

112TH CONGRESS  
1ST SESSION

# H. R. 2316

To apply reduced sentences for certain cocaine base offenses retroactively for certain offenders, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 23, 2011

Mr. SCOTT of Virginia (for himself, Mr. PAUL, Mr. CONYERS, Mr. BARTLETT, Mr. HASTINGS of Florida, and Mr. ELLISON) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To apply reduced sentences for certain cocaine base offenses retroactively for certain offenders, 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 “Fair Sentencing Clari-  
5 fication Act of 2011”.

6 **SEC. 2. FINDINGS.**

7 Congress finds as follows:

8 (1) The Fair Sentencing Act of 2010 was  
9 signed into law by President Obama on August 3,  
10 2010.

1           (2) Most district courts in the United States  
2           are applying the Fair Sentencing Act to pending  
3           criminal cases, including *United States v. Douglas*,  
4           746 F. Supp. 2d. 220 (D. Me. 2010), \_\_\_\_ F. 3d.  
5           \_\_\_\_, 2011 WL 2120163 (1st Cir. May 31, 2011);  
6           *United States v. Raymond Brown*, CR No. 10–135–  
7           GLL–1 (W.D. Pa. June 16, 2011); and *United*  
8           *States v. Marlon Jermaine Spencer*, CR No. 09–  
9           400–JW–1 (N.D. Cal. Nov. 30, 2010).

10           (3) There are, however, district courts that are  
11           not applying the Fair Sentencing Act to pending  
12           cases, including *United States v. Derrick Steven*  
13           *Clemons*, CR No. 08–028–AJS–1 (W.D. of Pa. Nov.  
14           18, 2010) and *United States v. Anthony L. Jackson*,  
15           CR No. 10–178–JRS–1 (E.D. Va. Nov. 19, 2010).

16           (4) According to the U.S. Sentencing Commis-  
17           sion’s analysis, 20,905 offenders would receive a re-  
18           duction in their sentences if both the statutory  
19           changes and guideline changes were made retro-  
20           active, and the average sentence reduction would be  
21           46 months, representing a savings of over \$2.2 bil-  
22           lion at an average incarceration cost of \$28,284 per  
23           year, the latest yearly cost estimate from the Bureau  
24           of Prisons.

1           (5) The purpose of this Act is to clarify that  
2           the amendments made by the Fair Sentencing Act  
3           are to be applied to pending cases and retroactively  
4           to cases that are no longer pending.

5 **SEC. 3. CLARIFICATION OF APPLICABILITY WITH REGARD**  
6                                   **TO PENDING CASES.**

7           With respect to any offense for which the penalties  
8           were modified by section 2 or 3 of the Fair Sentencing  
9           Act of 2010 (Public Law 111–220) and which was com-  
10          mitted before the date of enactment of such Act, and not-  
11          withstanding the provisions of section 109 of title 1,  
12          United States Code—

13                 (1) in cases in which a sentence has not yet  
14                 been imposed, the court shall impose such sentence  
15                 as if sections 2 and 3 of the Fair Sentencing Act of  
16                 2010 (Public Law 111–220) were in effect on the  
17                 date the offense was committed; and

18                 (2) in cases in which a sentence has already  
19                 been imposed, if subject to a pending appeal on or  
20                 after August 3, 2010, the Court of Appeals shall re-  
21                 mand the case for resentencing consistent with the  
22                 amendments made by sections 2 and 3 of the Fair  
23                 Sentencing Act of 2010 (Public Law 111–220).

1 **SEC. 4. COURT MAY REDUCE TERM OF IMPRISONMENT.**

2 In the case of a defendant who has been convicted  
3 of a crime committed before August 3, 2010, for which  
4 a term of imprisonment has been imposed, on motion of  
5 the defendant or the Director of the Bureau of Prisons,  
6 or on its own motion, the sentencing court may reduce  
7 the term of imprisonment for that crime consistent with  
8 the amendments made by sections 2 and 3 of the Fair  
9 Sentencing Act of 2010 (Public Law 111–220) if such  
10 crime is—

11 (1) punishable by a term of imprisonment  
12 under—

13 (A) section 404(a) of the Controlled Sub-  
14 stances Act for possession of a substance which  
15 contains cocaine base (21 U.S.C. 844(a)) (as in  
16 effect on the date of the commission of the  
17 crime);

18 (B) section 401(b)(1)(A)(iii) of such Act  
19 (21 U.S.C. 841(b)(1)(A)(iii)) (as in effect on  
20 the date of the commission of the crime); or

21 (C) section 401(b)(1)(B)(iii) of such Act  
22 (21 U.S.C. 841(b)(1)(B)(iii)) (as in effect on  
23 the date of the commission of the crime); or

24 (2) punishable by a term of imprisonment  
25 under paragraph (1)(C) or (2)(C) of section 1010(b)  
26 of the Controlled Substances Import and Export Act

1 (21 U.S.C. 960(b)) (as in effect on the date of the  
2 commission of the crime).

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