

117TH CONGRESS
1ST SESSION

S. 3028

To authorize the Attorney General to make grants to, and enter into cooperative agreements with, States and units of local government to develop, implement, or expand 1 or more programs to provide medication-assisted treatment to individuals who have opioid use disorder and are incarcerated within the jurisdictions of the States or units of local government.

IN THE SENATE OF THE UNITED STATES

OCTOBER 20, 2021

Mr. MARKEY (for himself and Ms. MURKOWSKI) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To authorize the Attorney General to make grants to, and enter into cooperative agreements with, States and units of local government to develop, implement, or expand 1 or more programs to provide medication-assisted treatment to individuals who have opioid use disorder and are incarcerated within the jurisdictions of the States or units of local government.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Community Re-Entry
3 through Addiction Treatment to Enhance Opportunities
4 Act” or as the “CREATE Opportunities Act”.

5 **SEC. 2. MEDICATION-ASSISTED TREATMENT CORRECTIONS**
6 **AND COMMUNITY REENTRY PROGRAM.**

7 (a) DEFINITIONS.—In this section—

8 (1) the term “Attorney General” means the At-
9 torney General, acting through the Director of the
10 National Institute of Corrections;

11 (2) the term “certified recovery coach” means
12 an individual—

13 (A) with knowledge of, or experience with,
14 recovery from a substance use disorder; and

15 (B) who—

16 (i) has completed training through,
17 and is determined to be in good standing
18 by—

19 (I) a single State agency; or

20 (II) a recovery community orga-
21 nization that is capable of conducting
22 that training and making that deter-
23 mination; and

24 (ii) meets the criteria specified by the
25 Attorney General, in consultation with the
26 Secretary of Health and Human Services,

1 for qualifying as a certified recovery coach
2 for the purposes of this Act;

3 (3) the term “correctional facility” has the
4 meaning given the term in section 901 of title I of
5 the Omnibus Crime Control and Safe Streets Act of
6 1968 (34 U.S.C. 10251);

7 (4) the term “covered grant or cooperative
8 agreement” means a grant received, or cooperative
9 agreement entered into, under the Program;

10 (5) the term “covered program” means a pro-
11 gram—

12 (A) to provide medication-assisted treat-
13 ment to individuals who have opioid use dis-
14 order and are incarcerated within the jurisdic-
15 tion of the State or unit of local government
16 carrying out the program; and

17 (B) that is developed, implemented, or ex-
18 panded through a covered grant or cooperative
19 agreement;

20 (6) the term “medication-assisted treatment”
21 means the use of 1 or more drugs, or 1 or more
22 combinations of drugs, that have been approved
23 under the Federal Food, Drug, and Cosmetic Act
24 (21 U.S.C. 301 et seq.) or section 351 of the Public
25 Health Service Act (42 U.S.C. 262) for the treat-

1 ment of an opioid use disorder, in combination with
2 evidence-based counseling and behavioral therapies,
3 such as psychosocial counseling, overseen by 1 or
4 more social work professionals and 1 or more quali-
5 fied clinicians, to provide a comprehensive approach
6 to the treatment of substance use disorders;

7 (7) the term “nonprofit organization” means an
8 organization that is described in section 501(c)(3) of
9 the Internal Revenue Code of 1986 and is exempt
10 from taxation under section 501(a) of such Code;

11 (8) the term “Panel” means the Medication-as-
12 sisted Treatment Corrections and Community Re-
13 entry Application Review Panel established under
14 subsection (e)(2);

15 (9) the term “participant” means an individual
16 who participates in a covered program;

17 (10) the term “political appointee” has the
18 meaning given the term in section 714(h) of title 38,
19 United States Code;

20 (11) the term “Program” means the Medica-
21 tion-assisted Treatment Corrections and Community
22 Reentry Program established under subsection (b);

23 (12) the term “psychosocial” means the inter-
24 relation of social factors and individual thought and
25 behavior;

1 (13) the term “recovery community organiza-
2 tion” has the meaning given the term in section 547
3 of the Public Health Service Act (42 U.S.C. 290ee–
4 2);

5 (14) the term “single State agency” means,
6 with respect to a State or unit of local government,
7 the single State agency identified by the State, or
8 the State in which the unit of local government is
9 located, in the plan submitted by that State under
10 section 1932(b)(1)(A)(i) of the Public Health Serv-
11 ice Act (42 U.S.C. 300x–32(b)(1)(A)(i));

12 (15) the term “State” means—

13 (A) each State of the United States;

14 (B) the District of Columbia; and

15 (C) each commonwealth, territory, or pos-
16 session of the United States; and

17 (16) the term “unit of local government” has
18 the meaning given the term in section 901 of title
19 I of the Omnibus Crime Control and Safe Streets
20 Act of 1968 (34 U.S.C. 10251), except that such
21 term also includes a tribal organization, as defined
22 in section 4 of the Indian Self-Determination and
23 Education Assistance Act (25 U.S.C. 5304).

24 (b) AUTHORIZATION.—Not later than 90 days after
25 the date of enactment of this Act, the Attorney General,

1 in consultation with the Secretary of Health and Human
2 Services, shall establish a program—

3 (1) that shall be known as the “Medication-as-
4 sisted Treatment Corrections and Community Re-
5 entry Program”; and

6 (2) under which the Attorney General—

7 (A) may make grants to, and enter into co-
8 operative agreements with, States or units of
9 local government to develop, implement, or ex-
10 pand 1 or more programs to provide medica-
11 tion-assisted treatment that meets the standard
12 of care generally accepted for the treatment of
13 opioid use disorder to individuals who have
14 opioid use disorder and are incarcerated within
15 the jurisdictions of the States or units of local
16 government; and

17 (B) shall establish a working relationship
18 with 1 or more knowledgeable corrections orga-
19 nizations with expertise in security, medical
20 health, mental health, and addiction care to
21 oversee and support implementation of the pro-
22 gram, including through the use of evidence-
23 based clinical practices.

24 (c) PURPOSES.—The purposes of the Program are
25 to—

1 (1) develop medication-assisted treatment pro-
 2 grams in consultation with nonprofit organizations
 3 and community organizations that are qualified to
 4 provide technical support for the programs;

5 (2) reduce the risk of overdose to participants
 6 after the participants are released from incarcer-
 7 ation; and

8 (3) reduce the rate of reincarceration.

9 (d) PROGRAM REQUIREMENTS.—In carrying out a
 10 covered program, a State or unit of local government
 11 shall—

12 (1) in providing medication-assisted treatment
 13 under the covered program, offer to participants 3
 14 or more drugs that—

15 (A) have been approved under the Federal
 16 Food, Drug, and Cosmetic Act (21 U.S.C. 301
 17 et seq.) or section 351 of the Public Health
 18 Service Act (42 U.S.C. 262) for the treatment
 19 of an opioid use disorder; and

20 (B) do not contain the same active moiety;
 21 and

22 (2) use—

23 (A) screening tools with psychometric reli-
 24 ability and validity that provide useful clinical

data to guide the long-term treatment of participants who have—

(i) opioid use disorder; or

(ii) co-occurring opioid use disorder and mental disorders;

(B) at each correctional facility at which the covered program is carried out, a sufficient number of personnel, as determined by the Attorney General in light of the number of individuals incarcerated at the correctional facility and the number of those individuals who the correctional facility has screened and identified as having opioid use disorder, to—

(i) monitor participants with active opioid use disorder who begin participation in the covered program while demonstrating, or develop, signs and symptoms of opioid withdrawal;

(ii) provide evidence-based medically managed withdrawal care or assistance to the participants described in clause (i);

(iii) prescribe or otherwise dispense—

(I) the drugs that are offered under the covered program, as required under paragraph (1); and

1 (II) naloxone or any other emer-
 2 gency opioid antagonist approved by
 3 the Commissioner of Food and Drugs
 4 to treat opioid overdose; and

5 (iv) discuss with participants the risks
 6 and benefits of, and differences among, the
 7 opioid antagonist, opioid agonist, and par-
 8 tial agonist drugs used to treat opioid use
 9 disorder; and

10 (C) a certified recovery coach, social work
 11 professional, or other qualified clinician who, in
 12 order to support the sustained recovery of par-
 13 ticipants, shall work with participants who are
 14 recovering from opioid use disorder.

15 (e) APPLICATION.—

16 (1) IN GENERAL.—A State or unit of local gov-
 17 ernment desiring a covered grant or cooperative
 18 agreement shall submit to the Attorney General an
 19 application that—

20 (A) shall include—

21 (i) a description of—

22 (I) the objectives of the medica-
 23 tion-assisted treatment program that
 24 the applicant will develop, implement,

1 or expand under the covered grant or
2 cooperative agreement;

3 (II) the activities that the appli-
4 cant will carry out under the covered
5 program;

6 (III) how the activities described
7 under subclause (II) will achieve the
8 objectives described in subclause (I);
9 and

10 (IV) the outreach and education
11 component of the covered program
12 that the applicant will carry out in
13 order to encourage maximum partici-
14 pation in the covered program;

15 (ii) a plan for—

16 (I) measuring progress in achiev-
17 ing the objectives described in clause
18 (i)(I), including a strategy to collect
19 data that can be used to measure that
20 progress;

21 (II) collaborating with the single
22 State agency for the applicant or 1 or
23 more nonprofit organizations in the
24 community of the applicant to help
25 ensure that—

1 (aa) if participants so desire,
2 participants have continuity of
3 care after release from incarceration
4 with respect to the form of
5 medication-assisted treatment the
6 participants received during in-
7 carceration, including—

8 (AA) by working with
9 community service providers
10 to assist eligible partici-
11 pants, before release from
12 incarceration in registering
13 for the Medicaid program
14 under title XIX of the Social
15 Security Act (42 U.S.C.
16 1396 et seq.) or other min-
17 imum essential coverage, as
18 defined in section 5000A(f)
19 of the Internal Revenue
20 Code of 1986; and

21 (BB) if a participant
22 cannot afford, or does not
23 qualify for, health insurance
24 that provides coverage with
25 respect to enrollment in a

1 medication-assisted treat-
2 ment program, and if the
3 participant cannot pay the
4 cost of enrolling in a medi-
5 cation-assisted treatment
6 program, by working with
7 units of local government,
8 nonprofit organizations,
9 opioid use disorder treat-
10 ment providers, and entities
11 carrying out programs under
12 substance use disorder
13 grants to, before the partici-
14 pant is released from incar-
15 ceration, identify a resource,
16 other than the applicant or
17 the covered program to be
18 carried out by the applicant,
19 that may be used to pay the
20 cost of enrolling the partici-
21 pant in a medication-as-
22 sisted treatment program;
23 (bb) medications are se-
24 curely stored; and

1 (cc) protocols relating to di-
2 version are maintained; and

3 (III) with respect to each com-
4 munity in which a correctional facility
5 at which a covered program will be
6 carried out is located, collaborating
7 with State agencies responsible for
8 overseeing programs relating to sub-
9 stance use disorder and local public
10 health officials and nonprofit organi-
11 zations in the community to help en-
12 sure that medication-assisted treat-
13 ment provided at each correctional fa-
14 cility at which the covered program
15 will be carried out is also available at
16 locations that are not correctional fa-
17 cilities in those communities, to the
18 greatest extent practicable; and

19 (iii) a certification that—

20 (I) each correctional facility at
21 which the covered program will be
22 carried out has access to a sufficient
23 number of clinicians who are licensed
24 to prescribe or otherwise dispense to
25 participants the drugs for the treat-

1 ment of opioid use disorder required
 2 to be offered under subsection (d)(1),
 3 which may include clinicians who use
 4 telemedicine, in accordance with regu-
 5 lations issued by the Administrator of
 6 the Drug Enforcement Administra-
 7 tion, to provide services under the cov-
 8 ered program; and

9 (II) the covered program will
 10 provide evidence-based counseling and
 11 behavioral therapies, which may in-
 12 clude counseling and therapy adminis-
 13 tered through the use of telemedicine,
 14 as appropriate, to participants as part
 15 of the medication-assisted treatment
 16 provided under the covered program;
 17 and

18 (B) may include a statement indicating the
 19 number of participants that the applicant ex-
 20 pects to serve through the covered program.

21 (2) MEDICATION-ASSISTED TREATMENT COR-
 22 RECTIONS AND COMMUNITY REENTRY APPLICATION
 23 REVIEW PANEL.—

24 (A) IN GENERAL.—Not later than 60 days
 25 after the date of enactment of this Act, the At-

1 torney General shall establish a Medication-as-
2 sisted Treatment Corrections and Community
3 Reentry Application Review Panel that shall—

4 (i) be composed of not fewer than 10
5 individuals and not more than 15 individ-
6 uals; and

7 (ii) include—

8 (I) 1 or more employees, who are
9 not political appointees, of—

10 (aa) the Department of Jus-
11 tice;

12 (bb) the Drug Enforcement
13 Administration;

14 (cc) the Substance Abuse
15 and Mental Health Service Ad-
16 ministration;

17 (dd) the National Center for
18 Injury Prevention and Control at
19 the Centers for Disease Control
20 and Prevention; and

21 (ee) the Office of National
22 Drug Control Policy; and

23 (II) other stakeholders who—

24 (aa) have expert knowledge
25 relating to the opioid epidemic,

1 drug treatment, or community
2 addiction services; and

3 (bb) represent law enforce-
4 ment organizations and public
5 health entities.

6 (B) DUTIES.—

7 (i) IN GENERAL.—The Panel shall—

8 (I) review and evaluate applica-
9 tions for covered grants and coopera-
10 tive agreements; and

11 (II) make recommendations to
12 the Attorney General relating to the
13 awarding of covered grants and coop-
14 erative agreements.

15 (ii) RURAL COMMUNITIES.—In review-
16 ing and evaluating applications under
17 clause (i), the Panel shall take into consid-
18 eration the unique circumstances, including
19 the lack of resources relating to the treat-
20 ment of opioid use disorder, faced by rural
21 States and units of local government.

22 (C) TERMINATION.—The Panel shall ter-
23minate on the last day of fiscal year 2025.

24 (3) PUBLICATION OF CRITERIA IN FEDERAL
25 REGISTER.—Not later than 90 days after the date of

1 enactment of this Act, the Attorney General, in con-
2 sultation with the Panel, shall publish in the Federal
3 Register—

4 (A) the process through which applications
5 submitted under paragraph (1) shall be sub-
6 mitted and evaluated; and

7 (B) the criteria used in awarding covered
8 grants and cooperative agreements.

9 (f) DURATION.—A covered grant or cooperative
10 agreement shall be for a period of not more than 4 years,
11 except that the Attorney General may extend the term of
12 a covered grant or cooperative agreement based on out-
13 come data or extenuating circumstances relating to the
14 covered program carried out under the covered grant or
15 cooperative agreement.

16 (g) REPORT.—

17 (1) IN GENERAL.—Not later than 2 years after
18 the date on which a State or unit of local govern-
19 ment is awarded a covered grant or cooperative
20 agreement, and each year thereafter until the date
21 that is 1 year after the date on which the period of
22 the covered grant or cooperative agreement ends, the
23 State or unit of local government shall submit a re-
24 port to the Attorney General that includes informa-
25 tion relating to the covered program carried out by

the State or unit of local government, including information relating to—

(A) the goals of the covered program;

(B) any evidence-based interventions carried out under the covered program;

(C) outcomes of the covered program, which shall—

(i) be reported in a manner that distinguishes the outcomes based on the categories of, with respect to the participants in the covered program—

(I) the race of the participants;

and

(II) the gender of the participants; and

(ii) include information relating to the rate of reincarceration among participants in the covered program; and

(D) expenditures under the covered program.

(2) PUBLICATION.—

(A) AWARDEE.—A State or unit of local government that submits a report under paragraph (1) shall make the report publicly available on—

1 (i) the website of each correctional fa-
2 cility at which the State or unit of local
3 government carried out the covered grant
4 program; and

5 (ii) if a correctional facility at which
6 the State or unit of local government car-
7 ried out the covered grant program does
8 not operate a website, the website of the
9 State or unit of local government.

10 (B) ATTORNEY GENERAL.—The Attorney
11 General shall make each report received under
12 paragraph (1) publicly available on the website
13 of the National Institute of Corrections.

14 (3) SUBMISSION TO CONGRESS.—Not later than
15 2 years after the date on which the Attorney Gen-
16 eral awards the first covered grant or cooperative
17 agreement, and each year thereafter, the Attorney
18 General shall submit to the Committee on the Judi-
19 ciary of the Senate and the Committee on the Judi-
20 ciary of the House of Representatives a summary
21 and compilation of the reports that the Attorney
22 General has received under paragraph (1) during the
23 year preceding the date on which the Attorney Gen-
24 eral submits the summary and compilation.

1 (h) AUTHORIZATION OF APPROPRIATIONS.—There is
2 authorized to be appropriated \$50,000,000 to carry out
3 this section for each of fiscal years 2022 through 2025.

○