4 tivity, including—

5 (A) threats and trends concerning illicit
6 trafficking and unlawful crossings;

7 (B) the ability to forecast future shifts in
8 such threats and trends;

9 (C) the ability to evaluate such threats and
10 trends at a level sufficient to create actionable
11 plans; and

12 (D) the operational capability to conduct
13 persistent and integrated surveillance of the
14 international borders of the United States.

15 (7) TRANSIT ZONE.—The term “transit zone”
16 means the sea corridors of the western Atlantic
17 Ocean, the Gulf of Mexico, the Caribbean Sea, and
18 the eastern Pacific Ocean through which undocu-
19 mented migrants and illicit drugs transit, either di-
20 rectly or indirectly, to the United States.

21 (8) TURN BACK.—The term “turn back” means
22 an unlawful border crosser who, after making an un-
23 lawful entry into the United States, promptly re-
24 turns to the country from which such crosser en-
25 tered.

1 (9) UNLAWFUL BORDER CROSSING EFFECTIVE-
2 NESS RATE.—The term “unlawful border crossing
3 effectiveness rate” means the percentage that results
4 from dividing—

5 (A) the number of apprehensions and turn
6 backs; and

7 (B) the number of apprehensions, esti-
8 mated unlawful entries, turn backs, and got
9 aways.

10 (10) UNLAWFUL ENTRY.—The term “unlawful
11 entry” means an unlawful border crosser who enters
12 the United States and is not apprehended by a bor-
13 der security component of the Department of Home-
14 land Security.

15 **SEC. 3. METRICS FOR SECURING THE BORDER BETWEEN**
16 **PORTS OF ENTRY.**

17 (a) IN GENERAL.—Not later than 120 days after the
18 date of the enactment of this Act, the Secretary of Home-
19 land Security shall develop metrics, informed by situa-
20 tional awareness, to measure the effectiveness of security
21 between ports of entry. The Secretary shall annually im-
22 plement the metrics developed under this subsection,
23 which shall include—

1 (1) estimates, using alternative methodologies,
2 including recidivism data, survey data, known-flow
3 data, and technologically measured data, of—

4 (A) total attempted unlawful border cross-
5 ings;

6 (B) the rate of apprehension of attempted
7 unlawful border crossers; and

8 (C) the number of unlawful entries;

9 (2) a situational awareness achievement metric,
10 which measures situational awareness achieved in
11 each Border Patrol sector;

12 (3) an unlawful border crossing effectiveness
13 rate;

14 (4) a probability of detection, which compares
15 the estimated total unlawful border crossing at-
16 tempts not detected by the Border Patrol to the un-
17 lawful border crossing effectiveness rate, as informed
18 by paragraph (1);

19 (5) an illicit drugs seizure rate for drugs seized
20 by the Border Patrol, which compares the ratio of
21 the amount and type of illicit drugs seized by the
22 Border Patrol in any fiscal year to the average of
23 the amount and type of illicit drugs seized by the
24 Border Patrol in the immediately preceding 5 fiscal
25 years;

1 (6) a weight-to-frequency rate, which compares
 2 the average weight of marijuana seized per seizure
 3 by the Border Patrol in any fiscal year to such
 4 weight-to-frequency rate for the immediately pre-
 5 ceding 5 fiscal years;

6 (7) estimates of the impact of the Consequence
 7 Delivery System on the rate of recidivism of unlaw-
 8 ful border crossers over multiple fiscal years; and

9 (8) an examination of each consequence re-
 10 ferred to in paragraph (7), including—

- 11 (A) voluntary return;
- 12 (B) warrant of arrest or notice to appear;
- 13 (C) expedited removal;
- 14 (D) reinstatement of removal;
- 15 (E) alien transfer exit program;
- 16 (F) Operation Streamline;
- 17 (G) standard prosecution; and
- 18 (H) Operation Against Smugglers Initia-
 19 tive on Safety and Security.

20 (b) METRICS CONSULTATION.—In developing the
 21 metrics required under subsection (a), the Secretary
 22 shall—

23 (1) consult with the appropriate components of
 24 the Department of Homeland Security; and

1 (2) as appropriate, work with other agencies,
2 including the Office of Refugee Resettlement of the
3 Department of Health and Human Services and the
4 Executive Office for Immigration Review of the De-
5 partment of Justice, to ensure that authoritative
6 data sources are utilized.

7 (c) MANNER OF COLLECTION.—The data used by the
8 Secretary of Homeland Security shall be collected and re-
9 ported in a consistent and standardized manner across all
10 Border Patrol sectors, informed by situational awareness.

11 **SEC. 4. METRICS FOR SECURING THE BORDER AT PORTS**
12 **OF ENTRY.**

13 (a) IN GENERAL.—Not later than 120 days after the
14 date of the enactment of this Act, the Secretary of Home-
15 land Security shall develop metrics, informed by situa-
16 tional awareness, to measure the effectiveness of security
17 at ports of entry. The Secretary shall annually implement
18 the metrics developed under this subsection, which shall
19 include—

20 (1) estimates, using alternative methodologies,
21 including survey data and randomized secondary
22 screening data, of—

23 (A) total attempted inadmissible border
24 crossings;

1 (B) the rate of apprehension of attempted
2 inadmissible border crossings; and

3 (C) the number of unlawful entries;

4 (2) the amount and type of illicit drugs seized
5 by the Office of Field Operations of U.S. Customs
6 and Border Protection at United States land, air,
7 and sea ports during the previous fiscal year;

8 (3) an illicit drugs seizure rate for drugs seized
9 by the Office of Field Operations, which compares
10 the ratio of the amount and type of illicit drugs
11 seized by the Office of Field Operations in any fiscal
12 year to the average of the amount and type of illicit
13 drugs seized by the Office of Field Operations in the
14 immediately preceding 5 fiscal years;

15 (4) in consultation with the Office of National
16 Drug Control Policy and the United States Southern
17 Command, a cocaine seizure effectiveness rate,
18 which is the percentage resulting from dividing—

19 (A) the amount of cocaine seized by the
20 Office of Field Operations; and

21 (B) the total estimated cocaine flow rate at
22 ports of entry along the land border;

23 (5) the number of infractions related to trav-
24 elers and cargo committed by major violators who
25 are apprehended by the Office of Field Operations at

1 ports of entry, and the estimated number of such in-
2 fractions committed by major violators who are not
3 apprehended;

4 (6) a measurement of how border security oper-
5 ations affect crossing times, including—

6 (A) a wait time ratio that compares the av-
7 erage wait times to total commercial and pri-
8 vate vehicular traffic volumes at each port of
9 entry;

10 (B) an infrastructure capacity utilization
11 rate that measures traffic volume against the
12 physical and staffing capacity at each port of
13 entry;

14 (C) a secondary examination rate that
15 measures the frequency of secondary examina-
16 tions at each port of entry; and

17 (D) an enforcement rate that measures the
18 effectiveness of secondary examinations at de-
19 tecting major violators; and

20 (7) a cargo scanning rate that includes—

21 (A) a comparison of the number of high-
22 risk cargo containers scanned by the Office of
23 Field Operations at each United States seaport
24 during the fiscal year to the total number of
25 high-risk cargo containers entering the United

1 States at each seaport during the previous fis-
2 cal year;

3 (B) the percentage of all cargo that is con-
4 sidered “high-risk” cargo; and

5 (C) the percentage of high-risk cargo
6 scanned—

7 (i) upon arrival at a United States
8 seaport before entering United States com-
9 merce; and

10 (ii) before being laden on a vessel des-
11 tined for the United States.

12 (b) METRICS CONSULTATION.—In developing the
13 metrics required under subsection (a), the Secretary
14 shall—

15 (1) consult with the appropriate components of
16 the Department of Homeland Security; and

17 (2) as appropriate, work with other agencies,
18 including the Office of Refugee Resettlement of the
19 Department of Health and Human Services and the
20 Executive Office for Immigration Review of the De-
21 partment of Justice, to ensure that authoritative
22 data sources are utilized.

23 (c) MANNER OF COLLECTION.—The data used by the
24 Secretary of Homeland Security shall be collected and re-

1 ported in a consistent and standardized manner across all
2 field offices, informed by situational awareness.

3 **SEC. 5. METRICS FOR SECURING THE MARITIME BORDER.**

4 (a) IN GENERAL.—Not later than 120 days after the
5 date of the enactment of this Act, the Secretary of Home-
6 land Security shall develop metrics, informed by situa-
7 tional awareness, to measure the effectiveness of security
8 in the maritime environment. The Secretary shall annually
9 implement the metrics developed under this subsection,
10 which shall include—

11 (1) situational awareness achieved in the mari-
12 time environment;

13 (2) an undocumented migrant interdiction rate,
14 which compares the migrants interdicted at sea to
15 the total known migrant flow;

16 (3) an illicit drugs removal rate, for drugs re-
17 moved inside and outside of a transit zone, which
18 compares the amount and type of illicit drugs re-
19 moved, including drugs abandoned at sea, by the
20 Department of Homeland Security’s maritime secu-
21 rity components in any fiscal year to the average of
22 the amount and type of illicit drugs removed by the
23 Department of Homeland Security’s maritime com-
24 ponents for the immediately preceding 5 fiscal years;

1 (4) in consultation with the Office of National
2 Drug Control Policy and the United States Southern
3 Command, a cocaine removal effectiveness rate, for
4 cocaine removed inside a transit zone and outside a
5 transit zone; which compares the amount of cocaine
6 removed by the Department of Homeland Security's
7 maritime security components by the total docu-
8 mented cocaine flow rate, as contained in Federal
9 drug databases;

10 (5) a response rate, which compares the ability
11 of the maritime security components of the Depart-
12 ment of Homeland Security to respond to and re-
13 solve known maritime threats, whether inside and
14 outside a transit zone, by placing assets on-scene, to
15 the total number of events with respect to which the
16 Department has known threat information; and

17 (6) an intergovernmental response rate, which
18 compares the ability of the maritime security compo-
19 nents of the Department of Homeland Security or
20 other United States Government entities to respond
21 to and resolve actionable maritime threats, whether
22 inside or outside the Western Hemisphere transit
23 zone, by targeting maritime threats in order to de-
24 tect them, and of those threats detected, the total
25 number of maritime threats interdicted or disrupted.

1 (b) METRICS CONSULTATION.—In developing the
2 metrics required under subsection (a), the Secretary
3 shall—

4 (1) consult with the appropriate components of
5 the Department of Homeland Security; and

6 (2) as appropriate, work with other agencies,
7 including the Drug Enforcement Agency, the De-
8 partment of Defense, and the Department of Jus-
9 tice, to ensure that authoritative data sources are
10 utilized.

11 (c) MANNER OF COLLECTION.—The data used by the
12 Secretary of Homeland Security shall be collected and re-
13 ported in a consistent and standardized manner, informed
14 by situational awareness.

15 **SEC. 6. AIR AND MARINE SECURITY METRICS IN THE LAND**
16 **DOMAIN.**

17 (a) IN GENERAL.—Not later than 120 days after the
18 date of the enactment of this Act, the Secretary of Home-
19 land Security shall develop metrics, informed by situa-
20 tional awareness, to measure the effectiveness of the avia-
21 tion assets and operations of the Office of Air and Marine
22 of U.S. Customs and Border Enforcement. The Secretary
23 shall annually implement the metrics developed under this
24 subsection, which shall include—

1 (1) an effectiveness rate, which compares Office
2 of Air and Marine flight hours requirements to the
3 number of flight hours flown by such Office;

4 (2) a funded flight hour effectiveness rate,
5 which compares the number of funded flight hours
6 appropriated to the Office of Air and Marine to the
7 number of actual flight hours flown by such Office;

8 (3) a readiness rate, which compares the num-
9 ber of aviation missions flown by the Office of Air
10 and Marine to the number of aviation missions can-
11 celled by such Office due to maintenance, operations,
12 or other causes;

13 (4) the number of missions cancelled by such
14 Office due to weather compared to the total planned
15 missions;

16 (5) the number of subjects detected by the Of-
17 fice of Air and Marine through the use of unmanned
18 aerial systems and manned aircrafts;

19 (6) the number of apprehensions assisted by the
20 Office of Air and Marine through the use of un-
21 manned aerial systems and manned aircrafts;

22 (7) the number and quantity of illicit drug sei-
23 zures assisted by the Office of Air and Marine
24 through the use of unmanned aerial systems and
25 manned aircrafts; and

1 (8) the number of times that usable intelligence
2 related to border security was obtained through the
3 use of unmanned aerial systems and manned air-
4 craft.

5 (b) METRICS CONSULTATION.—In developing the
6 metrics required under subsection (a), the Secretary
7 shall—

8 (1) consult with the appropriate components of
9 the Department of Homeland Security; and

10 (2) as appropriate, work with other agencies,
11 including the Department of Justice, to ensure that
12 authoritative data sources are utilized.

13 (c) MANNER OF COLLECTION.—The data used by the
14 Secretary of Homeland Security shall be collected and re-
15 ported in a consistent and standardized manner, informed
16 by situational awareness.

17 **SEC. 7. DATA TRANSPARENCY.**

18 The Secretary of Homeland Security shall—

19 (1) in accordance with applicable privacy laws,
20 make data related to apprehensions, inadmissible
21 aliens, drug seizures, and other enforcement actions
22 available to the public, academic research, and law
23 enforcement communities; and

1 (2) provide the Office of Immigration Statistics
2 of the Department of Homeland Security with unfet-
3 tered access to the data described in paragraph (1).

4 **SEC. 8. EVALUATION BY THE GOVERNMENT ACCOUNT-**
5 **ABILITY OFFICE AND THE SECRETARY OF**
6 **HOMELAND SECURITY.**

7 (a) METRICS REPORT.—

8 (1) MANDATORY DISCLOSURES.—The Secretary
9 of Homeland Security shall submit an annual report
10 containing the metrics required under sections 3
11 through 6 and the data and methodology used to de-
12 velop such metrics to—

13 (A) the appropriate congressional commit-
14 tees; and

15 (B) the Comptroller General of the United
16 States.

17 (2) PERMISSIBLE DISCLOSURES.—The Sec-
18 retary of Homeland Security, for the purpose of vali-
19 dation and verification, may submit the annual re-
20 port described in paragraph (1) to—

21 (A) the National Center for Border Secu-
22 rity and Immigration;

23 (B) the head of a national laboratory with-
24 in the Department of Homeland Security lab-

1 oratory network with prior expertise in border
2 security; and

3 (C) a Federally Funded Research and De-
4 velopment Center sponsored by the Department
5 of Homeland Security.

6 (b) GAO REPORT.—Not later than 270 days after
7 receiving the first report under subsection (a)(1), and bi-
8 annually thereafter for the following 10 years, the Comp-
9 troller General of the United States, shall submit a report
10 to the appropriate congressional committees that—

11 (1) analyzes the suitability and statistical valid-
12 ity of the data and methodology contained in such
13 report; and

14 (2) includes recommendations to Congress on—

15 (A) the feasibility of other suitable metrics
16 that may be used to measure the effectiveness
17 of border security; and

18 (B) improvements that need to be made to
19 the metrics being used to measure the effective-
20 ness of border security.

21 (c) STATE OF THE BORDER REPORT.—Not later
22 than 60 days after the end of each fiscal year through
23 fiscal year 2025, the Secretary of Homeland Security shall
24 submit a “State of the Border” report to the appropriate
25 congressional committees that—

1 (1) provides trends for each metric under sec-
 2 tions 3 through 6 for the last 10 years, to the extent
 3 possible;

4 (2) provides selected analysis into related as-
 5 pects of illegal flow rates, including legal flows and
 6 stock estimation techniques; and

7 (3) includes any other information that the Sec-
 8 retary determines appropriate.

9 (d) METRICS UPDATE.—

10 (1) IN GENERAL.—After submitting the final
 11 report to the Comptroller General under subsection
 12 (a), the Secretary of Homeland Security may re-
 13 evaluate and update any of the metrics required
 14 under sections 3 through 6 to ensure that such
 15 metrics—

16 (A) meet the Department of Homeland Se-
 17 curity’s performance management needs; and

18 (B) are suitable to measure the effective-
 19 ness of border security.

20 (2) CONGRESSIONAL NOTIFICATION.—Not later
 21 than 30 days before updating the metrics under
 22 paragraph (1), the Secretary shall notify the appro-
 23 priate congressional committees of such updates.

○