

Calendar No. 369

111TH CONGRESS
2D 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 of Ohio, Mr. WARNER, Mrs. GILLIBRAND, Mr. BURRIS, Mr. KENNEDY, Mr. CARDIN, Mrs. McCASKILL, Mrs. HAGAN, Mr. BINGAMAN, Mr. WHITEHOUSE, Ms. LANDRIEU, Mr. HATCH, Mr. UDALL of Colorado, Mr. TESTER, Mr. CARPER, Mr. CASEY, Mr. HARKIN, Mr. BEGICH, Ms. SNOWE, Mr. KERRY, Mr. NELSON of Florida, Mr. LEVIN, Mrs. LINCOLN, Mr. FRANKEN, Mr. MERKLEY, Mr. SANDERS, Mr. LAUTENBERG, Mr. MENENDEZ, and Ms. KLOBUCHAR) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

MAY 6, 2010

Reported by Mr. LEAHY, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “National Criminal Jus-
3 tice Commission Act of 2009”.

4 **SEC. 2. FINDINGS.**

5 Congress finds the following:

6 (1) The United States has the highest reported
7 incarceration rate in the world; imprisoning a higher
8 percentage of its population than any other country.
9 The American incarceration rate is five times the
10 world’s average incarceration rate. A total of
11 2,380,000 people are in prison.

12 (2) Although criminal justice laws and legal
13 procedures depend heavily on State and local law,
14 and although a majority of those imprisoned in the
15 United States are held in non-Federal institutions,
16 the conditions under which Americans are incarcer-
17 ated and the manner in which former inmates reen-
18 ter society is a compelling national interest that po-
19 tentially affects every American citizen and every lo-
20 cality in the country.

21 (3) The American public and their elected offi-
22 cials at all levels of government overwhelmingly sup-
23 port the punishment and incarceration of violent
24 criminals, as well as those who direct and participate
25 in criminal enterprises.

1 (4) Minorities make up a disproportionately
2 large share of prison populations. Black males have
3 a 32 percent chance of serving time in prison at
4 some point in their lives; Hispanic males have a 17
5 percent chance; white males have a 6 percent
6 chance.

7 (5) The number of persons on probation and
8 parole has been growing along with institutional
9 populations. There are 7,300,000 Americans incar-
10 cerated or on probation or parole, equal to 1 in
11 every 31 adults, an increase of 290 percent since
12 1980.

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

20 (7) Spending on corrections consumes an in-
21 creasingly large portion of resources at all levels of
22 government. Corrections expenditures compete with
23 and diminish funding for education, public health,
24 public safety, parks and recreation, and programs
25 specifically designed to reduce the prison population.

1 An analysis by the Pew Charitable Trusts found
2 that over the past 20 years, inflation-adjusted state
3 spending on corrections rose 127 percent while high-
4 er education expenditures rose just 21 percent.

5 (8) The National Gang Threat Assessment re-
6 ports that there are approximately 1,000,000 gang
7 members in the United States. According to report-
8 ing by local law enforcement, gangs commit “as
9 much as 80 percent of the crime in some locations”.
10 Gangs are primary retail distributors of illicit drugs,
11 some of which operate at the regional or national
12 level. According to the 2008 National Drug Threat
13 Survey, 58 percent of law enforcement agencies re-
14 port gang involvement in drug distribution.

15 (9) The combination of gang activity and the
16 movement of illegal drugs into the country has re-
17 sulted in unprecedented levels of sophisticated, orga-
18 nized violence along America’s southern border and
19 in hundreds of American communities. More than
20 6,000 people died in Mexico in 2008 alone as a re-
21 sult of drug-related violence.

22 (10) Despite high incarceration rates for drug-
23 related offenses, illicit drug availability remains con-
24 sistent. 86 percent of high school students report
25 that it is “very easy” or “fairly easy” to obtain

1 marijuana. 47 percent report the same for cocaine,
2 39 percent for crack, and 27 percent for heroin.

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

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

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

1 (14) Prisons have become public health risks.
 2 The number of State prisoners with HIV is 2.5
 3 times greater than the general population. The num-
 4 ber of State prisoners with hepatitis C is 9 times
 5 that of the general population.

6 (15) Prison administration is uneven, lacking
 7 clear, affirmative standards of training and perform-
 8 ance, varying greatly from institution to institution,
 9 locality to locality, and among Federal, State and
 10 local jurisdictions.

11 (16) According to a 2007 Bureau of Justice
 12 Statistics survey, an estimated 60,500 inmates (or
 13 4.5 percent of all Federal and State inmates) experi-
 14 enced 1 or more incidents of sexual victimization in-
 15 volving other inmates or staff. Analyses suggest that
 16 official records of assault in prison (both physical
 17 and sexual) only reflect 10 to 20 percent of all as-
 18 saults in prison.

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, make findings related

1 to current Federal and State criminal justice policies and
 2 practices, and make reform recommendations for the
 3 President, Congress, and State governments to improve
 4 public safety, cost-effectiveness, overall prison administra-
 5 tion, and fairness in the implementation of the Nation's
 6 criminal justice system.

7 **SEC. 5. REVIEW AND FINDINGS.**

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

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

14 (1) the statistical areas of increase in the
 15 United States incarceration rate compared to histor-
 16 ical standards of incarceration in the United States
 17 and the reasons for this increase;

18 (2) a comparison of incarceration policies, in-
 19 cluding juvenile incarceration policies, in countries
 20 with similar political systems including Western Eu-
 21 rope and Japan, denoting the different standards
 22 applied for types of crime, length of sentences,
 23 standards of prison administration, quality of re-
 24 entry programs for exoffenders, and recidivism rates;

1 (3) an examination of prison administration
2 policies at the Federal, State, and local levels, to in-
3 clude the availability and quality of preemployment
4 training programs and the availability of meaningful
5 career progression within the profession;

6 (4) the costs of current incarceration policies at
7 the Federal, State and local level, including the rel-
8 evant costs of law enforcement, the proportion of
9 that cost associated with gangs and drug enforce-
10 ment, the costs of constructing and administering
11 prison facilities, the costs of post-incarceration su-
12 pervision and reentry programs, and the cost of lost
13 economic opportunities associated with the stigma of
14 incarceration;

15 (5) an examination of the impact of gang activi-
16 ties in the United States, including the proportion of
17 these activities that are directed by foreign-based
18 gangs and syndicates, and outlining the impact of
19 these activities in terms of violence, intimidation,
20 and all areas of criminal activity;

21 (6) an examination of current drug policy and
22 its impact on incarceration, crime and violence, sen-
23 tencing, and reentry programs, to include an anal-
24 ysis of the general availability of drugs in our soci-
25 ety, the impact and effectiveness of current policies

on reducing that availability and on the incidence of crime; and in the case of criminal offenders, the availability of drug treatment programs before, during, and after incarceration;

(7) an examination of the legal and administrative changes in policies regarding those who suffer from mental illness, including mandatory and voluntary commitment to institutional care, the effectiveness and availability of alternative methods of treatment, the impact of these policy changes on incarceration, and the availability of government sponsored or assisted programs to address mental illness;

(8) an examination of the historic role of the military (active duty, National Guard, Coast Guard, and reserve forces), in the prevention of crime, the apprehension of criminals, the protection of American citizens, and the maintenance of stability along the national borders; and

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

SEC. 6. DUTIES OF THE COMMISSION.

(a) **RECOMMENDATIONS.**—After conducting a review of the United States criminal justice system and making

1 findings as required by section 5, the Commission shall
2 make recommendations for changes in policies and laws
3 designed to—

4 (1) refocus incarceration policies to reduce the
5 overall incarceration rate while preserving public
6 safety, cost-effectiveness, and societal fairness;

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

10 (3) improve prison administration, including
11 Federal standards of competence and the creation of
12 a career path for prison administrators;

13 (4) institute the use of policies and practices
14 proven effective throughout the spectrum of criminal
15 behavior;

16 (5) establish a system for the reintegration of
17 exoffenders that provides productive skills and op-
18 portunities and improves communities' ability to as-
19 similate former offenders;

20 (6) restructure the approach to criminalization
21 of, and incarceration as a result of the possession or
22 use of illegal drugs, decreasing the demand for illicit
23 drugs, and improving the treatment for addiction;

1 (7) improve and streamline the treatment of
2 mental illness, both in our society and in the crimi-
3 nal justice system;

4 (8) improve Federal and local responses to
5 international and domestic criminal activity and vio-
6 lence carried out by gangs, cartels, and syndicates,
7 particularly in relation to drug smuggling and dis-
8 tribution; and

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

12 (b) COORDINATION WITH INTERNATIONAL AND DO-
13 MESTIC GOVERNMENT AND NONGOVERNMENT REP-
14 RESENTATIVES.—The Commission shall—

15 (1) consult with government and nongovern-
16 mental leaders, including State and local law en-
17 forcement officials; and

18 (2) include in its final report required by sub-
19 section (c) summaries of the input and recommenda-
20 tions of these leaders based on the recommendations
21 required by subsection (a).

22 (c) REPORT.—

23 (1) REPORT.—Not later than 18 months after
24 the selection of the chair and the Executive Director
25 of the Commission, the Commission shall prepare

1 and submit a final report that contains a detailed
 2 statement of findings, conclusions, and recommenda-
 3 tions of the Commission to Congress and the Presi-
 4 dent.

5 (2) PUBLIC AVAILABILITY.—The report sub-
 6 mitted under this subsection shall be made available
 7 to the public.

8 **SEC. 7. MEMBERSHIP.**

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

11 (1) One member shall be appointed by the
 12 President, who shall serve as Chairman of the Com-
 13 mission.

14 (2) Two members appointed by the majority
 15 leader of the Senate, in consultation with the Chair-
 16 man of the Committee on Judiciary.

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

20 (4) Two members appointed by the Speaker of
 21 the House of Representatives, in consultation with
 22 the Chairman of the Committee on Judiciary.

23 (5) Two members appointed by the minority
 24 leader of the House of Representatives, in consulta-

tion with the ranking member of the Committee on
Judiciary.

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

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

(b) MEMBERSHIP.—

(1) QUALIFICATIONS.—The individuals ap-
pointed from private life as members of the Commis-
sion shall be individuals who are nationally recog-
nized for expertise, knowledge, or experience in such
relevant areas as—

(A) law enforcement;

(B) criminal justice;

(C) national security;

(D) prison administration;

(E) prisoner reentry;

(F) public health, including drug addiction

and mental health;

(G) victims' rights; and

(H) social services.

(2) DISQUALIFICATION.—An individual shall
not be appointed as a member of the Commission if
such individual possesses any personal or financial

1 interest in the discharge of any of the duties of the
2 Commission.

3 ~~(3) TERMS.—~~Members shall be appointed for
4 the life of the Commission.

5 ~~(c) APPOINTMENT; INITIAL MEETING.—~~

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

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

12 ~~(d) MEETINGS; QUORUM; VACANCIES.—~~

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

15 ~~(2) QUORUM.—~~Six members of the Commis-
16 sion, including at least one member chosen by the
17 minority leader of the Senate, minority leader of the
18 House of Representatives, or Chairman of the Re-
19 publican Governors Association, shall constitute a
20 quorum for purposes of conducting business, except
21 that 2 members of the Commission shall constitute
22 a quorum for purposes of receiving testimony.

23 ~~(3) VACANCIES.—~~Any vacancy in the Commis-
24 sion shall not affect its powers, but shall be filled in
25 the same manner in which the original appointment

1 was made. If vacancies in the Commission occur on
 2 any day after 45 days after the date of the enact-
 3 ment of this Act, a quorum shall consist of a major-
 4 ity of the members of the Commission as of such
 5 day, so long as at least one Commission member
 6 chosen by a member of each party, Republican and
 7 Democratic, is present.

8 (c) ACTIONS OF COMMISSION.—

9 (1) IN GENERAL.—The Commission—

10 (A) shall act by resolution agreed to by a
 11 majority of the members of the Commission
 12 voting and present; and

13 (B) may establish panels composed of less
 14 than the full membership of the Commission for
 15 purposes of carrying out the duties of the Com-
 16 mission under this title—

17 (i) which shall be subject to the review
 18 and control of the Commission; and

19 (ii) any findings and determinations
 20 made by such a panel shall not be consid-
 21 ered the findings and determinations of the
 22 Commission unless approved by the Com-
 23 mission.

24 (2) DELEGATION.—Any member, agent, or staff
 25 of the Commission may, if authorized by the chair

1 of the Commission, take any action which the Com-
 2 mission is authorized to take pursuant to this Act.

3 **SEC. 8. ADMINISTRATION.**

4 (a) TRAVEL EXPENSES.—Members shall receive trav-
 5 el expenses, including per diem in lieu of subsistence, in
 6 accordance with sections 5702 and 5703 of title 5, United
 7 States Code, while away from their homes or regular
 8 places of business in performance of services for the Com-
 9 mission.

10 (b) 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 equiv-
 14 alent to a rate established for the Senior Executive
 15 Service under section 5382 of title 5, United States
 16 Code.

17 (2) STAFF APPOINTMENT.—With the approval
 18 of the Commission, the Executive Director may ap-
 19 point such personnel as the Executive Director de-
 20 termines to be appropriate.

21 (3) EXPERTS AND CONSULTANTS.—With the
 22 approval of the Commission, the Executive Director
 23 may procure temporary and intermittent services
 24 under section 3109(b) of title 5, United States Code.

1 (4) DETAIL OF GOVERNMENT EMPLOYEES.—

2 Upon the request of the Commission, the head of
3 any Federal agency may detail, without reimburse-
4 ment, any of the personnel of such agency to the
5 Commission to assist in carrying out the duties of
6 the Commission. Any such detail shall not interrupt
7 or otherwise affect the civil service status or privi-
8 leges of the Federal employee.

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

23 (c) OBTAINING OFFICIAL DATA.—The Commission
24 may secure directly from any agency of the United States
25 information necessary to enable it to carry out this Act.

1 Upon the request of the Chair of the Commission, the
 2 head of that department or agency shall furnish that infor-
 3 mation to the Commission.

4 (d) **MAILS.**—The Commission may use the United
 5 States mails in the same manner and under the same con-
 6 ditions as other departments and agencies of the United
 7 States.

8 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

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

12 (b) **AVAILABILITY.**—Any sums appropriated under
 13 the subsection (a) shall remain available, without fiscal
 14 year limitation, until expended.

15 **SEC. 10. SUNSET.**

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

18 **SECTION 1. SHORT TITLE.**

19 *This Act may be cited as the “National Criminal Jus-*
 20 *tice Commission Act of 2010”.*

21 **SEC. 2. FINDINGS.**

22 *Congress finds that—*

23 (1) *it is in the interest of the Nation to establish*
 24 *a commission to undertake a comprehensive review of*
 25 *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 and Justice was established*
 4 *in 1965;*

5 (3) *that commission, in a span of 18 months,*
 6 *produced a comprehensive report entitled "The Chal-*
 7 *lenge of Crime in a Free Society," which contained*
 8 *200 specific recommendations on all aspects of the*
 9 *criminal justice system involving Federal, State, trib-*
 10 *al, and local governments, civic organizations, reli-*
 11 *gious institutions, business groups, and individual*
 12 *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 insti-*
 16 *tutions, business groups, and individual citizens come*
 17 *together to review evidence and consider how to im-*
 18 *prove 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 under-*
 6 *take 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 make*
 12 *findings regarding such review and recommendations for*
 13 *changes in oversight, policies, practices, and laws designed*
 14 *to prevent, deter, and reduce crime and violence, improve*
 15 *cost-effectiveness, and ensure the interests of justice at every*
 16 *step of the criminal justice system.*

17 (c) *PRIOR COMMISSIONS.*—*The Commission shall take*
 18 *into consideration the work of prior relevant commissions*
 19 *in conducting its review.*

20 (d) *STATE AND LOCAL GOVERNMENT.*—*In making its*
 21 *recommendations, the Commission should consider the fi-*
 22 *nancial and human resources of State and local govern-*
 23 *ments. Recommendations shall not infringe on the legiti-*
 24 *mate rights of the States to determine their own criminal*
 25 *laws or the enforcement of such laws.*

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

4 (f) *CONSULTATION WITH GOVERNMENT AND NON-*
 5 *GOVERNMENT REPRESENTATIVES.*—

6 (1) *IN GENERAL.*—*The Commission shall—*

7 (A) *closely consult with Federal, State,*
 8 *local, and tribal government and nongovern-*
 9 *mental leaders, including State, local, and tribal*
 10 *law enforcement officials, legislators, public*
 11 *health officials, judges, court administrators,*
 12 *prosecutors, defense counsel, victims' rights orga-*
 13 *nizations, probation and parole officials, crimi-*
 14 *nal justice planners, criminologists, civil rights*
 15 *and liberties organizations, formerly incarcerated*
 16 *individuals, professional organizations, and*
 17 *corrections officials; and*

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

21 (2) *UNITED STATES SENTENCING COMMISSION.*—

22 *To the extent the review and recommendations re-*
 23 *quired by this section relate to sentencing policies and*
 24 *practices for the Federal criminal justice system, the*
 25 *Commission shall conduct such review and make such*

1 *recommendations in consultation with the United*
 2 *States Sentencing Commission.*

3 *(g) REPORT.—*

4 *(1) REPORT.—Not later than 18 months after the*
 5 *formation of the Commission, the Commission shall*
 6 *prepare and submit a final report that contains a de-*
 7 *tailed statement of findings, conclusions, and rec-*
 8 *ommendations of the Commission to Congress, the*
 9 *President, State, local, and tribal governments.*

10 *(2) GOAL OF UNANIMITY.—It is the sense of the*
 11 *Senate that, given the national importance of the*
 12 *matters before the Commission, the Commission*
 13 *should work toward unanimously supported findings*
 14 *and recommendations.*

15 *(3) PUBLIC AVAILABILITY.—The report submitted*
 16 *under this subsection shall be made available to the*
 17 *public.*

18 *(4) VOTES ON RECOMMENDATIONS IN REPORT.—*
 19 *Consistent with paragraph (2), the Commission shall*
 20 *state the vote total for each recommendation con-*
 21 *tained in its report to Congress.*

22 **SEC. 6. MEMBERSHIP.**

23 *(a) IN GENERAL.—The Commission shall be composed*
 24 *of 14 members, as follows:*

1 (1) 1 member shall be appointed by the Presi-
2 dent, in consultation with the minority leader of the
3 Senate and the minority leader of the House of Rep-
4 resentatives, who shall serve as co-chairman of the
5 Commission.

6 (2) 1 member shall be appointed by the Presi-
7 dent, in consultation with the majority leader of the
8 Senate and the Speaker of the House of Representa-
9 tives, who shall serve as co-chairman of the Commis-
10 sion.

11 (3) 2 members appointed by the majority leader
12 of the Senate, in consultation with the Chairman of
13 the Committee on the Judiciary.

14 (4) 2 members appointed by the minority leader
15 of the Senate, in consultation with the ranking mem-
16 ber of the Committee on Judiciary.

17 (5) 2 members appointed by the Speaker of the
18 House of Representatives, in consultation with the
19 Chairman of the Committee on Judiciary.

20 (6) 2 members appointed by the minority leader
21 of the House of Representatives, in consultation with
22 the ranking member of the Committee on Judiciary.

23 (7) 2 members, who shall be State and local rep-
24 resentatives, shall be appointed by the President in

1 *agreement with the minority leader of the Senate and*
 2 *the minority leader of the House of Representatives.*

3 (8) *2 members, who shall be State and local rep-*
 4 *resentatives, shall be appointed by the President in*
 5 *agreement with the majority leader of the Senate and*
 6 *the Speaker of the House of Representatives.*

7 (b) *MEMBERSHIP.—*

8 (1) *QUALIFICATIONS.—The individuals ap-*
 9 *pointed from private life as members of the Commis-*
 10 *sion shall be individuals with distinguished reputa-*
 11 *tions for integrity and nonpartisanship who are na-*
 12 *tionally recognized for expertise, knowledge, or experi-*
 13 *ence in such relevant areas as—*

14 (A) *law enforcement;*

15 (B) *criminal justice;*

16 (C) *national security;*

17 (D) *prison and jail administration;*

18 (E) *prisoner reentry;*

19 (F) *public health, including physical and*
 20 *sexual victimization, drug addiction and mental*
 21 *health;*

22 (G) *victims' rights;*

23 (H) *civil liberties;*

24 (I) *court administration;*

25 (J) *social services; and*

1 (K) *State, local, and tribal government.*

2 (2) *DISQUALIFICATION.—An individual shall not*
3 *be appointed as a member of the Commission if such*
4 *individual possesses any personal financial interest*
5 *in the discharge of any of the duties of the Commis-*
6 *sion.*

7 (3) *TERMS.—Members shall be appointed for the*
8 *life of the Commission.*

9 (c) *APPOINTMENT; INITIAL MEETING.—*

10 (1) *APPOINTMENT.—Members of the Commission*
11 *shall be appointed not later than 45 days after the*
12 *date of the enactment of this Act.*

13 (2) *INITIAL MEETING.—The Commission shall*
14 *hold its initial meeting on the date that is 60 days*
15 *after the date of the enactment of this Act. If not all*
16 *Commission members are selected by that date, the*
17 *Commission shall hold its initial meeting within 15*
18 *days of the appointment of all Commission members.*

19 (3) *ETHICS.—At the initial meeting of the Com-*
20 *mission, the Commission shall draft appropriate eth-*
21 *ics guidelines for commissioners and staff, including*
22 *guidelines relating to conflict of interest and financial*
23 *disclosure.*

24 (d) *MEETINGS; QUORUM; VACANCIES.—*

1 (1) *MEETINGS.*—*The Commission shall meet at*
2 *the call of the co-chairs or a majority of its members.*

3 (2) *QUORUM.*—*Seven members of the Commis-*
4 *sion, including at least 2 members chosen by either*
5 *the Senate Majority Leader, Speaker of the House, or*
6 *Senate Majority Leader and Speaker of the House in*
7 *agreement with the President and 2 members chosen*
8 *by either the Senate Minority Leader, House Minor-*
9 *ity Leader, or Senate Minority Leader and House*
10 *Minority Leader in agreement with the President,*
11 *shall constitute a quorum for purposes of conducting*
12 *business, except that 2 members of the Commission*
13 *shall constitute a quorum for purposes of receiving*
14 *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 enactment*
20 *of this Act, a quorum shall consist of a majority of*
21 *the members of the Commission as of such day, so*
22 *long as at least 1 Commission member chosen by a*
23 *member of each party, Republican and Democratic, is*
24 *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 vot-*
4 *ing 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 co-chairs*
18 *of the Commission, take any action which the Com-*
19 *mission is authorized to take pursuant to this Act.*

20 **SEC. 7. ADMINISTRATION.**

21 (a) *STAFF.*—

22 (1) *EXECUTIVE DIRECTOR.*—*The Commission*
23 *shall have a staff headed by an Executive Director.*
24 *The Executive Director shall be paid at a rate estab-*
25 *lished for the Certified Plan pay level for the Senior*

1 *Executive Service under section 5382 of title 5,*
 2 *United States Code.*

3 (2) *APPOINTMENT AND COMPENSATION.—The co-*
 4 *chairs of the Commission shall designate and fix the*
 5 *compensation of the Executive Director and, in ac-*
 6 *cordance with rules agreed upon by the Commission,*
 7 *may appoint and fix the compensation of such other*
 8 *personnel as may be necessary to enable the Commis-*
 9 *sion to carry out its functions, without regard to the*
 10 *provisions of title 5, United States Code, governing*
 11 *appointments in the competitive service, and without*
 12 *regard to the provisions of chapter 51 and subchapter*
 13 *III of chapter 53 of such title relating to classification*
 14 *and General Schedule pay rates, except that no rate*
 15 *of pay fixed under this subsection may exceed the*
 16 *equivalent of that payable for a position at level V of*
 17 *the Executive Schedule under section 5316 of title 5,*
 18 *United States Code.*

19 (3) *PERSONNEL AS FEDERAL EMPLOYEES.—*

20 (A) *IN GENERAL.—The executive director*
 21 *and any personnel of the Commission who are*
 22 *employees shall be employees under section 2105*
 23 *of title 5, United States Code, for purposes of*
 24 *chapters 63, 81, 83, 84, 85, 87, 89, and 90 of*
 25 *that title.*

1 (B) *MEMBERS OF COMMISSION.*—Subpara-
 2 graph (A) shall not be construed to apply to
 3 members of the Commission.

4 (4) *THE COMPENSATION OF COMMISSIONERS.*—
 5 Each member of the Commission may be compensated
 6 at not to exceed the daily equivalent of the annual
 7 rate of basic pay in effect for a position at level V
 8 of the Executive Schedule under section 5315 of title
 9 5, United States Code, for each day during which
 10 that member is engaged in the actual performance of
 11 the duties of the Commission. All members of the
 12 Commission who are officers or employees of the
 13 United States , State, or local government shall serve
 14 without compensation in addition to that received for
 15 their services as officers or employees.

16 (5) *TRAVEL EXPENSES.*—While away from their
 17 homes or regular places of business in the perform-
 18 ance of services for the Commission, members of the
 19 Commission shall be allowed travel expenses, includ-
 20 ing per diem in lieu of subsistence, in the same man-
 21 ner as persons employed intermittently in the Govern-
 22 ment service are allowed expenses under section
 23 5703(b) of title 5, United States Code.

24 (b) *EXPERTS AND CONSULTANTS.*—With the approval
 25 of the Commission, the Executive Director may procure

1 *temporary and intermittent services under section 3109(b)*
 2 *of title 5, United States Code.*

3 (c) *DETAIL OF GOVERNMENT EMPLOYEES.*—Upon the
 4 *request of the Commission, the head of any Federal agency*
 5 *may detail, without reimbursement, any of the personnel*
 6 *of such agency to the Commission to assist in carrying out*
 7 *the duties of the Commission. Any such detail shall not in-*
 8 *terrupt or otherwise affect the civil service status or privi-*
 9 *leges of the Federal employee.*

10 (d) *OTHER RESOURCES.*—The Commission shall have
 11 *reasonable access to materials, resources, statistical data,*
 12 *and other information such Commission determines to be*
 13 *necessary to carry out its duties from the Library of Con-*
 14 *gress, the Department of Justice, the Office of National*
 15 *Drug Control Policy, the Department of State, and other*
 16 *agencies of the executive and legislative branches of the Fed-*
 17 *eral Government. The co-chairs of the Commission shall*
 18 *make requests for such access in writing when necessary.*

19 (e) *VOLUNTEER SERVICES.*—Notwithstanding the pro-
 20 *visions of section 1342 of title 31, United States Code, the*
 21 *Commission is authorized to accept and utilize the services*
 22 *of volunteers serving without compensation. The Commis-*
 23 *sion may reimburse such volunteers for local travel and of-*
 24 *fice supplies, and for other travel expenses, including per*
 25 *diem in lieu of subsistence, as authorized by section 5703*

1 *of Title 5, United States Code. A person providing volunteer*
 2 *services to the Commission shall be considered an employee*
 3 *of the Federal Government in performance of those services*
 4 *for the purposes of chapter 81 of title 5 of the United States*
 5 *Code, relating to compensation for work-related injuries,*
 6 *chapter 171 of title 28 of the United States Code, relating*
 7 *to tort claims, and chapter 11 of title 18 of the United*
 8 *States Code, relating to conflicts of interest.*

9 (f) *OBTAINING OFFICIAL DATA.—The Commission*
 10 *may secure directly from any agency of the United States*
 11 *information necessary to enable it to carry out this Act.*
 12 *Upon the request of the co-chairs of the Commission, the*
 13 *head of that department or agency shall furnish that infor-*
 14 *mation to the Commission. The Commission shall not have*
 15 *access to sensitive information regarding ongoing investiga-*
 16 *tions.*

17 (g) *MAILS.—The Commission may use the United*
 18 *States mails in the same manner and under the same condi-*
 19 *tions as other departments and agencies of the United*
 20 *States.*

21 (h) *ADMINISTRATIVE REPORTING.—The Commission*
 22 *shall issue bi-annual status reports to Congress regarding*
 23 *the use of resources, salaries, and all expenditures of appro-*
 24 *priated funds.*

1 (i) *CONTRACTS.*—*The Commission is authorized to*
 2 *enter into contracts with Federal and State agencies, pri-*
 3 *vate firms, institutions, and individuals for the conduct of*
 4 *activities necessary to the discharge of its duties and re-*
 5 *sponsibilities. A contract, lease or other legal agreement en-*
 6 *tered into by the Commission may not extend beyond the*
 7 *date of the termination of the Commission.*

8 (j) *GIFTS.*—*Subject to existing law, the Commission*
 9 *may accept, use, and dispose of gifts or donations of services*
 10 *or property.*

11 (k) *ADMINISTRATIVE ASSISTANCE.*—*The Adminis-*
 12 *trator of General Services shall provide to the Commission,*
 13 *on a reimbursable basis, the administrative support services*
 14 *necessary for the Commission to carry out its responsibil-*
 15 *ities under this Act. These administrative services may in-*
 16 *clude human resource management, budget, leasing, ac-*
 17 *counting, and payroll services.*

18 (l) *NONAPPLICABILITY OF FACA AND PUBLIC ACCESS*
 19 *TO MEETINGS AND MINUTES.*—

20 (1) *IN GENERAL.*—*The Federal Advisory Com-*
 21 *mittee Act (5 U.S.C. App.) shall not apply to the*
 22 *Commission.*

23 (2) *MEETINGS AND MINUTES.*—

24 (A) *MEETINGS.*—

1 (i) *ADMINISTRATION.*—All meetings of
2 the Commission shall be open to the public,
3 except that a meeting or any portion of it
4 may be closed to the public if it concerns
5 matters or information described in section
6 552b(c) of title 5, United States Code. Inter-
7 ested persons shall be permitted to appear
8 at open meetings and present oral or writ-
9 ten statements on the subject matter of the
10 meeting. The Commission may administer
11 oaths or affirmations to any person appear-
12 ing before it.

13 (ii) *NOTICE.*—All open meetings of the
14 Commission shall be preceded by timely
15 public notice in the Federal Register of the
16 time, place, and subject of the meeting.

17 (B) *MINUTES AND PUBLIC AVAILABILITY.*—
18 Minutes of each open meeting shall be kept and
19 shall contain a record of the people present, a de-
20 scription of the discussion that occurred, and
21 copies of all statements filed. The minutes and
22 records of all open meetings and other documents
23 that were made available to or prepared for the
24 Commission shall be available for public inspec-

1 *tion and copying at a single location in the of-*
 2 *fices of the Commission.*

3 *(m) ARCHIVING.—Not later than the date of termi-*
 4 *nation of the Commission, all records and papers of the*
 5 *Commission shall be delivered to the Archivist of the United*
 6 *States for deposit in the National Archives.*

7 **SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

8 *(a) IN GENERAL.—There are authorized to be appro-*
 9 *priated for fiscal years 2010 and 2011 such sums are as*
 10 *necessary to carry out the purposes of this Act, not to exceed*
 11 *\$7,000,000 per year for each fiscal year, and not more than*
 12 *\$14,000,000 total. None of the funds appropriated under*
 13 *this Act may be utilized for international travel.*

14 *(b) AVAILABILITY.—Any sums appropriated under the*
 15 *subsection (a) shall remain available, without fiscal year*
 16 *limitation, until expended.*

17 **SEC. 9. SUNSET.**

18 *The Commission shall terminate 60 days after it sub-*
 19 *mits its report to Congress.*

Calendar No. 369

11TH CONGRESS
2^D Session

S. 714

A BILL

To establish the National Criminal Justice
Commission.

MAY 6, 2010

Reported with an amendment