

111TH CONGRESS
1ST SESSION

S. 714

To establish the National Criminal Justice Commission.

IN THE SENATE OF THE UNITED STATES

MARCH 26, 2009

Mr. WEBB (for himself, Mr. SPECTER, Mr. REID, Mr. LEAHY, Mr. DURBIN, Mr. GRAHAM, Mr. SCHUMER, Mrs. MURRAY, Mr. WYDEN, Mr. BROWN, Mr. WARNER, Mrs. GILLIBRAND, Mr. BURRIS, Mr. KENNEDY, Mr. CARDIN, and Mrs. MCCASKILL) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To establish the National Criminal Justice Commission.

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 “National Criminal Jus-
5 tice Commission Act of 2009”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) The United States has the highest reported
9 incarceration rate in the world, imprisoning a higher
10 percentage of its population than any other country.

1 The American incarceration rate is five times the
2 world's average incarceration rate. A total of
3 2,380,000 people are in prison.

4 (2) Although criminal justice laws and legal
5 procedures depend heavily on State and local law,
6 and although a majority of those imprisoned in the
7 United States are held in non-Federal institutions,
8 the conditions under which Americans are incarcer-
9 ated and the manner in which former inmates reen-
10 ter society is a compelling national interest that po-
11 tentially affects every American citizen and every lo-
12 cality in the country.

13 (3) The American public and their elected offi-
14 cials at all levels of government overwhelmingly sup-
15 port the punishment and incarceration of violent
16 criminals, as well as those who direct and participate
17 in criminal enterprises.

18 (4) Minorities make up a disproportionately
19 large share of prison populations. Black males have
20 a 32 percent chance of serving time in prison at
21 some point in their lives; Hispanic males have a 17
22 percent chance; white males have a 6 percent
23 chance.

24 (5) The number of persons on probation and
25 parole has been growing along with institutional

1 populations. There are 7,300,000 Americans incar-
2 cerated or on probation or parole, equal to 1 in
3 every 31 adults, an increase of 290 percent since
4 1980.

5 (6) The number of exoffenders returning to
6 their communities from Federal and State prisons
7 rose to 725,000 in 2007, an increase of 19.9 percent
8 since 2000, and a more than doubling in the past 2
9 decades. On average, 2 out of every 3 released pris-
10 oners will be rearrested and 1 in 2 will return to
11 prison within 3 years of release.

12 (7) Spending on corrections consumes an in-
13 creasingly large portion of resources at all levels of
14 government. Corrections expenditures compete with
15 and diminish funding for education, public health,
16 public safety, parks and recreation, and programs
17 specifically designed to reduce the prison population.
18 An analysis by the Pew Charitable Trusts found
19 that over the past 20 years, inflation-adjusted state
20 spending on corrections rose 127 percent while high-
21 er education expenditures rose just 21 percent.

22 (8) The National Gang Threat Assessment re-
23 ports that there are approximately 1,000,000 gang
24 members in the United States. According to report-
25 ing by local law enforcement, gangs commit “as

1 much as 80 percent of the crime in some locations”.
2 Gangs are primary retail distributors of illicit drugs,
3 some of which operate at the regional or national
4 level. According to the 2008 National Drug Threat
5 Survey, 58 percent of law enforcement agencies re-
6 port gang involvement in drug distribution.

7 (9) The combination of gang activity and the
8 movement of illegal drugs into the country has re-
9 sulted in unprecedented levels of sophisticated, orga-
10 nized violence along America’s southern border and
11 in hundreds of American communities. More than
12 6,000 people died in Mexico in 2008 alone as a re-
13 sult of drug-related violence.

14 (10) Despite high incarceration rates for drug-
15 related offenses, illicit drug availability remains con-
16 sistent. 86 percent of high school students report
17 that it is “very easy” or “fairly easy” to obtain
18 marijuana. 47 percent report the same for cocaine,
19 39 percent for crack, and 27 percent for heroin.

20 (11) Those addicted to and abusive of illicit
21 drugs are an estimated 10 to 20 percent of the drug
22 using population, but account for an estimated half
23 of all illicit drug consumption. Treating addiction
24 will significantly help decrease demand.

1 (12) Drug offenders in prisons and jails have
2 increased 1200 percent since 1980. Nearly a half
3 million persons are in Federal or State prison or
4 local jail for a drug offense, compared to an esti-
5 mated 41,100 in 1980. A significant percentage of
6 these offenders have no history of violence or high-
7 level drug selling activity.

8 (13) Prisons and jails nationwide have become
9 holding facilities for the mentally ill. There are an
10 estimated 350,000 men and women in prisons and
11 jails with serious mental disorders. Approximately 4
12 times as many mentally ill people are in prisons than
13 in mental health hospitals. Prisoners are 2 to 4
14 times more likely than the general population to be
15 schizophrenic, depressed, bipolar, or suffering from
16 post-traumatic stress disorder. Approximately 73
17 percent of mentally ill inmates suffer from a sub-
18 stance abuse disorder.

19 (14) Prisons have become public health risks.
20 The number of State prisoners with HIV is 2.5
21 times greater than the general population. The num-
22 ber of State prisoners with hepatitis C is 9 times
23 that of the general population.

24 (15) Prison administration is uneven, lacking
25 clear, affirmative standards of training and perform-

1 ance, varying greatly from institution to institution,
2 locality to locality, and among Federal, State and
3 local jurisdictions.

4 (16) According to a 2007 Bureau of Justice
5 Statistics survey, an estimated 60,500 inmates (or
6 4.5 percent of all Federal and State inmates) experi-
7 enced 1 or more incidents of sexual victimization in-
8 volving other inmates or staff. Analyses suggest that
9 official records of assault in prison (both physical
10 and sexual) only reflect 10 to 20 percent of all as-
11 saults in prison.

12 **SEC. 3. ESTABLISHMENT OF COMMISSION.**

13 There is established a commission to be known as the
14 “National Criminal Justice Commission” (referred to in
15 this Act as the “Commission”).

16 **SEC. 4. PURPOSE OF THE COMMISSION.**

17 The Commission shall undertake a comprehensive re-
18 view of the criminal justice system, make findings related
19 to current Federal and State criminal justice policies and
20 practices, and make reform recommendations for the
21 President, Congress, and State governments to improve
22 public safety, cost-effectiveness, overall prison administra-
23 tion, and fairness in the implementation of the Nation’s
24 criminal justice system.

1 **SEC. 5. REVIEW AND FINDINGS.**

2 (a) GENERAL REVIEW.—The Commission shall re-
3 view all areas of Federal and State criminal justice costs,
4 practices, and policies.

5 (b) SPECIFIC FINDINGS.—In conducting the review,
6 the Commission shall make such findings as it deems ap-
7 propriate, including—

8 (1) the statistical areas of increase in the
9 United States incarceration rate compared to histor-
10 ical standards of incarceration in the United States
11 and the reasons for this increase;

12 (2) a comparison of incarceration policies, in-
13 cluding juvenile incarceration policies, in countries
14 with similar political systems including Western Eu-
15 rope and Japan, denoting the different standards
16 applied for types of crime, length of sentences,
17 standards of prison administration, quality of re-
18 entry programs for exoffenders, and recidivism rates;

19 (3) an examination of prison administration
20 policies at the Federal, State, and local levels, to in-
21 clude the availability and quality of preemployment
22 training programs and the availability of meaningful
23 career progression within the profession;

24 (4) the costs of current incarceration policies at
25 the Federal, State and local level, including the rel-
26 evant costs of law enforcement, the proportion of

1 that cost associated with gangs and drug enforce-
2 ment, the costs of constructing and administering
3 prison facilities, the costs of post-incarceration su-
4 pervision and reentry programs, and the cost of lost
5 economic opportunities associated with the stigma of
6 incarceration;

7 (5) an examination of the impact of gang activi-
8 ties in the United States, including the proportion of
9 these activities that are directed by foreign-based
10 gangs and syndicates, and outlining the impact of
11 these activities in terms of violence, intimidation,
12 and all areas of criminal activity;

13 (6) an examination of current drug policy and
14 its impact on incarceration, crime and violence, sen-
15 tencing, and reentry programs, to include an anal-
16 ysis of the general availability of drugs in our soci-
17 ety, the impact and effectiveness of current policies
18 on reducing that availability and on the incidence of
19 crime, and in the case of criminal offenders, the
20 availability of drug treatment programs before, dur-
21 ing, and after incarceration;

22 (7) an examination of the legal and administra-
23 tive changes in policies regarding those who suffer
24 from mental illness, including mandatory and vol-
25 untary commitment to institutional care, the effec-

1 tiveness and availability of alternative methods of
2 treatment, the impact of these policy changes on in-
3 carceration, and the availability of government spon-
4 sored or assisted programs to address mental illness;

5 (8) an examination of the historic role of the
6 military (active duty, National Guard, Coast Guard,
7 and reserve forces), in the prevention of crime, the
8 apprehension of criminals, the protection of Amer-
9 ican citizens, and the maintenance of stability along
10 the national borders; and

11 (9) any other area that the Commission in its
12 judgment believes relevant to a full understanding of
13 the present criminal justice system in the United
14 States.

15 **SEC. 6. DUTIES OF THE COMMISSION.**

16 (a) **RECOMMENDATIONS.**—After conducting a review
17 of the United States criminal justice system and making
18 findings as required by section 5, the Commission shall
19 make recommendations for changes in policies and laws
20 designed to—

21 (1) refocus incarceration policies to reduce the
22 overall incarceration rate while preserving public
23 safety, cost-effectiveness, and societal fairness;

1 (2) decrease prison violence, with particular ref-
2 erence to protecting those incarcerated from physical
3 abuse;

4 (3) improve prison administration, including
5 Federal standards of competence and the creation of
6 a career path for prison administrators;

7 (4) institute the use of policies and practices
8 proven effective throughout the spectrum of criminal
9 behavior;

10 (5) establish a system for the reintegration of
11 exoffenders that provides productive skills and op-
12 portunities and improves communities' ability to as-
13 similate former offenders;

14 (6) restructure the approach to criminalization
15 of, and incarceration as a result of the possession or
16 use of illegal drugs, decreasing the demand for illicit
17 drugs, and improving the treatment for addiction;

18 (7) improve and streamline the treatment of
19 mental illness, both in our society and in the crimi-
20 nal justice system;

21 (8) improve Federal and local responses to
22 international and domestic criminal activity and vio-
23 lence carried out by gangs, cartels, and syndicates,
24 particularly in relation to drug smuggling and dis-
25 tribution; and

1 (9) improve and reform any other aspect of the
2 United States criminal justice system the Commis-
3 sion determines is required.

4 (b) COORDINATION WITH INTERNATIONAL AND DO-
5 MESTIC GOVERNMENT AND NONGOVERNMENT REP-
6 RESENTATIVES.—The Commission shall—

7 (1) consult with government and nongovern-
8 mental leaders, including State and local law en-
9 forcement officials; and

10 (2) include in its final report required by sub-
11 section (c) summaries of the input and recommenda-
12 tions of these leaders based on the recommendations
13 required by subsection (a).

14 (c) REPORT.—

15 (1) REPORT.—Not later than 18 months after
16 the selection of the chair and the Executive Director
17 of the Commission, the Commission shall prepare
18 and submit a final report that contains a detailed
19 statement of findings, conclusions, and recommenda-
20 tions of the Commission to Congress and the Presi-
21 dent.

22 (2) PUBLIC AVAILABILITY.—The report sub-
23 mitted under this subsection shall be made available
24 to the public.

1 **SEC. 7. MEMBERSHIP.**

2 (a) IN GENERAL.—The Commission shall be com-
3 posed of 11 members, as follows:

4 (1) One member shall be appointed by the
5 President, who shall serve as Chairman of the Com-
6 mission.

7 (2) Two members appointed by the majority
8 leader of the Senate, in consultation with the Chair-
9 man of the Committee on Judiciary.

10 (3) Two members appointed by the minority
11 leader of the Senate, in consultation with the rank-
12 ing member of the Committee on Judiciary.

13 (4) Two members appointed by the Speaker of
14 the House of Representatives, in consultation with
15 the Chairman of the Committee on Judiciary.

16 (5) Two members appointed by the minority
17 leader of the House of Representatives, in consulta-
18 tion with the ranking member of the Committee on
19 Judiciary.

20 (6) One member appointed by the Chairman of
21 the Republican Governors Association.

22 (7) One member appointed by the Chairman of
23 the Democratic Governors Association.

24 (b) MEMBERSHIP.—

25 (1) QUALIFICATIONS.—The individuals ap-
26 pointed from private life as members of the Commis-

1 sion shall be individuals who are nationally recog-
2 nized for expertise, knowledge, or experience in such
3 relevant areas as—

4 (A) law enforcement;

5 (B) criminal justice;

6 (C) national security;

7 (D) prison administration;

8 (E) prisoner reentry;

9 (F) public health, including drug addiction
10 and mental health;

11 (G) victims' rights; and

12 (H) social services.

13 (2) DISQUALIFICATION.—An individual shall
14 not be appointed as a member of the Commission if
15 such individual possesses any personal or financial
16 interest in the discharge of any of the duties of the
17 Commission.

18 (3) TERMS.—Members shall be appointed for
19 the life of the Commission.

20 (c) APPOINTMENT; INITIAL MEETING.—

21 (1) APPOINTMENT.—Members of the Commis-
22 sion shall be appointed not later than 45 days after
23 the date of the enactment of this Act.

1 (2) INITIAL MEETING.—The Commission shall
2 hold its initial meeting on the date that is 60 days
3 after the date of the enactment of this Act.

4 (d) MEETINGS; QUORUM; VACANCIES.—

5 (1) MEETINGS.—The Commission shall meet at
6 the call of the chair or a majority of its members.

7 (2) QUORUM.—Six members of the Commis-
8 sion, including at least one member chosen by the
9 minority leader of the Senate, minority leader of the
10 House of Representatives, or Chairman of the Re-
11 publican Governors Association, shall constitute a
12 quorum for purposes of conducting business, except
13 that 2 members of the Commission shall constitute
14 a quorum for purposes of receiving testimony.

15 (3) VACANCIES.—Any vacancy in the Commis-
16 sion shall not affect its powers, but shall be filled in
17 the same manner in which the original appointment
18 was made. If vacancies in the Commission occur on
19 any day after 45 days after the date of the enact-
20 ment of this Act, a quorum shall consist of a major-
21 ity of the members of the Commission as of such
22 day, so long as at least one Commission member
23 chosen by a member of each party, Republican and
24 Democratic, is present.

25 (e) ACTIONS OF COMMISSION.—

1 (1) IN GENERAL.—The Commission—

2 (A) shall act by resolution agreed to by a
3 majority of the members of the Commission
4 voting and present; and

5 (B) may establish panels composed of less
6 than the full membership of the Commission for
7 purposes of carrying out the duties of the Com-
8 mission under this title—

9 (i) which shall be subject to the review
10 and control of the Commission; and

11 (ii) any findings and determinations
12 made by such a panel shall not be consid-
13 ered the findings and determinations of the
14 Commission unless approved by the Com-
15 mission.

16 (2) DELEGATION.—Any member, agent, or staff
17 of the Commission may, if authorized by the chair
18 of the Commission, take any action which the Com-
19 mission is authorized to take pursuant to this Act.

20 **SEC. 8. ADMINISTRATION.**

21 (a) TRAVEL EXPENSES.—Members shall receive trav-
22 el expenses, including per diem in lieu of subsistence, in
23 accordance with sections 5702 and 5703 of title 5, United
24 States Code, while away from their homes or regular

1 places of business in performance of services for the Com-
2 mission.

3 (b) STAFF.—

4 (1) EXECUTIVE DIRECTOR.—The Commission
5 shall have a staff headed by an Executive Director.
6 The Executive Director shall be paid at a rate equiv-
7 alent to a rate established for the Senior Executive
8 Service under section 5382 of title 5, United States
9 Code.

10 (2) STAFF APPOINTMENT.—With the approval
11 of the Commission, the Executive Director may ap-
12 point such personnel as the Executive Director de-
13 termines to be appropriate.

14 (3) EXPERTS AND CONSULTANTS.—With the
15 approval of the Commission, the Executive Director
16 may procure temporary and intermittent services
17 under section 3109(b) of title 5, United States Code.

18 (4) DETAIL OF GOVERNMENT EMPLOYEES.—
19 Upon the request of the Commission, the head of
20 any Federal agency may detail, without reimburse-
21 ment, any of the personnel of such agency to the
22 Commission to assist in carrying out the duties of
23 the Commission. Any such detail shall not interrupt
24 or otherwise affect the civil service status or privi-
25 leges of the Federal employee.

1 (5) OTHER RESOURCES.—The Commission
2 shall have reasonable access to materials, resources,
3 statistical data, and other information such Commis-
4 sion determines to be necessary to carry out its du-
5 ties from the Library of Congress, the Office of Na-
6 tional Drug Control Policy, the Department of
7 State, and other agencies of the executive and legis-
8 lative branches of the Federal Government. The
9 chair of the Commission shall make requests for
10 such access in writing when necessary. The Office of
11 National Drug Control Policy shall make office
12 space available for day-to-day Commission activities
13 and for the scheduled quarterly full Commission
14 meetings.

15 (c) OBTAINING OFFICIAL DATA.—The Commission
16 may secure directly from any agency of the United States
17 information necessary to enable it to carry out this Act.
18 Upon the request of the Chair of the Commission, the
19 head of that department or agency shall furnish that infor-
20 mation to the Commission.

21 (d) MAILS.—The Commission may use the United
22 States mails in the same manner and under the same con-
23 ditions as other departments and agencies of the United
24 States.

1 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

2 (a) IN GENERAL.—There are authorized to be appro-
3 priated for fiscal years 2009 and 2010 such sums are as
4 necessary to carry out the purposes of this Act.

5 (b) AVAILABILITY.—Any sums appropriated under
6 the subsection (a) shall remain available, without fiscal
7 year limitation, until expended.

8 **SEC. 10. SUNSET.**

9 The Commission shall terminate 60 days after it sub-
10 mits its report to Congress.

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