

## 117TH CONGRESS 1ST SESSION H.R. 2858

To authorize the court to depart from a statutory minimum in the case of a juvenile offender, youthful victim offender, and certain other minors, and for other purposes.

## IN THE HOUSE OF REPRESENTATIVES

April 26, 2021

Mr. Westerman (for himself, Ms. Bass, Mr. Cárdenas, and Mr. Trone) introduced the following bill; which was referred to the Committee on the Judiciary

## A BILL

To authorize the court to depart from a statutory minimum in the case of a juvenile offender, youthful victim offender, and certain other minors, 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 "Sara's Law and the
- 5 Preventing Unfair Sentencing Act of 2021".
- 6 SECTION 2. SENTENCING YOUTHFUL VICTIM OFFENDERS
- 7 WHO HAVE BEEN TRAFFICKED, ABUSED, OR
- 8 ASSAULTED.
- 9 (a) Sentencing Youthful Victim Offenders.—

1	(1) In General.—Section 3553 of chapter 227
2	of title 18, United States Code, is amended by add-
3	ing at the end the following:
4	"(h) Sentencing Youthful Victim Offend-
5	ERS.—
6	"(1) Statutory minimums.—In the case of a
7	youthful victim offender, the court shall have the au-
8	thority to impose a sentence that is below a level es-
9	tablished by statute as a minimum sentence so as to
10	consider the effect of trauma on the offender's con-
11	duct.
12	"(2) Suspension of Sentence.—In the case
13	of a youthful offender, the court shall have the au-
14	thority to suspend any portion of an imposed sen-
15	tence.
16	"(3) Youthful victim offender de-
17	FINED.—In this subsection, the term 'youthful vic-
18	tim offender' means an individual who—
19	"(A) has not attained the age of 18; and
20	"(B) has been convicted of a violent of-
21	fense against a person who the court finds, by
22	clear and convincing evidence, engaged in con-
23	duct against such individual, not earlier than 1
24	vear before such violent offense, that is an of-

1	fense under section 1591 or an offense under
2	chapter 71, 109A, 110, or 117.".
3	(2) APPLICATION.—The amendments made by
4	this section shall apply only to a conviction entered
5	on or after the date of the enactment of this Act.
6	(b) DIRECTIVE TO SENTENCING COMMISSION.—Pur-
7	suant to its authority under section 994(p) of title 28,
8	United States Code, and in accordance with this section,
9	the United States Sentencing Commission shall review and
10	amend, if appropriate, its guidelines and its policy state-
11	ments with respect to youthful victim offenders to ensure
12	that the guidelines and policy statements are consistent
13	with the amendments made by subsection (a).
14	SECTION 3. SENTENCING JUVENILE OFFENDERS.
15	(a) Sentencing Juvenile Offenders.—
16	(1) In General.—Section 3553 of chapter 227
17	of title 18, United States Code, is amended—
18	(A) in subsection (a)—
19	(i) in paragraph (6), by striking
20	"and" at the end;
21	(ii) in paragraph (7), by striking the
22	period at the end and inserting "; and";
23	and
24	(iii) by adding at the end the fol-
25	lowing:

1	"(8) in the case of a juvenile (as such term is
2	defined in section 5031), the diminished culpability
3	of juveniles compared to that of adults."; and
4	(B) by adding at the end the following:
5	"(h) Limitation on Statutory Minimum for Ju-
6	VENILE OFFENDERS.—In the case of a juvenile (as such
7	term is defined in section 5031), the court shall have the
8	authority to impose a sentence that is 35 percent below
9	a level established by statute as a minimum sentence so
10	as to reflect the juvenile's age and prospect for rehabilita-
11	tion.".
12	(2) APPLICATION.—The amendments made by
13	this section shall apply only to a conviction entered
14	on or after the date of the enactment of this Act.
15	(b) DIRECTIVE TO SENTENCING COMMISSION.—Pur-
16	suant to its authority under section 994(p) of title 28,
17	United States Code, and in accordance with this section,
18	the United States Sentencing Commission shall review and
19	amend, if appropriate, its guidelines and its policy state-
20	ments with respect to juveniles to ensure that the guide-
21	lines and policy statements are consistent with the amend-

## SECTION 4. PAROLE FOR JUVENILES.

2	(a)	IN	GENERAL.—	–Chapter	403	of	title	18,	United

- 3 States Code, is amended by inserting after section 5032
- 4 the following:
- 5 "§ 5032A. Modification of an imposed term of impris-
- 6 onment for violations of law committed
- 7 prior to age 18
- 8 "(a) IN GENERAL.—Notwithstanding any other pro-
- 9 vision of law, a court may reduce a term of imprisonment
- 10 imposed upon a defendant convicted as an adult for an
- 11 offense committed and completed before the defendant at-
- 12 tained 18 years of age if—
- "(1) the defendant has served not less than 20
- years in custody for the offense; and
- 15 "(2) the court finds, after considering the fac-
- tors set forth in subsection (c), that the defendant
- is not a danger to the safety of any person or the
- 18 community and that the interests of justice warrant
- a sentence modification.
- 20 "(b) Supervised Release.—Any defendant whose
- 21 sentence is reduced pursuant to subsection (a) shall be or-
- 22 dered to serve a period of supervised release of not less
- 23 than 5 years following release from imprisonment. The
- 24 conditions of supervised release and any modification or
- 25 revocation of the term of supervised release shall be in
- 26 accordance with section 3583.

1	"(c) Factors and Information To Be Consid-
2	ERED IN DETERMINING WHETHER TO MODIFY A TERM
3	OF IMPRISONMENT.—The court, in determining whether
4	to reduce a term of imprisonment pursuant to subsection
5	(a), shall consider—
6	"(1) the factors described in section 3553(a)
7	including the nature of the offense and the history
8	and characteristics of the defendant;
9	"(2) the age of the defendant at the time of the
10	offense;
11	"(3) a report and recommendation of the Bu-
12	reau of Prisons, including information on whether
13	the defendant has substantially complied with the
14	rules of each institution in which the defendant has
15	been confined and whether the defendant has com-
16	pleted any educational, vocational, or other prison
17	program, where available;
18	"(4) a report and recommendation of the
19	United States attorney for any district in which are
20	offense for which the defendant is imprisoned was
21	prosecuted;
22	"(5) whether the defendant has demonstrated
23	maturity, rehabilitation, and a fitness to reenter so-
24	ciety sufficient to justify a sentence reduction;

1	"(6) any statement, which may be presented
2	orally or otherwise, by any victim of an offense for
3	which the defendant is imprisoned or by a family
4	member of the victim if the victim is deceased;
5	"(7) any report from a physical, mental, or psy-
6	chiatric examination of the defendant conducted by
7	a licensed health care professional;
8	"(8) the family and community circumstances
9	of the defendant at the time of the offense, including
10	any history of abuse, trauma, or involvement in the
11	child welfare system;
12	"(9) the extent of the role of the defendant in
13	the offense and whether, and to what extent, an
14	adult was involved in the offense;
15	"(10) the diminished culpability of juveniles as
16	compared to that of adults, and the hallmark fea-
17	tures of youth, including immaturity, impetuosity,
18	and failure to appreciate risks and consequences,
19	which counsel against sentencing juveniles to the
20	otherwise applicable term of imprisonment; and
21	"(11) any other information the court deter-
22	mines relevant to the decision of the court.
23	"(d) Limitation on Applications Pursuant to

24 This Section.—

1	"(1) Second application.—Not earlier than
2	5 years after the date on which an order entered by
3	a court on an initial application under this section
4	becomes final, a court shall entertain a second appli-
5	cation by the same defendant under this section.
6	"(2) Final application.—Not earlier than 5
7	years after the date on which an order entered by
8	a court on a second application under paragraph (1)
9	becomes final, a court shall entertain a final applica-
10	tion by the same defendant under this section.
11	"(3) Prohibition.—A court may not entertain
12	an application filed after an application filed under
13	paragraph (2) by the same defendant.
14	"(e) Procedures.—
15	"(1) Notice.—The Bureau of Prisons shall
16	provide written notice of this section to—
17	"(A) any defendant who has served not
18	less than 19 years in prison for an offense com-
19	mitted and completed before the defendant at-
20	tained 18 years of age for which the defendant
21	was convicted as an adult; and
22	"(B) the sentencing court, the United
23	States attorney, and the Federal Public De-
24	fender or Executive Director of the Community
25	Defender Organization for the judicial district

1	in which the sentence described in subpara-
2	graph (A) was imposed.
3	"(2) Crime victims rights.—Upon receiving
4	notice under paragraph (1), the United States attor-
5	ney shall provide any notifications required under
6	section 3771.
7	"(3) Application.—
8	"(A) In general.—An application for a
9	sentence reduction under this section shall be
10	filed as a motion to reduce the sentence of the
11	defendant and may include affidavits or other
12	written material.
13	"(B) Requirement.—A motion to reduce
14	a sentence under this section shall be filed with
15	the sentencing court and a copy shall be served
16	on the United States attorney for the judicial
17	district in which the sentence was imposed.
18	"(4) Expanding the record; hearing.—
19	"(A) Expanding the Record.—After the
20	filing of a motion to reduce a sentence under
21	this section, the court may direct the parties to
22	expand the record by submitting additional
23	written materials relating to the motion.
24	"(B) Hearing.—

1	"(i) In general.—The court shall
2	conduct a hearing on the motion, at which
3	the defendant and counsel for the defend-
4	ant shall be given the opportunity to be
5	heard.
6	"(ii) EVIDENCE.—In a hearing under
7	this section, the court may allow parties to
8	present evidence.
9	"(iii) Defendant's presence.—At
10	a hearing under this section, the defendant
11	shall be present unless the defendant
12	waives the right to be present. The re-
13	quirement under this clause may be satis-
14	fied by the defendant appearing by video
15	teleconference.
16	"(iv) Counsel.—A defendant who is
17	unable to obtain counsel is entitled to have
18	counsel appointed to represent the defend-
19	ant for proceedings under this section, in-
20	cluding any appeal, unless the defendant
21	waives the right to counsel.
22	"(v) FINDINGS.—The court shall state
23	in open court, and file in writing, the rea-
24	sons for granting or denying a motion

under this section.

25

1	"(C) Appeal.—The Government or the
2	defendant may file a notice of appeal in the dis-
3	trict court for review of a final order under this
4	section. The time limit for filing such appeal
5	shall be governed by rule 4(a) of the Federal
6	Rules of Appellate Procedure.

- 7 "(f) EDUCATIONAL AND REHABILITATIVE Pro8 GRAMS.—A defendant who is convicted and sentenced as
  9 an adult for an offense committed and completed before
  10 the defendant attained 18 years of age may not be de11 prived of any educational, training, or rehabilitative pro12 gram that is otherwise available to the general prison pop13 ulation.".
- 14 (b) Table of Sections.—The table of sections for 15 chapter 403 of title 18, United States Code, is amended 16 by inserting after the item relating to section 5032 the 17 following:

"5032A. Modification of an imposed term of imprisonment for violations of law committed prior to age 18.".

18 (c) APPLICABILITY.—The amendments made by this 19 section shall apply to any conviction entered before, on, 20 or after the date of enactment of this Act.

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