

115TH CONGRESS
1ST SESSION

S. 1933

To focus limited Federal resources on the most serious offenders.

IN THE SENATE OF THE UNITED STATES

OCTOBER 5, 2017

Mr. LEE (for himself, Mr. DURBIN, Mr. FLAKE, Mr. LEAHY, Mr. BOOKER, Mr. WHITEHOUSE, Mr. FRANKEN, Mr. BLUMENTHAL, Mr. UDALL, Mr. WYDEN, Mr. SCHATZ, Mr. KING, Mr. PETERS, Mr. MARKEY, Ms. DUCKWORTH, Mr. SANDERS, Mr. HEINRICH, Mr. COONS, Mr. MERKLEY, Mr. KAINE, and Ms. BALDWIN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To focus limited Federal resources on the most serious offenders.

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 “Smarter Sentencing
5 Act of 2017”.

6 **SEC. 2. APPLICABILITY OF STATUTORY MINIMUMS.**

7 Section 3553(f)(1) of title 18, United States Code,
8 is amended by striking “defendant” and all that follows

1 through “point” and inserting “criminal history category
2 for the defendant is not higher than category 2”.

3 **SEC. 3. CLARIFICATION OF APPLICABILITY OF THE FAIR**
4 **SENTENCING ACT.**

5 (a) DEFINITION OF COVERED OFFENSE.—In this
6 section, the term “covered offense” means a violation of
7 a Federal criminal statute, the statutory penalties for
8 which were modified by section 2 or 3 of the Fair Sen-
9 tencing Act of 2010 (Public Law 111–220; 124 Stat.
10 2372), that was committed before August 3, 2010.

11 (b) DEFENDANTS PREVIOUSLY SENTENCED.—A
12 court that imposed a sentence for a covered offense, may,
13 on motion of the defendant, the Director of the Bureau
14 of Prisons, the attorney for the Government, or the court,
15 impose a reduced sentence as if sections 2 and 3 of the
16 Fair Sentencing Act of 2010 (Public Law 111–220; 124
17 Stat. 2372) were in effect at the time the covered offense
18 was committed.

19 (c) LIMITATIONS.—No court shall entertain a motion
20 made under this section to reduce a sentence if the sen-
21 tence was previously imposed or previously reduced in ac-
22 cordance with the amendments made by sections 2 and
23 3 of the Fair Sentencing Act of 2010 (Public Law 111–
24 220; 124 Stat. 2372) or if a motion made under this sec-
25 tion to reduce the sentence was previously denied. Nothing

1 in this section shall be construed to require a court to re-
 2 duce any sentence pursuant to this section.

3 **SEC. 4. SENTENCING MODIFICATIONS FOR CERTAIN DRUG**
 4 **OFFENSES.**

5 (a) CONTROLLED SUBSTANCES ACT.—The Con-
 6 trolled Substances Act (21 U.S.C. 801 et seq.) is amend-
 7 ed—

8 (1) in section 102 (21 U.S.C. 802), by adding
 9 at the end the following:

10 “(57) The term ‘courier’ means a defendant
 11 whose role in the offense was limited to transporting
 12 or storing drugs or money.”; and

13 (2) in section 401(b)(1) (21 U.S.C.
 14 841(b)(1))—

15 (A) in the flush text following clause
 16 (viii)—

17 (i) by striking “10 years or more”
 18 and inserting “5 years or more”;

19 (ii) by striking “such person shall be
 20 sentenced to a term of imprisonment which
 21 may not be less than 20 years and” and
 22 inserting “such person shall be sentenced
 23 to a term of imprisonment of not less than
 24 10 years and”; and

1 (iii) by striking “mandatory term of
 2 life imprisonment without release” and in-
 3 serting “term of imprisonment of not less
 4 than 25 years”; and

5 (B) in the flush text following clause
 6 (viii)—

7 (i) by striking “5 years” and inserting
 8 “2 years”; and

9 (ii) by striking “not be less than 10
 10 years” and inserting “not be less than 5
 11 years”.

12 (b) CONTROLLED SUBSTANCES IMPORT AND EXPORT
 13 ACT.—Section 1010(b) of the Controlled Substances Im-
 14 port and Export Act (21 U.S.C. 960(b)) is amended—

15 (1) in paragraph (1), in the flush text following
 16 subparagraph (H)—

17 (A) by inserting “, other than a person
 18 who is a courier,” after “such violation”;

19 (B) by striking “person commits” and in-
 20 serting “person, other than a courier, com-
 21 mits”; and

22 (C) by inserting “If a person who is a cou-
 23 rier commits such a violation, the person shall
 24 be sentenced to a term of imprisonment of not
 25 less than 5 years and not more than life. If a

1 person who is a courier commits such a viola-
2 tion after a prior conviction for a felony drug
3 offense has become final, the person shall be
4 sentenced to a term of imprisonment of not less
5 than 10 years and not more than life.” before
6 “Notwithstanding section 3583”; and

7 (2) in paragraph (2), in the flush text following
8 subparagraph (H)—

9 (A) by inserting “, other than a person
10 who is a courier,” after “such violation”;

11 (B) by striking “person commits” and in-
12 serting “person, other than a courier, com-
13 mits”; and

14 (C) by inserting “If a person who is a cou-
15 rier commits such a violation, the person shall
16 be sentenced to a term of imprisonment of not
17 less than 2 years and not more than life. If a
18 person who is a courier commits such a viola-
19 tion after a prior conviction for a felony drug
20 offense has become final, the person shall be
21 sentenced to a term of imprisonment of not less
22 than 5 years and not more than life.” before
23 “Notwithstanding section 3583”.

1 **SEC. 5. DIRECTIVE TO THE SENTENCING COMMISSION.**

2 (a) DIRECTIVE TO SENTENCING COMMISSION.—Pur-
3 suant to its authority under section 994(p) of title 28,
4 United States Code, and in accordance with this section,
5 the United States Sentencing Commission shall review and
6 amend, if appropriate, its guidelines and its policy state-
7 ments applicable to persons convicted of an offense under
8 section 401 of the Controlled Substances Act (21 U.S.C.
9 841) or section 1010 of the Controlled Substances Import
10 and Export Act (21 U.S.C. 960) to ensure that the guide-
11 lines and policy statements are consistent with the amend-
12 ments made by sections 2 and 4 of this Act and reflect
13 the intent of Congress that such penalties be decreased
14 in accordance with the amendments made by section 4 of
15 this Act.

16 (b) CONSIDERATIONS.—In carrying out this section,
17 the United States Sentencing Commission shall con-
18 sider—

19 (1) the mandate of the United States Sen-
20 tencing Commission, under section 994(g) of title
21 28, United States Code, to formulate the sentencing
22 guidelines in such a way as to “minimize the likeli-
23 hood that the Federal prison population will exceed
24 the capacity of the Federal prisons”;

25 (2) the findings and conclusions of the United
26 States Sentencing Commission in its October 2011

1 report to Congress entitled, Mandatory Minimum
2 Penalties in the Federal Criminal Justice System;

3 (3) the fiscal implications of any amendments
4 or revisions to the sentencing guidelines or policy
5 statements made by the United States Sentencing
6 Commission;

7 (4) the relevant public safety concerns involved
8 in the considerations before the United States Sen-
9 tencing Commission;

10 (5) the intent of Congress that penalties for
11 violent, repeat, and serious drug traffickers who
12 present public safety risks remain appropriately se-
13 vere; and

14 (6) the need to reduce and prevent racial dis-
15 parities in Federal sentencing.

16 (c) EMERGENCY AUTHORITY.—The United States
17 Sentencing Commission shall—

18 (1) promulgate the guidelines, policy state-
19 ments, or amendments provided for in this Act as
20 soon as practicable, and in any event not later than
21 120 days after the date of enactment of this Act, in
22 accordance with the procedure set forth in section
23 21(a) of the Sentencing Act of 1987 (28 U.S.C. 994
24 note), as though the authority under that Act had
25 not expired; and

1 (2) pursuant to the emergency authority pro-
2 vided under paragraph (1), make such conforming
3 amendments to the Federal sentencing guidelines as
4 the Commission determines necessary to achieve
5 consistency with other guideline provisions and ap-
6 plicable law.

7 **SEC. 6. REPORT BY ATTORNEY GENERAL.**

8 Not later than 6 months after the date of enactment
9 of this Act, the Attorney General shall submit to the Com-
10 mittees on the Judiciary of the House of Representatives
11 and the Senate a report outlining how the reduced expend-
12 itures on Federal corrections and the cost savings result-
13 ing from this Act will be used to help reduce overcrowding
14 in the Federal Bureau of Prisons, help increase proper in-
15 vestment in law enforcement and crime prevention, and
16 help reduce criminal recidivism, thereby increasing the ef-
17 fectiveness of Federal criminal justice spending.

18 **SEC. 7. REPORT ON FEDERAL CRIMINAL OFFENSES.**

19 (a) DEFINITIONS.—In this section—

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

23 (2) the term “criminal statutory offense”
24 means a criminal offense under a Federal statute.

1 (b) REPORT ON CRIMINAL STATUTORY OFFENSES.—

2 Not later than 1 year after the date of enactment of this
 3 Act, the Attorney General shall submit to the Committee
 4 on the Judiciary of the Senate and the Committee on the
 5 Judiciary of the House of Representatives a report, which
 6 shall include—

7 (1) a list of all criminal statutory offenses, in-
 8 cluding a list of the elements for each criminal stat-
 9 utory offense; and

10 (2) for each criminal statutory offense listed
 11 under paragraph (1)—

12 (A) the potential criminal penalty for the
 13 criminal statutory offense;

14 (B) the number of prosecutions for the
 15 criminal statutory offense brought by the De-
 16 partment of Justice each year for the 15-year
 17 period preceding the date of enactment of this
 18 Act; and

19 (C) the mens rea requirement for the
 20 criminal statutory offense.

21 (c) REPORT ON CRIMINAL REGULATORY OF-
 22 FENSES.—

23 (1) REPORTS.—Not later than 1 year after the
 24 date of enactment of this Act, the head of each Fed-
 25 eral agency described in paragraph (2) shall submit

1 to the Committee on the Judiciary of the Senate and
2 the Committee on the Judiciary of the House of
3 Representatives a report, which shall include—

4 (A) a list of all criminal regulatory of-
5 fenses enforceable by the agency; and

6 (B) for each criminal regulatory offense
7 listed under subparagraph (A)—

8 (i) the potential criminal penalty for a
9 violation of the criminal regulatory offense;

10 (ii) the number of violations of the
11 criminal regulatory offense referred to the
12 Department of Justice for prosecution in
13 each of the years during the 15-year period
14 preceding the date of enactment of this
15 Act; and

16 (iii) the mens rea requirement for the
17 criminal regulatory offense.

18 (2) AGENCIES DESCRIBED.—The Federal agen-
19 cies described in this paragraph are the Department
20 of Agriculture, the Department of Commerce, the
21 Department of Education, the Department of En-
22 ergy, the Department of Health and Human Serv-
23 ices, the Department of Homeland Security, the De-
24 partment of Housing and Urban Development, the
25 Department of the Interior, the Department of

1 Labor, the Department of Transportation, the De-
 2 partment of the Treasury, the Commodity Futures
 3 Trading Commission, the Consumer Product Safety
 4 Commission, the Equal Employment Opportunity
 5 Commission, the Export-Import Bank of the United
 6 States, the Farm Credit Administration, the Federal
 7 Communications Commission, the Federal Deposit
 8 Insurance Corporation, the Federal Election Com-
 9 mission, the Federal Labor Relations Authority, the
 10 Federal Maritime Commission, the Federal Mine
 11 Safety and Health Review Commission, the Federal
 12 Trade Commission, the National Labor Relations
 13 Board, the National Transportation Safety Board,
 14 the Nuclear Regulatory Commission, the Occupa-
 15 tional Safety and Health Review Commission, the
 16 Office of Compliance, the Postal Regulatory Com-
 17 mission, the Securities and Exchange Commission,
 18 the Securities Investor Protection Corporation, the
 19 Environmental Protection Agency, the Small Busi-
 20 ness Administration, the Federal Housing Finance
 21 Agency, and the Office of Government Ethics.

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

24 (1) the Attorney General shall establish a pub-
 25 lically accessible index of each criminal statutory of-

1 fense listed in the report required under subsection
2 (b) and make the index available and freely acces-
3 sible on the website of the Department of Justice;
4 and

5 (2) the head of each agency described in sub-
6 section (c)(2) shall establish a publically accessible
7 index of each criminal regulatory offense listed in
8 the report required under subsection (c)(1) and
9 make the index available and freely accessible on the
10 website of the agency.

11 (e) RULE OF CONSTRUCTION.—Nothing in this sec-
12 tion shall be construed to require or authorize appropria-
13 tions.

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