

116TH CONGRESS
2D SESSION

S. 4169

To establish a National Commission on United States Counterterrorism Policy, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 2, 2020

Mr. PETERS introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To establish a National Commission on United States Counterterrorism Policy, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “National Commission
5 on United States Counterterrorism Policy Act of 2020”.

6 **SEC. 2. NATIONAL COMMISSION ON UNITED STATES**
7 **COUNTERTERRORISM POLICY.**

8 (a) ESTABLISHMENT.—There is established an inde-
9 pendent commission within the legislative branch to be
10 known as the “National Commission on United States

1 Counterterrorism Policy” (in this section referred to as
2 the “Commission”).

3 (b) PURPOSE.—The Commission shall—

4 (1) review United States counterterrorism ob-
5 jectives, priorities, capabilities, policies, programs,
6 and activities; and

7 (2) assess how to adapt and prioritize such poli-
8 cies, programs, and activities to ensure such policies,
9 programs, and activities—

10 (A) employ an appropriate mix of available
11 instruments of national power;

12 (B) comply with the rule of law and re-
13 spect for civil rights, civil liberties, and human
14 rights;

15 (C) appropriately focus on existing and
16 emerging terrorism risks; and

17 (D) are appropriately balanced relative to
18 the pursuit of other United States interests in
19 an era when the United States faces a diverse
20 range of threats from domestic and inter-
21 national terrorism, a dynamic number of polit-
22 ical, economic, and military competitions
23 around the world, and challenges within the
24 United States.

1 (c) STUDY AREAS.—In carrying out subsection (b),
2 the Commission shall study the following:

3 (1) The evolution of threats to the United
4 States since September 11, 2001, from international
5 and domestic terrorism, including an assessment of
6 potential connections between such threats, and the
7 risks such threats pose relative to other threats to
8 the United States and United States national inter-
9 ests.

10 (2) Major lessons learned from United States
11 counterterrorism objectives, priorities, capabilities,
12 policies, programs and activities since September 11,
13 2001, and the relevance of such lessons for ongoing
14 and future counterterrorism objectives, priorities,
15 policies, programs, and activities.

16 (3) Ongoing United States counterterrorism ob-
17 jectives, priorities, capabilities, policies, programs,
18 and activities, including an assessment of the fol-
19 lowing:

20 (A) Any tradeoffs that exist between such
21 objectives, priorities, capabilities, policies, pro-
22 grams, and activities.

23 (B) The integration, programmatically and
24 organizationally, of such objectives, priorities,
25 capabilities, policies, programs, and activities

1 into wider United States foreign and domestic
2 policy.

3 (C) The instruments used to advance
4 counterterrorism objectives and the identifica-
5 tion of new or modified instruments, if appro-
6 priate.

7 (D) Any impacts on civil rights and civil
8 liberties in the United States and internation-
9 ally recognized human rights abroad.

10 (E) Any impacts on the counterterrorism
11 policies of partner countries.

12 (F) Congressional oversight of such objec-
13 tives, priorities, capabilities, policies, programs,
14 and activities.

15 (G) Whether counterterrorism resources
16 are appropriately balanced across the range of
17 terrorist threats facing the United States and
18 across the range of counterterrorism programs
19 and activities conducted by the United States
20 Government.

21 (4) The legal and policy frameworks for
22 counterterrorism programs and activities in the
23 United States and abroad, including adherence to
24 such frameworks.

1 (5) The tradeoffs the United States may face as
2 it seeks to balance counterterrorism objectives and
3 priorities with a growing number of political, eco-
4 nomic, and military competitions around the world
5 and challenges at home, and how to mitigate any
6 risks such tradeoffs might pose.

7 (6) Potential new or emerging challenges of
8 conducting counterterrorism operations in contested
9 environments, where strategic state competitors such
10 as Russia, China, or Iran operate.

11 (7) The state of United States counterterrorism
12 partnerships, including the willingness, capacity, and
13 capability of United States counterterrorism part-
14 ners to combat shared threats.

15 (8) The policies and operations of private enti-
16 ties, including the defense industry and technology
17 and media entities, that have implications for domes-
18 tic terrorism and international terrorism, including
19 implications of involvement of private entities in
20 United States counterterrorism policies, programs,
21 and activities.

22 (9) The effects of United States counterter-
23 rorism objectives, priorities, capabilities, policies,
24 programs, and activities on threats from domestic
25 terrorism and international terrorism.

1 (10) Ongoing efforts by the executive branch to
2 measure the effectiveness of counterterrorism poli-
3 cies, programs, and activities through net assess-
4 ments and evaluations of lessons learned, including
5 an assessment of efforts to address factors that con-
6 tribute to terrorist recruitment and radicalization.

7 (11) Recommendations on how best to adapt
8 United States counterterrorism objectives, priorities,
9 capabilities, policies, programs, and activities to ad-
10 dress existing and emerging terrorism risks on the
11 basis of the areas of study specified in this sub-
12 section and any other findings the Commission de-
13 termines relevant.

14 (d) COMPOSITION.—

15 (1) MEMBERS.—The Commission shall be com-
16 posed of 14 commissioners, to be appointed as fol-
17 lows:

18 (A) One commissioner appointed by the
19 Chairman, with the concurrence of the ranking
20 member, of each of the appropriate congres-
21 sional committees.

22 (B) A Chairperson, appointed by the
23 Speaker of the House of Representatives, with
24 the concurrence of the minority leader of the
25 House of Representatives.

1 (C) A Vice-Chairperson, appointed by the
2 majority leader of the Senate, with the concur-
3 rence of the minority leader of the Senate.

4 (2) QUALIFICATIONS.—Individuals appointed to
5 the Commission shall be United States persons with
6 relevant counterterrorism expertise and experience in
7 diplomacy, law enforcement, the Armed Forces, law,
8 public administration, the legislative branch, intel-
9 ligence, academia, human rights, civil rights, or civil
10 liberties. The leadership of the Senate and the
11 House of Representatives shall coordinate with the
12 appropriate congressional committees to ensure that
13 Commission membership represents a variety of ex-
14 pertise in such fields. At least 1 of the commis-
15 sioners shall, in addition to relevant counterter-
16 rorism expertise, possess a civil rights or civil lib-
17 erties background and 1 of the commissioners shall,
18 in addition to relevant counterterrorism expertise,
19 possess an international human rights background.

20 (3) PROHIBITIONS.—An individual appointed to
21 the Commission may not be—

22 (A) a Member of Congress, including a
23 Delegate or Resident Commissioner;

24 (B) an officer or employee of any branch
25 of the Federal Government;

1 (C) an employee or official of any State,
2 territory, county, or municipality in the United
3 States; or

4 (D) a registered lobbyist.

5 (4) CONFLICTS OF INTEREST.—An individual
6 appointed to the Commission shall disclose any fi-
7 nancial gains from private sector employment con-
8 ducted in support of United States counterterrorism
9 policies, programs, or activities at any time since
10 September 11, 2001.

11 (5) DEADLINE FOR APPOINTMENT OF COMMIS-
12 SIONERS.—Individuals appointed to the Commission
13 shall be appointed not later than 30 days after the
14 date of the enactment of this Act.

15 (6) PERIOD OF APPOINTMENT.—Each commis-
16 sioner and the Chairperson and Vice-Chairperson
17 shall be appointed for the life of the Commission.

18 (7) VACANCIES.—Any vacancy in the Commis-
19 sion shall not affect its powers and duties and shall
20 be filled in the same manner as the original appoint-
21 ment within 30 days of such vacancy occurring.

22 (8) COMPENSATION.—Commissioners and the
23 Chairperson and Vice-Chairperson shall serve with-
24 out pay.

1 (9) TRAVEL EXPENSES.—Commissioners and
2 the Chairperson and Vice-Chairperson shall receive
3 travel expenses, including per diem in lieu of subsist-
4 ence, in accordance with sections 5702 and 5703 of
5 title 5, United States Code, while away from their
6 homes or regular places of business in performance
7 of services for the Commission.

8 (e) MEETINGS.—

9 (1) INITIAL MEETING.—Not later than 30 days
10 after the appointment of two-thirds of the members
11 of the Commission, including the Chairperson or
12 Vice-Chairperson, the Commission shall hold an ini-
13 tial meeting to develop and implement a schedule for
14 completion of the review and assessment under sub-
15 section (b) of the areas of study specified in sub-
16 section (c) and the report required under subsection
17 (m)(2).

18 (2) SUBSEQUENT MEETINGS.—The Commission
19 shall meet at the call of the Chairperson or a major-
20 ity of commissioners.

21 (3) QUORUM.—Eight members shall constitute
22 a quorum and members shall have the option to vote
23 by proxy.

24 (f) CONSULTATION.—In conducting the review, as-
25 sessment, and study required under this section, the Com-

1 mission shall consult with relevant experts in the Federal
2 Government (including relevant Members of Congress and
3 congressional staff), academia, law, civil society, and the
4 private sector.

5 (g) POWERS OF THE COMMISSION.—

6 (1) HEARINGS AND EVIDENCE.—For the pur-
7 poses of carrying out this section, the Commission
8 may—

9 (A) hold classified or unclassified hearings,
10 take testimony, receive evidence, and administer
11 oaths; and

12 (B) subject to paragraph (3), require, by
13 subpoena authorized by majority vote of the
14 Commission and issued under the signature of
15 the Chairperson or any member designated by
16 a majority of the Commission, the attendance
17 and testimony of such witnesses and the pro-
18 duction of such books, records, correspondence,
19 memoranda, papers, and documents, as the
20 Commission may determine advisable.

21 (2) NOTIFICATION OF COMMITTEES.—If the
22 Commission is unable to obtain testimony or docu-
23 ments needed to conduct its work, the Commission
24 shall notify the appropriate congressional committees
25 and appropriate investigative authorities.

1 (3) SUBPOENA ENFORCEMENT.—

2 (A) IN GENERAL.—In the case of contu-
3 macy or failure to obey a subpoena issued
4 under paragraph (1)(B), the United States dis-
5 trict court for the judicial district in which the
6 subpoenaed person resides, is served, or may be
7 found, or where the subpoena is returnable,
8 may issue an order requiring such person to ap-
9 pear at any designated place to testify or to
10 produce documentary or other evidence. Any
11 failure to obey the order of the court may be
12 punished by the court as a contempt of that
13 court.

14 (B) ADDITIONAL ENFORCEMENT.—In the
15 case of any failure of any witness to comply
16 with any subpoena or to testify when sum-
17 moned under authority of this section, the Com-
18 mission may, by majority vote, certify a state-
19 ment of fact constituting such failure to the ap-
20 propriate United States attorney, who may
21 bring the matter before the grand jury for its
22 action, under the same statutory authority and
23 procedures as if the United States attorney had
24 received a certification under sections 102

1 through 104 of the Revised Statutes of the
2 United States (2 U.S.C. 192 through 194).

3 (4) LIMITATIONS ON SUBPOENA AUTHORITY.—

4 With respect to the subpoena authority under para-
5 graph (1)(B), the Commission—

6 (A) may only issue a subpoena to a mem-
7 ber of Federal, State, local, Tribal, or territorial
8 government;

9 (B) may reference unclassified documents
10 and information obtained through a subpoena
11 when conducting interviews to further the Com-
12 mission's objectives and may include such docu-
13 ments and information in the final report, but
14 may not otherwise share, disclose, publish, or
15 transmit in any way any information obtained
16 through a subpoena to another Federal depart-
17 ment or agency, any agency of a State, local,
18 Tribal, or territorial government, or any inter-
19 national body; and

20 (C) shall comply with requirements for the
21 issuance of a subpoena issued by a United
22 States district court under the Federal Rules of
23 Civil Procedure.

24 (5) MEETINGS.—The Commission shall—

25 (A) hold public hearings and meetings;

1 (B) hold classified hearings or meetings, if
2 necessary to discuss classified material or infor-
3 mation; and

4 (C) provide an opportunity for public com-
5 ment, including sharing of research and policy
6 analysis, through publication in the Federal
7 Register of a solicitation for public comments
8 during a period to last not fewer than 45 days.

9 (h) RESOURCES.—

10 (1) AUTHORITY TO USE THE UNITED STATES
11 MAILS.—The Commission may use the United States
12 mails in the same manner and under the same con-
13 ditions as other Federal agencies.

14 (2) DOCUMENTS, STATISTICAL DATA, AND
15 OTHER SUCH INFORMATION.—Upon written request
16 by the Chairperson, Vice-Chairperson, or any com-
17 missioner designated by a majority of the Commis-
18 sion, an executive department, bureau, agency,
19 board, commission, office, independent establish-
20 ment, or instrumentality of the Federal Govern-
21 ment—

22 (A) shall provide reasonable access to doc-
23 uments, statistical data, and other such infor-
24 mation the Commission determines necessary to
25 carry out its duties; and

1 (B) shall, to the extent authorized by law,
2 furnish any information, suggestions, estimates,
3 and statistics the Commission determines nec-
4 essary to carry out its duties.

5 (3) AUTHORITY TO ACCEPT GIFTS.—The Com-
6 mission may accept, use, and dispose of gifts or do-
7 nations of services, goods, and property from non-
8 Federal entities for the purposes of aiding and facili-
9 tating the work of the Commission. The authority
10 provided in this paragraph does not extend to gifts
11 of money in any form, or any gifts from private sec-
12 tor entities with a financial interest in counterter-
13 rorism products or services, as determined by the
14 Commission. The Commission shall publish as an
15 addendum to the report under subsection (m)(2) a
16 list of all gifts received and the individual or entity
17 from which the gift was received.

18 (4) AUTHORITY TO CONTRACT.—

19 (A) IN GENERAL.—The Commission is au-
20 thorized to enter into contracts, leases, or other
21 legal agreements with Federal and State agen-
22 cies, Indian Tribes, Tribal entities, private enti-
23 ties, and individuals for the conduct of activities
24 necessary to the discharge of its duties.

1 (B) TERMINATION.—A contract, lease, or
2 other legal agreement entered into by the Com-
3 mission under this paragraph may not extend
4 beyond the date of termination of the Commis-
5 sion.

6 (5) INAPPLICABILITY OF FACA.—The Federal
7 Advisory Committee Act (5 U.S.C. App.) shall not
8 apply to the activities of the Commission under this
9 section.

10 (6) OFFICE SPACE AND ADMINISTRATIVE SUP-
11 PORT.—The Architect of the Capitol shall make of-
12 fice space available for day-to-day activities of the
13 Commission and for scheduled meetings of the Com-
14 mission. Upon request, the Architect of the Capitol
15 shall provide, on a reimbursable basis, such adminis-
16 trative support as the Commission requests to carry
17 out its duties.

18 (7) ASSISTANCE FROM FEDERAL AGENCIES.—

19 (A) GENERAL SERVICES ADMINISTRA-
20 TION.—The Administrator of General Services
21 shall provide to the Commission on a reimburs-
22 able basis administrative support and other
23 services as the Commission requests to carry
24 out its duties.

1 (B) FEDERAL AGENCIES.—Federal agen-
2 cies may provide to the Commission such serv-
3 ices, funds, facilities, and other support services
4 as may be determined advisable.

5 (i) STAFF.—

6 (1) STAFF DIRECTOR.—The Chairperson, in
7 consultation with the Vice-Chairperson, and in ac-
8 cordance with rules agreed upon by the Commission,
9 may appoint a staff director.

10 (2) STAFF.—With the approval of the Commis-
11 sion, the staff director may appoint such employees
12 as the staff director determines necessary to enable
13 the Commission to carry out its duties.

14 (3) STAFF QUALIFICATIONS.—The staff direc-
15 tor shall ensure employees of the Commission have
16 relevant counterterrorism expertise and experience,
17 including in areas such as in diplomacy, law enforce-
18 ment, the Armed Forces, law, public administration,
19 the legislative branch, intelligence, academia, human
20 rights, civil rights, or civil liberties.

21 (4) APPOINTMENTS AND COMPENSATION.—The
22 Commission may appoint and fix the compensation
23 of the staff director and other employees without re-
24 gard to the provisions of title 5, United States Code,
25 governing appointments in the competitive service,

1 and without regard to the provisions of chapter 51
2 and subchapter III of chapter 53 of such title relat-
3 ing to classification and General Schedule pay rates,
4 except that the rate of pay for the staff director may
5 exceed the equivalent of that payable to a person oc-
6 cupying a position at level IV of the Executive
7 Schedule and the rate of pay for any other employee
8 of the Commission may exceed the equivalent of that
9 payable to a person occupying a position at level V
10 of the Executive Schedule.

11 (5) EXPERTS AND CONSULTANTS.—With the
12 approval of the Chairperson, the staff director may
13 procure temporary and intermittent services under
14 section 3109(b) of title 5, United States Code.

15 (6) DETAIL OF GOVERNMENT EMPLOYEES.—
16 Upon the request of the Commission, the head of
17 any Federal agency may detail, without reimburse-
18 ment, any of the personnel of such agency to the
19 Commission to assist in carrying out its duties. Any
20 such detail shall not interrupt or otherwise affect the
21 civil service status or privileges of such personnel.

22 (7) VOLUNTEER SERVICES.—Notwithstanding
23 section 1342 of title 31, United States Code, the
24 Commission may accept and use voluntary and un-

1 compensated services as the Commission determines
2 necessary.

3 (j) SECURITY CLEARANCES FOR COMMISSION MEM-
4 BERS AND STAFF.—The appropriate Federal agencies or
5 departments shall cooperate with the Commission in expe-
6 ditiously providing to the commissioners, including the
7 Chairperson and Vice-Chairperson, and the staff director
8 and employees appropriate security clearances to the ex-
9 tent possible pursuant to existing procedures and require-
10 ments, except that no person shall be provided with access
11 to classified information without the appropriate security
12 clearances.

13 (k) FUNDING.—There is authorized to be appro-
14 priated \$4,000,000 to the Commission, to remain available
15 until the date of termination, to carry out this Act.

16 (l) TERMINATION.—The Commission shall terminate
17 on the date that is 180 days after the date on which the
18 Commission submits the report required by subsection
19 (m)(2).

20 (m) BRIEFINGS AND REPORT.—

21 (1) BRIEFINGS.—The Chairperson, Vice-Chair-
22 person, and staff director of the Commission shall
23 provide quarterly briefings to the appropriate con-
24 gressional committees, of which not less than 2
25 briefings shall be for Members of Congress.

1 (2) REPORT.—

2 (A) IN GENERAL.—Not later than 540
3 days after the initial meeting of the Commis-
4 sion under subsection (e), the Commission shall
5 submit to the appropriate congressional com-
6 mittees an unclassified report that includes the
7 following:

8 (i) The findings, conclusions, and rec-
9 ommendations of the Commission pursuant
10 to the review and assessment under sub-
11 section (b) and areas of study specified in
12 subsection (c).

13 (ii) Summaries of the input and rec-
14 ommendations of each individual with
15 whom the Commission consulted in accord-
16 ance with subsection (f), attributed in ac-
17 cordance with the preference expressed by
18 such individual.

19 (B) CLASSIFIED ANNEX.—The report re-
20 quired under this paragraph may include a clas-
21 sified annex.

22 (C) PUBLIC RELEASE.—Not later than 7
23 days after the date on which the Commission
24 submits the report required under this sub-
25 section to the appropriate congressional com-

1 mittees, the Commission shall make publicly
2 available the report required under this para-
3 graph, with the exception of any classified
4 annex under subparagraph (B).

5 (n) DEFINITIONS.—In this section:

6 (1) APPROPRIATE CONGRESSIONAL COMMIT-
7 TEES.—The term “appropriate congressional com-
8 mittees” means—

9 (A) the Committee on Foreign Relations,
10 the Select Committee on Intelligence, the Com-
11 mittee on Armed Services, the Committee on
12 Homeland Security and Governmental Affairs,
13 the Committee on the Judiciary, and the Com-
14 mittee on Finance of the Senate; and

15 (B) the Committee on Foreign Affairs, the
16 Permanent Select Committee on Intelligence,
17 the Committee on Armed Services, the Com-
18 mittee on Homeland Security, the Committee
19 on the Judiciary, and the Committee on Finan-
20 cial Services of the House of Representatives.

21 (2) DOMESTIC TERRORISM.—The term “domes-
22 tic terrorism” has the meaning given such term in
23 section 2331 of title 18, United States Code.

24 (3) INDIAN TRIBE.—The term “Indian Tribe”
25 has the meaning given the term “Indian tribe” in

1 section 4 of the Indian Self-Determination and Edu-
2 cation Assistance Act of 1975 (25 U.S.C. 5304).

3 (4) INTERNATIONAL TERRORISM.—The term
4 “international terrorism” has the meaning given
5 such term in section 2331 of title 18, United States
6 Code.

7 (5) REGISTERED LOBBYIST.—The term “reg-
8 istered lobbyist” means a lobbyist described in sec-
9 tion 3 of the Lobbying Disclosure Act of 1995 (2
10 U.S.C. 1603).

11 (6) UNITED STATES PERSON.—The term
12 “United States person” has the meaning given that
13 term in section 101 of the Foreign Intelligence Sur-
14 veillance Act of 1978 (50 U.S.C. 1801).

