

111TH CONGRESS
1ST SESSION

S. 495

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

FEBRUARY 26, 2009

Mr. CARDIN (for himself and Mr. SPECTER) 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 ad-
dress 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 2009”.

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 crime rates,
8 racial discrimination, ethnic and cultural insen-
9 sitivity, or unconscious bias, as well as other factors;

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

13 (5) programs that promote fairness will in-
14 crease public confidence in the criminal justice sys-
15 tem, increase public safety, and further the pursuit
16 of justice.

17 **SEC. 3. PILOT PROGRAM.**

18 (a) IN GENERAL.—Not later than 90 days after the
19 date of enactment of this Act, the Attorney General shall
20 establish a pilot program in 10 United States districts in
21 order to promote fairness, and the perception of fairness,
22 in the Federal criminal justice system, and to determine
23 whether legislation is required.

24 (b) PROGRAM REQUIREMENTS.—

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

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

9 (A) to gather racial and ethnic data on in-
10 vestigations and prosecutions in the United
11 States districts and the causes of disparities, if
12 any;

13 (B) to determine the extent to which the
14 communities' perception of bias has affected
15 confidence in the Federal criminal justice sys-
16 tem;

17 (C) to analyze whether measures may be
18 taken to reduce unwarranted disparities, if any,
19 and increase confidence in the criminal justice
20 system; and

21 (D) to make recommendations, to the ex-
22 tent possible, to ensure that law enforcement
23 priorities and initiatives, charging and plea bar-
24 gaining decisions, sentencing recommendations,
25 and other steps within the criminal process are

1 not influenced by racial and ethnic stereotyping
 2 or bias, and do not produce unwarranted dis-
 3 parities from otherwise neutral laws or policies.

4 (3) CRITERIA FOR SELECTION.—

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

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

14 **SEC. 4. PLAN AND REPORT.**

15 (a) IN GENERAL.—

16 (1) UNITED STATES ATTORNEY.—Each United
 17 States Attorney shall, in consultation with an advi-
 18 sory group appointed in accordance with paragraph
 19 (2), develop and implement a plan in accordance
 20 with subsections (b) and (c).

21 (2) ADVISORY GROUP.—

22 (A) APPOINTMENT.—Not later than 90
 23 days after designation by the Attorney General,
 24 the United States Attorney in each of the 10
 25 pilot districts selected pursuant to section 3

1 shall appoint an advisory group, after consulta-
2 tion with the chief judge of the district and
3 criminal justice professionals within the district.

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

6 (i) 1 or more senior social scientists
7 with expertise in research methods or sta-
8 tistics; and

9 (ii) individuals and entities who play
10 important roles in the criminal justice
11 process and have broad-based community
12 representation such as—

13 (I) Federal and State prosecu-
14 tors;

15 (II) Federal and State defenders,
16 if present in the district, and private
17 defense counsel;

18 (III) Federal and State judges;

19 (IV) Federal and State law en-
20 forcement officials and union rep-
21 resentatives;

22 (V) a member of the United
23 States Sentencing Commission or des-
24 ignee;

1 (VI) parole and probation offi-
2 cers;

3 (VII) correctional officers;

4 (VIII) victim's rights representa-
5 tives;

6 (IX) civil rights organizations;

7 (X) business and professional
8 representatives; and

9 (XI) faith based organizations
10 that provide services to people in-
11 volved in the criminal justice system.

12 (C) TERM LIMIT.—Subject to subpara-
13 graph (D), a member of the advisory group
14 shall not serve longer than 5 years.

15 (D) PERMANENT MEMBERS.—Notwith-
16 standing subparagraph (C), the following shall
17 be permanent members of the advisory group
18 for that district:

19 (i) The chief judge for the judicial dis-
20 trict.

21 (ii) The Federal defender for the judi-
22 cial district.

23 (iii) The United States Attorney for
24 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) recommendations for sentencing
6 enhancements and reductions, including
7 the filing of substantial assistance motions,
8 whether at sentencing or post-conviction,
9 by race and ethnicity;

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

19 (v) the racial and ethnic composition
20 of the Federal prosecutors in the district;
21 and

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

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

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

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

13 (ii) recommended measures, rules, and
14 programs for reducing unjustified dispari-
15 ties, if any, and increasing public con-
16 fidence; and

17 (iii) an explanation of the manner in
18 which the recommended plan complies with
19 this paragraph.

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

1 (3) COPY OF REPORT.—The United States At-
2 torney shall transmit a copy of the plan and report
3 adopted and implemented, in accordance with this
4 subsection, together with the report and plan rec-
5 ommended by the advisory group, to the Attorney
6 General. The United States Attorney shall include
7 with the plan an explanation of any recommendation
8 of the advisory group that is not included in the
9 plan.

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

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

25 (d) INFORMATION ON THE PILOT PROGRAM.—

1 (1) REPORT AND MODEL PLAN.—Not later than
2 5 years after the date of the enactment of this Act,
3 the Attorney General shall—

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

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

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

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

15 (A) study ways to reduce unwarranted ra-
16 cial and ethnic disparate impact in the Federal
17 criminal system; and

18 (B) make recommendations to all United
19 States Attorneys on ways to improve the sys-
20 tem.

21 **SEC. 5. AUTHORIZATION OF APPROPRIATIONS.**

22 There are authorized to be appropriated \$3,000,000
23 for use, at the discretion of the Attorney General, by the

- 1 United States Attorneys' advisory groups in the develop-
- 2 ment and implementation of plans under this Act.

