

116TH CONGRESS
2D SESSION

S. 3433

To amend the Homeland Security Act of 2002 to make certain improvements in the Office for Civil Rights and Civil Liberties of the Department of Homeland Security, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 10, 2020

Mr. PETERS (for himself and Ms. HASSAN) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To amend the Homeland Security Act of 2002 to make certain improvements in the Office for Civil Rights and Civil Liberties of the Department of Homeland Security, and for other purposes.

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 Office for Civil Rights and Civil Liberties
6 Authorization Act”.

1 **SEC. 2. OFFICER FOR CIVIL RIGHTS AND CIVIL LIBERTIES.**

2 (a) IN GENERAL.—Section 705 of the Homeland Se-
3 curity Act of 2002 (6 U.S.C. 345) is amended—

4 (1) in the section heading, by striking “**ESTAB-**
5 **LISHMENT OF**”; and

6 (2) by striking subsections (a) and (b) and in-
7 serting the following new subsections:

8 “(a) IN GENERAL.—There is established within the
9 Department an Office for Civil Rights and Civil Liberties.
10 The head of such Office is the Officer for Civil Rights
11 and Civil Liberties (referred to in this section as the ‘Offi-
12 cer’), who shall report directly to the Secretary.

13 “(b) RESPONSIBILITIES.—The Officer shall carry out
14 the following responsibilities:

15 “(1) Oversee compliance with constitutional,
16 statutory, regulatory, policy, and other requirements
17 relating to the civil rights and civil liberties of indi-
18 viduals affected by the programs and activities of
19 the Department.

20 “(2) Integrate civil rights and civil liberties pro-
21 tections into all programs and activities of the De-
22 partment.

23 “(3) Conduct civil rights and civil liberties im-
24 pact assessments, including, as appropriate, prior to
25 the implementation of new Department regulations,
26 initiatives, programs, or policies.

1 “(4) Conduct periodic reviews and assessments
2 of policies, procedures, and activities of the Depart-
3 ment relating to civil rights and civil liberties, in-
4 cluding reviews initiated by the Officer.

5 “(5) Provide policy advice, recommendations,
6 and other technical assistance relating to civil rights
7 and civil liberties to the Secretary and to heads of
8 components, directorates, and offices and other per-
9 sonnel within the Department.

10 “(6) Review, assess, and investigate complaints,
11 including complaints filed by members of the public,
12 and information indicating possible abuses of civil
13 rights or civil liberties at the Department, unless the
14 Inspector General of the Department determines
15 that any such complaint should be investigated by
16 the Inspector General.

17 “(7) As the Officer determines necessary, ini-
18 tiate reviews, investigations, and assessments of the
19 administration of the programs and activities by the
20 Department relating to civil rights and civil liberties.

21 “(8) Coordinate with the Privacy Officer to en-
22 sure that—

23 “(A) programs, policies, and procedures in-
24 volving civil rights, civil liberties, and privacy

1 considerations are addressed in an integrated
2 and comprehensive manner; and

3 “(B) Congress receives appropriate reports
4 regarding such programs, policies, and proce-
5 dures.

6 “(9) Lead the equal employment opportunity
7 programs of the Department, including complaint
8 management and adjudication, workforce diversity,
9 and promotion of the merit system principles.

10 “(10) On a semi-annual basis, make publicly
11 available through accessible communications chan-
12 nels, including the website of the Department—

13 “(A) information on the responsibilities
14 and functions of, and how to contact, the Of-
15 fice;

16 “(B) summary of the investigations that
17 result in final recommendations that are issued
18 by the Officer carried out pursuant to para-
19 graph (6); and

20 “(C) summaries of impact assessments
21 issued by the Officer and carried out pursuant
22 to paragraph (3) or (7).

23 “(11) Engage with individuals and communities
24 whose civil rights and civil liberties may be affected
25 by programs and activities of the Department, in-

cluding by informing such individuals and communities about report and redress processes and advising the Secretary and heads of components, directorates, offices, and other personnel within the Department of concerns raised by such individuals and communities.

“(c) TRANSPARENCY.—

“(1) COMPLAINTS.—In the case of a complaint made concerning allegations of abuses of civil rights and civil liberties under paragraph (6) of subsection (b), the Officer shall—

“(A) provide to the individual who made the complaint notice of the receipt of such complaint within 30 days of receiving the complaint; and

“(B) inform the complainant of the determination of the Officer regarding the initiation of a review, assessment, or investigation within the Office, a referral to the Inspector General of the Department, or any other action taken.

“(2) INVESTIGATIONS.—In the case of an investigation initiated by the Officer pursuant to paragraph (6) or (7) of subsection (b) in which findings or recommendations are issued, the Officer shall, on a semi-annual basis, make publicly available through

1 accessible communications channels, including the
2 website of the Department—

3 “(A) the findings and recommendations of
4 the Officer, if any;

5 “(B) a summary of the investigations that
6 result in final recommendations that are issued
7 by the Officer; and

8 “(C) shall not include any personally iden-
9 tifiable information related to any individual in-
10 volved in such investigation.

11 “(3) SUBMITTAL TO HEADS OF OPERATIONAL
12 COMPONENTS.—The Officer shall transmit a copy of
13 each summary produced under paragraph (2) to the
14 Secretary and to the relevant head of each relevant
15 operational component of the Department.

16 “(4) REPORTS TO CONGRESS.—Upon the con-
17 clusion of any investigation conducted by the Officer
18 under paragraph (6) or (7) of subsection (b) in
19 which findings or recommendations are issued, the
20 Officer shall submit to Congress a report on the in-
21 vestigation, which shall be prepared and submitted
22 without any prior comment or amendment by the
23 Secretary, Deputy Secretary, or any other officer or
24 employee of the Department or the Office of Man-

1 agement and Budget, unless the Officer seeks such
2 comment.

3 “(d) COMPONENT CIVIL RIGHTS AND CIVIL LIB-
4 ERTIES OFFICER.—The head of each of the operational
5 components of the Department, in consultation with the
6 Officer, shall designate a career appointee (as such term
7 is defined in section 3132 of title 5, United States Code)
8 from such component as the Officer for Civil Rights and
9 Civil Liberties of that component. The Officer for Civil
10 Rights and Civil Liberties of each such component shall
11 coordinate with and provide information to the Officer for
12 Civil Rights and Civil Liberties of the Department on mat-
13 ters related to civil rights and civil liberties within the
14 components.

15 “(e) ACCESS TO INFORMATION.—The Officer—

16 “(1) shall have access in a timely manner to all
17 records, reports, audits, reviews, documents, papers,
18 recommendations, and other materials available to
19 the Department that relate to programs and oper-
20 ations with respect to the responsibilities of the Offi-
21 cer under subsection (b); and

22 “(2) may, to the extent the Officer determines
23 necessary, and subject to the approval of the Sec-
24 retary—

1 “(A) issue a subpoena to require the pro-
2 duction, by any person other than a Federal
3 agency, of all information, documents, reports,
4 answers, records, accounts, papers, and other
5 documentary evidence necessary in the perform-
6 ance of the responsibilities of the Officer under
7 this section; and

8 “(B) administer to or take from any per-
9 son an oath, affirmation, or affidavit, whenever
10 necessary in the performance of the responsibil-
11 ities of the Officer under this section.

12 “(f) ANNUAL REPORT.—Not later than March 31 of
13 each year, the Officer shall submit to the appropriate com-
14 mittees and subcommittees of Congress a report on the
15 implementation of this section during the year preceding
16 the year during which the report is submitted. Each such
17 report shall include, for the year covered by the report—

18 “(1) a list of Department programs and activi-
19 ties for which civil rights and civil liberties impact
20 assessments were conducted, or policy advice, rec-
21 ommendations, or other technical assistance was
22 provided;

23 “(2) a summary of investigations resulting in
24 recommendations issued under paragraph (6) or (7)
25 of subsection (b) by the Officer to the Secretary or

1 the head of a component, directorate, or office, to-
2 gether with information on the status of the compo-
3 nent, directorate, or office's implementation of such
4 recommendations;

5 “(3) information on the diversity and equal em-
6 ployment opportunity activities of the Department,
7 including information on complaint management and
8 adjudication of equal employment opportunity com-
9 plaints and efforts to ensure compliance throughout
10 the Department with equal employment opportunity
11 requirements;

12 “(4) a description of any efforts to engage with
13 individuals and communities whose civil rights and
14 civil liberties may be affected by activities carried
15 out by the Department, including public meetings;
16 and

17 “(5) information on total staffing for the Office
18 for Civil Rights and Civil Liberties, including—

19 “(A) the number of full-time, part-time
20 and contract support personnel; and

21 “(B) information on the number of em-
22 ployees whose primary responsibilities include
23 supporting the Officer in carrying out para-
24 graph (9) of subsection (b).”.

1 (b) CLERICAL AMENDMENT.—The item relating to
 2 section 705 in section 1(b) of the Homeland Security Act
 3 of 2002 is amended to read as follows:

4 **“SEC. 705. OFFICER FOR CIVIL RIGHTS AND CIVIL LIB-**
 5 **ERTIES.”.**

6 (c) REPORTING TO CONGRESS.—Section
 7 1062(f)(1)(A)(i) of the National Security Intelligence Re-
 8 form Act of 2004 (42 U.S.C. 2000ee–1(f)(1)(A)(i)) is
 9 amended by inserting “the Committee on Homeland Secu-
 10 rity of the House of Representatives,” after “Affairs of
 11 the Senate,”.

12 **SEC. 3. COMPTROLLER GENERAL REVIEW.**

13 Not later than 2 years after the date of the enact-
 14 ment of this Act, the Comptroller General of the United
 15 States shall submit to Congress a report on subsection
 16 (b)(11) of section 705 of the Homeland Security Act of
 17 2002 (6 U.S.C. 345), as amended by section 2.

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