

115TH CONGRESS
1ST SESSION

H. R. 4261

To improve public safety, accountability, transparency, and respect for federalism in Federal criminal law by applying evidence-based reforms already made by some States, and reinvesting the resulting savings from doing so in additional evidence-based criminal justice strategies that are proven to reduce recidivism and crime, and the burden of the criminal justice system on the taxpayer.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 6, 2017

Mr. SCOTT of Virginia (for himself, Mr. LEWIS of Minnesota, Mr. CONYERS, Mrs. LOVE, Ms. JACKSON LEE, Mr. CURBELO of Florida, Ms. NORTON, and Mr. FITZPATRICK) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To improve public safety, accountability, transparency, and respect for federalism in Federal criminal law by applying evidence-based reforms already made by some States, and reinvesting the resulting savings from doing so in additional evidence-based criminal justice strategies that are proven to reduce recidivism and crime, and the burden of the criminal justice system on the taxpayer.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Safe, Accountable,
3 Fair, Effective Justice Act” or the “SAFE Justice Act”.

4 **SEC. 2. TABLE OF CONTENTS.**

5 The table of contents for this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.

TITLE I—IDENTIFYING AND REDUCING OVER-FEDERALIZATION
AND OVER-CRIMINALIZATION BY RESPECTING THE BALANCE
OF POWERS AMONG THE STATES AND THE FEDERAL GOVERN-
MENT

- Sec. 101. Compilation and publication of criminal offenses to provide fair notice to address over-federalization.
- Sec. 102. Procedures to reduce over-federalization.
- Sec. 103. Procedures to reduce pretrial detention.
- Sec. 104. Annual review and reports of the citizen complaint process.
- Sec. 105. Focusing Federal criminal penalties for simple possession to places of special Federal interest in recognition of the balance of power between the Federal Government and the States.

TITLE II—CREATING A PERFORMANCE-INCENTIVE FUNDING
PROGRAM

- Sec. 201. Calculation of savings.
- Sec. 202. Distribution of performance incentive funding.
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- Sec. 204. Definitions.

TITLE III—ADDRESSING INFORMATION DISPARITY AND ACCU-
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MORE ROBUSTLY AND TO REDUCE THE NUMBER OF WRONG-
FUL CONVICTIONS

- Sec. 301. Findings and declarations.
- Sec. 302. Accuracy and reliability of evidence in criminal cases; addressing information disparity in criminal cases.
- Sec. 303. Notification relating to forensic, prosecutorial, or law enforcement misconduct.
- Sec. 304. Remedies.
- Sec. 305. Toolkits for State and local government.

TITLE IV—CONCENTRATING PRISON SPACE ON VIOLENT AND
CAREER CRIMINALS

Subtitle A—Restoring Original Congressional Intent To Focus Federal Drug Mandatory Minimums Only on Managers, Supervisors, Organizers, and Leaders of Drug Trafficking Organizations and To Avoid Duplicative Prosecution With States

- Sec. 401. Focusing the application of Federal mandatory minimums for certain drug offenses to restore original congressional intent respecting the balance of power between the Federal Government and the States.
- Sec. 402. Modification of criteria for “safety valve” limitation on applicability of certain mandatory minimums.
- Sec. 403. Consistency in the use of prior convictions for sentencing enhancements.
- Sec. 404. Clarification of applicability of the Fair Sentencing Act.
- Sec. 405. Eligibility for resentencing based on changes in law.
- Sec. 406. Directives to the Sentencing Commission.
- Sec. 407. Exclusion of acquitted conduct and discretion to disregard manipulated conduct from consideration during sentencing.

Subtitle B—Clarification of Congressional Intent on Certain Recidivist
Penalties

- Sec. 408. Amendments to enhanced penalties provision.

Subtitle C—Expanding the Ability To Apply for Compassionate Release

- Sec. 409. Ability to petition for release to extended supervision for certain prisoners who are medically incapacitated, geriatric, or caregiver parents of minor children and who do not pose public safety risks.

TITLE V—ENCOURAGING ACCOUNTABILITY WITH GREATER USE
OF EVIDENCE-BASED SENTENCING ALTERNATIVES FOR
LOWER-LEVEL OFFENDERS

- Sec. 501. Eligibility for prejudgement probation.
- Sec. 502. Sentence of probation.
- Sec. 503. Directive to the Sentencing Commission regarding use of probation.
- Sec. 504. Establishing accountability evidence-based problem-solving court programs.

TITLE VI—IMPLEMENTING EVIDENCE-BASED PRACTICES TO
REDUCE RECIDIVISM

Subtitle A—Revision of Statutory Sentence Credits

- Sec. 601. Delivery and incentives to complete in-prison recidivism reduction programming.
- Sec. 602. Post-sentencing risk and needs assessment system and in-prison recidivism reduction programming.

Subtitle B—De-escalation Training and Improving Community Relations

- Sec. 603. De-escalation training.

Subtitle C—Oversight of Mental Health and Substance Abuse Treatment

- Sec. 604. Authorizing grants to States for the use of medication-assisted treatment for heroin, opioid, or alcohol abuse in residential substance abuse treatment.
- Sec. 605. Performance-based contracting for residential reentry centers.

Subtitle D—Implementing Swift, Certain, and Proportionate Sanctions for Violations of Conditions of Probation or Supervised Release

- Sec. 606. Graduated sanctioning system.
- Sec. 607. Graduated responses to technical violations of supervision.
- Sec. 608. Targeted and proportional penalties for revocation of probation.
- Sec. 609. Targeted and proportional penalties for violations of supervised release.

Subtitle E—Focus Supervision Resources on High-Risk Offenders

- Sec. 610. Earned discharge credits for compliant supervisees.
- Sec. 611. Elimination of mandatory revocation for minor drug violations.

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- Sec. 612. Clarification or original congressional intent regarding calculation of good time conduct credit.
- Sec. 613. Analysis of fiscal implications for inclusion in presentence reports.
- Sec. 614. Supporting safe law enforcement.

TITLE VII—INCREASING GOVERNMENT TRANSPARENCY AND ACCURACY

- Sec. 701. Report on mandatory minimums.
- Sec. 702. Federal defender added as a nonvoting member of the Sentencing Commission.
- Sec. 703. Budget and inmate population impact of legislation on the Federal corrections system.
- Sec. 704. Reports.

1 **TITLE I—IDENTIFYING AND RE-**
2 **DUCING OVER-FEDERALIZA-**
3 **TION AND OVER-CRIMINAL-**
4 **IZATION BY RESPECTING THE**
5 **BALANCE OF POWERS AMONG**
6 **THE STATES AND THE FED-**
7 **ERAL GOVERNMENT**

8 **SEC. 101. COMPILATION AND PUBLICATION OF CRIMINAL**
9 **OFFENSES TO PROVIDE FAIR NOTICE TO AD-**
10 **DRESS OVER-FEDERALIZATION.**

11 (a) COMPILATION AND PUBLICATION OF CRIMINAL
12 OFFENSES.—Not later than 180 days after the date of
13 the enactment of this Act, and every year thereafter, the
14 Attorney General shall, in consultation with relevant enti-
15 ties within the executive branch, including independent
16 regulatory agencies, compile a publicly available and free
17 of charge listing of—

18 (1) the various Federal law violations that carry
19 criminal penalties;

20 (2) location/citation of the violation;

21 (3) the potential criminal penalty for a viola-
22 tion; and

23 (4) the mens rea required for the offense.

24 To ensure that individuals have fair notice of prohibited
25 conduct and the criminal penalties they bring, the Attor-

1 ney General shall publicize the existence of this database
2 and publish the database on the Department of Justice
3 website.

4 (b) OVERSIGHT TO ADDRESS OVER-FEDERALIZA-
5 TION.—Each executive branch agency must obtain the ex-
6 press prior approval of the Attorney General for each
7 added criminal penalty resulting from agency regulation.

8 **SEC. 102. PROCEDURES TO REDUCE OVER-FEDERALIZA-**
9 **TION.**

10 (a) IN GENERAL.—Not later than 180 days after the
11 date of the enactment of this Act, in order to reduce over-
12 federalization and over-incarceration, the Attorney Gen-
13 eral shall create and implement procedures—

14 (1) to provide coordination by Federal prosecu-
15 tors and law enforcement agencies with other Fed-
16 eral agencies to determine—

17 (A) whether unlawful conduct that involves
18 the administrative competencies of other Fed-
19 eral agencies is best addressed by civil sanctions
20 or criminal charges; and

21 (B) if such conduct is best addressed by
22 criminal charges, whether diversion or criminal
23 prosecution is more appropriate; and

24 (2) to provide coordination by Federal prosecu-
25 tors and law enforcement agencies with State pros-

1 ecutors and law enforcement agencies to reduce du-
2 plicative Federal prosecutions of the same offender
3 for the same conduct that may be prosecuted at the
4 State level.

5 (b) REPORT BY INSPECTOR GENERAL.—Not later
6 than 1 year after the date of the enactment of this Act,
7 the Inspector General of the Department of Justice shall
8 report to the Congress, for the period beginning on the
9 date of the enactment of this Act and ending as closely
10 as feasible to the date on which the report is made, on—

11 (1) the number of cases referred from law en-
12 forcement or other agencies for Federal prosecution
13 in which the alleged unlawful conduct involved a vio-
14 lation of a regulation promulgated by a Federal
15 agency other than the Department of Justice; or

16 (2) the number of cases accepted for Federal
17 prosecution—

18 (A) by judicial district;

19 (B) by mens rea;

20 (C) by penalty imposed;

21 (D) by costs;

22 (3) the estimated Federal correctional costs of
23 those cases in prison bed-years;

24 (4) the number of cases declined for Federal
25 prosecution; and

1 (5) the number of cases accepted for Federal
2 prosecution by offense by judicial district, including
3 the offense's mens rea and criminal penalty imposed.

4 **SEC. 103. PROCEDURES TO REDUCE PRETRIAL DETENTION.**

5 (a) **GUIDANCE BY ATTORNEY GENERAL.**—Not later
6 than 180 days after the date of the enactment of this Act,
7 the Attorney General, in consultation with the Criminal
8 Law Committee of the Judicial Conference of the United
9 States, the United States Probation and Pretrial Services,
10 and a Federal public or community defender from the De-
11 fender Services Advisory Group, shall create and imple-
12 ment procedures to reduce over-incarceration due to the
13 unnecessary use of pretrial detention in certain cases in
14 order to—

15 (1) reduce overcrowding of pretrial detention
16 facilities; and

17 (2) reduce the cost of pretrial detention.

18 (b) **CONSIDERATIONS TO BE TAKEN INTO ACCOUNT**
19 **IN CREATING PROCEDURES.**—In carrying out subsection
20 (a), the Attorney General and the Director of the United
21 States Courts shall take into consideration in creating and
22 implementing their respective procedures—

23 (1) whether in Federal cases a summons in-
24 stead of an arrest should be the default procedure;

1 (2) whether in some or most cases where a
2 summons would not be sufficient, other least restric-
3 tive alternatives would be preferable to pretrial de-
4 tention;

5 (3) the need to avoid seeking bonds that offend-
6 ers are unable to meet, which is tantamount to seek-
7 ing pretrial detention;

8 (4) the extent to which pretrial detention re-
9 sults from the disproportionate pretrial detention of
10 individuals with fewer economic means;

11 (5) the impact of pretrial detention on loss of
12 employment and housing; and

13 (6) the need to avoid pretrial detention that is
14 not necessary to ensure the appearance of the de-
15 fendant as required and the safety of the public as
16 required under section 3142 of title 18, United
17 States Code.

18 (c) REPORT BY INSPECTOR GENERAL.—Not later
19 than 1 year after the date of the enactment of this Act,
20 the Inspector General of the Department of Justice shall
21 report to the Congress on the procedures created under
22 this section, and address whether and to what extent those
23 procedures are likely to accomplish their intended pur-
24 poses. In the report, the Inspector General may include
25 recommendations for further changes in procedures that

1 would better accomplish the purposes set forth in sub-
2 section (a), taking into account the considerations de-
3 scribed in subsection (b).

4 **SEC. 104. ANNUAL REVIEW AND REPORTS OF THE CITIZEN**
5 **COMPLAINT PROCESS.**

6 The Office of the Inspector General shall—

7 (1) conduct an annual review of citizen com-
8 plaints to determine whether the Office of Profes-
9 sional Responsibility has taken appropriate discipli-
10 nary measures against prosecutors who have mis-
11 handled cases or engaged in misconduct; and

12 (2) publish in a report to Congress each case in
13 which any judge or court has found that a pros-
14 ecutor or law enforcement officer engaged in mis-
15 conduct, whether such a finding resulted in reversal,
16 vitiating, or vacatur of a conviction or sentence.

17 **SEC. 105. FOCUSING FEDERAL CRIMINAL PENALTIES FOR**
18 **SIMPLE POSSESSION TO PLACES OF SPECIAL**
19 **FEDERAL INTEREST IN RECOGNITION OF**
20 **THE BALANCE OF POWER BETWEEN THE**
21 **FEDERAL GOVERNMENT AND THE STATES.**

22 Section 404 of the Controlled Substances Act (21
23 U.S.C. 844) is amended by inserting after “It shall be un-
24 lawful for any person” each place it appears the following:
25 “within the special maritime and territorial jurisdiction of

1 the United States (as defined for the purposes of title 18,
2 United States Code)’’.

3 **TITLE II—CREATING A PER-**
4 **FORMANCE-INCENTIVE FUND-**
5 **ING PROGRAM**

6 **SEC. 201. CALCULATION OF SAVINGS.**

7 (a) CALCULATION OF REVOCATION BASELINE.—

8 (1) GENERAL RULE.—The Director of the Ad-
9 ministrative Office of the United States Courts, in
10 consultation with the Director of the Bureau of Pris-
11 ons and the United States Sentencing Commission,
12 shall calculate for each Federal judicial district a
13 baseline revocation rate.

14 (2) METHOD OF CALCULATION.—The baseline
15 revocation rate for a judicial district is the percent-
16 age equivalent of the ratio of the total number of
17 adult supervisees sent to prison from that district
18 during the baseline period to the total number of
19 adult supervisees sent to prison nationally during
20 the same period.

21 (3) DEFINITIONS.—In this subsection—

22 (A) the term “sent to prison” means sent
23 to Federal or State prison—

24 (i) for a revocation of probation or su-
25 pervised release; or

1 (ii) for a conviction of a new felony of-
2 fense.

3 (B) The term “baseline period” means the
4 period beginning January 1, 2012, and ending
5 December 31, 2014.

6 (b) ANNUAL REVOCATION CALCULATIONS.—At the
7 conclusion of the calendar year following the implementa-
8 tion of subsection (a), and every calendar year thereafter,
9 the Director of the Administrative Office of the United
10 States Courts, in consultation with the Director of the Bu-
11 reau of Prisons and the United States Sentencing Com-
12 mission shall calculate the following measures:

13 (1) AVERAGE REVOCATION COST.—The average
14 revocation cost, which is the average cost to incar-
15 cerate a supervisee revoked to prison in the previous
16 year, including average length of stay times average
17 marginal cost per day.

18 (2) NATIONWIDE REVOCATION RATE.—The na-
19 tionwide revocation rate, which is calculated as the
20 number of supervisees nationwide sent to prison in
21 the previous year as a percentage of the nationwide
22 supervision population as of June 30th of that year.

23 (3) DISTRICT REVOCATION RATES.—For each
24 judicial district, the district’s revocation rate, which
25 is calculated as the number of supervisees from that

1 district sent to prison in the previous year as a per-
2 centage of the district's supervision population as of
3 June 30th of that year.

4 (4) REDUCTION IN REVOCATION RATE.—For
5 each judicial district, the reduction in revocation
6 rate is the number of adult supervisees from each
7 district not revoked to prison, which is calculated
8 based on the reduction in the district's revocation
9 rate as calculated under paragraph (3) from the dis-
10 trict's baseline revocation rate as calculated under
11 subsection (a). In making this estimate, the Director
12 of the Administrative Office of the United States
13 Courts, in consultation with the Director of the Bu-
14 reau of Prisons and the Judicial Conference of the
15 United States, may adjust the calculation to account
16 for changes in each district's caseload in the most
17 recent completed year as compared to the district's
18 adult supervision population during the years 2012
19 through 2014.

20 (c) CATEGORIZATION OF JUDICIAL DISTRICTS.—An-
21 nually, at the conclusion of each calendar year, the Direc-
22 tor of the Administrative Office of the United States
23 Courts, in consultation with the Director of the Bureau
24 of Prisons and the United States Sentencing Commission,
25 shall assign the appropriate supervision revocation tier to

1 each judicial district for which it was estimated that the
2 judicial district successfully reduced its revocation rate, as
3 provided by subsection (b)(4). The tiers are defined for
4 the purposes of this subtitle as follows:

5 (1) TIER 1.—A tier 1 district is one which has
6 a district revocation rate, as defined in subsection
7 (b)(3), that is no more than 25 percent higher than
8 the nationwide revocation rate, as defined in sub-
9 section (b)(2).

10 (2) TIER 2.—A tier 2 district is one which has
11 a district revocation rate, as defined in subsection
12 (b)(3), that is more than 25 percent above the na-
13 tionwide revocation rate, as defined in subsection
14 (b)(2).

15 **SEC. 202. DISTRIBUTION OF PERFORMANCE INCENTIVE**
16 **FUNDING.**

17 (a) DISTRIBUTION OF REVOCATION REDUCTION IN-
18 CENTIVE PAYMENTS.—Annually, the Director of the Ad-
19 ministrative Office of the United States Courts, in con-
20 sultation with the Director of the Bureau of Prisons and
21 the United States Sentencing Commission, shall calculate
22 a revocation reduction incentive payment for each eligible
23 judicial district, pursuant to section 201, for the most re-
24 cently completed calendar year, as follows:

1 (1) REVOCATION REDUCTION INCENTIVE PAY-
2 MENTS FOR TIER 1 DISTRICTS.—For a tier 1 dis-
3 trict, the district’s revocation reduction incentive
4 payment is equal to the estimated number of
5 supervisees successfully prevented from being sent to
6 prison, as defined by section 201(b)(4) multiplied by
7 45 percent of the costs to the Director of the Bu-
8 reau of Prisons to incarcerate a supervisee who is
9 revoked to prison, as defined in section 201(b)(1).

10 (2) REVOCATION REDUCTION INCENTIVE PAY-
11 MENTS FOR TIER 2 DISTRICTS.—For a tier 2 judicial
12 district, its revocation rate shall equal the estimated
13 number of supervisees successfully prevented from
14 being sent to prison, as defined by section 201(b)(4)
15 multiplied by 40 percent of the costs to the Bureau
16 of Prisons to incarcerate in prison a supervisee
17 whose supervision is revoked.

18 (b) DISTRIBUTION OF GRANTS FOR HIGH-PER-
19 FORMING DISTRICTS.—

20 (1) FUNDING RESERVED FOR HIGH-PER-
21 FORMING DISTRICTS.—Annually, the Director of the
22 Administrative Office of the United States Courts,
23 in consultation with the Director of the Bureau of
24 Prisons and the United States Sentencing Commis-
25 sion, shall calculate 5 percent of the total savings at-

1 tributed to those districts that successfully reduce
2 the number of supervisees revoked to prison for the
3 purposes of providing high-performance grants.

4 (2) ELIGIBILITY.—A judicial district is eligible
5 for a high-performance grant if it is a district—

6 (A) with supervisee revocation rates more
7 than 50 percent below the nationwide average
8 in the most recently completed calendar year;
9 and

10 (B) that has not exceeded the national rev-
11 ocation rate for the past three calendar years.

12 (3) ADMINISTRATION OF GRANTS FOR HIGH-
13 PERFORMING DISTRICTS.—

14 (A) The Administrative Office of the
15 United States Courts may make a high per-
16 formance grant to a district in a year in which
17 that district does not also receive a supervision
18 revocation reduction payment under subsection
19 (a).

20 (B) The chief probation officer, in con-
21 sultation with the chief judge, in a judicial dis-
22 trict that qualifies for both a high performance
23 grant and a supervision revocation reduction
24 payment shall inform the Administrative Office
25 of the United States Courts, by a date des-

1 ignated by the Administrative Office of the
2 United States Courts, whether the judicial dis-
3 trict should receive the high performance grant
4 or the supervision failure reduction incentive
5 payment.

6 (C) The Administrative Office of the
7 United States Courts shall seek to ensure that
8 each qualifying judicial district that submits a
9 qualifying application for a high performance
10 grant receives a proportionate share of the
11 grant funding available, based on the popu-
12 lation of adults age 18 to 25, inclusive, in that
13 judicial district.

14 (c) PAYMENTS.—The Administrative Office of the
15 United States Courts shall disburse the revocation reduc-
16 tion incentive payments and high performance grants cal-
17 culated for any calendar year to judicial districts in the
18 following fiscal year.

19 **SEC. 203. USE OF PERFORMANCE INCENTIVE FUNDING.**

20 (a) ESTABLISHMENT OF A SUPERVISION PERFORM-
21 ANCE INCENTIVE FUND.—Each district probation office
22 is hereby authorized to establish a Supervision Perform-
23 ance Incentive Fund (hereinafter in this section referred
24 to as the “Fund”), to receive all amounts allocated to the
25 judicial district for the purposes of implementing this sec-

1 tion. In any fiscal year for which a district probation office
2 receives sums to be expended for the implementation of
3 this section, those sums, including any interest, shall be
4 made available to the chief probation officer of that dis-
5 trict probation office, not later than 30 days after the de-
6 posit of those moneys into the fund.

7 (b) AUTHORIZED USE OF FUNDS.—Funds received
8 through appropriations for the purposes of this subtitle
9 shall be used by the chief probation officer or his designee
10 to provide supervision and rehabilitative services for Fed-
11 eral supervisees, and shall be spent on implementing or
12 enhancing evidence-based community corrections practices
13 and programs, which may include the following:

14 (1) Implementing and expanding evidence-based
15 risk and needs assessments.

16 (2) Implementing and expanding the use of
17 graduated sanctions pursuant to section 3609.

18 (3) Implementing and expanding treatment and
19 services associated with problem-solving courts that
20 are proven to reduce recidivism among the targeted
21 population.

22 (4) Expanding the availability of evidence-based
23 rehabilitation programs, including drug and alcohol
24 treatment, mental health treatment, employment
25 programs, services for victims of domestic violence,

1 services for veterans, and cognitive behavioral ther-
2 apy.

3 (5) Expanding the availability, in terms of
4 hours and geographic locations, of day reporting
5 centers and the reporting hours of existing probation
6 offices to accommodate supervisees' work, education,
7 and/or child care schedules.

8 (6) Hiring social workers to assist supervisees
9 in applications for social services and programs on
10 the local, State, and Federal level.

11 (7) Evaluating the effectiveness of rehabilita-
12 tion and supervision programs and ensuring pro-
13 gram fidelity.

14 (c) MANDATORY EVALUATION.—

15 (1) IN GENERAL.—Except as provided in para-
16 graph (2), the chief probation officer, in consultation
17 with the chief judge of the judicial district, shall de-
18 vote at least 5 percent of all funding received
19 through the Fund to evaluate the effectiveness of
20 those programs and practices implemented or ex-
21 panded with the funds provided pursuant to this sec-
22 tion.

23 (2) WAIVER OF REQUIREMENT.—A chief proba-
24 tion officer may petition the Administrative Office of
25 the United States Courts for waiver of this restric-

1 tion, and the Administrative Office of the United
2 States Courts shall have the authority to grant such
3 a petition, if the Chief Probation Officer can dem-
4 onstrate that the department is already devoting suf-
5 ficient funds to the evaluation of these programs and
6 practices.

7 (d) ACCOUNTING.—The head of each district proba-
8 tion office receiving amounts from the Fund shall provide
9 for a separate accounting of those amounts sufficient to
10 evaluate the effectiveness of each program.

11 **SEC. 204. DEFINITIONS.**

12 In this subtitle:

13 (1) CHIEF JUDGE.—The term “chief judge”
14 with respect to a district court means the chief judge
15 of that court, or the judge of that court if there is
16 only one judge.

17 (2) CHIEF PROBATION OFFICER.—The term
18 “chief probation officer” means the probation officer
19 designated by the court to direct the work of all pro-
20 bation officers serving in the judicial district.

21 (3) COMMUNITY CORRECTIONS PROGRAM.—The
22 term “community corrections program” means an
23 evidence-based recidivism reduction program estab-
24 lished pursuant to this subtitle, consisting of a sys-

1 tem of services dedicated to all of the following
2 goals:

3 (A) Enhancing public safety through the
4 management and reduction of a supervisee’s
5 risk of recidivism while under supervision.

6 (B) Supporting supervisees’ achievement of
7 stability of employment and housing by using a
8 range of supervision tools, sanctions, and serv-
9 ices applied to supervisees for the purpose of re-
10 ducing criminal conduct and promoting behav-
11 ioral change that reduces recidivism and pro-
12 motes the successful reintegration of offenders
13 into the community.

14 (C) Holding offenders accountable for their
15 criminal behaviors and for successful compli-
16 ance with applicable court orders and conditions
17 of supervision.

18 (D) Improving public safety outcomes for
19 persons placed on supervision, as measured by
20 their successful completion of supervision and
21 commensurate reduction in the rate of
22 supervisees sent to prison as a result of a rev-
23 ocation or conviction for a new crime.

24 (4) EVIDENCE-BASED PRACTICES.—The term
25 “evidence-based practices” means supervision poli-

1 cies, procedures, programs, and practices that sci-
2 entific research demonstrates reduce recidivism
3 among people on probation or supervised release.

4 (5) SUPERVISEE.—The term “supervisee” has
5 the meaning given that term in section 3609 of title
6 18, United States Code.

7 (6) SUPERVISION.—The term “supervision” has
8 the meaning given that term in section 3609 of title
9 18, United States Code.

10 (7) REVOCATION.—The term “revocation”
11 means a judicial process to revoke supervision that
12 imposes confinement.

13 **TITLE III—ADDRESSING INFOR-**
14 **MATION DISPARITY AND AC-**
15 **CURACY IN CRIMINAL PROS-**
16 **ECUTIONS TO PROTECT INNO-**
17 **CENCE MORE ROBUSTLY AND**
18 **TO REDUCE THE NUMBER OF**
19 **WRONGFUL CONVICTIONS**

20 **SEC. 301. FINDINGS AND DECLARATIONS.**

21 The Congress finds and declares the following:

22 (1) The goal of a law enforcement investigation
23 is to apprehend the person or persons responsible for
24 the commission of a crime.

1 (2) Mistaken eyewitness identification has been
2 shown to have contributed to the wrongful conviction
3 in 72 percent of the Nation’s 330 DNA exonerations
4 of innocent persons, including 20 who served time on
5 death row and 30 who pled guilty. These innocents
6 served an average of 13.5 years in prison before ex-
7 oneration and release. No one benefits from a
8 wrongful conviction—except the real perpetrator,
9 who remains free to commit additional crimes. In
10 half of the exoneration cases, the process of settling
11 the innocence claim led to the identification of the
12 real perpetrator. Over 140 violent crimes could have
13 been prevented had the real perpetrator been identi-
14 fied instead of the innocent.

15 (3) Over the past 30 years, a large body of
16 peer-reviewed, scientific research and practice has
17 emerged showing that simple systemic changes can
18 protect the innocent and the public by increasing the
19 accuracy of the evidence used to support a conviction
20 beyond a reasonable doubt. These reforms are—

21 (A) improving the accuracy of eyewitness
22 identification;

23 (B) preserving and analyzing forensic evi-
24 dence;

1 (C) recording confessions and interroga-
2 tions;

3 (D) regulating, disclosing, and video re-
4 cording informant or cooperator testimony;

5 (E) improving the quality of defense coun-
6 sel;

7 (F) providing for post-conviction DNA
8 testing for all applicants for whom DNA has
9 the potential to prove innocence; and

10 (G) increasing compensation to the wrong-
11 fully convicted.

12 (4) Policies and procedures to improve the ac-
13 curacy of eyewitness identifications such as those
14 recommended by the National Academy of Sciences,
15 the United States National Institute of Justice, the
16 International Association of Chiefs of Police, and the
17 American Bar Association are readily available.

18 (5) More accurate eyewitness identifications in-
19 crease the ability of police and prosecutors to convict
20 the guilty and protect the innocent.

21 (6) The integrity of the criminal justice process
22 is enhanced by adherence to best practices in evi-
23 dence gathering.

1 (7) Federal, State, and local governments will
2 benefit from the improvement of the accuracy of eye-
3 witness identifications.

4 (8) The value of properly preserved biological
5 evidence has been enhanced by the discovery of mod-
6 ern DNA testing methods, which, coupled with a
7 comprehensive system of DNA databases that store
8 crime scene and offender profiles, allow law enforce-
9 ment to improve its crime-solving potential.

10 (9) Tapping the potential of preserved biological
11 evidence requires the proper identification, collection,
12 preservation, storage, cataloguing and organization
13 of such evidence.

14 (10) Law enforcement agencies indicate that
15 “cold” case investigations are hindered by an inabil-
16 ity to access biological evidence that was collected in
17 connection with criminal investigations.

18 (11) Innocent people mistakenly convicted of
19 the serious crimes for which biological evidence is
20 probative cannot prove their innocence if such evi-
21 dence is not accessible for testing in appropriate cir-
22 cumstances.

23 (12) It is well established that the failure to up-
24 date policies regarding the preservation of evidence

1 squanders valuable law enforcement resources, man-
2 power hours and storage space.

3 (13) Simple but crucial enhancements to proto-
4 cols for properly preserving biological evidence can
5 solve old crimes, enhance public safety and settle
6 claims of innocence.

7 (14) Existing Federal, State, and local laws still
8 erect procedural hurdles that result in some poten-
9 tially innocent applicants being barred from seeking
10 DNA testing after a conviction has been imposed de-
11 spite enduring probative value of DNA evidence.

12 (15) During his 2005 State of the Union ad-
13 dress, President George W. Bush urged that, “[i]n
14 America, we must make doubly sure no person is
15 held to account for a crime he or she did not com-
16 mit, so we are dramatically expanding the use of
17 DNA evidence to prevent wrongful conviction”.

18 (16) United States Attorney General Eric Hold-
19 er expressed his hope, in the interest of justice and
20 identifying the true perpetrators of crimes, that “all
21 levels of government will follow the Federal Govern-
22 ment’s lead by working to expand access to DNA
23 evidence”.

24 (17) Emerging DNA testing technologies can
25 enhance the quality of justice.

1 (18) The scientifically reliable results of DNA
2 testing provide the certainty and finality that bolster
3 the public's trust in our Federal, State, and local
4 criminal justice systems.

5 (19) In addition to the wrongfully convicted and
6 their families, crime victims, law enforcement, pros-
7 ecutors, courts and the public are harmed whenever
8 individuals guilty of crimes elude justice while inno-
9 cent individuals are imprisoned for crimes they did
10 not commit.

11 (20) Our Federal, State, and local governments
12 must enhance their technology to increase the
13 amount of testable, biological evidence and enhance
14 their existing post-conviction DNA testing statutes
15 so that all applicants for whom DNA testing has the
16 potential to prove a claim of innocence will have the
17 opportunity to obtain such testing.

18 (21) Properly audio and video recorded custo-
19 dial interrogations provide the best evidence of the
20 communications that occurred during an interroga-
21 tion; prevent disputes about how an officer con-
22 ducted himself or treated a suspect during the
23 course of an interrogation; prevent disputes about
24 the account of events the defendant originally pro-
25 vided to law enforcement; spare judges and jurors

1 the time necessary and need to assess which account
2 of an interrogation to believe; and enhance public
3 confidence in the criminal process. It is therefore the
4 Congress' intent to require the video and audio re-
5 cording of all custodial interrogations in Federal law
6 enforcement agencies.

7 (22) An informant is a person who was not a
8 victim of a crime who offers to provide information
9 or assistance to law enforcement in exchange for le-
10 niency or some other benefit. The testimony of in-
11 formants, who have reason to seek leniency from the
12 criminal justice system in exchange for their testi-
13 mony, is inherently suspect. However, truthful in-
14 formant testimony may still be important in solving
15 crimes.

16 (23) Rewarding informants, either tacitly or ex-
17 plicitly, by the Government produces dangerous in-
18 centives to manufacture or fabricate testimony.
19 Thus, it is incumbent upon the judicial system to as-
20 sess whether informant testimony is reliable.

21 (24) The use of informant testimony without a
22 system to properly assess its reliability or corrobo-
23 rate its substance provides fertile ground for ob-
24 struction of the fair administration of justice.

1 (25) Therefore, a system to properly assess the
2 reliability of informant testimony, including, but not
3 limited to audio and video recording of all state-
4 ments provided by informants, should be developed.

5 (26) The failure to properly educate law en-
6 forcement, defense lawyers, prosecutors, judges, ju-
7 ries, and other fact investigators and fact finders
8 about the vulnerabilities inherent in informant testi-
9 mony enables improper consideration of such testi-
10 mony, which can seriously undermine the integrity of
11 our criminal justice system.

12 **SEC. 302. ACCURACY AND RELIABILITY OF EVIDENCE IN**
13 **CRIMINAL CASES; ADDRESSING INFORMA-**
14 **TION DISPARITY IN CRIMINAL CASES.**

15 (a) IN GENERAL.—Not later than 180 days after the
16 date of enactment of this Act, the Attorney General shall,
17 in consultation with the Federal Public or Community De-
18 fender from the Defender Services Advisory Group, the
19 American Bar Association, the American Law Institute,
20 and other expert organizations, including the Innocence
21 Project and the National District Attorneys Association,
22 create training and best practices to be implemented by
23 Federal prosecutors and law enforcement officers prior to
24 trial, consistent with the constitutional rights of the de-
25 fendant, that increase protection for the innocent by re-

1 ducing the inaccuracy and unreliability of evidence relied
2 upon in criminal cases, including—

3 (1) procedures and protocols for collecting,
4 marking, preserving, cataloguing, and handling evi-
5 dence;

6 (2) training on interrogation to eliminate coer-
7 cive tactics that lead to false or unreliable confes-
8 sions;

9 (3) training on interviewing witnesses to elimi-
10 nate suggestive tactics that lead to false or unreli-
11 able identifications and memories;

12 (4) training to eliminate cross-racial identifica-
13 tion mistakes and collaborating on the criteria for
14 expert testimony and parameters for model jury in-
15 structions on cross-racial identification;

16 (5) training to avoid and discourage the use of
17 unreliable informant or cooperator testimony;

18 (6) requiring audio and video recording of all
19 interviews and interrogations in connection with any
20 defendant's prosecution;

21 (7) promoting a fair and expeditious disposition
22 of the charges, whether by diversion, plea, or trial,
23 consistent with defendants' constitutional rights;

24 (8) providing the defendant with sufficient in-
25 formation to make an informed plea;

1 (9) permitting the defendant to thoroughly pre-
2 pare for trial and minimize surprise at trial by pro-
3 viding prompt discovery to the defendant;

4 (10) reducing interruptions and complications
5 during trial to the extent practicable and avoid un-
6 necessary and repetitious trials by identifying and
7 resolving evidentiary disputes prior to trial;

8 (11) increasing the funding and resources for
9 court-appointed counsel to minimize the procedural
10 and substantive inequities among similarly situated
11 defendants, particularly between defendants rep-
12 resented by court-appoint counsel, pursuant to 18
13 U.S.C. 3006A, and defendants represented by pri-
14 vately retained counsel; and

15 (12) minimizing the burden upon victims, wit-
16 nesses, counsel, and the taxpayer.

17 (b) INITIAL DISCLOSURE TO DEFENDANTS.—The
18 Attorney General shall instruct Federal prosecutors and
19 law enforcement agents, upon request by the defendant
20 and not later than 14 days after such request, to permit
21 the defendant to inspect and to copy or photograph the
22 full contents of all investigative and case files, excepting
23 only privileged material or attorney work product, to per-
24 mit inspection, copying, testing, and photographing of dis-

1 closed documents or tangible objects, including the fol-
2 lowing documents or tangible objects:

3 (1) All relevant recorded, written, and oral
4 statements of the defendant or of any codefendant
5 that are within the possession or control of the Gov-
6 ernment, and any documents relating to the acquisi-
7 tion of such statements.

8 (2) The names and addresses of all persons
9 known to the Government to have information con-
10 cerning the offense charged, together with all writ-
11 ten statements of any such person that are within
12 the possession or control of the Government and
13 that relate to the subject matter of the offense
14 charged.

15 (3) The identity of persons the Government in-
16 tends to call as witnesses at trial.

17 (4) Any information regarding any inquiry, so-
18 licitation, or agreement between the Government and
19 any individual that constitutes an inquiry into or so-
20 licitation of cooperation or testimony of the indi-
21 vidual.

22 (5) Any reports or written statements of any
23 expert the Government intends to call as a witness
24 at trial, including results of physical or mental ex-
25 aminations, scientific tests, experiments, compari-

1 sons, a written description of the substance of the
2 proposed testimony of the expert, the expert's opin-
3 ion, and the underlying basis of that opinion, if that
4 report or written statement of the expert is material
5 to preparing the defense or the Government intends
6 to use the item in its case-in-chief at trial. At the
7 defendant's request, the Government must give to
8 the defendant a written summary of any testimony
9 that the Government intends to use under the Fed-
10 eral Rules of Evidence during its case-in-chief at
11 trial. If the Government requests discovery under
12 rule 16(b)(1)(C)(ii) of the Federal Rules of Criminal
13 Procedure and the defendant complies, the Govern-
14 ment must, at the defendant's request, give to the
15 defendant a written summary of testimony that the
16 Government intends to use the Federal Rules of Evi-
17 dence as evidence at trial on the issue of the defend-
18 ant's mental condition. The summary provided
19 under this paragraph must describe the witness's
20 opinions, the bases and reasons for those opinions,
21 and the witness's qualifications.

22 (6) Any tangible objects, including books, pa-
23 pers, documents, photographs, buildings, places, or
24 any other objects, which pertain to the case or which
25 were obtained from or belong to the defendant, and

1 the identity of any tangible objects if the item is ma-
2 terial to preparing the defense or the Government
3 intends to use the item in its case-in-chief at trial.

4 (7) Any record of prior criminal convictions,
5 pending charges, or probationary status of the de-
6 fendant or of any codefendant or cooperating wit-
7 ness, and insofar as known to the Government, any
8 record of convictions, pending charges, or proba-
9 tionary status that may be used to impeach of any
10 witness to be called by either party at trial.

11 (8) Any material, documents, or information re-
12 lating to lineups, showups, and picture or voice iden-
13 tifications, if it is relevant to preparing the defense
14 or the Government intends to use the item in its
15 case-in-chief.

16 (9) Any material or information within the Gov-
17 ernment's possession or control which tends to ne-
18 gate the guilt of the defendant as to the offense
19 charged or would tend to mitigate punishment of the
20 defendant.

21 (10) Any evidence of character, reputation, or
22 other conduct of the defendant that the Government
23 has investigated.

24 (11) If the defendant's conversations or prem-
25 ises were subject to electronic surveillance (including

1 wiretapping) in connection with the investigation or
2 prosecution of the case, any transcripts, notes,
3 memos, recordings, or other materials derived from
4 such surveillance.

5 (12) Any tangible object obtained through a
6 search and seizure, including any information, docu-
7 ments, or other material relating to the acquisition
8 of that object, if the object, information, or docu-
9 ment, or material is material to preparing the de-
10 fense or the Government intends to use that object,
11 information, document, or material in its case-in-
12 chief.

13 (13) Any evidence that a forensic technician,
14 laboratory, or facility involved in the case has been
15 responsible for an unreliable forensic analysis or
16 questionable conviction in the past.

17 (c) PROMPT DISCLOSURE OF ADDITIONAL INFORMA-
18 TION LATER ADDED TO THE INVESTIGATIVE OR CASE
19 FILE.—Upon completing the initial disclosure required
20 under subsection (b), the Government shall, not later than
21 14 days after information of the sort described in sub-
22 section (b) is added to the investigative or case file, dis-
23 close the full contents of that additional information, ex-
24 cepting only privileged material or attorney work product,
25 to permit inspection, copying, testing, and photographing

1 of disclosed documents or tangible objects, including the
2 documents or tangible objects described in subsection (b),
3 irrespective of whether the Government intends to rely on
4 such information at trial and irrespective of whether or
5 not the Government considers such information material
6 or exculpatory.

7 (d) PROTECTIVE ORDER.—

8 (1) IN GENERAL.—Upon written application by
9 the Government, the court may grant a protective
10 order limiting the scope or timing of disclosure re-
11 quired by this section, or limiting the persons to
12 whom such disclosure may be made or disseminated.

13 (2) REQUIREMENTS FOR GRANTING.—The ap-
14 plication shall be granted only to the extent the Gov-
15 ernment demonstrates that such disclosure would
16 cause—

17 (A) a particularized and substantial risk of
18 physical harm or intimidation to any person;

19 (B) the release of information that would
20 compromise a significant national security in-
21 terest; or

22 (C) the violation of privacy rights, pro-
23 tected by Federal law, of a non-law-enforcement
24 witness.

1 (3) NATURE OF ORDER IF GRANTED.—If grant-
2 ed, the protective order shall be narrowly tailored to
3 limit the scope, timing or extent of disclosure only
4 to the extent necessary to address the particularized
5 need for delayed, limited or nondisclosure, while pro-
6 tecting the defendant’s right to prepare for trial or
7 sentencing to the extent possible.

8 (4) APPLICATION MAY BE EX PARTE.—The
9 written application may be made ex parte so long as
10 the Government provides notice to the defendant of
11 the general nature of the application, and the de-
12 fendant is given an opportunity to be heard on
13 whether an ex parte application is necessary, wheth-
14 er any protective order is warranted, and the param-
15 eters of any protective order. If the application re-
16 mains sealed, it shall be preserved in the record for
17 appellate review.

18 **SEC. 303. NOTIFICATION RELATING TO FORENSIC, PROS-**
19 **ECUTORIAL, OR LAW ENFORCEMENT MIS-**
20 **CONDUCT.**

21 (a) NOTICE.—Not later than 30 days after a finding
22 by the Attorney General that a Federal prosecutor or law
23 enforcement officer involved in a Federal criminal case has
24 engaged in misconduct or a Federal forensic facility or
25 technician has provided flawed analysis or testimony, the

1 Attorney General shall inform each defendant in whose
2 case that prosecutor, law enforcement officer, forensic fa-
3 cility, or forensic technician was involved.

4 (b) ACCESS TO EVIDENCE AND CASE FILES FOR NO-
5 TIFIED PERSONS.—The Attorney General shall permit no-
6 tified defendants and their counsel access to—

7 (1) the forensic evidence underlying the defend-
8 ant’s case to be re-tested by another validated Gov-
9 ernment facility as well as by the defendant’s inde-
10 pendent forensic expert at the Government’s ex-
11 pense; and

12 (2) the investigative and prosecutorial case file
13 in the defendant’s case, including any attorney work
14 product.

15 (c) FAILURE TO COMPLY.—The Attorney General’s
16 failure to comply with any requirement of this section enti-
17 tles the defendant to appropriate judicial relief.

18 (d) HABEAS RELIEF.—A defendant who receives a
19 notice under subsection (a) and whose conviction has be-
20 come final is entitled to seek judicial relief under section
21 2255 of title 28, United States Code, notwithstanding any
22 procedural limitation or bar to such relief, so long as the
23 defendant exercised due diligence in seeking relief after
24 receiving the notice described in subsection (a).

1 **SEC. 304. REMEDIES.**

2 (a) WITHIN THE DEPARTMENT OF JUSTICE.—The
3 Attorney General shall take appropriate disciplinary meas-
4 ures to sanction any failure of a Federal prosecutor or
5 law enforcement officer to comply in good faith with the
6 procedures and requirements created by or under this
7 title.

8 (b) JUDICIAL REMEDY.—The court may exclude from
9 trial any evidence involved in a failure of a Federal pros-
10 ecutor or law enforcement officer to comply in good faith
11 with the procedures and requirements created by or under
12 this title.

13 **SEC. 305. TOOLKITS FOR STATE AND LOCAL GOVERNMENT.**

14 Not later than 180 days after the date of the enact-
15 ment of this Act, the Attorney General shall provide tool-
16 kits regarding training in best practices developed under
17 this title to State and local governments and encourage
18 them to adopt these practices to reduce the likelihood of
19 wrongful conviction.

1 **TITLE IV—CONCENTRATING**
2 **PRISON SPACE ON VIOLENT**
3 **AND CAREER CRIMINALS**

4 **Subtitle A—Restoring Original**
5 **Congressional Intent To Focus**
6 **Federal Drug Mandatory Mini-**
7 **mums Only on Managers, Super-**
8 **visors, Organizers, and Leaders**
9 **of Drug Trafficking Organiza-**
10 **tions and To Avoid Duplicative**
11 **Prosecution With States**

12 **SEC. 401. FOCUSING THE APPLICATION OF FEDERAL MAN-**
13 **DATORY MINIMUMS FOR CERTAIN DRUG OF-**
14 **FENSES TO RESTORE ORIGINAL CONGRES-**
15 **SIONAL INTENT RESPECTING THE BALANCE**
16 **OF POWER BETWEEN THE FEDERAL GOVERN-**
17 **MENT AND THE STATES.**

18 (a) CONTROLLED SUBSTANCES ACT.—Section 401 of
19 the Controlled Substances Act (21 U.S.C. 841) is amend-
20 ed by adding at the end the following:

21 “(i) CLARIFYING CONGRESSIONAL INTENT REGARD-
22 ING APPLICATION OF CERTAIN PENALTIES.—(1) The
23 penalties set forth in subparagraph (A) of subsection
24 (b)(1) apply only if—

1 “(A) the type and quantity of the controlled or
2 counterfeit substance violates subparagraph (A) of
3 subsection (b)(1); and

4 “(B) the defendant was an organizer or leader
5 of a drug trafficking organization.

6 “(2) The penalties set forth in subparagraph (B) of
7 subsection (b)(1) apply only if—

8 “(A) the type and quantity of the controlled or
9 counterfeit substance violates subparagraph (B) of
10 subsection (b)(1); and

11 “(B) the defendant was an organizer, leader,
12 manager, or supervisor of a drug trafficking organi-
13 zation.

14 “(3) The penalties set forth in subparagraph (C) of
15 subsection (b)(1) apply only if—

16 “(A) the type and quantity of the controlled or
17 counterfeit substance violates subparagraph (A),
18 (B), or (C) of subsection (b)(1); and

19 “(B) the defendant was not a leader, organizer,
20 manager, or supervisor of a drug trafficking organi-
21 zation.

22 “(4) The penalties set forth in subsection (b)(1)(D)
23 apply only if—

24 “(A) the defendant’s conduct does not violate
25 paragraphs (1) through (3);

1 “(B) the defendant’s role was not minor or
2 minimal; and

3 “(C) the defendant is not a leader, organizer,
4 manager, or supervisor of or otherwise employed by
5 a drug trafficking organization.

6 “(5) The penalties set forth in section 404 of the
7 Controlled Substances Act shall apply to prosecutions
8 under this section if—

9 “(A) the defendant’s conduct does not violate
10 paragraphs (1) through (3); and

11 “(B) the defendant’s role was minor or mini-
12 mal.

13 Notwithstanding subsection (b)(1)(D) or paragraph (4) or
14 (5) of this subsection, any person who violates subsection
15 (a) of this section by distributing a small amount of mari-
16 juana for no remuneration shall be treated as provided in
17 section 404 of the Controlled Substances Act and section
18 3607 of title 18, United States Code.”.

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

22 (1) so that paragraph (4) reads as follows:

23 “(4) In the case of less than 50 kilograms of
24 marihuana, except in the case of 50 or more mari-
25 huana plants regardless of weight, 10 kilograms of

1 hashish, or one kilogram of hashish oil, such person
2 shall, except as provided in paragraphs (4) and (5)
3 of section 401(b), be sentenced to a term of impris-
4 onment of not more than 5 years, a fine not to ex-
5 ceed the greater of that authorized in accordance
6 with the provisions of title 18, United States Code,
7 or \$250,000, if the defendant is an individual or
8 \$1,000,000 if the defendant is other than an indi-
9 vidual, or both. If any person commits such a viola-
10 tion after a prior conviction for a felony drug offense
11 has become final, such person shall be sentenced to
12 a term of imprisonment of not more than 10 years,
13 a fine not to exceed the greater of twice that author-
14 ized in accordance with the provisions of title 18,
15 United States Code, or \$500,000 if the defendant is
16 an individual or \$2,000,000 if the defendant is other
17 than an individual, or both. Notwithstanding section
18 3583 of title 18, United States Code, any sentence
19 imposing a term of imprisonment under this para-
20 graph shall, in the absence of such a prior convic-
21 tion, impose a term of supervised release of at least
22 2 years in addition to such term of imprisonment
23 and shall, if there was such a prior conviction, im-
24 pose a term of supervised release of at least 4 years
25 in addition to such term of imprisonment.”; and

1 (2) so that paragraph (5) reads as follows:

2 “(5) In the case of a violation of subsection (a)
3 involving a controlled substance in schedule III, such
4 person shall be sentenced in accordance with para-
5 graphs (1) through (4) of this subsection and sub-
6 section (e).”.

7 (c) CLARIFYING ORIGINAL CONGRESSIONAL INTENT
8 REGARDING APPLICATION OF CERTAIN PENALTIES.—
9 Section 1010 of the Controlled Substances Import and Ex-
10 port Act (21 U.S.C. 960) is amended by adding at the
11 end the following:

12 “(e) CLARIFYING ORIGINAL CONGRESSIONAL INTENT
13 REGARDING APPLICATION OF PENALTIES UNDER THE
14 CONTROLLED SUBSTANCES IMPORT AND EXPORT ACT.—

15 “(1) The penalties set forth in paragraph (1) of
16 subsection (b) apply only if—

17 “(A) type and quantity of the controlled or
18 counterfeit substance violates paragraph (1) of
19 subsection (b); and

20 “(B) the defendant was an organizer or
21 leader of a drug trafficking organization.

22 “(2) The penalties set forth in paragraph (2) of
23 subsection (b) apply only if—

1 “(A) the type and quantity of the con-
2 trolled or counterfeit substance violates para-
3 graph (2) of subsection (b); and

4 “(B) the defendant was an organizer, lead-
5 er, manager, or supervisor of a drug trafficking
6 organization.

7 “(3) The penalties set forth in paragraph (3) of
8 subsection (b) apply only if—

9 “(A) the type and quantity of the con-
10 trolled or counterfeit substance violates para-
11 graph (1), (2), or (3) of subsection (b); and

12 “(B) the defendant was not a leader, orga-
13 nizer, manager, or supervisor of a drug traf-
14 ficking organization.

15 “(4) The penalties set forth in paragraph (4) of
16 subsection (b) apply only if—

17 “(A) the defendant’s conduct does not vio-
18 late paragraphs (1) through (3);

19 “(B) the defendant’s role was not minor or
20 minimal; and

21 “(C) the defendant is not a leader, orga-
22 nizer, manager, or supervisor of or otherwise
23 employed by a drug trafficking organization.

1 “(5) The penalties set forth in section 404 of
2 the Controlled Substances Act shall apply to pros-
3 ecutions under section 1010(b) of this Act if—

4 “(A) the defendant’s conduct does not vio-
5 late paragraphs (1) through (3); and

6 “(B) the defendant’s role was minor or
7 minimal.

8 “(6) Notwithstanding paragraph (4) of sub-
9 section (b) or paragraph (4) or (5) of this sub-
10 section, whoever violates subsection (a) of this sec-
11 tion by distributing a small amount of marijuana for
12 no remuneration shall be treated as provided in sec-
13 tion 404 of the Controlled Substances Act and sec-
14 tion 3607 of title 18, United States Code.”.

15 (d) DEFINITIONS.—Section 102 of the Controlled
16 Substances Act is amended by adding at the end the fol-
17 lowing:

18 “(58)(A) The term ‘participant’ means a person
19 who is criminally responsible for the commission of
20 the offense, and does not include a law enforcement
21 officer or a person acting on behalf of law enforce-
22 ment.

23 “(B) The term ‘organizer’ or ‘leader’ means a
24 person who, over a significant period of time—

1 “(i) exercised primary decision-making au-
2 thority over the most significant aspects of the
3 criminal activity;

4 “(ii) engaged in significant planning of the
5 acquisition or distribution of large quantities of
6 drugs or sums of money for the initiation and
7 commission of the offense;

8 “(iii) recruited and paid accomplices;

9 “(iv) delegated tasks to other participants
10 on a regular basis;

11 “(v) received a significantly larger share of
12 the proceeds of the criminal activity than other
13 participants; and

14 “(vi) exercised supervisory control or au-
15 thority over at least four other participants in
16 the criminal activity who meet the definition of
17 ‘manager’ or ‘supervisor’ in subsection (d)(3)
18 over a substantial period of time.

19 “(C) The term ‘manager’ or ‘supervisor’ means
20 a person who, over a significant period of time—

21 “(i) exercised some decision-making au-
22 thority over significant aspects of the criminal
23 activity;

1 “(ii) received a larger share of the pro-
2 ceeds of the criminal activity than most other
3 participants; and

4 “(iii) provided ongoing, day-to-day super-
5 vision of, or specialized training to, at least four
6 other participants over a substantial period of
7 time.

8 “(D) When used with regards to a defendant’s
9 role in the offense, the term ‘minor’ means the per-
10 son was not a manager, supervisor, organizer, or
11 leader, and, in comparison with those in the offense
12 who played such roles—

13 “(i) exercised little decision-making author-
14 ity over aspects of the criminal activity;

15 “(ii) had little or no knowledge of the
16 scope, extent, and inner workings of the crimi-
17 nal activity;

18 “(iii) received small shares of the proceeds
19 of the criminal activity; or

20 “(iv) was involved in the offense for a
21 short period of time or in a sporadic manner
22 over a long period of time.

23 “(E) When used with regards to a defendant’s
24 role in the offense, the term ‘minimal’ means the
25 person was not a manager, supervisor, organizer, or

1 leader, and the person’s involvement in the crime
2 was less substantial than that of a person playing a
3 ‘minor’ role.”.

4 (e) APPLICABILITY TO OTHER CONTROLLED SUB-
5 STANCES DERIVING THEIR PENALTIES THEREFROM.—

6 (1) Section 401 of the Controlled Substances
7 Act is amended by adding at the end, as amended
8 by section 401(a) of this Act:

9 “(i) The penalties set forth in subsections (b) and (i)
10 of this section shall apply to any provision of law for which
11 the penalties are derived from this section.”.

12 (2) Section 1010 of the Controlled Substances
13 Import and Export Act is amended by adding at the
14 end, as amended by section 401(c) of this Act:

15 (f) APPLICATION OF PENALTIES.—The penalties set
16 forth in subsections (b) and (e) of this section shall apply
17 to any provision of law for which the penalties are derived
18 from this section.

19 **SEC. 402. MODIFICATION OF CRITERIA FOR “SAFETY**
20 **VALVE” LIMITATION ON APPLICABILITY OF**
21 **CERTAIN MANDATORY MINIMUMS.**

22 (a) IN GENERAL.—Section 3553(f) of title 18, United
23 States Code, is amended—

24 (1) in the matter preceding paragraph (1), by
25 inserting “or under any provision of law for which

1 the penalties are derived from any of those sections,
2 or section 924(c) of this title in relation to a drug
3 trafficking crime,” before “the court shall impose”;

4 (2) so that paragraph (1) reads as follows:

5 “(1) the defendant—

6 “(A) does not have a criminal history cat-
7 egory higher than category I after any down-
8 ward departure under the sentencing guidelines;

9 “(B) does not have—

10 “(i) criminal history points higher
11 than 4 after any downward departure
12 under the sentencing guidelines; or

13 “(ii) an offense of conviction that is—

14 “(I) an offense under section 922
15 or 924;

16 “(II) a sex offense (as defined in
17 section 111 of the Adam Walsh Child
18 Protection and Safety Act of 2006);

19 “(III) a Federal crime of ter-
20 rorism (as defined in section
21 2332b(g)(5)); or

22 “(IV) a racketeering offense
23 under section 1962; or

24 “(C) committed the offense as the result
25 of—

1 “(i) mental illness, cognitive deficits,
2 or a history of persistent or serious sub-
3 stance abuse or addiction;

4 “(ii) trauma suffered while serving on
5 active duty in an armed conflict zone for a
6 branch of the United States military; or

7 “(iii) victimization stemming from any
8 combination of physical, mental, emotional,
9 or psychological abuse or domestic vio-
10 lence, if the offense was committed at the
11 direction of another individual who—

12 “(I) was a more culpable partici-
13 pant in the instant offense or played
14 a significantly greater role in the of-
15 fense; or

16 “(II) effectively coerced the de-
17 fendant’s involvement in the offense
18 by means of threats or abuse either
19 directly from the other individual or
20 through any person or group;”;

21 (3) so that paragraph (2) reads as follows:

22 “(2) the defendant did not use violence or cred-
23 ible threats of violence in connection with the of-
24 fense;”; and

25 (4) so that paragraph (4) reads as follows:

1 “(4) the defendant was not convicted under sec-
2 tion 401 of the Controlled Substances Act or section
3 1010(b) of the Controlled Substances Import and
4 Export Act for being an organizer, leader, manager,
5 or supervisor of a drug trafficking organization, and
6 was not engaged in a continuing criminal enterprise,
7 as defined in section 408 of the Controlled Sub-
8 stances Act; and”.

9 (b) LIMITATION ON USE OF CERTAIN INFORMATION
10 TO DETERMINE GUIDELINE RANGE.—Subsection (f)(5)
11 of section 3553 of title 18, United States Code, as amend-
12 ed by section 402(a) of this Act, is amended further by
13 adding at the end the following:

14 “(h) LIMITATION ON USE OF CERTAIN INFORMATION
15 TO DETERMINE GUIDELINE SENTENCE.—Information
16 and evidence provided by the defendant pursuant to this
17 paragraph shall not be used by the court in determining
18 the applicable guideline range, or in imposing an upward
19 departure or variance.”.

20 **SEC. 403. CONSISTENCY IN THE USE OF PRIOR CONVIC-**
21 **TIONS FOR SENTENCING ENHANCEMENTS.**

22 (a) DEFINITION OF FELONY DRUG OFFENSE.—Sec-
23 tion 102(44) of the Controlled Substances Act (21 U.S.C.
24 802(44)) is amended to read as follows:

1 “(44) For the purpose of increased punishment
2 based on a prior conviction for a ‘felony drug of-
3 fense’, the term ‘felony drug offense’—

4 “(A) means an offense under Federal or
5 State law that—

6 “(i) has as an element the knowing
7 manufacture, distribution, import, export,
8 or possession with intent to distribute a
9 controlled substance;

10 “(ii) is classified by the applicable law
11 of the jurisdiction as a felony for which a
12 maximum term of imprisonment of 10
13 years or more is prescribed by law; and

14 “(iii) for which a sentence of impris-
15 onment exceeding 1 year and 1 month was
16 initially imposed and was not suspended;
17 but

18 “(B) does not include an offense for
19 which—

20 “(i) the conviction occurred more than
21 10 years before the defendant’s commis-
22 sion of the instant offense, excluding any
23 period during which the defendant was in-
24 carcerated;

1 “(ii) the prosecution relating to the
2 offense was ultimately dismissed, including
3 in a case in which the defendant previously
4 entered a plea of guilty or nolo contendere;

5 “(iii) the conviction has been reversed,
6 vacated, set aside, or otherwise vitiated by
7 judicial action;

8 “(iv) the conviction was expunged;

9 “(v) the defendant has been pardoned
10 or had civil rights restored; or

11 “(vi) the conviction was unconstitu-
12 tional under the caselaw of the United
13 States Supreme Court in effect at the time
14 the conviction occurred or after the convic-
15 tion became final.”.

16 (b) DEFINITION OF FELONY DRUG TRAFFICKING
17 OFFENSE.—Section 102 of the Controlled Substances Act
18 (21 U.S.C. 802) is amended by adding at the end the fol-
19 lowing:

20 “(57) For the purpose of increased punishment
21 based on a prior conviction for a ‘drug trafficking
22 offense’, that term has the same meaning as the
23 term ‘felony drug offense’ under subsection (44).”.

1 (c) DEFINITIONS OF RELATED TERMS FOR CHAPTER
2 44 OF TITLE 18, UNITED STATES CODE.—Section
3 924(e)(2) of title 18, United States Code, is amended—

4 (1) in subparagraph (A), by striking “means—
5 ” and all that follows through the end of the sub-
6 paragraph and inserting “means a ‘felony drug of-
7 fense’ as that term is defined in section 102(44) of
8 the Controlled Substances Act;”;

9 (2) in subparagraph (B), by inserting “, for
10 which a sentence of imprisonment exceeding 1 year
11 and 1 month was initially imposed and not sus-
12 pended” after “adult”; and

13 (3) in subparagraph (C), by striking the period
14 at the end and inserting “, but does not include a
15 conviction for any offense that is not classified as a
16 felony by the applicable law of the jurisdiction or is
17 a conviction of the sort described in subparagraph
18 (B) of section 102(44) of the Controlled Substances
19 Act and does not include any finding that the de-
20 fendant committed an act of juvenile delinquency
21 that was made more than 10 years before the de-
22 fendant’s commencement of the instant offense, ex-
23 cluding any period during which the defendant was
24 incarcerated; and”.

1 (d) REQUIREMENT OF FILING AN INFORMATION.—
2 Section 924(e) of title 18, United States Code, is amended
3 by adding at the end the following:

4 “(3) A person may not be sentenced to in-
5 creased punishment under this subsection unless, be-
6 fore trial or entry of a guilty plea, the United States
7 Attorney files an information with the court and
8 serves a copy on the person or his counsel stating
9 in writing the previous convictions to be relied
10 upon.”.

11 (e) APPLYING EVIDENCE-BASED PRACTICES FOR
12 AGE-RELATED DECLINES IN RECIDIVISM TO CERTAIN
13 PENALTIES.—

14 (1) IN GENERAL.—Section 401(b)(1) of the
15 Controlled Substances Act (21 U.S.C. 841(b)(1)) is
16 amended—

17 (A) in subparagraph (A)—

18 (i) in the flush text following clause
19 (viii), by striking “life imprisonment, a
20 fine” and inserting “a term of imprison-
21 ment which may not be less than 25 years
22 and not more than life imprisonment, a
23 fine”; and

24 (ii) in the flush text following clause
25 (viii), by striking “term of life imprison-

1 ment without release” and inserting “a
2 term of imprisonment which may not be
3 less than 25 years and not more than life
4 imprisonment, a fine”;

5 (B) in subparagraph (B), in the flush text
6 following clause (viii), by striking “life impris-
7 onment, a fine” and inserting “a term of im-
8 prisonment which may not be less than 25
9 years and not more than life imprisonment, a
10 fine”; and

11 (C) in subparagraph (C), by striking “life
12 imprisonment, a fine” and inserting “a term of
13 imprisonment which may not be less than 25
14 years and not more than life imprisonment, a
15 fine”.

16 (2) RETROACTIVE EFFECT.—The amendments
17 made by this subsection apply with respect to convic-
18 tions occurring before, on, or after the date of the
19 enactment of this Act.

20 (f) PROCEDURES RELATED TO SEEKING ENHANCED
21 DRUG PENALTIES FOR DRUG TRAFFICKING.—Section
22 411 of the Controlled Substances Act (21 U.S.C. 851) is
23 amended by striking paragraph (2) of subsection (a) and
24 inserting the following:

1 “(2) No person who is convicted of an offense
2 under this part shall be sentenced to increased pun-
3 ishment by reason of a prior conviction if—

4 “(A) except as provided in paragraph (4),
5 the Government fails, before trial, or before
6 entry of a plea of guilty, to file an information
7 with the court and serves a copy of such infor-
8 mation on the person or counsel for that per-
9 son, stating any previous conviction upon which
10 the Government intends to rely for the en-
11 hanced penalty;

12 “(B) the person was not convicted as al-
13 leged in the information;

14 “(C) the conviction is for simple possession
15 of a controlled substance, the offense was clas-
16 sified as a misdemeanor under the law of the
17 jurisdiction in which the proceedings were held,
18 the finding that the defendant committed an
19 act of juvenile delinquency that made more
20 than 10 years before the defendant’s com-
21 mencement of the instant offense, excluding any
22 period during which the defendant was incar-
23 cerated, or the proceedings resulted in a dis-
24 position that was not deemed a conviction
25 under that law;

1 “(D) the conviction has been dismissed, ex-
2 punged, vacated, or set aside, or for which the
3 person has been pardoned or has had civil
4 rights restored;

5 “(E) the conviction is invalid; or

6 “(F) the person is otherwise not subject to
7 an increased sentence as a matter of law.

8 “(3) An information may not be filed under this
9 section—

10 “(A) if the increased punishment which
11 may be imposed is imprisonment for a term in
12 excess of three years unless the person either
13 waived or was afforded prosecution by indict-
14 ment for the offense for which such increased
15 punishment may be imposed; or

16 “(B) more than 10 years after the date the
17 judgment for the prior conviction was entered,
18 excluding any period during which the defend-
19 ant was incarcerated.

20 “(4) Upon a showing by the Government that
21 facts regarding prior convictions could not with due
22 diligence be obtained prior to trial or before entry of
23 a plea of guilty, the court may postpone the trial or
24 the taking of the plea of guilty for a reasonable pe-
25 riod for the purpose of obtaining those facts.

1 “(5) Clerical mistakes in the information, or in
2 the underlying conviction records, may be amended
3 at any time prior to the pronouncement of the sen-
4 tence.

5 “(6) The Government shall bear the burden of
6 proof beyond a reasonable doubt regarding the exist-
7 ence and accuracy of any prior conviction alleged.

8 “(7) The person with respect to whom the in-
9 formation was filed may challenge a prior conviction
10 before sentence is imposed.

11 “(8) If a prior conviction that was a basis for
12 increased punishment under this part has been va-
13 cated in any State or Federal proceeding, or is for
14 an offense that no longer qualifies as a felony drug
15 offense under United States Supreme Court or rel-
16 evant circuit caselaw, the person shall be resen-
17 tenced to any sentence available under the law at the
18 time of resentencing, not to exceed the original sen-
19 tence.”.

20 (g) INFORMATION FILED BY UNITED STATES AT-
21 TORNEY.—Paragraph (4) of section 3559(c) of title 18,
22 United States Code, is amended to read as follows:

23 “(4) INFORMATION FILED BY UNITED STATES
24 ATTORNEY.—A person may not be sentenced to in-
25 creased punishment under this subsection unless, be-

1 fore trial or entry of a guilty plea, the United States
2 Attorney files an information with the court and
3 serves a copy on the person or his counsel stating
4 in writing the previous convictions to be relied
5 upon.”.

6 (h) RESENTENCING.—Section 3559(c)(7) of title 18,
7 United States Code, is amended by inserting “not to ex-
8 ceed the original sentence” before the period at the end.

9 **SEC. 404. CLARIFICATION OF APPLICABILITY OF THE FAIR**
10 **SENTENCING ACT.**

11 (a) 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 were in effect at the time
17 the covered offense was committed.

18 (b) DEFINITION OF COVERED OFFENSE.—In this
19 section, the term “covered offense” means a violation of
20 a Federal criminal statute, the statutory penalties for
21 which were modified by section 2 or 3 of the Fair Sen-
22 tencing Act of 2010 (Public Law 111–220; 124 Stat.
23 2372), that was committed before August 3, 2010.

1 **SEC. 405. ELIGIBILITY FOR RESENTENCING BASED ON**
2 **CHANGES IN LAW.**

3 Section 3582(c) of title 18, United States Code, is
4 amended—

5 (1) by striking “and” at the end of paragraph
6 (1);

7 (2) by striking the period at the end of para-
8 graph (2) and inserting “; and”; and

9 (3) by adding at the end the following:

10 “(3) in the case of a defendant who was sen-
11 tenced to a term of imprisonment for an offense for
12 which the minimum or maximum term of imprison-
13 ment was subsequently reduced as a result of the
14 amendments made by the SAFE Justice Act, upon
15 motion of the defendant, counsel for the defendant,
16 counsel for the Government, or the Director of the
17 Bureau of Prisons, or, on its own motion, the court
18 may reduce the term of imprisonment consistent
19 with that reduction, after considering the factors set
20 forth in subsections (a) and (d) through (g) of sec-
21 tion 3553 to the extent applicable. If the court does
22 grant a sentence reduction, the reduced sentence
23 shall not be less than permitted under current statu-
24 tory law. If the court denies a motion made under
25 this paragraph, the movant may file another motion
26 under this subsection, not earlier than 5 years after

1 each denial, which may be granted if the offender
2 demonstrates the offender’s compliance with recidi-
3 vism-reduction programming or other efforts the of-
4 fender has undertaken to improve the likelihood of
5 successful re-entry and decrease any risk to public
6 safety posed by the defendant’s release. If the court
7 denies the motion due to incorrect legal conclusions
8 or facts or other mistakes by the court, probation of-
9 ficer, or counsel, the defendant may file another mo-
10 tion under this subsection at any time.”.

11 **SEC. 406. DIRECTIVES TO THE SENTENCING COMMISSION.**

12 (a) **GENERALLY.**—Pursuant to its authority under
13 section 994(p) of title 28, United States Code, and in ac-
14 cordance with this section, the United States Sentencing
15 Commission shall review and amend its guidelines and its
16 policy statements applicable to persons convicted of an of-
17 fense under the Controlled Substances Act (21 U.S.C. 801
18 et seq.), the Controlled Substances Import and Export Act
19 (21 U.S.C. 951 et seq.), or any offense deriving its pen-
20 alties therefrom to ensure that the guidelines and policy
21 statements are consistent with the amendments made by
22 this title.

23 (b) **CONSIDERATIONS.**—In carrying out this section,
24 the United States Sentencing Commission shall con-
25 sider—

1 (1) the mandate of the United States Sen-
2 tencing Commission, under section 994(g) of title
3 28, United States Code, to formulate the sentencing
4 guidelines in such a way as to “minimize the likeli-
5 hood that the Federal prison population will exceed
6 the capacity of the Federal prisons”;

7 (2) the relevant public safety concerns, includ-
8 ing the need to preserve limited prison resources for
9 more serious, repeat, and violent offenders;

10 (3) the intent of Congress that violent, repeat,
11 and high-level drug traffickers who present public
12 safety risks receive sufficiently severe sentences, and
13 that nonviolent, lower- and street-level drug offend-
14 ers without serious records receive proportionally
15 less severe sentences;

16 (4) the fiscal implications of any amendments
17 or revisions to the sentencing guidelines or policy
18 statements made by the United States Sentencing
19 Commission;

20 (5) the appropriateness of, and likelihood of un-
21 warranted sentencing disparity resulting from, use
22 of drug type and quantity as the primary factors de-
23 termining a sentencing guideline range; and

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

1 (c) GENERAL INSTRUCTION TO SENTENCING COM-
2 MISSION.—Section 994(h) of title 28, United States Code,
3 is amended to read as follows:

4 “(h) The Commission shall ensure that the guidelines
5 specify a sentence to a term of imprisonment at or near
6 the maximum term authorized for categories of defendants
7 in which the defendant is 18 years old or older and—

8 “(1) has been convicted of a felony that is—

9 “(A) a violent felony as defined in section
10 924(e)(2)(B) of title 18; or

11 “(B) an offense under—

12 “(i) section 401 of the Controlled
13 Substances Act;

14 “(ii) section 1002(a), 1005, or 1009
15 of the Controlled Substances Import and
16 Export Act; or

17 “(iii) chapter 705 of title 46, United
18 States Code; and

19 “(2) has previously been convicted of two or
20 more prior offenses, each of which—

21 “(A) is classified by the applicable law of
22 the convicting jurisdiction as a felony; and

23 “(B) is—

24 “(i) a violent felony as defined in sec-
25 tion 924(e)(2)(B) of title 18; or

1 “(ii) a felony drug offense as defined
2 in section 102(44) of the Controlled Sub-
3 stances Act.”.

4 **SEC. 407. EXCLUSION OF ACQUITTED CONDUCT AND DIS-**
5 **CRETION TO DISREGARD MANIPULATED CON-**
6 **DUCT FROM CONSIDERATION DURING SEN-**
7 **TENCING.**

8 (a) ACQUITTED CONDUCT NOT TO BE CONSIDERED
9 IN SENTENCING.—Section 3661 of title 18, United States
10 Code, is amended by striking the period at the end and
11 inserting “, except that a court shall not consider conduct
12 of which a person has not been convicted.”.

13 (b) PROVIDING DISCRETION TO DISREGARD CER-
14 TAIN FACTORS IN SENTENCING.—

15 (1) TITLE 18, UNITED STATES CODE.—Section
16 3553 of title 18, United States Code, is amended by
17 adding at the end the following:

18 “(g) DISCRETION TO DISREGARD CERTAIN FAC-
19 TORS.—A court, in sentencing a defendant convicted
20 under the Controlled Substances Act, the Controlled Sub-
21 stances Import and Export Act, any offense deriving its
22 penalties from either such Act, or an offense under section
23 924(e) based on a drug trafficking crime, may disregard,
24 in determining the statutory range, calculating the guide-
25 line range or considering the factors set forth in section

1 3553(a), any type or quantity of a controlled substance,
2 counterfeit substance, firearm or ammunition that was de-
3 termined by a confidential informant, cooperating witness,
4 or law enforcement officer who solicited the defendant to
5 participate in a reverse sting or fictitious stash-house rob-
6 bery.”.

7 (2) CONTROLLED SUBSTANCES ACT.—Section
8 401(b)(1) of the Controlled Substances Act (21
9 U.S.C. 841(b)(1)) is amended by adding at the end
10 the following:

11 “(F) In the case of a person who conspires
12 to commit an offense under this title, the type
13 and quantity of the controlled or counterfeit
14 substance for the offense that was the object of
15 the conspiracy shall be the type and quantity
16 involved in—

17 “(i) the defendant’s own unlawful
18 acts; and

19 “(ii) any unlawful act of a co-con-
20 spirator that—

21 “(I) the defendant agreed to
22 jointly undertake;

23 “(II) was in furtherance of that
24 unlawful act the defendant agreed to
25 jointly undertake; and

1 “(III) was intended by the de-
2 fendant.”.

3 (3) CONTROLLED SUBSTANCES IMPORT AND
4 EXPORT ACT.—Section 1010(b) of the Controlled
5 Substances Import and Export Act (21 U.S.C.
6 960(b)) is amended by adding at the end the fol-
7 lowing:

8 “(8) In the case of a person who conspires to
9 commit an offense under this title, the type and
10 quantity of the controlled or counterfeit substance
11 for the offense that was the object of the conspiracy
12 shall be the type and quantity involved in—

13 “(A) the defendant’s own unlawful acts;
14 and

15 “(B) any unlawful act of a co-conspirator
16 that—

17 “(i) the defendant agreed to jointly
18 undertake;

19 “(ii) was in furtherance of that unlaw-
20 ful act the defendant agreed to jointly un-
21 dertake; and

22 “(iii) was intended by the defend-
23 ant.”.

24 (4) DIRECTIVE TO THE SENTENCING COMMIS-
25 SION.—Pursuant to its authority under section

1 994(p) of title 28, United States Code, and in ac-
2 cordance with this section, the United States Sen-
3 tencing Commission shall review and amend its
4 guidelines and policy statements applicable to rel-
5 evant conduct to ensure that they are consistent
6 with the amendments made by this section.

7 (5) DEFINITIONS.—The following definitions
8 apply in this section:

9 (A) REVERSE STING.—The term “reverse
10 sting” means a situation in which a person who
11 is a law enforcement officer or is acting on be-
12 half of law enforcement initiates a transaction
13 involving the sale of a controlled substance,
14 counterfeit substance, firearms or ammunition
15 to a targeted individual.

16 (B) STASH HOUSE.—The term “stash
17 house” means a location where drugs and/or
18 money are stored in furtherance of a drug dis-
19 tribution operation.

20 (C) FICTITIOUS STASH HOUSE ROB-
21 BERY.—The term “fictitious stash house rob-
22 bery” means a situation in which a person who
23 is a law enforcement officer or is acting on be-
24 half of law enforcement describes a fictitious
25 stash house to a targeted individual and invites

1 the targeted individual to rob such fictitious
2 stash house.

3 **Subtitle B—Clarification of Con-**
4 **gressional Intent on Certain Re-**
5 **cidivist Penalties**

6 **SEC. 408. AMENDMENTS TO ENHANCED PENALTIES PROVI-**
7 **SION.**

8 Section 924(e) of title 18, United States Code, is
9 amended—

10 (1) in paragraph (1)(C), by striking, “In the
11 case of a second or subsequent conviction under this
12 subsection” and inserting “If any person commits a
13 violation under this subsection after a prior convic-
14 tion under this subsection has become final”;

15 (2) in clause (i), by striking “not less than 25
16 years” and inserting “not less than 15 years.”; and

17 (3) by adding at the end the following:

18 “(6) In this subsection, the term ‘during and in
19 relation to’ does not include any possession not on
20 the person of, or within arm’s reach and otherwise
21 readily and immediately accessible to the defendant
22 at the time and place of the offense.”.

1 **Subtitle C—Expanding the Ability**
2 **To Apply for Compassionate Re-**
3 **lease**

4 **SEC. 409. ABILITY TO PETITION FOR RELEASE TO EX-**
5 **TENDED SUPERVISION FOR CERTAIN PRIS-**
6 **ONERS WHO ARE MEDICALLY INCAPACI-**
7 **TATED, GERIATRIC, OR CAREGIVER PARENTS**
8 **OF MINOR CHILDREN AND WHO DO NOT**
9 **POSE PUBLIC SAFETY RISKS.**

10 (a) **ELIGIBILITY.**—Subparagraph (A) of section
11 3582(c)(1) of title 18, United States Code, is amended
12 to read as follows:

13 “(A) the court, upon motion of the defend-
14 ant, the Director of the Bureau of Prisons, or
15 on its own motion, may reduce the term of im-
16 prisonment after considering the factors set
17 forth in section 3553(a) to the extent they are
18 applicable, if it finds that—

19 “(i) extraordinary and compelling rea-
20 sons warrant such a reduction; or

21 “(ii) the defendant—

22 “(I) is at least 60 years of age;

23 “(II) has an extraordinary health
24 condition; or

25 “(III) has been notified that—

1 “(aa) the primary caregiver
2 of the defendant’s biological or
3 adopted child under the age of 18
4 has died or has become medi-
5 cally, mentally, or psychologically
6 incapacitated;

7 “(bb) the primary caregiver
8 is therefore unable to care for the
9 child any longer; and

10 “(cc) other family members
11 or caregivers are unable to care
12 for the child, such that the child
13 is at risk of being placed in the
14 foster care system; and”.

15 (b) INELIGIBILITY AND PROCEDURE.—Section 3582
16 of title 18, United States Code, is amended by adding at
17 the end the following:

18 “(e) INELIGIBILITY.—No prisoner is eligible for a
19 modification of sentence under subsection (c)(1)(A) if the
20 prisoner is serving a sentence of imprisonment for any of
21 the following offenses:

22 “(1) A Federal conviction for homicide in which
23 the prisoner was proven beyond a reasonable doubt
24 to have had the intent to cause death and death re-
25 sulted.

1 “(2) A Federal crime of terrorism, as defined
2 under section 2332b(g)(5).

3 “(3) A Federal sex offense, as described in sec-
4 tion 111 of the Sex Offender Registration and Noti-
5 fication Act (42 U.S.C. 16911).

6 “(f) REQUIREMENTS FOR CERTAIN MOTIONS.—If
7 the prisoner makes a motion under subsection (c)(1)(A)
8 on the basis of an extraordinary health condition or the
9 death or incapacitation of the primary caregiver of the
10 prisoner’s minor child, that prisoner shall provide docu-
11 mentation, as the case may be—

12 “(1) setting forth a relevant diagnosis regard-
13 ing the extraordinary health condition; or

14 “(2) that—

15 “(A) the requirements of subsection
16 (c)(1)(A)(ii)(III) are met; and

17 “(B) the prisoner’s release—

18 “(i) is in the best interest of the child;

19 and

20 “(ii) would not endanger public safety.

21 “(g) PROCEDURE FOR COURT DETERMINATION.—(1)
22 Upon receipt of a prisoner’s motion under subsection
23 (c)(1)(A), the court, after obtaining relevant contact infor-
24 mation from the Attorney General, shall send notice of the
25 motion to the victim or victims, or appropriate surviving

1 relatives of a deceased victim, of the crime committed by
2 the prisoner. The notice shall inform the victim or victims
3 or surviving relatives of a deceased victim of how to pro-
4 vide a statement prior to a determination by the court on
5 the motion.

6 “(2) Not later than 60 days after receiving a pris-
7 oner’s motion for modification under subsection (c)(1)(A),
8 the court shall hold a hearing on the motion if the motion
9 has not been granted.

10 “(3) The court shall grant the modification under
11 subsection (c)(1)(A) if the court determines that—

12 “(A) the prisoner meets the criteria pursuant to
13 subsection (c)(1)(A); and

14 “(B) there is a low likelihood that the prisoner
15 will pose a risk to public safety.

16 “(4) In determining a prisoner’s motion for a modi-
17 fication of sentence under subsection (c)(1)(A) the court
18 shall consider—

19 “(A) the age of the prisoner and years served
20 in prison;

21 “(B) the criminogenic needs and risk factors of
22 the offender;

23 “(C) the prisoner’s behavior in prison;

24 “(D) an evaluation of the prisoner’s community
25 and familial bonds;

1 “(E) an evaluation of the prisoner’s health; and

2 “(F) a victim statement, if applicable, pursuant
3 to paragraph (1).

4 “(h) ACTIONS WITH RESPECT TO SUCCESSFUL MO-
5 TION.—If the court grants the prisoner’s motion pursuant
6 to subsection (c)(1)(A), the court shall—

7 “(1) reduce the term of imprisonment for the
8 prisoner in a manner that provides for the release of
9 the prisoner not later than 30 days after the date
10 on which the prisoner was approved for sentence
11 modification;

12 “(2) modify the remainder of the term of im-
13 prisonment to home confinement or residential re-
14 entry confinement with or without electronic moni-
15 toring; or

16 “(3) lengthen or impose a term of supervised
17 release so that it expires on the same date as if the
18 defendant received no relief under subsection
19 (c)(1)(A).

20 “(i) SUBSEQUENT MOTIONS.—If the court denies a
21 prisoner’s motion pursuant to subsection (c)(1)(A), the
22 prisoner may not file another motion under subsection
23 (c)(1)(A) earlier than one year after the date of denial.
24 If the court denies the motion due to incorrect legal con-
25 clusions or facts or other mistakes by the court, probation

1 officer, or counsel, the prisoner may file another motion
2 under that subsection without regard to this limitation.

3 “(j) DEFINITION.—In this section, the term ‘extraor-
4 dinary health conditions’ means a condition afflicting a
5 person, such as infirmity, significant disability, or a need
6 for advanced medical treatment or services not readily or
7 reasonably available within the correctional institution.”.

8 (c) EFFECTIVE DATE.—The amendments made by
9 this section take effect 1 year after the date of the enact-
10 ment of this Act.

11 **TITLE V—ENCOURAGING AC-**
12 **COUNTABILITY WITH GREAT-**
13 **ER USE OF EVIDENCE-BASED**
14 **SENTENCING ALTERNATIVES**
15 **FOR LOWER-LEVEL OFFEND-**
16 **ERS**

17 **SEC. 501. ELIGIBILITY FOR PREJUDGEMENT PROBATION.**

18 Section 3607(a)(1) of title 18, United States Code,
19 is amended by striking “been convicted of violating a Fed-
20 eral or State law relating to controlled substances” and
21 inserting “been convicted of a felony under the Controlled
22 Substances Act, the Controlled Substances Import and
23 Export Act, or any other Federal offense deriving its pen-
24 alties from either such Act”.

1 **SEC. 502. SENTENCE OF PROBATION.**

2 Subsection (a) of section 3561 of title 18, United
3 States Code, is amended to read as follows:

4 “(a) IN GENERAL.—

5 “(1) PROBATION GENERALLY AVAILABLE.—Ex-
6 cept as provided in paragraph (2), a defendant who
7 has been found guilty of an offense may be sen-
8 tenced to probation.

9 “(2) GENERAL EXCEPTIONS.—A defendant may
10 not be sentenced to probation if—

11 “(A) the offense is a Class A or Class B
12 felony and the defendant is an individual;

13 “(B) the offense is an offense for which
14 probation has been expressly precluded; or

15 “(C) the defendant is sentenced at the
16 same time to a term of imprisonment for the
17 same or a different offense that is not a petty
18 offense.

19 “(3) PRESUMPTION OF PROBATION FOR CER-
20 TAIN OFFENDERS.—The court shall sentence an oth-
21 erwise eligible defendant to probation, if the defend-
22 ant is a first-time Federal offender whose place of
23 residence allows for Federal probation supervision
24 and who did not engage in violent conduct as a part
25 of the offense, unless the court, having considered
26 the nature and circumstances of the offense and the

1 history and characteristics of the defendant, finds on
2 the record that a term of probation would not be ap-
3 propriate. However, a defendant convicted of a Fed-
4 eral sex offense, as described in section 111 of the
5 Sex Offender Registration and Notification Act, is
6 not subject to a presumption of probation under this
7 paragraph.”.

8 **SEC. 503. DIRECTIVE TO THE SENTENCING COMMISSION**
9 **REGARDING USE OF PROBATION.**

10 (a) **DIRECTIVE TO THE SENTENCING COMMISSION.**—
11 Pursuant to its authority under section 994(p) of title 28,
12 United States Code, and in accordance with this section,
13 the United States Sentencing Commission shall review and
14 amend its guidelines and its policy statements applicable
15 to persons eligible for probation to ensure that the guide-
16 lines and policy statements are consistent with the amend-
17 ments made by section 501.

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

21 (1) the mandate of the United States Sen-
22 tencing Commission, under section 994(g) of title
23 28, United States Code, to formulate the sentencing
24 guidelines in such a way as to “minimize the likeli-

1 hood that the Federal prison population will exceed
2 the capacity of the Federal prisons”;

3 (2) the fiscal implications of any amendments;

4 (3) relevant public safety concerns and the stat-
5 utory sentencing factors under section 3553 of title
6 18; and

7 (4) the intent of Congress that prison be re-
8 served for serious offenders for whom prison is most
9 appropriate.

10 **SEC. 504. ESTABLISHING ACCOUNTABILITY EVIDENCE-**
11 **BASED PROBLEM-SOLVING COURT PRO-**
12 **GRAMS.**

13 (a) IN GENERAL.—Part II of title 18, United States
14 Code, is amended by inserting after chapter 207 the fol-
15 lowing:

16 **“CHAPTER 207A—PROBLEM-SOLVING**
17 **COURT PROGRAMS**

“Sec.

“3157. Establishment of problem-solving court programs.

“3158. Evaluation of problem-solving court programs.

“3159. Definitions.

18 **“§ 3157. Establishment of problem-solving court pro-**
19 **grams**

20 “(a) IN GENERAL.—A United States district court
21 may establish a problem-solving court program in its dis-
22 trict.

1 “(b) USE OF RESEARCH-BASED PRINCIPLES AND
2 PRACTICES.—The Director of the Administrative Office of
3 the United States Courts shall ensure that all Federal
4 courts have available to them current information and re-
5 search relating to best practices for reducing participant
6 recidivism through problem-solving court programs.

7 “(c) INFORMATION SHARING AMONG COURTS.—The
8 United States Sentencing Commission, pursuant to its au-
9 thority under section 995(a)(12)(A) of title 28 to serve
10 as a clearinghouse and information center, shall provide
11 a website where United States District Court problem-
12 solving court programs may post and share research, doc-
13 uments, best practices, and other information with each
14 other and the public.

15 “(d) BEST PRACTICES.—The Director of the Admin-
16 istrative Office of the United States Courts shall ensure
17 all Federal courts adhere to the following best practices:

18 “(1) Focus problem-solving court program re-
19 sources on offenders facing prison terms to ensure
20 that a problem-solving court program functions to
21 divert that offender from incarceration and ensures
22 that the penalty for noncompliance with the program
23 does not exceed what would have the original penalty
24 or sentence for the offense.

25 “(2) Adopt objective admission criteria.

1 “(3) Use the pre-plea rather than the post-plea
2 model.

3 “(4) Ensure due process protections.

4 “(5) Incorporate evidence-based health meas-
5 ures, not simply abstinence, into substance abuse
6 problem-solving court program goals to ensure that
7 the underlying health issue is addressed instead of
8 merely being punished.

9 “(6) Improve overall treatment quality and em-
10 ploy opioid maintenance treatments for substance
11 abuse problem-solving court programs as well as
12 other evidence-based therapies.

13 **“§ 3158. Evaluation of problem-solving court pro-**
14 **grams**

15 “The Judicial Conference shall ensure that each Fed-
16 eral problem-solving court program, not later than 1 year
17 after the date of its commencement of operations, adopts
18 a plan to measure its success in reducing recidivism and
19 costs.

20 **“§ 3159. Definitions**

21 “In this chapter—

22 “(1) the term ‘problem-solving court program’
23 means a judge-involved intensive intervention, super-
24 vision, and accountability process in which a defend-
25 ant participates, either before conviction, sentencing,

1 or other disposition or upon being sentenced to a
 2 term of probation or upon release from a sentence
 3 of incarceration, that may include substance abuse,
 4 mental health, employment, and veterans' programs;
 5 and

6 “(2) the term ‘problem-solving court program
 7 coordinator’ means an existing employee of the
 8 United States Courts who is responsible for coordi-
 9 nating the establishment, staffing, operation, evalua-
 10 tion, and integrity of the problem-solving court pro-
 11 gram.”.

12 (b) CLERICAL AMENDMENT.—The table of chapters
 13 for part II of title 18, United States Code, is amended
 14 by inserting after the item relating to chapter 207 the fol-
 15 lowing new item:

“207A. Problem-solving court programs 3157”.

16 **TITLE VI—IMPLEMENTING EVI-**
 17 **DENCE-BASED PRACTICES TO**
 18 **REDUCE RECIDIVISM**
 19 **Subtitle A—Revision of Statutory**
 20 **Sentence Credits**

21 **SEC. 601. DELIVERY AND INCENTIVES TO COMPLETE IN-**
 22 **PRISON RECIDIVISM REDUCTION PROGRAM-**
 23 **MING.**

24 (a) IN GENERAL.—Section 3621(e) of title 18,
 25 United States Code, is amended to read as follows:

1 “(e) IN-PRISON PROGRAMMING.—

2 “(1) IN-PRISON PROGRAMMING.—In order to
3 carry out the requirement of subsection (b) that
4 every prisoner with a substance abuse problem have
5 the opportunity to participate in appropriate sub-
6 stance abuse treatment, and to address the
7 criminogenic needs of Federal offenders more gen-
8 erally, the Director of the Bureau of Prisons shall,
9 subject to the availability of appropriations—

10 “(A) provide residential substance abuse
11 treatment for all eligible offenders, with priority
12 for such treatment accorded based on eligible
13 prisoners’ proximity to release date;

14 “(B) provide cognitive-based therapy for
15 all eligible offenders;

16 “(C) provide workforce development
17 through participation in the Federal Prison In-
18 dustries; and

19 “(D) provide vocational and occupational
20 training.

21 “(2) INCENTIVES FOR PRISONER’S SUCCESSFUL
22 COMPLETION OF PROGRAMMING.—

23 “(A) Any prisoner who in the judgment of
24 the Director of the Bureau of Prisons has suc-
25 cessfully completed a program of residential

1 substance abuse treatment or cognitive behav-
2 ioral therapy provided under paragraph (1) of
3 this subsection shall be eligible for a reduction
4 of incarceration by up to one year.

5 “(B) Any prisoner who, in the judgment of
6 the Director of the Bureau of Prisons, has com-
7 pleted at least 30 days of work for Federal
8 Prison Industries or vocational and occupa-
9 tional training shall be eligible to have the total
10 period of incarceration reduced by up to the
11 total number of days of work for Federal Pris-
12 on Industries or vocational and occupational
13 training, but not to exceed one year.

14 “(3) RESTRICTIONS ON REDUCTIONS IN THE
15 PERIOD OF CUSTODY.—Reductions in the period of
16 incarceration earned under paragraph (2) of this
17 subsection shall not exceed one year.”.

18 (b) CORRESPONDING AMENDMENTS TO EXISTING
19 LAW.—Section 3624(a) of title 18, United States Code,
20 is amended by striking “as provided in subsection (b)”
21 and inserting “as provided in subsection (b) and section
22 3621(e) and section 3621A(d)(3)”.

23 (c) TRANSITION.—The amendments made by this
24 section shall take effect on the date not later than 1 year
25 after the date of the enactment of this section.

1 **SEC. 602. POST-SENTENCING RISK AND NEEDS ASSESS-**
2 **MENT SYSTEM AND IN-PRISON RECIDIVISM**
3 **REDUCTION PROGRAMMING.**

4 (a) DEVELOPMENT OF SYSTEM.—

5 (1) GENERALLY.—Not later than one year after
6 the date of the enactment of this section, the Attor-
7 ney General shall develop an offender risk and needs
8 assessment system, which shall—

9 (A) assess and determine the criminogenic
10 needs and risk factors of all admitted offenders;

11 (B) be used to assign each prisoner to ap-
12 propriate recidivism reduction programs or pro-
13 ductive activities based on the prisoner's spe-
14 cific criminogenic needs and risk factors; and

15 (C) in accordance with section 3621A(d)
16 (1) and (2) of title 18, United States Code, doc-
17 ument eligible prisoners' required recidivism re-
18 duction programs or productive activities in a
19 case plan and their progress in completing the
20 elements of that case plan.

21 (2) RESEARCH AND BEST PRACTICES.—In de-
22 signing the offender risk and needs assessment sys-
23 tem, the Attorney General shall use available re-
24 search and best practices in the field and consult
25 with academic and other criminal justice experts as
26 appropriate.

1 (3) RISK AND NEEDS ASSESSMENT TOOL.—In
2 carrying out this subsection, the Attorney General
3 shall prescribe a suitable intake assessment tool to
4 be used in carrying out subparagraphs (A) and (B)
5 of paragraph (1), and suitable procedures to com-
6 plete the documentation described in subparagraph
7 (C) of paragraph (1). The Attorney General shall
8 ensure that the assessment tool produces consistent
9 results when administered by different people, in
10 recognition of the need to ensure interrater reli-
11 ability.

12 (4) VALIDATION.—In carrying out this sub-
13 section, the Attorney General shall statistically vali-
14 date the assessment tool on the Federal prison popu-
15 lation not later than 2 years after the date of the
16 enactment of this subsection.

17 (b) USE OF RISK AND NEEDS ASSESSMENT SYSTEM
18 BY BUREAU OF PRISONS.—Subchapter C of chapter 229
19 of title 18, United States Code, is amended by inserting
20 after section 3621 the following:

21 **“§ 3621A. Post-sentencing risk and needs assessment**
22 **system**

23 “(a) ASSIGNMENT OF RECIDIVISM REDUCTION PRO-
24 GRAMS OR PRODUCTIVE ACTIVITIES.—In recognition that
25 some activities or excessive programming may be counter-

1 productive for some prisoners, the Attorney General may
2 provide guidance to the Director of the Bureau of Prisons
3 on the quality and quantity of recidivism reduction pro-
4 gramming or productive activities that are both appro-
5 priate and effective for each prisoner.

6 “(b) BUREAU OF PRISONS TRAINING.—The Attorney
7 General shall develop protocols and programs for Bureau
8 of Prisons personnel responsible for using the Post-Sen-
9 tencing Risk and Needs Assessment System (hereinafter
10 in the section referred to as the ‘Assessment System’) cre-
11 ated under the SAFE Justice Act. Such training protocols
12 shall include a requirement that such personnel dem-
13 onstrate competence in administering the assessment tool,
14 including interrater reliability, on a biannual basis.

15 “(c) QUALITY ASSURANCE.—In order to ensure that
16 the Director of the Bureau of Prisons is using the Assess-
17 ment System in an appropriate and consistent manner,
18 the Attorney General, the Government Accountability Of-
19 fice, and the Office of the Inspector General shall monitor
20 and assess the use of the Assessment System and shall
21 conduct separate and independent periodic audits of the
22 use of the Assessment System at Bureau of Prisons facili-
23 ties.

24 “(d) EVIDENCE-BASED ASSESSMENT SYSTEM AND
25 RECIDIVISM REDUCTION PROGRAMMING.—

1 “(1) IN GENERAL.—The Director of the Bureau
2 of Prisons shall develop a case plan that targets the
3 criminogenic needs and risk factors of each eligible
4 prisoner—

5 “(A) to guide the prisoner’s rehabilitation
6 while incarcerated; and

7 “(B) to reduce the likelihood of recidivism
8 after release.

9 “(2) CASE PLANS.—

10 “(A) CONTENT.—Not later than 30 days
11 after a prisoner’s initial admission, the Director
12 of the Bureau of Prisons shall complete a case
13 plan for that prisoner. The plan shall—

14 “(i) include programming and treat-
15 ment requirements based on the prisoner’s
16 identified criminogenic needs and risk fac-
17 tors, as determined by the Assessment Sys-
18 tem;

19 “(ii) ensure that a prisoner whose
20 criminogenic needs and risk factors do not
21 warrant recidivism reduction programming
22 participates in and successfully complies
23 with productive activities, including prison
24 jobs; and

1 “(iii) ensure that each eligible pris-
2 oner participates in and successfully com-
3 plies with recidivism reduction program-
4 ming or productive activities, including
5 prison jobs, throughout the entire term of
6 incarceration of the prisoner.

7 “(B) TIME CONSTRAINTS.—The Director
8 of the Bureau of Prisons shall ensure that the
9 requirements set forth in the case plan are fea-
10 sible and achievable prior to the prisoner’s re-
11 lease eligibility date.

12 “(C) NOTICE TO PRISONER.—The Director
13 of the Bureau of Prisons shall—

14 “(i) provide the prisoner with a writ-
15 ten copy of the case plan and require the
16 prisoner’s case manager to explain the con-
17 ditions set forth in the case plan and the
18 incentives for successful compliance with
19 the case plan; and

20 “(ii) review the case plan with the
21 prisoner once every 6 months after the
22 prisoner receives the case plan to assess
23 the prisoner’s progress toward successful
24 compliance with the case plan and any

1 need or eligibility for additional or dif-
2 ferent programs or activities.

3 “(3) INCENTIVE FOR PRISONER’S SUCCESSFUL
4 COMPLIANCE WITH CASE PLAN REQUIREMENTS.—

5 “(A) IN GENERAL.—Except as provided in
6 subparagraph (C), the Director of the Bureau
7 of Prisons shall, in addition to any other credit
8 or reduction a prisoner receives under any other
9 provision of law, award earned time credit to-
10 ward service of the prisoner’s sentence of 10
11 days for each calendar month of successful
12 compliance with the prisoner’s case plan. A
13 prisoner who is detained before sentencing shall
14 earn credit for participating in programs or ac-
15 tivities during that period under this para-
16 graph. The total time credits that a prisoner
17 may earn under this paragraph shall not exceed
18 120 days for any year of imprisonment. A pris-
19 oner may receive credit at the end of each year
20 of the sentence being served, beginning at the
21 end of the first year of the sentence. For pur-
22 poses of this section, the first year of the sen-
23 tence shall begin on the date the sentence com-
24 menced under section 3585(a) less any credit
25 for prior custody under section 3585(b). Any

1 credits awarded under this section shall vest on
2 the date the prisoner is released from custody.

3 “(B) AVAILABILITY.—An eligible prisoner
4 may receive under subparagraph (A) credit for
5 successful compliance with case plan require-
6 ments for participating in programs or activities
7 before the date of enactment of this Act if the
8 Director of the Bureau of Prisons determines
9 that such programs or activities were the same
10 or equivalent to those created pursuant to this
11 section before the date of the enactment of this
12 subsection.

13 “(C) EXCLUSIONS.—No credit shall be
14 awarded under this paragraph to any prisoner
15 serving a sentence of imprisonment for convic-
16 tion for any of the following offenses:

17 “(i) A Federal conviction for homicide
18 in which the prisoner was proven beyond a
19 reasonable doubt to have had the intent to
20 cause death and death resulted.

21 “(ii) A Federal crime of terrorism, as
22 defined under section 2332b(g)(5).

23 “(iii) A Federal sex offense, as de-
24 scribed in section 111 of the Sex Offender

1 Registration and Notification Act (42
2 U.S.C. 16911).

3 “(D) PARTICIPATION BY INELIGIBLE PRIS-
4 ONERS.—The Director of the Bureau of Prisons
5 shall make all reasonable efforts to ensure that
6 every prisoner participates in recidivism reduc-
7 tion programming or productive activities, in-
8 cluding a prisoner who is excluded from earning
9 time credits.

10 “(E) OTHER INCENTIVES.—The Director
11 of the Bureau of Prisons shall develop policies
12 to provide appropriate incentives for successful
13 compliance with case plan requirements, in ad-
14 dition to the earned time credit described in
15 subparagraph (A), including incentives for pris-
16 oners who are precluded from earning credit
17 under subparagraph (C). Such incentives may
18 include additional commissary, telephone, or
19 visitation privileges for use with family, close
20 friends, mentors, and religious leaders.

21 “(F) PENALTIES.—The Director of the
22 Bureau of Prisons shall amend its Inmate Dis-
23 cipline Program to reduce credits previously
24 earned under subparagraph (A) for prisoners
25 who violate the rules of the institution in which

1 the prisoner is imprisoned, a recidivism reduc-
2 tion program, or a productive activity, which
3 shall provide—

4 “(i) levels of violations and cor-
5 responding penalties, which may include
6 loss of earned time credits;

7 “(ii) that any loss of earned time
8 credits shall not apply to future earned
9 time credits that the prisoner may earn
10 subsequent to a rule violation; and

11 “(iii) a procedure to restore earned
12 time credits that were lost as a result of a
13 rule violation based on the prisoner’s indi-
14 vidual progress after the date of the rule
15 violation.

16 “(4) RECIDIVISM REDUCTION PROGRAMMING
17 AND PRODUCTIVE ACTIVITIES.—Beginning not later
18 than one year after the date of the enactment of the
19 SAFE Justice Act, the Attorney General shall, sub-
20 ject to the availability of appropriations, make avail-
21 able to all eligible prisoners appropriate recidivism
22 reduction programming or productive activities, in-
23 cluding prison jobs. The Attorney General may pro-
24 vide such programming and activities by entering
25 into partnerships with any of the following:

1 “(A) Nonprofit organizations, including
2 faith-based and community-based organizations
3 that provide recidivism reduction programming,
4 on a paid or volunteer basis.

5 “(B) Educational institutions that will de-
6 liver academic classes in Bureau of Prisons fa-
7 cilities, on a paid or volunteer basis.

8 “(C) Private entities that will, on a paid or
9 volunteer basis—

10 “(i) deliver occupational and voca-
11 tional training and certifications in Bureau
12 of Prisons facilities;

13 “(ii) provide equipment to facilitate
14 occupational and vocational training or em-
15 ployment opportunities for prisoners;

16 “(iii) employ prisoners; or

17 “(iv) assist prisoners in prerelease
18 custody or supervised release in finding
19 employment.

20 “(e) DEFINITIONS.—In this section the following
21 definitions apply:

22 “(1) CASE PLAN.—The term ‘case plan’ means
23 an individualized, documented accountability and be-
24 havior change strategy developed by the Director of
25 the Bureau of Prisons to prepare offenders for re-

1 lease and successful reentry into the community.
2 The case plan shall focus on the offender's
3 criminogenic needs and risk factors that are associ-
4 ated with the risk of recidivism.

5 “(2) CRIMINOGENIC NEEDS AND RISK FAC-
6 TORS.—The term ‘criminogenic needs and risk fac-
7 tors’ means characteristics and behaviors that are
8 associated with the risk of committing crimes and
9 that when addressed through evidence-based pro-
10 gramming are diminished. These factors include but
11 are not limited to—

12 “(A) criminal thinking;

13 “(B) criminal associates;

14 “(C) antisocial behavior and personality;

15 “(D) dysfunctional family;

16 “(E) low levels of employment;

17 “(F) low levels of education;

18 “(G) substance abuse;

19 “(H) mental health issues or cognitive
20 deficits; and

21 “(I) poor use of leisure time.

22 “(3) DYNAMIC RISK FACTOR.—The term ‘dy-
23 namic risk factor’ means a characteristic or at-
24 tribute that has been shown to be associated with
25 risk of recidivism and that can be modified based on

1 a prisoner’s actions, behaviors, or motives, including
2 through completion of appropriate programming or
3 other means in a prison setting.

4 “(4) ELIGIBLE PRISONER.—The term ‘eligible
5 prisoner’ means—

6 “(A) a prisoner serving a sentence of in-
7 carceration for conviction of a Federal offense;
8 but

9 “(B) does not include any prisoner who the
10 Bureau of Prisons determines—

11 “(i) would present a danger to himself
12 or others if permitted to participate in re-
13 cidivism reduction programming; or

14 “(ii) is serving a sentence of incarcer-
15 ation of less than 1 month.

16 “(5) PRODUCTIVE ACTIVITY.—The term ‘pro-
17 ductive activity’ means a group or individual activ-
18 ity, including holding a job as part of a prison work
19 program, that is designed to allow prisoners whose
20 criminogenic needs and risk factors do not warrant
21 recidivism reduction programming.

22 “(6) RECIDIVISM REDUCTION PROGRAM.—The
23 term ‘recidivism reduction program’ means a group
24 or individual activity that—

1 “(A) is of a kind that has been shown em-
2 pirically to reduce recidivism or promote suc-
3 cessful reentry; and

4 “(B) may include—

5 “(i) substance abuse treatment;

6 “(ii) classes on social learning and life
7 skills;

8 “(iii) classes on morals or ethics;

9 “(iv) academic classes;

10 “(v) cognitive behavioral treatment;

11 “(vi) mentoring;

12 “(vii) occupational and vocational
13 training;

14 “(viii) faith-based classes or services;

15 and

16 “(ix) victim-impact classes or restora-
17 tive justice programs.

18 “(7) RECIDIVISM RISK.—The term ‘recidivism
19 risk’ means the likelihood that a prisoner will com-
20 mit additional crimes for which the prisoner could be
21 prosecuted in a Federal, State, or local court in the
22 United States.

23 “(8) RECOVERY PROGRAMMING.—The term ‘re-
24 covery programming’ means a course of instruction
25 or activities that has been demonstrated to reduce

1 substance abuse or dependence among participants,
2 or to promote recovery among individuals who have
3 substance abuse issues.

4 “(9) RELEASE ELIGIBILITY DATE.—The term
5 ‘release eligibility date’ means the earliest date at
6 which the offender could be released after accruing
7 the maximum number of earned time credits for
8 which the offender is eligible.

9 “(10) SUCCESSFUL COMPLIANCE.—The term
10 ‘successful compliance’ means that the person in
11 charge of the Bureau of Prisons penal or correc-
12 tional facility or that person’s designee has deter-
13 mined that the eligible prisoner, to the extent prac-
14 ticable, and excusing any medical or court-related
15 absences satisfied the following requirements for not
16 less than 30 days:

17 “(A) Regularly attended and actively par-
18 ticipated in appropriate recidivism reduction
19 programs or productive activities, as set forth
20 in the eligible prisoner’s case plan.

21 “(B) Did not regularly engage in disrup-
22 tive activity that seriously undermined the ad-
23 ministration of a recidivism reduction program
24 or productive activity.

1 “(11) EARNED TIME CREDITS.—The term
2 ‘earned time credits’ means credit toward service of
3 the prisoner’s sentence as described in subsection
4 (d)(3).”.

5 (c) CLERICAL AMENDMENT.—The table of sections
6 at the beginning of subchapter C of chapter 229 of title
7 18, United States Code, is amended by inserting after the
8 item relating to section 3621 the following:

 “3621A. Post-sentencing risk and needs assessment system.”.

9 **Subtitle B—De-escalation Training**
10 **and Improving Community Re-**
11 **lations**

12 **SEC. 603. DE-ESCALATION TRAINING.**

13 (a) IN GENERAL.—Not later than 1 year after the
14 date of the enactment of this Act, the Attorney General
15 shall, in consultation with the Substance Abuse and Men-
16 tal Health Services Administration, and subject to the
17 availability of appropriations, provide to criminal justice
18 agencies specialized and comprehensive training in proce-
19 dures to avoid racial and ethnic profiling, de-escalate en-
20 counters between law enforcement or corrections officers
21 and civilians, inmates, or detainees, and to identify and
22 appropriately respond to incidents in which the unique
23 needs of individuals who have a mental illness or cognitive
24 deficit are involved, and improve police-community rela-
25 tions.

1 (b) DEFINITION OF CRIMINAL JUSTICE AGENCIES.—

2 In this section the term “criminal justice agencies” in-
3 clude—

4 (1) Federal corrections agencies and any con-
5 tractors carrying out corrections functions;

6 (2) Federal law enforcement agencies, including
7 Federal prosecutors; and

8 (3) other Federal criminal justice agencies that
9 the Attorney General deems appropriate.

10 **Subtitle C—Oversight of Mental**
11 **Health and Substance Abuse**
12 **Treatment**

13 **SEC. 604. AUTHORIZING GRANTS TO STATES FOR THE USE**
14 **OF MEDICATION-ASSISTED TREATMENT FOR**
15 **HEROIN, OPIOID, OR ALCOHOL ABUSE IN**
16 **RESIDENTIAL SUBSTANCE ABUSE TREAT-**
17 **MENT.**

18 (a) IN GENERAL.—Section 1904 of the Omnibus
19 Crime Control and Safe Streets Act of 1968 (42 U.S.C.
20 3796ff-3) is amended—

21 (1) in subsection (d), by striking “pharma-
22 cological treatment” and inserting “pharmacological
23 treatment or medication assisted treatment not sub-
24 ject to diversion”; and

25 (2) by adding at the end the following:

1 “(e) DEFINITIONS.—In this section—

2 “(1) the term ‘medication assisted treatment’
3 means the use of medications approved by the Food
4 and Drug Administration, in combination with coun-
5 seling or behavioral therapies, to treat heroin, opioid,
6 or alcohol addiction; and

7 “(2) the term ‘opioid’ means any chemical that
8 binds to an opioid receptor and resembles opiates in
9 its pharmacological effects.”.

10 (b) REPORT ON MEDICATION ASSISTED TREATMENT
11 FOR OPIOID AND HEROIN ABUSE PILOT PROGRAM.—The
12 Director of the Bureau of Prisons shall submit within 90
13 days of enactment of this Act to the Committees on the
14 Judiciary and Appropriations of the Senate and the House
15 of Representatives a report and evaluation of the current
16 pilot program within the Bureau of Prisons to treat heroin
17 and opioid abuse through medication assisted treatment.
18 The report shall include a description of plans to expand
19 access to medication assisted treatment for heroin and
20 opioid abuse for Federal prisoners in appropriate cases.

21 (c) REPORT ON THE AVAILABILITY OF MEDICATION
22 ASSISTED TREATMENT FOR OPIOID AND HEROIN
23 ABUSE.—Within 90 days after the date of the enactment
24 of this Act, the Director of the Administrative Office of
25 the United States Courts shall submit a report to the

1 Committees on the Judiciary and Appropriations of the
2 Senate and the House of Representatives assessing the
3 availability of and capacity for the provision of medication
4 assisted treatment for opioid and heroin abuse among
5 treatment-service providers serving Federal offenders
6 under supervised release and including a description of
7 plans to expand access to medication assisted treatment
8 that is not subject to diversion for heroin and opioid abuse
9 whenever appropriate among Federal offenders under su-
10 pervised release.

11 **SEC. 605. PERFORMANCE-BASED CONTRACTING FOR RESI-**
12 **DENTIAL REENTRY CENTERS.**

13 (a) IN GENERAL.—The Director of the Bureau of
14 Prisons shall—

15 (1) revise its policies and procedures related to
16 contracting with providers of Residential Reentry
17 Centers to—

18 (A) meet the standards of performance-
19 based contracting; and

20 (B) include, among the standards of per-
21 formance—

22 (i) a reduction in the recidivism rate
23 of offenders transferred to the Residential
24 Reentry Center; and

1 (ii) an annual evaluation of these out-
2 comes;

3 (2) require that new or renewed contracts with
4 providers of Residential Reentry Centers meet the
5 standards of performance-based contracting;

6 (3) review existing contracts with providers of
7 Residential Reentry Centers prior to renewal and
8 update as necessary to reflect the standards of per-
9 formance-based contracting; and

10 (4) ensure performance-based contracts are ac-
11 tively managed to meet the standards of perform-
12 ance-based contracting.

13 (b) EXCEPTIONS.—In those cases where it would not
14 be cost effective to use performance-based contracting
15 standards, the Director of the Bureau of Prisons shall pro-
16 vide an explanation for this determination to the Attorney
17 General, who may exempt a contract from the require-
18 ments outlined in subsection (a)(2). Each exemption must
19 be approved in writing by the Attorney General before the
20 Director of the Bureau of Prisons enters into the contract.

21 (c) DEFINITIONS.—In this section the following defi-
22 nitions apply:

23 (1) PERFORMANCE-BASED CONTRACTING.—The
24 term “performance-based contracts” means con-
25 tracts that accomplish the following:

1 (A) Identify expected deliverables, perform-
2 ance measures, or outcomes; and render pay-
3 ment contingent upon the successful delivery of
4 those expected deliverables, performance meas-
5 ures or outcomes.

6 (B) Include a quality assurance plan that
7 describes how the contractor's performance will
8 be measured against the expected deliverables,
9 performance measures, or outcomes.

10 (C) Include positive and negative incentives
11 tied to the quality assurance plan measure-
12 ments.

13 (2) RECIDIVISM RATE.—The term “recidivism
14 rate” refers to the number and percentage of offend-
15 ers who are arrested for a new crime or commit a
16 technical violation of the terms of supervision that
17 results in revocation to prison during the period in
18 which the offender is in the Residential Reentry
19 Center.

20 (3) RESIDENTIAL REENTRY CENTERS.—The
21 term “Residential Reentry Centers” means privately
22 run centers which provide housing to Federal pris-
23 oners who are nearing release.

24 (d) DEADLINE FOR CARRYING OUT SECTION.—The
25 Director of the Bureau of Prisons shall complete initial

1 compliance with the requirements of this section not later
2 than 1 year after the date of the enactment of this Act.

3 (e) EVALUATION.—Not later than 2 years after the
4 date of the enactment of this Act, the Government Ac-
5 countability Office and Office of the Inspector General of
6 the Department of Justice shall each issue a report on
7 the progress made by the Director of the Bureau of Pris-
8 ons in implementing this section.

9 **Subtitle D—Implementing Swift,**
10 **Certain, and Proportionate**
11 **Sanctions for Violations of Con-**
12 **ditions of Probation or Super-**
13 **vised Release**

14 **SEC. 606. GRADUATED SANCTIONING SYSTEM.**

15 (a) IN GENERAL.—Not later than 1 year after the
16 date of the enactment of this section, the United States
17 Probation and Pretrial Services and the Criminal Law
18 Committee of the Judicial Conference shall develop a
19 standardized graduated sanctioning system (hereinafter in
20 this section referred to as the “system”), to guide proba-
21 tion officers in determining suitable sanctions in response
22 to technical violations of supervision. The United States
23 Sentencing Commission shall publish these factors and
24 amend its guidelines and policy statements so that they
25 are consistent. The system shall—

1 (1) provide a range of possible sanctions, from
2 less severe to more severe; and

3 (2) allow officers to respond quickly to technical
4 violations of supervision.

5 (b) DEVELOPMENT OF GRADUATED SANCTIONING
6 SYSTEM.—In designing the graduated sanctioning system,
7 the United States Probation and Pretrial Services and the
8 Criminal Law Committee of the Judicial Conference shall
9 use available research and best evidence-based practices
10 in the field, and shall consult with other stakeholders, in-
11 cluding current trial attorneys from the Department of
12 Justice and a Federal Public or Community Defender
13 from the Defender Services Advisory Group.

14 (c) CONTENT OF GRADUATED SANCTIONING SYS-
15 TEM.—

16 (1) Graduated sanctions may include—

17 (A) verbal warnings;

18 (B) increased reporting requirements;

19 (C) curfew requirements;

20 (D) electronic monitoring;

21 (E) increased substance abuse testing or
22 treatment;

23 (F) mental health counseling or treatment;

24 (G) behavioral therapy or anger manage-
25 ment;

1 (H) community service; and

2 (I) loss of earned discharge credits pursu-
3 ant to section 3610.

4 (2) In determining appropriate sanctions, the
5 United States Probation and Pretrial Services and
6 the Criminal Law Committee of the Judicial Com-
7 mittee shall consider—

8 (A) the severity of the current violation;

9 (B) the number and severity of previous
10 supervision violations;

11 (C) the rehabilitative options available; and

12 (D) the costs of incarceration.

13 (d) PROBATION AND PRETRIAL SERVICES TRAIN-
14 ING.—The Criminal Law Committee of the Judicial Con-
15 ference and the United States Probation and Pretrial
16 Services, in consultation with the Federal Judicial Center,
17 shall develop training protocols for staff responsible for
18 recommending graduated sanctions and for court-ap-
19 pointed counsel, which shall include—

20 (1) initial training to educate staff and judges
21 on how to use the graduated sanctioning system, as
22 well as an overview of the relevant research regard-
23 ing supervision practices shown to reduce recidivism
24 and improve offender outcomes;

25 (2) continuing education; and

1 (3) periodic training updates.

2 (e) CONTINUOUS QUALITY IMPROVEMENT.—In order
3 to ensure that the United States Probation and Pretrial
4 Services is using graduated sanctions in an appropriate
5 and consistent manner, the Judicial Conference in con-
6 sultation and coordination with the Chief Judge of each
7 Federal District Court shall—

8 (1) establish performance benchmarks and per-
9 formance assessments for probation officers, proba-
10 tion supervisors, and probation and pretrial services;
11 and

12 (2) establish additional continuous quality im-
13 provement procedures related to the implementation
14 and use of graduated sanctions that include, but are
15 not limited to, data collection, monitoring, periodic
16 audits, probation officer and supervisor performance
17 assessments, and corrective action measures.

18 **SEC. 607. GRADUATED RESPONSES TO TECHNICAL VIOLA-**
19 **TIONS OF SUPERVISION.**

20 (a) IN GENERAL.—Subchapter A of chapter 229 of
21 title 18, United States Code, is amended by inserting after
22 section 3608 the following:

1 **“§ 3609. Graduated responses to technical violations**
2 **of supervision**

3 “(a) IN GENERAL.—If a court determines that a
4 technical violation of supervision warrants an alternative
5 to arrest or incarceration, the court may modify the terms
6 of supervision by imposing a graduated sanction as an al-
7 ternative to revocation.

8 “(b) RECOMMENDATION AND IMPOSITION OF GRAD-
9 UATED SANCTIONS.—A probation officer in recommending
10 an appropriate sanction, and a court in determining an
11 appropriate sanction, shall use the graduated sanctioning
12 system established pursuant to the SAFE Justice Act.
13 The procedure for the imposition of graduated sanctions
14 shall include the following:

15 “(1) NOTICE OF GRADUATED SANCTIONS.—
16 Upon determining that a technical violation of su-
17 pervision warrants an alternative to arrest or incar-
18 ceration, a probation officer, with the concurrence of
19 that officer’s probation supervisor, shall serve on the
20 supervisee a Notice of Graduated Sanctions, which
21 shall include—

22 “(A) a description of the violation of su-
23 pervision;

24 “(B) an appropriate graduated sanction or
25 sanctions to be imposed, as determined under
26 the graduated sanctioning system;

1 “(C) an inquiry whether the supervisee
2 wishes to waive the supervisee’s right to a rev-
3 ocation or modification proceeding under the
4 Federal Rules of Criminal Procedure; and

5 “(D) notice of the supervisee’s right to re-
6 tain counsel or to request that counsel be ap-
7 pointed if the supervisee cannot afford to retain
8 counsel to consult with legal counsel before
9 agreeing to admit to the alleged violation.

10 “(2) Counsel shall be appointed for any finan-
11 cially eligible person.

12 “(3) EFFECT OF SUPERVISEE ELECTIONS
13 AFTER NOTICE.—If the supervisee agrees to waive
14 the right to a revocation or modification hearing,
15 agrees in writing to submit to the graduated sanc-
16 tion or sanctions as set forth in the Notice of Grad-
17 uated Sanctions, and admits to the alleged violation
18 of supervision, the specified sanction shall imme-
19 diately be imposed. If the supervisee does not agree
20 to waive the right to the revocation or modification
21 hearing, does not agree to submit to the specified
22 sanction or sanctions, does not admit to the alleged
23 violation, or if the supervisee fails to complete the
24 graduated sanction or sanctions to the satisfaction
25 of the probation officer and that officer’s supervisor,

1 then the probation officer may commence super-
2 vision revocation or modification proceedings.

3 “(c) DEFINITIONS.—In this section:

4 “(1) CRIMINOGENIC RISK AND NEEDS FAC-
5 TORS.—The term ‘criminal risk and needs factors’
6 means the characteristics and behaviors that are as-
7 sociated with the risk of committing crimes and,
8 that when addressed with evidence-based program-
9 ming are diminished.

10 “(2) EVIDENCE-BASED PRACTICES.—The term
11 ‘evidence-based practices’ means policies, procedures,
12 and practices that scientific research demonstrates
13 reduce recidivism.

14 “(3) GRADUATED SANCTIONS.—The term
15 ‘graduated sanctions’ means an accountability-based,
16 graduated series of sanctions applicable to
17 supervisees to hold such supervisees accountable for
18 their actions by providing appropriate and propor-
19 tional sanctions for each violation of supervision.

20 “(4) SANCTIONING GRID.—The term ‘sanc-
21 tioning grid’ means a list of graduated responses for
22 use in responding to supervisee behavior that vio-
23 lates a condition or conditions of supervision, with
24 responses ranging from less restrictive to more re-

1 strictive based on the seriousness of the violation
2 and the number and severity of prior violations.

3 “(5) NONTECHNICAL VIOLATION.—The term
4 ‘nontechnical violation’ means a new criminal convic-
5 tion for a crime committed while an offender is on
6 supervision.

7 “(6) TECHNICAL VIOLATION.—The term ‘tech-
8 nical violation’ means conduct by a person on super-
9 vision that violates a condition or conditions of su-
10 pervision, including a new arrest for a crime alleg-
11 edly committed while on supervision or criminal
12 charges that have been filed but not yet resulted in
13 a conviction. The term ‘technical violation’ does not
14 include a conviction for a crime committed while the
15 person was on supervision.

16 “(7) PROBATION OFFICER.—The term ‘proba-
17 tion officer’ means an employee of the United States
18 Probation and Pretrial Services who is directly re-
19 sponsible for supervising individual supervisees.

20 “(8) PROBATION SUPERVISOR.—The term ‘pro-
21 bation supervisor’ means an employee of the United
22 States Probation and Pretrial Services who is di-
23 rectly responsible for overseeing probation officers.

1 “(9) SUPERVISEE.—The term ‘supervisee’
2 means an individual who is currently under super-
3 vision.

4 “(10) SUPERVISION.—The term ‘supervision’
5 means supervision during a term of probation or su-
6 pervised release.”.

7 (b) CLERICAL AMENDMENT.—The table of sections
8 for subchapter A of chapter 229 of title 18, United States
9 Code, is amended by inserting after the item relating to
10 section 3608 the following new item:

“3609. Graduated responses to technical violations of supervision.”.

11 (c) CONFORMING AMENDMENTS.—

12 (1) MANDATORY CONDITIONS OF PROBATION.—
13 Section 3563(a) of title 18, United States Code, is
14 amended—

15 (A) by striking “and” at the end of para-
16 graph (8);

17 (B) by striking the period at the end of
18 paragraph (9) and inserting “; and”; and

19 (C) by adding after paragraph (9) the fol-
20 lowing:

21 “(10) for a felony or misdemeanor, that the
22 court may modify the term of probation by imposing
23 a graduated sanction if the probationer has waived
24 the right to a hearing under the Federal Rules of
25 Criminal Procedure.”.

1 (2) MANDATORY CONDITIONS OF SUPERVISED
2 RELEASE.—Section 3583(d) of title 18, United
3 States Code, is amended by inserting after “DNA
4 Analysis Backlog Elimination Act of 2000.” the fol-
5 lowing: “The court may modify the term of super-
6 vised release by imposing a graduated sanction if the
7 defendant has waived the right to a hearing under
8 the Federal Rules of Criminal Procedure.”.

9 (3) DUTIES OF PROBATION OFFICERS.—Section
10 3603 of title 18, United States Code, is amended—

11 (A) in paragraph (2) by striking “to the
12 degree required by the conditions specified by
13 the sentencing court” and inserting “to the de-
14 gree required by section 3609 and the condi-
15 tions specified by the sentencing court”; and

16 (B) in paragraph (3) by striking “use all
17 suitable methods, not inconsistent with the con-
18 ditions specified by the court” and inserting
19 “use a system of graduated sanctions and in-
20 centives designed to deter and respond imme-
21 diately to violations of supervision conditions,
22 not inconsistent with the conditions specified by
23 the court”.

1 (d) EFFECTIVE DATE.—The amendments made by
2 this section take effect 1 year after the date of the enact-
3 ment of this Act.

4 **SEC. 608. TARGETED AND PROPORTIONAL PENALTIES FOR**
5 **REVOCAION OF PROBATION.**

6 (a) PENALTIES FOR NONTECHNICAL VIOLATIONS OF
7 PROBATION.—Subsection (a) of section 3565 of title 18,
8 United States Code, is amended to read as follows:

9 “(a) CONTINUATION OR REVOCATION FOR NONTECH-
10 NICAL VIOLATIONS OF PROBATION.—If the defendant
11 commits a nontechnical violation prior to the expiration
12 or termination of the term of probation, the court may,
13 after a hearing pursuant to the Federal Rules of Criminal
14 Procedure, and after considering the factors set forth in
15 section 3553(a) to the extent that they are applicable—

16 “(1) continue the defendant on probation for
17 the remaining duration of the term of probation,
18 with the option to modify or impose additional con-
19 ditions; or

20 “(2) revoke the sentence of probation and re-
21 sentence the defendant under subchapter A.”.

22 (b) PENALTIES FOR TECHNICAL VIOLATIONS OF
23 PROBATION.—Section 3565 of title 18, United States
24 Code, is amended by adding at the end the following:

1 “(d) CONTINUATION OR REVOCATION FOR TECH-
2 NICAL VIOLATIONS OF PROBATION.—If the defendant
3 commits a technical violation prior to the expiration or ter-
4 mination of the term of probation, the court may, after
5 a hearing pursuant to the Federal Rules of Criminal Pro-
6 cedure, and after considering the factors set forth in sec-
7 tion 3553(a) to the extent that they are applicable—

8 “(1) continue the defendant on probation for
9 the remaining duration of the original term of pro-
10 bation, with the option to modify or impose addi-
11 tional conditions; or

12 “(2) revoke the sentence of probation and im-
13 pose a period of imprisonment not to exceed 60
14 days, which can be served in one term of confine-
15 ment or intermittent confinement (custody for inter-
16 vals of time) in jail, prison, community confinement,
17 or home detention in order not to disrupt employ-
18 ment or other community obligations.”.

19 **SEC. 609. TARGETED AND PROPORTIONAL PENALTIES FOR**
20 **VIOLATIONS OF SUPERVISED RELEASE.**

21 (a) PENALTIES FOR NONTECHNICAL VIOLATIONS OF
22 SUPERVISED RELEASE.—Section 3583 of title 18, United
23 States Code, is amended—

24 (1) in subsection (e), by amending paragraph
25 (3) to read as follows:

1 “(3) revoke the term of supervised release and
2 require the defendant to serve in prison all or part
3 of the term of supervised release authorized by stat-
4 ute for any or all offenses that resulted in the term
5 of supervised release, without any credit earned to-
6 ward discharge under section 3610, if the court,
7 pursuant to the Federal Rules of Criminal Proce-
8 dure applicable to revocation of probation or super-
9 vised release, finds by a preponderance of the evi-
10 dence that the defendant violated a condition of re-
11 lease, except that a defendant whose term is revoked
12 under this paragraph may not be required to serve
13 on any such revocation more than 5 years in prison
14 if the offense that resulted in the term of supervised
15 release is a class A felony, more than 3 years in
16 prison if such offense is a class B felony, more than
17 2 years in prison if such offense is a class C or D
18 felony, or more than one year in any other case; or”;
19 and

20 (2) by adding at the end the following:

21 “(m) CONTINUATION OR REVOCATION FOR NON-
22 TECHNICAL VIOLATIONS OF SUPERVISED RELEASE.—If
23 the defendant commits a nontechnical violation of super-
24 vided release prior to the expiration or termination of the
25 term of supervised release, the court may, after a hearing

1 under the provisions of the Federal Rules of Criminal Pro-
2 cedure, and after considering the factors set forth in sec-
3 tion 3553(a)—

4 “(1) continue the defendant on supervised re-
5 lease for the remaining duration of the original term
6 of supervised release, with the option to modify or
7 impose additional conditions; or

8 “(2) revoke the term of supervised release and
9 require the defendant to serve in prison all or part
10 of the term of supervised release authorized by stat-
11 ute for any or all the offenses that resulted in the
12 term of supervised release, without any credit earned
13 toward discharge under section 3610.”.

14 (b) PENALTIES FOR TECHNICAL VIOLATIONS OF SU-
15 PERVISED RELEASE.—Section 3583 is amended by insert-
16 ing after subsection (l) the following:

17 “(m) CONTINUATION OR REVOCATION FOR TECH-
18 NICAL VIOLATIONS OF SUPERVISED RELEASE.—If the de-
19 fendant commits a technical violation of supervised release
20 prior to the expiration or termination of the term of super-
21 vised release, the court may, after opportunity for a hear-
22 ing under the Federal Rules of Criminal Procedure and
23 after considering the factors set forth in section 3553(a)—

24 “(1) continue the defendant on supervised re-
25 lease for the remaining duration of the term of pro-

1 bation, with the option to modify or impose addi-
 2 tional conditions; or

3 “(2) revoke the term of supervised release and
 4 impose a period of imprisonment not to exceed 60
 5 days, which can be served in one term of confine-
 6 ment or intermittent confinement (custody for inter-
 7 vals of time) in jail, prison, community commitment,
 8 or home detention in order not to disrupt employ-
 9 ment or other community obligations.”.

10 **Subtitle E—Focus Supervision**
 11 **Resources on High-Risk Offenders**

12 **SEC. 610. EARNED DISCHARGE CREDITS FOR COMPLIANT**
 13 **SUPERVISEES.**

14 (a) IN GENERAL.—Title 18, United States Code, is
 15 amended by inserting after section 3609 (as added by sec-
 16 tion 522(a)) the following:

17 **“§ 3610. Incentivizing compliance with supervision**
 18 **conditions**

19 “(a) IN GENERAL.—A probation officer shall have
 20 the authority to award positive reinforcements for a de-
 21 fendant who is in compliance with the terms and condi-
 22 tions of supervision. These positive reinforcements may in-
 23 clude—

24 “(1) verbal recognition;

25 “(2) reduced reporting requirements; and

1 “(3) credits earned toward discharge which
2 shall be awarded pursuant to subsection (b).

3 “(b) CREDITS FOR EARNED DISCHARGE.—
4 Supervisees shall be eligible to earn discharge credits for
5 complying with the terms and conditions of supervision.
6 These credits, once earned, shall reduce the period of su-
7 pervision.

8 “(1) DETERMINATION OF AWARD.—The proba-
9 tion officer shall award 30 days of earned discharge
10 credits for each calendar month in which the of-
11 fender is in compliance with the terms and condi-
12 tions of supervision. If the offender commits a viola-
13 tion of supervision during the month, credits shall
14 not be awarded for that month.

15 “(2) DISCHARGE FROM SUPERVISION.—Once
16 the combination of time served on supervision and
17 earned discharge credits satisfies the total period of
18 supervision, upon motion of any party or upon the
19 court’s own motion, the court shall terminate the pe-
20 riod of supervision. The probation officer shall notify
21 the parties and the court in writing at least 60 days
22 prior to the termination of supervision. The 60-day
23 period shall include the accrual of all earned dis-
24 charge credits to that point.

25 “(c) DEFINITIONS.—In this section:

1 “(1) PROBATION OFFICER.—The term ‘proba-
2 tion officer’ means an employee of Probation and
3 Pretrial Services who is directly responsible for su-
4 pervising individual supervisees.

5 “(2) SUPERVISEE.—The term ‘supervisee’ has
6 the meaning given that term in section 3609.

7 “(3) SUPERVISION.—The term ‘supervision’ has
8 the meaning given that term in section 3609.

9 “(4) TERMINATION OF SUPERVISION.—The
10 term ‘termination of supervision’ means discharge
11 from supervision at or prior to the expiration of the
12 sentence imposed by the court.

13 “(5) TERMS AND CONDITIONS OF SUPER-
14 VISION.—The term ‘terms and conditions of super-
15 vision’ means those requirements set by the court.

16 “(6) VIOLATION OF SUPERVISION.—The term
17 ‘violation of supervision’ means conduct by a person
18 on supervision that violates a condition of super-
19 vision.”.

20 (b) CLERICAL AMENDMENT.—The table of sections
21 at the beginning of subchapter A of chapter 229 of title
22 18, United States Code, is amended by inserting after the
23 item relating to section 3609 (as added by section 522(b))
24 the following new item:

“3610. Incentivizing compliance with supervision conditions.”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section take effect 1 year after the date of the enact-
3 ment of this Act.

4 **SEC. 611. ELIMINATION OF MANDATORY REVOCATION FOR**
5 **MINOR DRUG VIOLATIONS.**

6 (a) REMOVING SUBSTANCE-RELATED VIOLATIONS AS
7 GROUNDS FOR MANDATORY REVOCATION OF SUPERVISED
8 RELEASE.—Section 3583(g) of title 18, United States
9 Code, is amended—

10 (1) in the flush text following paragraph (4), by
11 striking “require the defendant to serve a term of
12 imprisonment not to exceed the maximum term of
13 imprisonment authorized by subsection (e)(3)” and
14 inserting “require the defendant to serve a term of
15 imprisonment not to exceed 60 days unless otherwise
16 authorized under subsection (l) or (m)”;

17 (2) by striking paragraphs (1) and (4);

18 (3) by renumbering paragraph (2) as paragraph
19 (1), and paragraph (3) as paragraph (2);

20 (4) by inserting “or” at the end of paragraph
21 (2); and

22 (5) by striking “or” at the end of paragraph
23 (3).

24 (b) REMOVING SUBSTANCE-RELATED VIOLATIONS AS
25 GROUNDS FOR MANDATORY REVOCATION OF PROBA-

1 TION.—Section 3565(b) of title 18, United States Code,
2 is amended—

3 (1) in the flush text following paragraph (4), by
4 striking “revoke the sentence of probation and re-
5 sentence the defendant under subchapter A to a sen-
6 tence that includes a term of imprisonment” and in-
7 serting “revoke the sentence of probation and re-
8 quire the defendant to serve a term of imprisonment
9 not to exceed 60 days unless otherwise authorized
10 under subsection (a) or (d)”;

11 (2) by striking paragraphs (1) and (4);

12 (3) by renumbering paragraph (2) as paragraph
13 (1), and paragraph (3) as paragraph (2);

14 (4) by inserting “or” at the end of paragraph
15 (1); and

16 (5) by striking “or” at the end of paragraph
17 (2).

18 **Subtitle F—Maximizing Public**
19 **Safety Returns on Corrections**
20 **Dollars**

21 **SEC. 612. CLARIFICATION OR ORIGINAL CONGRESSIONAL**
22 **INTENT REGARDING CALCULATION OF GOOD**
23 **TIME CONDUCT CREDIT.**

24 (a) IN GENERAL.—Section 3624(b) of title 18,
25 United States Code, is amended—

1 (1) so that paragraph (1) reads as follows:

2 “(1) Subject to paragraph (2) and in addition
3 to the time actually served by the prisoner and any
4 credit provided to the prisoner under any other pro-
5 vision of law, a prisoner who is serving a term of im-
6 prisonment of more than 1 year, other than a term
7 of imprisonment for the duration of the prisoner’s
8 life, shall receive credit computed under this para-
9 graph toward that prisoner’s term of imprisonment.
10 The credit under this paragraph is computed begin-
11 ning on the date on which the sentence of the pris-
12 oner commences, at the rate of 54 days per year of
13 the sentence imposed by the court, if the Director of
14 the Bureau of Prisons determines that the prisoner
15 has displayed exemplary compliance with institu-
16 tional disciplinary regulations.”; and

17 (2) by striking paragraphs (3) and (4) and in-
18 serting the following:

19 “(3) This subsection applies to all prisoners
20 serving a term of imprisonment for offenses com-
21 mitted on or after November 1, 1987. With respect
22 to a prisoner serving a term of imprisonment on the
23 date of the enactment of the SAFE Justice Act, this
24 subsection shall apply to the entirety of the sentence

1 imposed on the prisoner, including time already
2 served.

3 “(4) A prisoner may not be awarded credit
4 under this subsection that would cause the prisoner
5 to be eligible for release earlier than the time the
6 prisoner already has served.”.

7 (b) EFFECTIVE DATE.—The amendments made by
8 subsection (a) take effect 90 days after the date of the
9 enactment of this Act.

10 **SEC. 613. ANALYSIS OF FISCAL IMPLICATIONS FOR INCLU-**
11 **SION IN PRESENTENCE REPORTS.**

12 (a) FACTORS TO BE CONSIDERED IN IMPOSING A
13 SENTENCE.—Section 3553(a)(3) of title 18, United States
14 Code, is amended by striking the semicolon and inserting
15 “and the average annual fiscal cost of each;”.

16 (b) PRESENTENCE REPORTS.—Section 3552(a) of
17 title 18, United States Code, is amended by adding at the
18 end the following “The appropriate officials of the United
19 States Probation and Pretrial Services shall provide infor-
20 mation on the average annual cost of the kinds of sen-
21 tences available as part of the Presentence Investigation
22 Report. For the purposes of this subsection the average
23 annual cost of incarceration is the figure per fiscal year
24 as published by the Director of the Bureau of Prisons.
25 The average annual fiscal costs of alternatives to incarcer-

1 ation for that judicial district shall be compiled by the
2 United States Probation and Pretrial Services.”.

3 (c) DIRECTIVE TO THE SENTENCING COMMISSION.—

4 Pursuant to its authority under section 994(p) of title 28,
5 United States Code, and in accordance with this section,
6 the United States Sentencing Commission shall amend its
7 guidelines and its policy statements to ensure that the
8 guidelines and policy statements are consistent with the
9 amendments made by this section and reflect the intent
10 of Congress that an analysis of fiscal implications be in-
11 cluded in presentence reports and considered in the im-
12 position of appropriate sentences.

13 (d) DIRECTIVE TO THE JUDICIAL CONFERENCE.—

14 Pursuant to its authority under section 334 of title 28,
15 United States Code, and in accordance with this section,
16 the Judicial Conference of the United States shall propose
17 an amendment to the Federal Rules of Criminal Procedure
18 consistent with the amendments made by this section to
19 reflect the intent of Congress that an analysis of fiscal
20 implications shall be included in presentence reports and
21 considered in the imposition of appropriate sentences.

22 **SEC. 614. SUPPORTING SAFE LAW ENFORCEMENT.**

23 (a) FINDINGS.—Congress finds the following:

24 (1) Most law enforcement officers walk into
25 risky situations and encounter tragedy on a regular

1 basis. Some, such as the police who responded to the
2 carnage of the Sandy Hook Elementary School, wit-
3 ness horror that stays with them for the rest of their
4 lives. Others are physically injured in carrying out
5 their duties, sometimes needlessly, through mistakes
6 made in high stress situations. The recent notable
7 deaths of officers are stark reminders of the risk of-
8 ficers face. As a result, physical, mental, and emo-
9 tional injuries plague many law enforcement agen-
10 cies. However, a large proportion of officer injuries
11 and deaths are not the result of interaction with of-
12 fenders but the outcome of poor physical health due
13 to poor nutrition, lack of exercise, sleep deprivation,
14 and substance abuse. Yet these causes are often
15 overlooked or given scant attention. Many other in-
16 juries and fatalities are the result of vehicular acci-
17 dents. The wellness and safety of law enforcement
18 officers is critical not only to themselves, their col-
19 leagues, and their agencies, but also to public safety.

20 (2) Officer suicide is also a problem. Police died
21 from suicide 2.4 times as often as from homicides.
22 And though depression resulting from traumatic ex-
23 periences is often the cause, routine work and life
24 stressors—serving hostile communities, working long

1 shifts, lack of family or departmental support—are
2 frequent motivators too.

3 (3) According to estimates of the United States
4 Bureau of Labor Statistics, more than 100,000 law
5 enforcement professionals are injured in the line of
6 duty each year. Many are the result of assaults,
7 which underscores the need for body armor, but
8 most are due to vehicular accidents.

9 (b) AUTHORIZED USES.—Funds obligated, but sub-
10 sequently unspent and deobligated, may remain available,
11 to the extent provided in appropriations Acts, for use as
12 specified under this section in ensuing fiscal years. The
13 Attorney General shall take all practicable steps to use
14 such funds as soon as practicable to carry out programs
15 that are consistent with the purposes of this Act. Such
16 programs include—

17 (1) a national “Blue Alert” warning system to
18 enlist the help of the public in finding suspects after
19 a law enforcement officer is killed in the line of
20 duty;

21 (2) counseling and support services for family
22 members of law enforcement officers who are killed
23 in the line of duty;

24 (3) national toll-free mental health hotline spe-
25 cifically for law enforcement officers, which is both

1 anonymous and peer-driven and has the ability and
2 resources to refer the caller to professional help if
3 needed;

4 (4) continuing research in the efficacy and im-
5 plementation of an annual fitness, resilience, nutri-
6 tion, and mental health check, in recognition that
7 many health problems afflicting law enforcement of-
8 ficers, notably cardiac issues, are cumulative;

9 (5) expanding Federal pension plans and
10 incentivizing State and local pension plans to recog-
11 nize fitness for duty exams as definitive evidence of
12 valid duty or nonduty related disability in recogni-
13 tion of the fact that officers injured in the line of
14 duty are often caught in limbo, without pay, unable
15 to work but also unable to obtain benefits because
16 “fitness for duty” exams are not recognized as valid
17 proof of disability and because they cannot receive
18 Social Security;

19 (6) implementing research-based findings into
20 the number of hours an officer should work consec-
21 utively and in total within a 24–48 hour period, in-
22 cluding special findings on the maximum number of
23 hours an officer should work in a high-risk or high-
24 stress environment (e.g. public demonstrations or
25 emergency situations) by implementing those find-

1 ings federally and providing incentives for State and
2 local law enforcement to do the same;

3 (7) providing individual tactical first-aid kits
4 that contain tourniquets, an Olaes modular bandage,
5 and QuickClot gauze, and training in hemorrhage
6 control to every law enforcement officer on the Fed-
7 eral level and providing incentives for State and
8 local enforcement agencies to do so;

9 (8) providing antiballistic vests and body armor
10 to every law enforcement officer on the Federal level,
11 and providing incentives for State and local law en-
12 forcement agencies to do so;

13 (9) researching and providing training, includ-
14 ing protocols for use and consequences of misuse,
15 prior to providing oleoresin capsicum (OC) spray—
16 commonly called pepper spray—to every correctional
17 worker in medium, high, and maximum security
18 Federal prisons as well as Federal Medical Centers,
19 Federal Detention Centers, and jail units operated
20 by the Bureau of Prisons and instituting a training
21 program to educate workers on how to use the spray
22 responsibly and effectively for self-defense purposes
23 only, and providing incentives for State and law en-
24 forcement agencies to do so;

1 (10) requiring the Director of the Bureau of
2 Prisons to ensure that each chief executive officer of
3 a Federal penal or correctional institution provides
4 a secure storage area located outside the secure pe-
5 rimeter of the institution for employees to store fire-
6 arms, or allowing employees to store firearms in a
7 vehicle lockbox approved by the Director of the Bu-
8 reau of Prisons;

9 (11) researching and/or developing the design
10 specifications or modifications for body-worn cam-
11 eras with the input of Federal, State, and local law
12 enforcement leaders and providing the devices or
13 funding to purchase the device and funding for re-
14 lated costs to implementation and storage costs to
15 every Federal law enforcement and correctional
16 agency and State and local officer, in recognition of
17 the fact that these devices reduce unwarranted com-
18 plaints against officers while also vindicating civil-
19 ians who have been mistreated;

20 (12) researching, developing, and providing best
21 practices for Federal, State, and local law enforce-
22 ment on the acquisition, use, retention, and dissemi-
23 nation of auditory, visual, and biometric data from
24 law enforcement in a constitutional manner and in
25 light of privacy concerns, in consultation with the

1 Bureau of Justice Assistance, civil rights and civil
2 liberties organizations, as well as law enforcement
3 research groups and other experts;

4 (13) hiring of social workers by the Bureau of
5 Prisons and providing incentives for State and local
6 governments to do so because social workers are
7 uniquely qualified to address the release preparation
8 needs of aging inmates, such as aftercare planning
9 and ensuring continuity of medical care;

10 (14) providing funding and training federally
11 and to State and local law enforcement agencies on
12 community-based policing principles to repair and
13 rebuild trust and collaborative relationships;

14 (15) providing funding to Federal, State, and
15 local law enforcement agencies to eliminate the DNA
16 backlog, in recognition that repeat, violent offenders,
17 in particular sex offenders, would be identified and
18 prevented from committing additional crimes;

19 (16) implementing requested and recommended
20 mental health treatments to Federal law enforce-
21 ment and correctional officers and providing incen-
22 tives to State and local law enforcement and correc-
23 tions agencies to do the same;

24 (17) providing incentives and support services
25 to State and local law enforcement agencies to en-

1 hance the reporting to and usage of the National In-
2 cident-Based Reporting System, which collects data
3 on each single incident and arrest within 22 offense
4 categories made up of 46 specific crimes that are the
5 major ones facing law enforcement today, including
6 terrorism, white collar crime, weapons offenses,
7 missing children in which criminality is involved,
8 drug offenses, hate crimes, spousal/child/elder abuse,
9 gang crimes, organized crime, sexual exploitation,
10 DUI and alcohol-related offenses;

11 (18) providing medication-assisted treatment
12 for individuals struggling with heroin, opioid, or al-
13 cohol abuse in residential substance abuse treatment
14 programs and providing funding to State and local
15 governments to do so;

16 (19) providing funding to State and local gov-
17 ernments and law enforcement agencies to imple-
18 ment the Attorney General’s best practices on infor-
19 mation and resource parity and innocence protec-
20 tion, including sharing the toolkits referenced in sec-
21 tion 305 of this Act to reduce the likelihood of
22 wrongful convictions, “open file” discovery practices,
23 evidence preservation, training on interrogation to
24 avoid coercive tactics that lead to false or unreliable
25 confessions, training on interviewing witnesses to

1 avoid suggestive tactics that lead to false or unreli-
2 able identifications, and training on the cross-racial
3 misidentification probability;

4 (20) investing in research and training in non-
5 lethal tools of policing that provide a greater range
6 of law enforcement response, including to de-escalate
7 situations and reduce deadly uses of force;

8 (21) investing in research and training in im-
9 plicit bias for local, State, and Federal law enforce-
10 ment personnel and developing comprehensive strat-
11 egies to recognize and reduce incidences of implicit
12 bias;

13 (22) investing in evidence-based programs to
14 assist communities in developing comprehensive re-
15 sponses to youth violence through coordinated pre-
16 vention and intervention initiatives;

17 (23) hiring social workers, psychologists, psy-
18 chiatrists, therapists, and counselors for Federal
19 prisons and providing funding to State and local
20 governments to do the same as they are uniquely
21 qualified to address the release preparation needs of
22 inmates;

23 (24) providing funding to State and local law
24 enforcement agencies to provide incentives for offi-
25 cers with undergraduate and graduate degrees;

1 (25) providing additional funding to Federal,
2 State, and local government agencies to provide com-
3 petent and effective counsel for persons financially
4 unable to obtain legal representation;

5 (26) providing additional funding for the grant
6 program established by the Second Chance Act
7 (Public Law 110–199) to prevent recidivism and im-
8 prove public safety;

9 (27) providing funding for Federal, State, and
10 local law enforcement leaders to attend the FBI Na-
11 tional Academy to share best practices and support
12 national coherence on important policing issues in
13 this ever-changing field;

14 (28) crime-reducing education grants, Federal
15 pretrial diversion programs, Federal problem-solving
16 courts, the elimination of mandatory minimums in
17 the Federal law, and the Innocence Protection Act
18 of 2004; and

19 (29) providing funding for a competitive 5-year
20 grant to a nationally recognized, nonpartisan, sci-
21 entifically sound, research organization, with an ad-
22 visory board comprised of local, State, and Federal
23 law enforcement leaders, and subject matter experts,
24 to create a national nonpunitive, forward-focused
25 peer review, training, and improvement center with

1 the goal of improved safety outcomes for officers and
2 civilians that would—

3 (A) establish a “critical incident review”
4 mechanism, similar to those used in medicine
5 and aviation, as a comprehensive, protective,
6 and accurate way of examining the cir-
7 cumstances surrounding an incident to accu-
8 rately identify problems on a systemic level to
9 reduce the number and types of problems, to
10 improve policing outcomes, refine policies and
11 practices, and build upon meaningful conversa-
12 tions and research to develop what improve-
13 ments with cooperation of the law enforcement
14 agencies involved;

15 (B) establish a data input form and infra-
16 structure of a “near miss” database and for
17 every policing incident in which an officer or ci-
18 vilian life is lost or substantial force is used to
19 review knowledge gained from past tragedies in
20 order to disseminate it to prevent future ones
21 and to encourage new learning and sustainable,
22 stakeholder-driven change;

23 (C) study, recommend, and establish an
24 “officer-involved shooting database” for use
25 when firearms have been used against law en-

1 enforcement officers and where officers have used
2 firearms against civilians to review knowledge
3 gained from past tragedies to distinguish be-
4 tween actual risk versus perceived risk on the
5 part of the civilian or officer and to develop
6 best practices;

7 (D) advance training, technical assistance
8 and knowledge regarding mental health issues
9 that occur within the criminal justice system,
10 including providing training and funding for de-
11 escalation techniques, coordination among gov-
12 ernment agencies, information-sharing, diver-
13 sion initiatives, jail and prison strategies, estab-
14 lishment of learning sites, suicide prevention,
15 and assistance and infrastructure for calls for
16 service and law enforcement triage capabilities;

17 (E) study, invest in, and apply policing re-
18 search tools that develop forecasts based upon
19 evolving technology, social movements, environ-
20 mental changes, economic factors, and political
21 events; and

22 (F) educate and facilitate the advance of
23 evidence-based policing to encourage use of the
24 best available scientific evidence to control

1 crime and disorder and enhance officer safety
2 and wellness.

3 (c) FUNDS TO SUPPLEMENT, NOT SUPPLANT, EX-
4 ISTING FUNDS.—Funds disbursed pursuant to this section
5 shall not be used to supplant existing State or local funds
6 utilized for these purposes, but rather to supplement them.

7 (d) ACCOUNTING.—Every year, the Department of
8 Justice shall provide an accounting of the reprogrammed
9 funds to ensure that the funds are disbursed and expended
10 in a manner to maximize public safety and make needed
11 improvements to the criminal justice system. The Attorney
12 General shall report the findings to the Judiciary, Over-
13 sight, and substantive congressional committees.

14 **TITLE VII—INCREASING GOV-**
15 **ERNMENT TRANSPARENCY**
16 **AND ACCURACY**

17 **SEC. 701. REPORT ON MANDATORY MINIMUMS.**

18 Not later than one year after the date of the enact-
19 ment of this Act, the Government Accountability Office
20 (GAO), in coordination with the Attorney General, shall
21 provide a report to Congress listing all existing mandatory
22 minimum penalties in force, including brief summaries of
23 the conduct prohibited by each and how frequently the
24 mandatory minimum is imposed.

1 **SEC. 702. FEDERAL DEFENDER ADDED AS A NONVOTING**
2 **MEMBER OF THE SENTENCING COMMISSION.**

3 (a) IN GENERAL.—Subsection (a) of section 991 of
4 title 28, United States Code, is amended—

5 (1) by striking “one nonvoting member.” at the
6 end of the first sentence and inserting “two non-
7 voting members.”; and

8 (2) by inserting before the last sentence the fol-
9 lowing: “A Federal public or community defender
10 designated by the Judicial Conference of the United
11 States with the advice of the Defender Services Ad-
12 visory Group shall be a nonvoting member of the
13 Commission.”.

14 (b) CONFORMING AMENDMENT.—The final sentence
15 of section 235(b)(5) of the Comprehensive Crime Control
16 Act of 1984 (18 U.S.C. 3551 note) is amended by striking
17 “nine members, including two ex officio, nonvoting mem-
18 bers” and inserting “ten members, including three non-
19 voting members”.

20 **SEC. 703. BUDGET AND INMATE POPULATION IMPACT OF**
21 **LEGISLATION ON THE FEDERAL CORREC-**
22 **TIONS SYSTEM.**

23 (a) IMPACT ANALYSIS.—

24 (1) WHEN REQUIRED.—Upon request by the
25 chair or ranking member of the Committee on the
26 Judiciary of either the Senate or the House of Rep-

1 representatives with respect to legislation referred to
2 that committee that amends sentencing or correc-
3 tions policy or creates a new criminal penalty, the
4 Attorney General shall, before the final committee
5 vote on ordering the legislation reported, provide the
6 requesting party an impact analysis.

7 (2) CONTENTS.—The impact analysis shall con-
8 tain—

9 (A) an estimate of the Federal budgetary
10 impact of the legislation, both overall and bro-
11 ken down by each agency affected in the execu-
12 tive and judicial branches; and

13 (B) an estimate of the legislation's 10-year
14 prison bed impact on Federal facilities.

15 (b) AMENDMENTS.—Upon request by the chair or
16 ranking member of the Committee on the Judiciary of the
17 Senate or the House of Representatives with respect to
18 any legislation ordered reported favorably by that com-
19 mittee with amendment, the Attorney General shall, not
20 later than 30 days after the request is made, provide the
21 requesting party with an updated impact analysis.

22 (c) INCLUSION OF IMPACT ANALYSIS OR STATE-
23 MENT.—The chair or ranking member shall include in the
24 committee report, or in additional, separate, or dissenting
25 views appended to the report, as the case may be, any

1 impact analysis provided at the request of that chair or
2 ranking member. If the Attorney General does not provide
3 an impact analysis in a timely manner, the chair or rank-
4 ing member shall instead include in the committee report
5 or views, a statement that the impact analysis was not
6 provided.

7 (d) EFFECT OF FAILURE TO COMPLY WITH RE-
8 QUIREMENTS OF SECTION.—The Attorney General shall
9 make every effort to provide an impact analysis required
10 under this section, and the requesting party shall make
11 every effort to give the Attorney General sufficient notice
12 to do so. However, failure to provide the impact analysis
13 does not give rise to any point of order regarding the legis-
14 lation. Failure by a chair or ranking member to include
15 matter as required by this section in a report or views
16 appended to the report does not give rise to a point of
17 order regarding the legislation.

18 **SEC. 704. REPORTS.**

19 (a) ANNUAL REPORTS BY THE ATTORNEY GEN-
20 ERAL.—Not later than 180 days after passage of this bill,
21 and every year thereafter, the Attorney General shall sub-
22 mit to the Congress, a report that contains the following:

23 (1) Analysis of demographic (age, race/eth-
24 nicity, gender) data on Federal offenders, including
25 by offender demographics, the number and types of

1 offenses for which offenders in that demographic
2 have—

3 (A) been considered for prosecution by the
4 Department of Justice but not charged;

5 (B) been charged but charges were dis-
6 missed;

7 (C) been initially charged with mandatory
8 minimums that were not withdrawn or dis-
9 missed, listed by statutory citation of manda-
10 tory minimum;

11 (D) been charged in a superseding indict-
12 ment or subsequent information with manda-
13 tory minimums;

14 (E) plea bargained in exchange for pros-
15 ecutors not charging mandatory minimums, in-
16 cluding the type of mandatory minimum plea
17 bargained away;

18 (F) been initially charged with mandatory
19 minimums but were withdrawn or dismissed,
20 listed by type of mandatory minimum; and

21 (G) been convicted, the length of sentence
22 they received, and the judicial district in which
23 they were sentenced to track whether unwar-
24 ranted sentencing disparities are occurring in
25 certain districts.

1 (2) An analysis of current and projected sav-
2 ings associated with this Act and the amendments
3 made by this Act.

4 (3) Developments in training and development
5 and research on the Department of Justice in con-
6 junction with the Department of Defense, on non-
7 lethal tools of policing.

8 (b) ANNUAL REPORTS BY THE DIRECTOR OF THE
9 BUREAU OF PRISONS.—Not later than 180 days after
10 passage of this bill, and every January 1 thereafter, the
11 Director of the Bureau of Prisons, in consultation with
12 the Inspector General of the Department of Justice, shall
13 submit to Congress a report that contains the following
14 information, categorized by race, national origin, gender,
15 age, and religion:

16 (1) PRISON DATA.—

17 (A) The number of offenders entering pris-
18 on on a new offense.

19 (B) The average sentence length for a new
20 prison sentence by offense type.

21 (C) The number of offenders entering pris-
22 on on a revocation of supervision.

23 (D) The average sentence length for of-
24 fenders entering prison for a probation revoca-
25 tion.

1 (E) The average sentence length for of-
2 fenders entering prison for a supervised release
3 revocation.

4 (F) The average percentage of the sen-
5 tence imposed served in prison as compared to
6 community, home, or residential reentry center.

7 (G) The average percentage of prison sen-
8 tences served in prison by offense type for of-
9 fenders entering on a new offense.

10 (H) The number of offenders in solitary
11 confinement, including their race, gender, age,
12 reason for solitary confinement, length of stay
13 in solitary confinement, the number of total
14 stays in solitary confinement, the total time of
15 stay in solitary confinement, and the number of
16 those offenders with mental health issues, cog-
17 nitive deficits, substance abuse issues, or com-
18 bat-related post-traumatic stress disorder.

19 (I) Total prison population by offense type
20 and by the type of admission into prison.

21 (J) Recidivism rate by offense type.

22 (K) Offense rate after 3 years of release.

23 (2) DATA RELATED TO EXPANDED EARNED
24 TIME CREDIT AND RECIDIVISM REDUCTION PRO-
25 GRAMMING.—

1 (A) The number and percentage of offend-
2 ers who have earned time credit in the prior
3 year.

4 (B) The average amount of time credit
5 earned per offender in the prior year.

6 (C) The average amount of time credit
7 earned by offenders released from prison in the
8 prior year.

9 (D) Additional information as requested by
10 the Judiciary, Oversight, and other substantive
11 committees.

12 (E) A summary and assessment of the
13 types and effectiveness of the recidivism reduc-
14 tion programs and productive activities in facili-
15 ties operated by the Director of the Bureau of
16 Prisons, including—

17 (i) evidence about which programs
18 and activities have been shown to reduce
19 recidivism;

20 (ii) the capacity of each program and
21 activity at each facility, including the num-
22 ber of prisoners enrolled in each program
23 and activity; and

24 (iii) identification of any problems or
25 shortages in capacity of such programs

1 and activities, and how they should be
2 remedied.

3 (3) DATA RELATED TO RELEASE TO EXTENDED
4 SUPERVISION FOR CERTAIN MEDICALLY INCAPACI-
5 TATED AND GERIATRIC PRISONERS.—

6 (A) The number of offenders who peti-
7 tioned for release to extended supervision pur-
8 suant to section 3582(c)(1)(A) of title 18,
9 United States Code.

10 (B) The number of offenders who peti-
11 tioned and were denied release to extended su-
12 pervision pursuant to section 3582(c)(1)(A) of
13 title 18, United States Code, and the common
14 reasons for denial.

15 (C) The number of offenders released to
16 extended supervision pursuant to section
17 3582(c)(1)(A) of title 18, United States Code,
18 who were revoked in the previous year.

19 (c) ANNUAL REPORTS BY THE DIRECTOR OF THE
20 ADMINISTRATIVE OFFICE OF THE UNITED STATES
21 COURTS.—Not later than 180 days after passage of this
22 bill, and every January 1 thereafter, the Director of the
23 Administrative Office of the United States Courts, in con-
24 sultation with the Judicial Conference, shall submit to the

1 appropriate committees of Congress, and publish pub-
2 lically, a report that contains the following:

3 (1) PROBATION DATA.—

4 (A) The number of offenders sentenced to
5 probation in the previous year.

6 (B) The number of offenders supervised on
7 probation.

8 (C) The number of probationers revoked
9 for a technical violation.

10 (D) The number of probationers who were
11 convicted of a new felony offense and sentenced
12 to a term of imprisonment, in either a local,
13 State, or Federal facility.

14 (2) SUPERVISED RELEASE DATA.—

15 (A) The number of offenders placed on
16 postrelease supervision in the following year.

17 (B) The number of offenders supervised on
18 postrelease supervision.

19 (C) The number of offenders on supervised
20 release revoked for a technical violation.

21 (D) The number of offenders on supervised
22 released who were convicted of a new felony of-
23 fense and sentenced to a term of imprisonment,
24 in either a local, State, or Federal facility.

1 (3) DATA RELATED TO THE IMPOSITION OF
2 THE GRADUATED SANCTIONING SYSTEM.—

3 (A) The number and percentage of offend-
4 ers who have one or more violations during the
5 year.

6 (B) The average number of violations per
7 offender during the year.

8 (4) DATA RELATED TO THE IMPOSITION OF
9 EARNED TIME CREDITS.—

10 (A) The number and percentage of offend-
11 ers who qualify for earned discharge in one or
12 more months of the year.

13 (B) The average amount of credits earned
14 per offender within the year.

15 (C) The average probation sentence length
16 for offenders sentenced to Federal probation.

17 (D) The average supervision sentence
18 length for offenders released to supervised re-
19 lease.

20 (E) The average time spent on Federal
21 probation for offenders successfully completing
22 probation.

23 (F) The average time spent on supervised
24 release for offenders successfully completing su-
25 pervised release.

1 (5) DATA RELATED TO PROBLEM-SOLVING
2 COURTS.—

3 (A) Total number of participants.

4 (B) Total number of successful partici-
5 pants.

6 (C) Total number of unsuccessful partici-
7 pants.

8 (D) Total number of participants who were
9 arrested for a new criminal offense while in the
10 problem-solving court program.

11 (E) Total number of participants who were
12 convicted of a new felony or misdemeanor of-
13 fense while in the problem-solving court pro-
14 gram.

15 (F) Any other data or information as re-
16 quired by the Judiciary, Oversight, and other
17 substantive committees.

18 (d) DEFINITIONS.—In this title, the following defini-
19 tions apply:

20 (1) RECIDIVISM.—The term “recidivism”
21 means the return to Federal prison of an offender
22 not later than 3 years after the date of release.

23 (2) SUPERVISION.—The term “supervision” has
24 the meaning given that term in section 3609 of title
25 18, United States Code.

1 (3) OFFENSE RATE.—The term “offense rate”
2 means either misdemeanor or felony convictions
3 more than 3 years after the date of release.

○