

112TH CONGRESS  
1ST SESSION

# S. 306

To establish the National Criminal Justice Commission.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 8, 2011

Mr. WEBB (for himself, Mr. BROWN of Ohio, Mr. DURBIN, Mr. FRANKEN, Mr. GRAHAM, Mrs. HAGAN, Mr. KERRY, Mr. LAUTENBERG, Mr. LEVIN, Mrs. McCASKILL, Mr. SCHUMER, Mrs. SHAHEEN, Mr. UDALL of Colorado, Mr. WARNER, Mr. WHITEHOUSE, Mr. WYDEN, Mr. HARKIN, Mr. BINGAMAN, Mr. MENENDEZ, and Mrs. MURRAY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## 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 2011”.

6       **SEC. 2. FINDINGS.**

7       Congress finds that—

8               (1) it is in the interest of the Nation to estab-  
9       lish a commission to undertake a comprehensive re-  
10      view of the criminal justice system;

1           (2) there has not been a comprehensive study  
2           since the President’s Commission on Law Enforce-  
3           ment and Administration of Justice was established  
4           in 1965;

5           (3) that commission, in a span of 18 months,  
6           produced a comprehensive report entitled “The  
7           Challenge of Crime in a Free Society,” which con-  
8           tained 200 specific recommendations on all aspects  
9           of the criminal justice system involving Federal,  
10          State, tribal, and local governments, civic organiza-  
11          tions, religious institutions, business groups, and in-  
12          dividual citizens; and

13          (4) developments over the intervening 45 years  
14          require once again that Federal, State, tribal, and  
15          local governments, civic organizations, religious in-  
16          stitutions, business groups, and individual citizens  
17          come together to review evidence and consider how  
18          to improve the criminal justice system.

19 **SEC. 3. ESTABLISHMENT OF COMMISSION.**

20          There is established a commission to be known as the  
21          “National Criminal Justice Commission” (referred to in  
22          this Act as the “Commission”).

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

24          The Commission shall undertake a comprehensive re-  
25          view of the criminal justice system, encompassing current

1 Federal, State, local, and tribal criminal justice policies  
2 and practices, and make reform recommendations for the  
3 President, Congress, State, local, and tribal governments.

4 **SEC. 5. REVIEW AND RECOMMENDATIONS.**

5 (a) GENERAL REVIEW.—The Commission shall un-  
6 dertake a comprehensive review of all areas of the criminal  
7 justice system, including Federal, State, local, and tribal  
8 governments' criminal justice costs, practices, and policies.

9 (b) FINDINGS AND RECOMMENDATIONS.—After con-  
10 ducting a review of the United States criminal justice sys-  
11 tem as required by section 5(a), the Commission shall  
12 make findings regarding such review and recommenda-  
13 tions for changes in oversight, policies, practices, and laws  
14 designed to prevent, deter, and reduce crime and violence,  
15 reduce recidivism, improve cost-effectiveness, and ensure  
16 the interests of justice at every step of the criminal justice  
17 system.

18 (c) PRIOR COMMISSIONS.—The Commission shall  
19 take into consideration the work of prior relevant commis-  
20 sions in conducting its review.

21 (d) STATE AND LOCAL GOVERNMENT.—In making  
22 its recommendations, the Commission should consider the  
23 financial and human resources of State and local govern-  
24 ments. Recommendations shall not infringe on the legiti-

1 mate rights of the States to determine their own criminal  
2 laws or the enforcement of such laws.

3 (e) PUBLIC HEARINGS.—The Commission shall con-  
4 duct public hearings in various locations around the  
5 United States.

6 (f) CONSULTATION WITH GOVERNMENT AND NON-  
7 GOVERNMENT REPRESENTATIVES.—

8 (1) IN GENERAL.—The Commission shall—

9 (A) closely consult with Federal, State,  
10 local, and tribal government and nongovern-  
11 mental leaders, including State, local, and tribal  
12 law enforcement officials, legislators, public  
13 health officials, judges, court administrators,  
14 prosecutors, defense counsel, victims' rights or-  
15 ganizations, probation and parole officials,  
16 criminal justice planners, criminologists, civil  
17 rights and liberties organizations, formerly in-  
18 carcerated individuals, professional organiza-  
19 tions, and corrections officials; and

20 (B) include in the final report required by  
21 subsection (g) summaries of the input and rec-  
22 ommendations of these leaders.

23 (2) UNITED STATES SENTENCING COMMIS-  
24 SION.—To the extent the review and recommenda-  
25 tions required by this section relate to sentencing

1 policies and practices for the Federal criminal jus-  
2 tice system, the Commission shall conduct such re-  
3 view and make such recommendations in consulta-  
4 tion with the United States Sentencing Commission.

5 (g) REPORT.—

6 (1) REPORT.—Not later than 18 months after  
7 the first meeting of the Commission, the Commis-  
8 sion shall prepare and submit a final report that  
9 contains a detailed statement of findings, conclu-  
10 sions, and recommendations of the Commission to  
11 Congress, the President, State, local, and tribal gov-  
12 ernments.

13 (2) GOAL OF UNANIMITY.—It is the sense of  
14 the Congress that, given the national importance of  
15 the matters before the Commission, the Commission  
16 should work toward unanimously supported findings  
17 and recommendations.

18 (3) PUBLIC AVAILABILITY.—The report sub-  
19 mitted under this subsection shall be made available  
20 to the public.

21 (4) VOTES ON RECOMMENDATIONS IN RE-  
22 PORT.—Consistent with paragraph (2), the Commis-  
23 sion shall state the vote total for each recommenda-  
24 tion contained in its report to Congress.

1 **SEC. 6. MEMBERSHIP.**

2 (a) IN GENERAL.—The Commission shall be com-  
3 posed of 14 members, as follows:

4 (1) One member shall be appointed by the  
5 President, who shall serve as co-chairman of the  
6 Commission.

7 (2) One member shall be appointed by the lead-  
8 er of the Senate (majority or minority leader, as the  
9 case may be) of the Republican Party, in consulta-  
10 tion with the leader of the House of Representatives  
11 (majority or minority leader, as the case may be) of  
12 the Republican Party, who shall serve as co-chair-  
13 man of the Commission.

14 (3) Two members shall be appointed by the sen-  
15 ior member of the Senate leadership of the Demo-  
16 cratic Party, in consultation with the Democratic  
17 leadership of the Committee on the Judiciary.

18 (4) Two members shall be appointed by the sen-  
19 ior member of the Senate leadership of the Repub-  
20 lican Party, in consultation with the Republican  
21 leadership of the Committee on the Judiciary.

22 (5) Two members shall be appointed by the sen-  
23 ior member of the leadership of the House of Rep-  
24 resentatives of the Republican Party, in consultation  
25 with the Republican leadership of the Committee on  
26 the Judiciary.

1           (6) Two members shall be appointed by the sen-  
2           ior member of the leadership of the House of Rep-  
3           resentatives of the Democratic Party, in consultation  
4           with the Democratic leadership of the Committee on  
5           the Judiciary.

6           (7) Two members, who shall be State and local  
7           representatives, shall be appointed by the President  
8           in agreement with leader of the Senate (majority or  
9           minority leader, as the case may be) of the Repub-  
10          lican Party and the leader of the House of Rep-  
11          resentatives (majority or minority leader, as the case  
12          may be) of the Republican Party.

13          (8) Two members, who shall be State and local  
14          representatives, shall be appointed by the President  
15          in agreement with leader of the Senate (majority or  
16          minority leader, as the case may be) of the Demo-  
17          cratic Party and the leader of the House of Rep-  
18          resentatives (majority or minority leader, as the case  
19          may be) of the Democratic Party.

20          (b) MEMBERSHIP.—

21           (1) QUALIFICATIONS.—The individuals ap-  
22           pointed from private life as members of the Commis-  
23           sion shall be individuals with distinguished reputa-  
24           tions for integrity and nonpartisanship who are na-

1 tionally recognized for expertise, knowledge, or expe-  
2 rience in such relevant areas as—

3 (A) law enforcement;

4 (B) criminal justice;

5 (C) national security;

6 (D) prison and jail administration;

7 (E) prisoner reentry;

8 (F) public health, including physical and  
9 sexual victimization, drug addiction and mental  
10 health;

11 (G) victims' rights;

12 (H) civil liberties;

13 (I) court administration;

14 (J) social services; and

15 (K) State, local, and tribal government.

16 (2) DISQUALIFICATION.—An individual shall  
17 not be appointed as a member of the Commission if  
18 such individual possesses any personal financial in-  
19 terest in the discharge of any of the duties of the  
20 Commission.

21 (3) TERMS.—Members shall be appointed for  
22 the life of the Commission.

23 (c) APPOINTMENT; FIRST MEETING.—



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

4           (2) FIRST MEETING.—The Commission shall  
5           hold its first meeting on the date that is 60 days  
6           after the date of enactment of this Act, or not later  
7           than 30 days after the date on which funds are  
8           made available for the Commission, whichever is  
9           later.

10          (3) ETHICS.—At the first meeting of the Com-  
11          mission, the Commission shall draft appropriate eth-  
12          ics guidelines for commissioners and staff, including  
13          guidelines relating to conflict of interest and finan-  
14          cial disclosure. The Commission shall consult with  
15          the Senate and House Committees on the Judiciary  
16          as a part of drafting the guidelines and furnish the  
17          Committees with a copy of the completed guidelines.

18          (d) MEETINGS; QUORUM; VACANCIES.—

19               (1) MEETINGS.—The Commission shall meet at  
20               the call of the co-chairs or a majority of its mem-  
21               bers.

22               (2) QUORUM.—Eight members of the Commis-  
23               sion shall constitute a quorum for purposes of con-  
24               ducting business, except that 2 members of the

1 Commission shall constitute a quorum for purposes  
2 of receiving testimony.

3 (3) VACANCIES.—Any vacancy in the Commis-  
4 sion shall not affect its powers, but shall be filled in  
5 the same manner in which the original appointment  
6 was made. If vacancies in the Commission occur on  
7 any day after 45 days after the date of the enact-  
8 ment of this Act, a quorum shall consist of a major-  
9 ity of the members of the Commission as of such  
10 day, so long as at least 1 Commission member cho-  
11 sen by a member of each party, Republican and  
12 Democratic, is present.

13 (e) ACTIONS OF COMMISSION.—

14 (1) IN GENERAL.—The Commission—

15 (A) shall act by resolution agreed to by a  
16 majority of the members of the Commission  
17 voting and present; and

18 (B) may establish panels composed of less  
19 than the full membership of the Commission for  
20 purposes of carrying out the duties of the Com-  
21 mission under this title—

22 (i) which shall be subject to the review  
23 and control of the Commission; and

24 (ii) any findings and determinations  
25 made by such a panel shall not be consid-

1           ered the findings and determinations of the  
2           Commission unless approved by the Com-  
3           mission.

4           (2) DELEGATION.—Any member, agent, or staff  
5           of the Commission may, if authorized by the co-  
6           chairs of the Commission, take any action which the  
7           Commission is authorized to take pursuant to this  
8           Act.

9 **SEC. 7. ADMINISTRATION.**

10          (a) STAFF.—

11           (1) EXECUTIVE DIRECTOR.—The Commission  
12           shall have a staff headed by an Executive Director.  
13           The Executive Director shall be paid at a rate estab-  
14           lished for the Certified Plan pay level for the Senior  
15           Executive Service under section 5382 of title 5,  
16           United States Code.

17           (2) APPOINTMENT AND COMPENSATION.—The  
18           co-chairs of the Commission shall designate and fix  
19           the compensation of the Executive Director and, in  
20           accordance with rules agreed upon by the Commis-  
21           sion, may appoint and fix the compensation of such  
22           other personnel as may be necessary to enable the  
23           Commission to carry out its functions, without re-  
24           gard to the provisions of title 5, United States Code,  
25           governing appointments in the competitive service,

1 and without regard to the provisions of chapter 51  
2 and subchapter III of chapter 53 of such title relat-  
3 ing to classification and General Schedule pay rates,  
4 except that no rate of pay fixed under this sub-  
5 section may exceed the equivalent of that payable for  
6 a position at level V of the Executive Schedule under  
7 section 5316 of title 5, United States Code.

8 (3) PERSONNEL AS FEDERAL EMPLOYEES.—

9 (A) IN GENERAL.—The executive director  
10 and any personnel of the Commission who are  
11 employees shall be employees under section  
12 2105 of title 5, United States Code, for pur-  
13 poses of chapters 63, 81, 83, 84, 85, 87, 89,  
14 and 90 of that title.

15 (B) MEMBERS OF COMMISSION.—Subpara-  
16 graph (A) shall not be construed to apply to  
17 members of the Commission.

18 (4) THE COMPENSATION OF COMMISSIONERS.—

19 Each member of the Commission may be com-  
20 pensated at not to exceed the daily equivalent of the  
21 annual rate of basic pay in effect for a position at  
22 level V of the Executive Schedule under section 5315  
23 of title 5, United States Code, for each day during  
24 which that member is engaged in the actual per-  
25 formance of the duties of the Commission. All mem-

1       bers of the Commission who are officers or employ-  
2       ees of the United States, State, or local government  
3       shall serve without compensation in addition to that  
4       received for their services as officers or employees.

5           (5) TRAVEL EXPENSES.—While away from  
6       their homes or regular places of business in the per-  
7       formance of services for the Commission, members  
8       of the Commission shall be allowed travel expenses,  
9       including per diem in lieu of subsistence, in the  
10      same manner as persons employed intermittently in  
11      the Government service are allowed expenses under  
12      section 5703(b) of title 5, United States Code.

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

17       (c) DETAIL OF GOVERNMENT EMPLOYEES.—Upon  
18      the request of the Commission, the head of any Federal  
19      agency may detail, without reimbursement, any of the per-  
20      sonnel of such agency to the Commission to assist in car-  
21      rying out the duties of the Commission. Any such detail  
22      shall not interrupt or otherwise affect the civil service sta-  
23      tus or privileges of the Federal employee.

24       (d) OTHER RESOURCES.—The Commission shall  
25      have reasonable access to materials, resources, statistical

1 data, and other information such Commission determines  
2 to be necessary to carry out its duties from the Library  
3 of Congress, the Department of Justice, the Office of Na-  
4 tional Drug Control Policy, the Department of State, and  
5 other agencies of the executive and legislative branches of  
6 the Federal Government. The co-chairs of the Commission  
7 shall make requests for such access in writing when nec-  
8 essary.

9 (e) VOLUNTEER SERVICES.—Notwithstanding the  
10 provisions of section 1342 of title 31, United States Code,  
11 the Commission is authorized to accept and utilize the  
12 services of volunteers serving without compensation. The  
13 Commission may reimburse such volunteers for local travel  
14 and office supplies, and for other travel expenses, includ-  
15 ing per diem in lieu of subsistence, as authorized by sec-  
16 tion 5703 of title 5, United States Code. A person pro-  
17 viding volunteer services to the Commission shall be con-  
18 sidered an employee of the Federal Government in per-  
19 formance of those services for the purposes of chapter 81  
20 of title 5 of the United States Code, relating to compensa-  
21 tion for work-related injuries, chapter 171 of title 28 of  
22 the United States Code, relating to tort claims, and chap-  
23 ter 11 of title 18 of the United States Code, relating to  
24 conflicts of interest.

1           (f) OBTAINING OFFICIAL DATA.—The Commission  
2 may secure directly from any agency of the United States  
3 information necessary to enable it to carry out this Act.  
4 Upon the request of the co-chairs of the Commission, the  
5 head of that department or agency shall furnish that infor-  
6 mation to the Commission. The Commission shall not have  
7 access to sensitive information regarding ongoing inves-  
8 tigations.

9           (g) MAILS.—The Commission may use the United  
10 States mails in the same manner and under the same con-  
11 ditions as other departments and agencies of the United  
12 States.

13           (h) ADMINISTRATIVE REPORTING.—The Commission  
14 shall issue biannual status reports to Congress regarding  
15 the use of resources, salaries, and all expenditures of ap-  
16 propriated funds.

17           (i) CONTRACTS.—The Commission is authorized to  
18 enter into contracts with Federal and State agencies, pri-  
19 vate firms, institutions, and individuals for the conduct of  
20 activities necessary to the discharge of its duties and re-  
21 sponsibilities. A contract, lease or other legal agreement  
22 entered into by the Commission may not extend beyond  
23 the date of the termination of the Commission.

1 (j) GIFTS.—Subject to existing law, the Commission  
2 may accept, use, and dispose of gifts or donations of serv-  
3 ices or property.

4 (k) ADMINISTRATIVE ASSISTANCE.—The Adminis-  
5 trator of General Services shall provide to the Commis-  
6 sion, on a reimbursable basis, the administrative support  
7 services necessary for the Commission to carry out its re-  
8 sponsibilities under this Act. These administrative services  
9 may include human resource management, budget, leas-  
10 ing, accounting, and payroll services.

11 (l) NONAPPLICABILITY OF FACA AND PUBLIC AC-  
12 CESS TO MEETINGS AND MINUTES.—

13 (1) IN GENERAL.—The Federal Advisory Com-  
14 mittee Act (5 U.S.C. App.) shall not apply to the  
15 Commission.

16 (2) MEETINGS AND MINUTES.—

17 (A) MEETINGS.—

18 (i) ADMINISTRATION.—All meetings of  
19 the Commission shall be open to the pub-  
20 lic, except that a meeting or any portion of  
21 it may be closed to the public if it concerns  
22 matters or information described in section  
23 552b(c) of title 5, United States Code. In-  
24 terested persons shall be permitted to ap-  
25 pear at open meetings and present oral or



1 written statements on the subject matter  
2 of the meeting. The Commission may ad-  
3 minister oaths or affirmations to any per-  
4 son appearing before it.

5 (ii) NOTICE.—All open meetings of  
6 the Commission shall be preceded by time-  
7 ly public notice in the Federal Register of  
8 the time, place, and subject of the meeting.

9 (B) MINUTES AND PUBLIC AVAIL-  
10 ABILITY.—Minutes of each open meeting shall  
11 be kept and shall contain a record of the people  
12 present, a description of the discussion that oc-  
13 curred, and copies of all statements filed. The  
14 minutes and records of all open meetings and  
15 other documents that were made available to or  
16 prepared for the Commission shall be available  
17 for public inspection and copying at a single lo-  
18 cation in the offices of the Commission.

19 (m) ARCHIVING.—Not later than the date of termi-  
20 nation of the Commission, all records and papers of the  
21 Commission shall be delivered to the Archivist of the  
22 United States for deposit in the National Archives.

23 **SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

24 (a) IN GENERAL.—There are authorized to be appro-  
25 priated for fiscal years 2011 and 2012 such sums are as

1 necessary to carry out the purposes of this Act, not to  
2 exceed \$7,000,000 per year for each fiscal year, and not  
3 more than \$14,000,000 total. None of the funds appro-  
4 priated under this Act may be utilized for international  
5 travel.

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

9 **SEC. 9. SUNSET.**

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

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