

115TH CONGRESS
2D SESSION

S. 3118

To specify and clarify mens rea requirements for certain Federal crimes
and to establish the National Criminal Justice Commission.

IN THE SENATE OF THE UNITED STATES

JUNE 21, 2018

Mr. HATCH (for himself and Mr. GRASSLEY) introduced the following bill;
which was read twice and referred to the Committee on the Judiciary

A BILL

To specify and clarify mens rea requirements for certain
Federal crimes and 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Mens Rea Reform Act of 2018”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—STATE OF MIND

Sec. 101. State of mind element for criminal offenses.

Sec. 102. Inventory of Federal criminal offenses.

TITLE II—NATIONAL CRIMINAL JUSTICE COMMISSION ACT

Sec. 201. Findings.
 Sec. 202. Establishment of commission.
 Sec. 203. Purpose of the commission.
 Sec. 204. Review, recommendations, and report.
 Sec. 205. Membership.
 Sec. 206. Administration.
 Sec. 207. Sunset.

1 **TITLE I—STATE OF MIND**2 **SEC. 101. STATE OF MIND ELEMENT FOR CRIMINAL OF-**
3 **FENSES.**

4 (a) IN GENERAL.—Chapter 1 of title 18, United
 5 States Code, is amended by adding at the end the fol-
 6 lowing:

7 **“§ 28. State of mind when not otherwise specifically**
8 **provided**

9 “(a) DEFINITIONS.—In this section—

10 “(1) the term ‘covered offense’—

11 “(A) means an offense—

12 “(i) specified in—

13 “(I) this title or any other Act of
 14 Congress;

15 “(II) any regulation; or

16 “(III) any law (including regula-
 17 tions) of any State or foreign govern-
 18 ment incorporated by reference into
 19 this title or any other Act of Con-
 20 gress; and

1 “(ii) that is punishable by imprison-
 2 ment, a maximum criminal fine of at least
 3 \$2,500, or both; and

4 “(B) does not include—

5 “(i) any offense set forth in chapter
 6 47 or chapter 47A of title 10; or

7 “(ii) any offense incorporated by sec-
 8 tion 13(a) of this title;

9 “(2) the term ‘existing covered offense without
 10 a state of mind requirement’ means a covered of-
 11 fense for which—

12 “(A) the provision or provisions specifying
 13 the elements of the offense were enacted, pro-
 14 mulgated, or finalized on or before the date of
 15 enactment of this section; and

16 “(B) there is not a state of mind require-
 17 ment specified for 1 or more elements of the
 18 covered offense, which shall be determined in
 19 accordance with subsection (d)—

20 “(i) in the text of the covered offense;

21 or

22 “(ii) under the precedents of the Su-
 23 preme Court of the United States;

24 “(3) the term ‘existing covered regulatory of-
 25 fense without a state of mind requirement’ means an

1 existing covered offense without a state of mind re-
2 quirement for which the provision or provisions
3 specifying the elements of the offense are in regula-
4 tions promulgated by an agency;

5 “(4) the term ‘future covered offense’ means a
6 covered offense for which the provision or provisions
7 specifying the elements of the offense are enacted,
8 promulgated, or finalized after the date of enact-
9 ment of this section;

10 “(5) the term ‘state of mind’ means willfully,
11 intentionally, maliciously, knowingly, recklessly, wan-
12 tonly, negligently, or with reason to believe, or any
13 other word or phrase that is synonymous with or
14 substantially similar to any such term; and

15 “(6) the term ‘willfully’, as related to an ele-
16 ment of an offense, means—

17 “(A) that the person acted with knowledge
18 that the person’s conduct was unlawful; and

19 “(B) if the element involves the nature, at-
20 tendant circumstances, object, or result of the
21 conduct of a person, that—

22 “(i) the person had knowledge of the
23 nature, attendant circumstances, object, or
24 result of his or her conduct; and

1 “(ii) it was the conscious object of the
2 person to engage in conduct—

3 “(I) of that nature;

4 “(II) with that attendant cir-
5 cumstance;

6 “(III) with that object; or

7 “(IV) to cause such a result.

8 “(b) FUTURE COVERED OFFENSES.—A future cov-
9 ered offense shall be construed to require the Government
10 to prove beyond a reasonable doubt that the defendant
11 acted—

12 “(1) with the state of mind specified in the text
13 of the future covered offense for each element of the
14 offense for which the text specifies a state of mind;
15 and

16 “(2) except as provided in subsection (d), will-
17 fully, with respect to any element of the offense for
18 which the text of the future covered offense does not
19 specify a state of mind.

20 “(c) EXISTING COVERED OFFENSES WITHOUT A
21 STATE OF MIND REQUIREMENT.—

22 “(1) DEFAULT REQUIREMENT FOR EXISTING
23 STATUTORY OFFENSES WITHOUT A STATE OF MIND
24 REQUIREMENT.—

1 “(A) IN GENERAL.—On and after the date
2 specified in subparagraph (B), an existing cov-
3 ered offense without a state of mind require-
4 ment for which the provision or provisions
5 specifying the elements of the existing covered
6 offense are in an Act of Congress shall be con-
7 strued to require the Government to prove be-
8 yond a reasonable doubt that the defendant
9 acted—

10 “(i) with the state of mind specified in
11 the text of the existing covered offense
12 without a state of mind requirement, in-
13 cluding any amendment made after the
14 date of enactment of this section, for each
15 element for which the text specifies a state
16 of mind; and

17 “(ii) except as provided in subsection
18 (d), willfully, with respect to any element
19 for which the text of the existing covered
20 offense without a state of mind require-
21 ment does not specify a state of mind.

22 “(B) DEADLINE.—The date specified in
23 this subparagraph is the earlier of—

24 “(i) the date that is 2 years after the
25 date on which the National Criminal Jus-

tice Commission submits the report under
 section 101(b) of the Mens Rea Reform
 Act of 2018; or

“(ii) the date that is 5 years after the
 date of enactment of the Mens Rea Reform
 Act of 2018.

“(2) EXISTING COVERED REGULATORY OF-
 FENSES WITHOUT A STATE OF MIND REQUIRE-
 MENT.—

“(A) IN GENERAL.—Not later than the
 date specified in subparagraph (B), each agency
 that has in effect an existing covered regulatory
 offense without a state of mind requirement
 shall promulgate regulations, after providing
 notice and an opportunity for comment, speci-
 fying the state of mind required for each ele-
 ment of the existing covered regulatory offense
 for which a state of mind is not specified.

“(B) DEADLINE.—The date specified in
 this subparagraph is the earlier of—

“(i) the date that is 3 years after the
 date on which the National Criminal Jus-
 tice Commission submits the report under
 section 101(b) of the Mens Rea Reform
 Act of 2018; or

1 “(ii) the date that is 6 years after the
2 date of enactment of the Mens Rea Reform
3 Act of 2018.

4 “(C) NO STRICT LIABILITY OFFENSES.—
5 The regulations promulgated by an agency
6 under subparagraph (A) may not specify that
7 an element of an existing covered regulatory of-
8 fense does not require any state of mind be
9 proven.

10 “(D) SUNSET.—Except as provided in sub-
11 section (d), after the date specified in subpara-
12 graph (B), the criminal penalty provisions of an
13 existing covered regulatory offense for which
14 the regulations establishing the elements of the
15 existing covered regulatory offense do not speci-
16 fy a state of mind for 1 or more elements shall
17 cease to have force or effect.

18 “(E) RULE OF CONSTRUCTION.—Nothing
19 in this paragraph shall be construed to grant an
20 agency authority with respect to establishing
21 the mens rea requirements for a covered regu-
22 latory offense that is in addition to, or in lieu
23 of, such authority provided under the statute
24 authorizing the covered regulatory offense.

1 “(d) DETERMINATION THAT ELEMENTS LACK RE-
2 QUIRED STATE OF MIND.—

3 “(1) FAILURE TO DISTINGUISH AMONG ELE-
4 MENTS.—Except as provided in paragraph (2), if the
5 text of a covered offense specifies the state of mind
6 required for commission of the covered offense with-
7 out specifying the elements of the covered offense to
8 which the state of mind applies, the state of mind
9 specified shall apply to all elements of the covered
10 offense, unless a contrary legislative purpose plainly
11 appears in the text of the statute.

12 “(2) EXCEPTIONS.—

13 “(A) IN GENERAL.—Paragraph (1) of this
14 subsection, subsection (b)(2), and paragraphs
15 (1)(A)(ii) and (2)(D) of subsection (c) shall not
16 apply with respect to—

17 “(i) any element for which the text of
18 the covered offense makes clear that Con-
19 gress affirmatively intended not to require
20 the Government to prove any state of mind
21 with respect to such element;

22 “(ii) any element of a covered offense,
23 to the extent that the element estab-
24 lishes—

1 “(I) subject matter jurisdiction
2 over the covered offense; or

3 “(II) venue with respect to trial
4 of the covered offense; or

5 “(iii) any element of a covered of-
6 fense, to the extent that applying para-
7 graph (1) of this subsection, subsection
8 (b)(2), or paragraph (1)(A)(ii) or (2)(D) of
9 subsection (c) to such element would lessen
10 the degree of mental culpability that the
11 Government is required to prove with re-
12 spect to that element under—

13 “(I) precedent of the Supreme
14 Court of the United States; or

15 “(II) any other provision of this
16 title, any other Act of Congress, or
17 any regulation.

18 “(B) MERE ABSENCE INSUFFICIENT.—For
19 purposes of subparagraph (A)(i), the mere ab-
20 sence of a specified state of mind for an ele-
21 ment of a covered offense in the text of the cov-
22 ered offense shall not be construed to mean
23 that Congress affirmatively intended not to re-
24 quire the Government to prove any state of
25 mind with respect to that element.

1 “(e) SUBSEQUENTLY ENACTED LAWS.—No law en-
 2 acted after the date of enactment of this section shall be
 3 construed to repeal, modify the text or effect of, or super-
 4 sede in whole or in part this section, unless such law spe-
 5 cifically refers to this section and explicitly repeals, modi-
 6 fies the text or effect of, or supersedes in whole or in part
 7 this section.”.

8 (b) COMMISSION REPORT AND LEGISLATION.—

9 (1) DEFINITIONS.—In this section, the term
 10 “existing covered offenses without a state of mind
 11 requirement” has the meaning given that term in
 12 section 28 of title 18, United States Code, as added
 13 by subsection (a).

14 (2) SUBMISSION.—Not later than the earlier of
 15 2 years after the date on which the Attorney Gen-
 16 eral submits the report required under section
 17 102(b) or 3 years after the date of enactment of this
 18 Act, the National Criminal Justice Commission shall
 19 submit to Congress—

20 (A) a report identifying—

21 (i) the existing covered offenses with-
 22 out a state of mind requirement; and

23 (ii) the existing covered offenses with-
 24 out a state of mind requirement for which
 25 the Commission recommends that the Gov-

ernment not be required to prove any state
of mind with respect to 1 or more elements
of the offense, based on consideration of
the criteria described in paragraph (3);
and

(B) for each existing covered offense with-
out a state of mind requirement identified
under subparagraph (A)(ii) for which the provi-
sion or provisions specifying the elements of the
existing covered offense without a state of mind
requirement are in an Act of Congress, pro-
posed legislative language to make clear the
Government is not required to prove any state
of mind with respect to 1 or more elements of
the offense.

(3) CRITERIA.—The criteria specified in this
paragraph are—

(A) whether the covered offense makes
criminal a type of conduct that a reasonable
person should know is subject to stringent pub-
lic regulation and may seriously threaten public
health or safety; and

(B) the potential penalty attached to a vio-
lation of the covered offense, with a severe pen-

1 alty suggesting that the offense should not be
2 a strict liability offense.

3 (c) EXPEDITED PROCEDURES.—

4 (1) DEFINITION.—In this subsection, the term
5 “joint resolution” means a joint resolution consisting
6 of the proposed legislative language submitted under
7 subsection (b)(2)(B) and introduced or reintroduced
8 under paragraph (2) of this subsection.

9 (2) INTRODUCTION OF PROPOSED LEGISLATIVE
10 LANGUAGE.—

11 (A) IN GENERAL.—The proposed legisla-
12 tive language submitted by the National Crimi-
13 nal Justice Commission under subsection
14 (b)(2)(B)—

15 (i) shall be introduced in the Senate
16 (by request) by the Majority Leader or Mi-
17 nority Leader of the Senate or by a Mem-
18 ber of the Senate designated by the Major-
19 ity Leader or Minority Leader of the Sen-
20 ate not later than 30 days after the date
21 on which the proposed legislation is sub-
22 mitted to Congress; and

23 (ii) shall be introduced in the House
24 of Representatives (by request) by the
25 Speaker of the House of Representatives

1 or the Minority Leader of the House of
2 Representatives or by a Member of the
3 House of Representatives designated by
4 the Speaker of the House of Representa-
5 tives or the Minority Leader of the House
6 of Representatives not later than 30 days
7 after the date on which the proposed legis-
8 lation is submitted to Congress.

9 (B) REINTRODUCTION.—The proposed leg-
10 islative language submitted by the National
11 Criminal Justice Commission under subsection
12 (b)(2)(B) shall be reintroduced as described in
13 subparagraph (A) not later than 30 days after
14 the first day of a Congress if—

15 (i) the proposed legislative language
16 was introduced during the previous Con-
17 gress after the date that was 210 days be-
18 fore the date of the sine die adjournment
19 of such previous Congress; and

20 (ii) there was not a vote in either
21 House of Congress on passage of the joint
22 resolution introduced under subparagraph
23 (A) during the previous Congress by which
24 the joint resolution was not agreed to.

1 (3) EXPEDITED CONSIDERATION IN HOUSE OF
2 REPRESENTATIVES.—

3 (A) REPORTING AND DISCHARGE.—Any
4 committee of the House of Representatives to
5 which a joint resolution is referred shall report
6 it to the House of Representatives not later
7 than 180 days after the date on which the joint
8 resolution is introduced or reintroduced in the
9 House of Representatives under paragraph (2).
10 If a committee fails to report the joint resolu-
11 tion within that period, the committee shall be
12 discharged from further consideration of the
13 joint resolution and the joint resolution shall be
14 referred to the appropriate calendar.

15 (B) PROCEEDING TO CONSIDERATION.—

16 (i) IN GENERAL.—After each com-
17 mittee authorized to consider a joint reso-
18 lution reports it to the House of Rep-
19 resentatives or has been discharged from
20 its consideration, it shall be in order, not
21 later than 210 days after the date on
22 which the joint resolution is introduced or
23 reintroduced in the House of Representa-
24 tives under paragraph (2), to move to pro-

1 ceed to consider the joint resolution in the
2 House of Representatives.

3 (ii) PROCEDURE.—For a motion to
4 proceed to consideration of a joint resolu-
5 tion—

6 (I) all points of order against the
7 motion are waived;

8 (II) such a motion shall not be in
9 order after the House of Representa-
10 tives has disposed of a motion to pro-
11 ceed on the joint resolution;

12 (III) the previous question shall
13 be considered as ordered on the mo-
14 tion to its adoption without inter-
15 vening motion;

16 (IV) the motion shall not be de-
17 batable; and

18 (V) a motion to reconsider the
19 vote by which the motion is disposed
20 of shall not be in order.

21 (C) CONSIDERATION.—If the House of
22 Representatives proceeds to consideration of a
23 joint resolution—

24 (i) the joint resolution shall be consid-
25 ered as read;

1 (ii) all points of order against the
 2 joint resolution and against its consider-
 3 ation are waived;

4 (iii) the previous question shall be
 5 considered as ordered on the joint resolu-
 6 tion to its passage without intervening mo-
 7 tion except 10 hours of debate equally di-
 8 vided and controlled by the proponent and
 9 an opponent;

10 (iv) an amendment to the joint resolu-
 11 tion shall not be in order; and

12 (v) a motion to reconsider the vote on
 13 passage of the joint resolution shall not be
 14 in order.

15 (4) EXPEDITED CONSIDERATION IN SENATE.—

16 (A) PLACEMENT ON CALENDAR.—Upon in-
 17 troduction in the Senate, the joint resolution
 18 shall be placed immediately on the calendar.

19 (B) PROCEEDING TO CONSIDERATION.—

20 (i) IN GENERAL.—Notwithstanding
 21 rule XXII of the Standing Rules of the
 22 Senate, it is in order, not later than 210
 23 days after the date on which the joint reso-
 24 lution is introduced or reintroduced in the
 25 Senate under paragraph (2) (even though

1 a previous motion to the same effect has
 2 been disagreed to) to move to proceed to
 3 the consideration of a joint resolution.

4 (ii) PROCEDURE.—For a motion to
 5 proceed to the consideration of a joint res-
 6 olution—

7 (I) all points of order against the
 8 motion are waived;

9 (II) the motion is not debatable;

10 (III) the motion is not subject to
 11 a motion to postpone;

12 (IV) a motion to reconsider the
 13 vote by which the motion is agreed to
 14 or disagreed to shall not be in order;
 15 and

16 (V) if the motion is agreed to,
 17 the joint resolution shall remain the
 18 unfinished business until disposed of.

19 (C) FLOOR CONSIDERATION.—

20 (i) IN GENERAL.—If the Senate pro-
 21 ceeds to consideration of a joint resolu-
 22 tion—

23 (I) all points of order against the
 24 joint resolution (and against consider-

1 ation of the joint resolution) are
2 waived;

3 (II) consideration of the joint
4 resolution, and all debatable motions
5 and appeals in connection therewith,
6 shall be limited to not more than 10
7 hours, which shall be divided equally
8 between the majority and minority
9 leaders or their designees;

10 (III) a motion further to limit de-
11 bate is in order and not debatable;

12 (IV) an amendment to, a motion
13 to postpone, or a motion to commit
14 the joint resolution is not in order;
15 and

16 (V) a motion to proceed to the
17 consideration of other business is not
18 in order.

19 (ii) VOTE ON PASSAGE.—The vote on
20 passage shall occur immediately following
21 the conclusion of the consideration of a
22 joint resolution, and a single quorum call
23 at the conclusion of the debate if requested
24 in accordance with the rules of the Senate.

1 (iii) RULINGS OF THE CHAIR ON PRO-
 2 CEDURE.—Appeals from the decisions of
 3 the Chair relating to the application of this
 4 paragraph or the rules of the Senate, as
 5 the case may be, to the procedure relating
 6 to a joint resolution shall be decided with-
 7 out debate.

8 (5) RULES RELATING TO SENATE AND HOUSE
 9 OF REPRESENTATIVES.—

10 (A) COORDINATION WITH ACTION BY
 11 OTHER HOUSE.—If, before the passage by one
 12 House of a joint resolution of that House, that
 13 House receives from the other House a joint
 14 resolution—

15 (i) the joint resolution of the other
 16 House shall not be referred to a com-
 17 mittee; and

18 (ii) with respect to a joint resolution
 19 of the House receiving the resolution—

20 (I) the procedure in that House
 21 shall be the same as if no joint resolu-
 22 tion had been received from the other
 23 House; and

1 (II) the vote on passage shall be
2 on the joint resolution of the other
3 House.

4 (B) TREATMENT OF JOINT RESOLUTION
5 OF OTHER HOUSE.—If one House fails to intro-
6 duce or consider a joint resolution under this
7 subsection, the joint resolution of the other
8 House shall be entitled to expedited floor proce-
9 dures under this subsection.

10 (C) TREATMENT OF COMPANION MEAS-
11 URES.—If, following passage of a joint resolu-
12 tion in the Senate, the Senate receives the com-
13 panion measure from the House of Representa-
14 tives, the companion measure shall not be de-
15 batable.

16 (D) CONSIDERATION AFTER PASSAGE.—If
17 the President vetoes the joint resolution, consid-
18 eration of a veto message in the Senate under
19 this paragraph shall be not more than 10 hours
20 equally divided between the majority and minor-
21 ity leaders or their designees.

22 (6) RULES OF HOUSE OF REPRESENTATIVES
23 AND SENATE.—This subsection is enacted by Con-
24 gress—

1 (A) as an exercise of the rulemaking power
 2 of the Senate and House of Representatives, re-
 3 spectively, and as such is deemed a part of the
 4 rules of each House, respectively, but applicable
 5 only with respect to the procedure to be fol-
 6 lowed in that House in the case of a joint reso-
 7 lution, and to supersede other rules only to the
 8 extent that it is inconsistent with such rules;
 9 and

10 (B) with full recognition of the constitu-
 11 tional right of either House to change the rules
 12 (so far as relating to the procedure of that
 13 House) at any time, in the same manner, and
 14 to the same extent as in the case of any other
 15 rule of that House.

16 (d) TECHNICAL AND CONFORMING AMENDMENT.—
 17 The table of sections for chapter 1 of title 18, United
 18 States Code, is amended by adding at the end the fol-
 19 lowing:

“28. State of mind when not otherwise specifically provided.”.

20 **SEC. 102. INVENTORY OF FEDERAL CRIMINAL OFFENSES.**

21 (a) DEFINITIONS.—In this section—

22 (1) the term “criminal regulatory offense”
 23 means a Federal regulation that is enforceable by a
 24 criminal penalty;

1 (2) the term “criminal statutory offense”
 2 means a criminal offense under a Federal statute;
 3 and

4 (3) the term “Executive agency”—

5 (A) has the meaning given the term in sec-
 6 tion 105 of title 5, United States Code; and

7 (B) includes the United States Postal
 8 Service and the Postal Regulatory Commission.

9 (b) REPORT ON CRIMINAL STATUTORY OFFENSES.—

10 Not later than 1 year after the date of enactment of this
 11 Act, the Attorney General shall submit to the Committee
 12 on the Judiciary of the Senate and the Committee on the
 13 Judiciary of the House of Representatives and make pub-
 14 licly available a report, which shall include—

15 (1) a list of all criminal statutory offenses, in-
 16 cluding a list of the elements for each criminal stat-
 17 utory offense; and

18 (2) for each criminal statutory offense listed
 19 under paragraph (1) and organized by Federal dis-
 20 trict where applicable—

21 (A) the potential criminal penalty for the
 22 criminal statutory offense;

23 (B) the number of violations of the crimi-
 24 nal statutory offense referred to the Depart-
 25 ment of Justice by an Executive agency for

1 prosecution, including referrals from investiga-
2 tive agencies of the Department of Justice, in
3 each of the years during the 15-year period pre-
4 ceding the date of enactment of this Act;

5 (C) the number of prosecutions for the
6 criminal statutory offense brought by the De-
7 partment of Justice each year for the 15-year
8 period preceding the date of enactment of this
9 Act;

10 (D) the number of prosecutions for the
11 criminal statutory offense brought by the De-
12 partment of Justice that have resulted in con-
13 viction for each year of the 15-year period pre-
14 ceding the date of enactment of this Act;

15 (E) the number of convictions for the
16 criminal statutory offense that have resulted in
17 imprisonment for each year of the 15-year pe-
18 riod preceding the date of enactment of this
19 Act;

20 (F) the average length of sentence of im-
21 prisonment imposed as a result of conviction for
22 the criminal statutory offense during each year
23 of the 15-year period preceding the date of en-
24 actment of this Act;

1 (G) the mens rea requirement for the
2 criminal statutory offense; and

3 (H) the number of prosecutions for the
4 criminal statutory offense in which the Depart-
5 ment of Justice was not required to prove mens
6 rea as a component of the offense.

7 (c) REPORT ON CRIMINAL REGULATORY OF-
8 FENSES.—Not later than 1 year after the date of enact-
9 ment of this Act, the head of each Executive agency shall
10 submit to the Committee on the Judiciary of the Senate
11 and the Committee on the Judiciary of the House of Rep-
12 resentatives and make publicly available a report, which
13 shall include—

14 (1) a list of all criminal regulatory offenses en-
15 forceable by the agency; and

16 (2) for each criminal regulatory offense listed
17 under paragraph (1)—

18 (A) the potential criminal penalty for a
19 violation of the criminal regulatory offense;

20 (B) the number of violations of the crimi-
21 nal regulatory offense referred to the Depart-
22 ment of Justice for prosecution in each of the
23 years during the 15-year period preceding the
24 date of enactment of this Act;

1 (C) the number of prosecutions for the
2 criminal regulatory offense brought by the De-
3 partment of Justice each year for the 15-year
4 period preceding the date of enactment of this
5 Act;

6 (D) the number of prosecutions for the
7 criminal regulatory offense brought by the De-
8 partment of Justice that have resulted in con-
9 viction for each year of the 15-year period pre-
10 ceeding the date of enactment of this Act;

11 (E) the number of convictions for the
12 criminal regulatory offense that have resulted in
13 imprisonment for each year of the 15-year pe-
14 riod preceding the date of enactment of this
15 Act;

16 (F) the average length of sentence of im-
17 prisonment imposed as a result of conviction for
18 the criminal regulatory offense during each year
19 of the 15-year period preceding the date of en-
20 actment of this Act;

21 (G) the mens rea requirement for the
22 criminal regulatory offense; and

23 (H) the number of prosecutions for the
24 criminal regulatory offense in which the De-

1 partment of Justice was not required to prove
2 mens rea as a component of the offense.

3 (d) INDEX.—Not later than 2 years after the date
4 of enactment of this Act—

5 (1) the Attorney General shall establish a pub-
6 lically accessible index of each criminal statutory of-
7 fense listed in the report required under subsection
8 (b) and make the index available and freely acces-
9 sible on the website of the Department of Justice;
10 and

11 (2) the head of each Executive agency shall es-
12 tablish a publically accessible index of each criminal
13 regulatory offense listed in the report required under
14 subsection (c) and make the index available and
15 freely accessible on the website of the agency.

16 (e) RULE OF CONSTRUCTION.—Nothing in this sec-
17 tion shall be construed to require or authorize appropria-
18 tions.

19 **TITLE II—NATIONAL CRIMINAL** 20 **JUSTICE COMMISSION ACT**

21 **SEC. 201. FINDINGS.**

22 Congress finds that—

23 (1) it is in the interest of the Nation to estab-
24 lish a commission to undertake a comprehensive re-
25 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 50 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. 202. ESTABLISHMENT OF COMMISSION.**

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

23 **SEC. 203. PURPOSE OF THE COMMISSION.**

24 The Commission shall—

1 (1) undertake a comprehensive review of the
2 criminal justice system;

3 (2) make recommendations for Federal criminal
4 justice reform to the President and Congress; and

5 (3) disseminate findings and supplemental guid-
6 ance to the Federal Government, as well as to State,
7 local, and tribal governments.

8 **SEC. 204. REVIEW, RECOMMENDATIONS, AND REPORT.**

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

13 (b) RECOMMENDATIONS.—

14 (1) IN GENERAL.—Not later than 18 months
15 after the first meeting of the Commission, the Com-
16 mission shall submit to the President and Congress
17 recommendations for changes in Federal oversight,
18 policies, practices, and laws designed to prevent,
19 deter, and reduce crime and violence, reduce recidi-
20 vism, improve cost-effectiveness, and ensure the in-
21 terests of justice at every step of the criminal justice
22 system.

23 (2) UNANIMOUS CONSENT REQUIRED.—A rec-
24 ommendation of the Commission may be adopted
25 and submitted under paragraph (1) if the rec-

ommendation is approved by a unanimous vote of the Commissioners at a meeting where a quorum is present pursuant to section 205(d).

(3) REQUIREMENT.—The recommendations submitted under this subsection shall be made available to the public.

(c) REPORT.—

(1) IN GENERAL.—Not later than 18 months after the first meeting of the Commission, the Commission shall also disseminate to the Federal Government, as well as to State, local, and tribal governments, a report that details the findings and supplemental guidance of the Commission regarding the criminal justice system at all levels of government.

(2) MAJORITY VOTE REQUIRED.—Commission findings and supplemental guidance may be adopted and included in the report required under paragraph (1) if the findings or guidance is approved by a majority vote of the Commissioners at a meeting where a quorum is present pursuant to section 205(d), except that any Commissioners dissenting from particular finding or supplemental guidance shall have the right to state the reason for their dissent in writing and such dissent shall be included in the report of the Commission.

1 (3) REQUIREMENT.—The report submitted
2 under this subsection shall be made available to the
3 public.

4 (d) PRIOR COMMISSIONS.—The Commission shall
5 take into consideration the work of prior relevant commis-
6 sions in conducting its review.

7 (e) STATE AND LOCAL GOVERNMENT.—In issuing its
8 recommendations and report under this section, the Com-
9 mission shall not infringe on the legitimate rights of the
10 States to determine their own criminal laws or the enforce-
11 ment of such laws.

12 (f) PUBLIC HEARINGS.—The Commission shall con-
13 duct public hearings in various locations around the
14 United States.

15 (g) CONSULTATION WITH GOVERNMENT AND NON-
16 GOVERNMENT REPRESENTATIVES.—

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

18 (A) closely consult with Federal, State,
19 local, and tribal government and nongovern-
20 mental leaders, including State, local, and tribal
21 law enforcement officials, legislators, public
22 health officials, judges, court administrators,
23 prosecutors, defense counsel, victims' rights or-
24 ganizations, probation and parole officials,
25 criminal justice planners, criminologists, civil

rights and liberties organizations, formerly incarcerated individuals, professional organizations, and corrections officials; and

(B) include in the final report required under subsection (c) summaries of the input and recommendations of these leaders.

(2) UNITED STATES SENTENCING COMMISSION.—To the extent the review and recommendations required by this section relate to sentencing policies and practices for the Federal criminal justice system, the Commission shall conduct such review and make such recommendations in consultation with the United States Sentencing Commission.

(h) SENSE OF CONGRESS, GOAL OF UNANIMITY.—

It is the sense of the Congress that, given the national importance of the matters before the Commission, the Commission should work toward unanimously supported findings and supplemental guidance, and that unanimously supported findings and supplemental guidance should take precedence over those findings and supplemental guidance that are not unanimously supported.

SEC. 205. MEMBERSHIP.

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

1 (1) One member shall be appointed by the
2 President, who shall serve as co-chairperson of the
3 Commission.

4 (2) One member shall be appointed by the lead-
5 er of the Senate, in consultation with the leader of
6 the House of Representatives, that is a member of
7 the opposite party of the President, who shall serve
8 as co-chairperson of the Commission.

9 (3) Two members shall be appointed by the sen-
10 ior member of the Senate leadership of the Demo-
11 cratic Party, in consultation with the Democratic
12 leadership of the Committee on the Judiciary.

13 (4) Two members shall be appointed by the sen-
14 ior member of the Senate leadership of the Repub-
15 lican Party, in consultation with the Republican
16 leadership of the Committee on the Judiciary.

17 (5) Two members shall be appointed by the sen-
18 ior member of the leadership of the House of Rep-
19 resentatives of the Republican Party, in consultation
20 with the Republican leadership of the Committee on
21 the Judiciary.

22 (6) Two members shall be appointed by the sen-
23 ior member of the leadership of the House of Rep-
24 resentatives of the Democratic Party, in consultation

1 with the Democratic leadership of the Committee on
2 the Judiciary.

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

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

17 (b) MEMBERSHIP.—

18 (1) QUALIFICATIONS.—The individuals ap-
19 pointed from private life as members of the Commis-
20 sion shall be individuals with distinguished reputa-
21 tions for integrity and nonpartisanship who are na-
22 tionally recognized for expertise, knowledge, or expe-
23 rience in such relevant areas as—

24 (A) law enforcement;

25 (B) criminal justice;

- 1 (C) national security;
- 2 (D) prison and jail administration;
- 3 (E) prisoner reentry;
- 4 (F) public health, including physical and
- 5 sexual victimization, drug addiction and mental
- 6 health;
- 7 (G) victims' rights;
- 8 (H) civil liberties;
- 9 (I) court administration;
- 10 (J) social services; and
- 11 (K) State, local, and tribal government.

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

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

19 (c) APPOINTMENT; FIRST MEETING.—

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

23 (2) FIRST MEETING.—The Commission shall
 24 hold its first meeting on the date that is 60 days
 25 after the date of enactment of this Act, or not later

1 than 30 days after the date on which funds are
2 made available for the Commission, whichever is
3 later.

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

12 (d) MEETINGS; QUORUM; VACANCIES.—

13 (1) MEETINGS.—The Commission shall meet at
14 the call of the co-chairpersons or a majority of its
15 members.

16 (2) QUORUM.—Eight members of the Commis-
17 sion shall constitute a quorum for purposes of con-
18 ducting business, except that 2 members of the
19 Commission shall constitute a quorum for purposes
20 of receiving testimony.

21 (3) VACANCIES.—Any vacancy in the Commis-
22 sion shall not affect its powers, but shall be filled in
23 the same manner in which the original appointment
24 was made. If vacancies in the Commission occur on
25 any day after 45 days after the date of the enact-

1 ment of this Act, a quorum shall consist of a major-
 2 ity of the members of the Commission as of such
 3 day, so long as not less than 1 Commission member
 4 chosen by a member of each party, Republican and
 5 Democratic, is present.

6 (e) ACTIONS OF COMMISSION.—

7 (1) IN GENERAL.—The Commission—

8 (A) shall, subject to the requirements of
 9 section 204, act by resolution agreed to by a
 10 majority of the members of the Commission
 11 voting and present; and

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

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

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

23 (2) DELEGATION.—Any member, agent, or staff
 24 of the Commission may, if authorized by the co-
 25 chairpersons of the Commission, take any action

1 which the Commission is authorized to take pursu-
2 ant to this Act.

3 **SEC. 206. ADMINISTRATION.**

4 (a) STAFF.—

5 (1) EXECUTIVE DIRECTOR.—The Commission
6 shall have a staff headed by an Executive Director.
7 The Executive Director shall be paid at a rate estab-
8 lished for the Certified Plan pay level for the Senior
9 Executive Service under section 5382 of title 5,
10 United States Code.

11 (2) APPOINTMENT AND COMPENSATION.—The
12 co-chairpersons of the Commission shall designate
13 the Executive Director and, in accordance with rules
14 agreed upon by the Commission, may appoint and
15 fix the compensation of such other personnel as may
16 be necessary to enable the Commission to carry out
17 its functions, without regard to the provisions of
18 title 5, United States Code, governing appointments
19 in the competitive service, and without regard to the
20 provisions of chapter 51 and subchapter III of chap-
21 ter 53 of such title relating to classification and
22 General Schedule pay rates, except that no rate of
23 pay fixed under this paragraph may exceed the
24 equivalent of that payable for a position at level V

1 of the Executive Schedule under section 5316 of title
2 5, United States Code.

3 (3) PERSONNEL AS FEDERAL EMPLOYEES.—

4 (A) IN GENERAL.—The executive director
5 and any personnel of the Commission who are
6 employees shall be employees under section
7 2105 of title 5, United States Code, for pur-
8 poses of chapters 63, 81, 83, 84, 85, 87, 89,
9 and 90 of that title.

10 (B) MEMBERS OF COMMISSION.—Subpara-
11 graph (A) shall not be construed to apply to
12 members of the Commission.

13 (4) THE COMPENSATION OF COMMISSIONERS.—

14 Each member of the Commission may be com-
15 pensated at not to exceed the daily equivalent of the
16 annual rate of basic pay in effect for a position at
17 level V of the Executive Schedule under section 5315
18 of title 5, United States Code, for each day during
19 which that member is engaged in the actual per-
20 formance of the duties of the Commission. All mem-
21 bers of the Commission who are officers or employ-
22 ees of the United States, a State, or a local govern-
23 ment shall serve without compensation in addition to
24 that received for their services as officers or employ-
25 ees.

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

9 (b) EXPERTS AND CONSULTANTS.—With the ap-
10 proval of the Commission, the Executive Director may
11 procure temporary and intermittent services under section
12 3109(b) of title 5, United States Code.

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

20 (d) OTHER RESOURCES.—The Commission shall
21 have reasonable access to materials, resources, statistical
22 data, and other information such Commission determines
23 to be necessary to carry out its duties from the Library
24 of Congress, the Department of Justice, the Office of Na-
25 tional Drug Control Policy, the Department of State, and

1 other agencies of the executive and legislative branches of
2 the Federal Government. The co-chairpersons of the Com-
3 mission shall make requests for such access in writing
4 when necessary.

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

21 (f) OBTAINING OFFICIAL DATA.—The Commission
22 may secure directly from any agency of the United States
23 information necessary to enable it to carry out this Act.
24 Upon the request of the co-chairpersons of the Commis-
25 sion, the head of that department or agency shall furnish

1 that information to the Commission. The Commission
2 shall not have access to sensitive information regarding
3 ongoing investigations.

4 (g) **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 (h) **ADMINISTRATIVE REPORTING.**—The Commission
9 shall issue biannual status reports to Congress regarding
10 the use of resources, salaries, and all expenditures of ap-
11 propriated funds.

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

19 (j) **GIFTS.**—Subject to existing law, the Commission
20 may accept, use, and dispose of gifts or donations of serv-
21 ices or property.

22 (k) **ADMINISTRATIVE ASSISTANCE.**—The Adminis-
23 trator of General Services shall provide to the Commis-
24 sion, on a reimbursable basis, the administrative support
25 services necessary for the Commission to carry out its re-

1 sponsibilities under this Act. These administrative services
2 may include human resource management, budget, leas-
3 ing, accounting, and payroll services.

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

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

9 (2) MEETINGS AND MINUTES.—

10 (A) MEETINGS.—

11 (i) ADMINISTRATION.—All meetings of
12 the Commission shall be open to the pub-
13 lic, except that a meeting or any portion of
14 it may be closed to the public if it concerns
15 matters or information described in section
16 552b(c) of title 5, United States Code. In-
17 terested persons shall be permitted to ap-
18 pear at open meetings and present oral or
19 written statements on the subject matter
20 of the meeting. The Commission may ad-
21 minister oaths or affirmations to any per-
22 son appearing before it.

23 (ii) NOTICE.—All open meetings of
24 the Commission shall be preceded by time-

1 ly public notice in the Federal Register of
2 the time, place, and subject of the meeting.

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

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

17 **SEC. 207. SUNSET.**

18 The Commission shall terminate 60 days after the
19 Commission submits the report required under section 204
20 to Congress.

○