

110TH CONGRESS
2D SESSION

S. 3245

To increase public confidence in the justice system and address any unwarranted racial and ethnic disparities in the criminal process.

IN THE SENATE OF THE UNITED STATES

JULY 10 (legislative day, JULY 9), 2008

Mr. BIDEN (for himself, Mr. SPECTER, Mr. CARDIN, and Mr. KERRY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To increase public confidence in the justice system and address any unwarranted racial and ethnic disparities in the criminal process.

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 “Justice Integrity Act
5 of 2008”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) the pursuit of justice requires the fair appli-
9 cation of the law;

1 (2) racial and ethnic disparities in the criminal
2 process have contributed to a growing perception of
3 bias in the criminal justice system;

4 (3) there are a variety of possible causes of dis-
5 parities in criminal justice statistics among racial
6 and ethnic groups and these causes may differ
7 throughout the United States, including factors such
8 as—

9 (A) varying levels of criminal activity
10 among racial and ethnic groups and legitimate
11 law enforcement response to that criminal activ-
12 ity; and

13 (B) racial discrimination, ethnic and cul-
14 tural insensitivity, or unconscious bias;

15 (4) the Nation would benefit from an under-
16 standing of all factors causing a disparate impact on
17 the criminal justice system; and

18 (5) programs that promote fairness will in-
19 crease public confidence in the criminal justice sys-
20 tem, increase public safety, and further the pursuit
21 of justice.

22 **SEC. 3. PILOT PROGRAM.**

23 (a) IN GENERAL.—Not later than 90 days after the
24 date of enactment of this Act, the Attorney General shall
25 establish a pilot program in 10 United States districts in

1 order to promote fairness, and the perception of fairness,
2 in the Federal criminal justice system, and to determine
3 whether legislation is required.

4 (b) PROGRAM REQUIREMENTS.—

5 (1) U.S. ATTORNEYS.—The Attorney General
6 shall designate, in accordance with paragraph (3),
7 10 United States Attorneys who shall each imple-
8 ment a plan in accordance with section 4, beginning
9 not later than 1 month after those United States At-
10 torneys are designated by the Attorney General.

11 (2) PURPOSE.—The purposes of the plans re-
12 quired by this section are—

13 (A) to gather racial and ethnic data on in-
14 vestigations and prosecutions in the United
15 States districts and the causes of disparities, if
16 any;

17 (B) to determine the extent to which the
18 communities' perception of bias has affected
19 confidence in the Federal criminal justice sys-
20 tem;

21 (C) to analyze whether measures may be
22 taken to reduce unwarranted disparities, if any,
23 and increase confidence in the criminal justice
24 system; and

(D) to make recommendations, to the extent possible, to ensure that law enforcement priorities and initiatives, charging and plea bargaining decisions, sentencing recommendations, and other steps within the criminal process are not influenced by racial and ethnic stereotyping or bias, and do not produce unwarranted disparities from otherwise neutral laws or policies.

(3) CRITERIA FOR SELECTION.—

(A) IN GENERAL.—The 10 pilot districts referred to in subsection (a) shall include districts of varying compositions with respect to size, case load, geography, and racial and ethnic composition.

(B) METROPOLITAN AREAS.—At least 3 of the United States Attorneys designated by the Attorney General shall be in Federal districts encompassing metropolitan areas.

SEC. 4. PLAN AND REPORT.

(a) IN GENERAL.—

(1) UNITED STATES ATTORNEY.—Each United States Attorney shall, in consultation with an advisory group appointed in accordance with paragraph (2), develop and implement a plan in accordance with subsections (b) and (c).

1 (2) ADVISORY GROUP.—

2 (A) APPOINTMENT.—Not later than 90
3 days after designation by the Attorney General,
4 the United States Attorney in each of the 10
5 pilot districts selected pursuant to section 3
6 shall appoint an advisory group, after consulta-
7 tion with the chief judge of the district and
8 criminal justice professionals within the district.

9 (B) MEMBERSHIP.—The advisory group of
10 a United States Attorney shall include—

11 (i) 1 or more senior social scientists
12 with expertise in research methods or sta-
13 tistics; and

14 (ii) individuals and entities who play
15 important roles in the criminal justice
16 process and have broad-based community
17 representation such as—

18 (I) Federal and State prosecu-
19 tors;

20 (II) Federal and State defenders,
21 if applicable in the district, and pri-
22 vate defense counsel;

23 (III) Federal and State judges;

(IV) Federal and State law enforcement officials and union representatives;

(V) parole and probation officers;

(VI) correctional officers;

(VII) victim's rights representatives;

(VIII) civil rights organizations;

(IX) business and professional representatives; and

(X) faith-based organizations who do criminal justice work.

(C) TERM LIMIT.—Subject to subparagraph (D), a member of the advisory group shall not serve longer than 5 years.

(D) PERMANENT MEMBERS.—Notwithstanding subparagraph (C), the following shall be permanent members of the advisory group for that district:

(i) The chief judge for the judicial district.

(ii) The Federal defender for the judicial district.

(iii) The United States Attorney for the judicial district.

1 (E) REPORTER.—The United States Attor-
 2 ney may designate a reporter for each advisory
 3 group, who may be compensated in accordance
 4 with guidelines established by the Executive Of-
 5 fice of the United States Attorneys.

6 (F) INDEPENDENT CONTRACTORS.—The
 7 members of an advisory group of a United
 8 States Attorney and any person designated as
 9 a reporter for such group—

10 (i) shall be considered independent
 11 contractors of the United States Attorney's
 12 Office when in the performance of official
 13 duties of the advisory group; and

14 (ii) may not, solely by reason of serv-
 15 ice on or for the advisory group, be prohib-
 16 ited from practicing law before any court.

17 (b) DEVELOPMENT AND IMPLEMENTATION OF A
 18 PLAN AND REPORT.—

19 (1) ADVISORY GROUP REPORT.—The advisory
 20 group appointed under subsection (a)(2) shall—

21 (A)(i) systematically collect and analyze
 22 quantitative data on the race and ethnicity of
 23 the defendant and victim at each stage of pros-
 24 ecution, including case intake, bail requests,
 25 declinations, selection of charges, diversion from

1 prosecution or incarceration, plea offers, sen-
2 tencing recommendations, fast-track sentencing,
3 and use of alternative sanctions; and

4 (ii) at a minimum, collect aggregate data
5 capable of individualization and tracking
6 through the system so that any cumulative ra-
7 cial or ethnic disadvantage can be analyzed;

8 (B) seek to determine the causes of racial
9 and ethnic disparities in a district, and whether
10 these disparities are substantially explained by
11 sound law enforcement policies or if they are at
12 least partially attributable to discrimination, in-
13 sensitivity, or unconscious bias;

14 (C) examine the extent to which racial and
15 ethnic disparities are attributable to—

16 (i) law enforcement priorities, pros-
17 ecutorial priorities, the substantive provi-
18 sions of legislation enacted by Congress; or

19 (ii) the penalty schemes enacted by
20 Congress or implemented by the United
21 States Sentencing Commission;

22 (D) examine data including—

23 (i) the racial and ethnic demographics
24 of the United States Attorney's district;

1 (ii) defendants charged in all cat-
2 egories of offense by race and ethnicity,
3 and, where applicable, the race and eth-
4 nicity of any identified victim;

5 (iii) substantial assistance motions,
6 whether at sentencing or post-conviction,
7 by race and ethnicity;

8 (iv) charging policies, including deci-
9 sions as to who should be charged in Fed-
10 eral rather than State court when either
11 forum is available, and whether these poli-
12 cies tend to result in racial or ethnic dis-
13 parities among defendants charged in Fed-
14 eral court, including whether relative dis-
15 parities exist between State and Federal
16 defendants charged with similar offenses;

17 (v) the racial and ethnic composition
18 of the Federal prosecutors in the district;
19 and

20 (vi) the extent to which training in
21 the exercise of discretion, including cul-
22 tural competency, is provided prosecutors;

23 (E) consult with an educational or inde-
24 pendent research group, if necessary, to conduct
25 work under this subsection; and

1 (F) submit to the United States Attorney
2 by the end of the second year after their initial
3 appointment a report and proposed plan, which
4 shall be made available to the public and which
5 shall include—

6 (i) factual findings and conclusions on
7 racial and ethnic disparities, if any, and
8 the State of public confidence in the crimi-
9 nal process;

10 (ii) recommended measures, rules, and
11 programs for reducing unjustified dispari-
12 ties, if any, and increasing public con-
13 fidence; and

14 (iii) an explanation of the manner in
15 which the recommended plan complies with
16 this paragraph.

17 (2) ADOPTION OF PLAN.—Not later than 60
18 days after receiving and considering the advisory
19 group’s report and proposed plan under paragraph
20 (1), the United States Attorney appointed under sec-
21 tion 3 shall adopt and implement a plan.

22 (3) COPY OF REPORT.—The United States At-
23 torney shall transmit a copy of the plan and report
24 adopted and implemented, in accordance with this
25 subsection, together with the report and plan rec-

1 ommended by the advisory group, to the Attorney
2 General. The United States Attorney shall include
3 with the plan an explanation of any recommendation
4 of the advisory group that is not included in the
5 plan.

6 (4) CONGRESS.—The Attorney General shall
7 transmit to the United States Attorney's in every
8 Federal district and to the Committees on the Judi-
9 ciary of the Senate and the House of Representa-
10 tives copies of any plan and accompanying report
11 submitted by a pilot district.

12 (c) PERIODIC UNITED STATES ATTORNEY ASSESS-
13 MENT.—After adopting and implementing a plan under
14 subsection (b), each United States Attorney in a pilot dis-
15 trict shall annually evaluate the efficacy of the plan. In
16 performing such assessment, the United States Attorney
17 shall consult with the advisory group appointed in accord-
18 ance with subsection (a)(2). Each assessment shall be sub-
19 mitted to the Executive Office for United States Attorneys
20 for review in accordance with subsection (d).

21 (d) INFORMATION ON THE PILOT PROGRAM.—

22 (1) REPORT AND MODEL PLAN.—Not later than
23 5 years after the date of the enactment of this Act,
24 the Attorney General shall—

1 (A) prepare a comprehensive report on all
2 plans received pursuant to this section;

3 (B) based on all the plans received pursu-
4 ant to this section the Attorney General shall
5 also develop one or more model plans; and

6 (C) transmit copies of the report and
7 model plan or plans to the Committees on the
8 Judiciary of the Senate and the House of Rep-
9 resentatives.

10 (2) CONTINUED OVERSIGHT.—The Attorney
11 General shall, on a continuing basis—

12 (A) study ways to reduce unwarranted ra-
13 cial and ethnic disparate impact in the Federal
14 criminal system; and

15 (B) make recommendations to all United
16 States Attorneys on ways to improve the sys-
17 tem.

18 **SEC. 5. AUTHORIZATION OF APPROPRIATIONS.**

19 There are authorized to be appropriated \$3,000,000
20 for use, at the discretion of the Attorney General, by the
21 United States Attorneys' advisory groups in the develop-
22 ment and implementation of plans under this Act.

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