

105TH CONGRESS  
2D SESSION

# S. 2311

To amend section 201 of title 18, United States Code, to increase prosecutorial effectiveness and enhance public safety, and for other purposes.

---

## IN THE SENATE OF THE UNITED STATES

JULY 15, 1998

Mr. KOHL (for himself and Mr. SESSIONS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

## A BILL

To amend section 201 of title 18, United States Code, to increase prosecutorial effectiveness and enhance public safety, and for other purposes.

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

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Effective Prosecution  
5       and Public Safety Act of 1998”.

6       **SEC. 2. FINDINGS.**

7       Congress makes the following findings:

8               (1) There is no evidence in legislative history or  
9       otherwise that Congress intended for section 201 of  
10       title 18, United States Code, to make illegal the tra-

1       ditional prosecutorial practice of recommending leni-  
2       ency or other favorable action towards a defendant  
3       in exchange for truthful testimony or other coopera-  
4       tion with the prosecution of another defendant.

5           (2) Section 201 of title 18, United States Code,  
6       was enacted in 1962 and, for over 35 years, no Fed-  
7       eral court interpreted that section to conflict with  
8       this essential tool of law enforcement.

9           (3) The United States Supreme Court in nu-  
10      merous decisions since 1962, including *Giglio v.*  
11      United States, has reviewed and implicitly approved  
12      this practice.

13          (4) On July 1, 1998, a panel of the Circuit  
14      Court of the United States for the Tenth Circuit  
15      ruled, in the case of *United States v. Singleton*, that  
16      the language of section 201(c) of title 18, United  
17      States Code, holding criminally liable anyone who  
18      “directly or indirectly, gives, offers or promises any-  
19      thing of value to any person, for or because of the  
20      testimony under oath or affirmation given or to be  
21      given by such person as a witness upon a trial, hear-  
22      ing, or other proceeding,” forbids a prosecutor from  
23      promising leniency to a cooperating witness in ex-  
24      change for testimony, and further ruled that the

1 prosecution of a crack cocaine distributor be thrown  
 2 out and the case remanded.

3 (5) Following the July 1, 1998 panel ruling, the  
 4 Circuit Court of the United States for the Tenth  
 5 Circuit stayed the panel decision and ordered an en  
 6 banc hearing.

7 (6) Regardless of the eventual ruling of the Cir-  
 8 cuit Court of the United States for the Tenth Cir-  
 9 cuit on this issue, unless there is Federal legislation  
 10 or a definitive United States Supreme Court decision  
 11 on this issue, it is likely that accused and convicted  
 12 criminals across the Nation will continue to chal-  
 13 lenge criminal charges and convictions based on the  
 14 reasoning in the panel decision, increasing the likeli-  
 15 hood that dangerous criminals will be released and  
 16 prosecutors will be discouraged from reasonably ex-  
 17 ercising their discretion.

18 **SEC. 3. PROSECUTORIAL EFFECTIVENESS AND PUBLIC**  
 19 **SAFETY.**

20 (a) IN GENERAL.—Section 201(d) of title 18, United  
 21 States Code, is amended—

22 (1) by inserting “(1)” after “(d)”; and

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

24 “(2) Paragraphs (2) and (3) of subsection (c) shall  
 25 not be construed to apply to any otherwise lawful giving,

1 promising, or offering by a prosecutor of leniency, witness  
 2 protection, or any other thing of value within the reason-  
 3 able exercise of prosecutorial discretion, in exchange for  
 4 the testimony of any person, including any—

5 “(A) offer or grant of immunity from prosecu-  
 6 tion;

7 “(B) offer to advise a court or parole board of  
 8 the extent of the cooperation by the person with the  
 9 prosecutor, or any advice so given; or

10 “(C) plea bargain agreement.”.

11 (b) **EFFECTIVE DATE.**—The amendments made by  
 12 this section shall take effect as if included in the amend-  
 13 ments made by the Criminal Law and Procedure Tech-  
 14 nical Amendments Act of 1986.

15 **SEC. 4. EFFECT ON PREVIOUS CONVICTIONS.**

16 (a) **IN GENERAL.**—Notwithstanding any other provi-  
 17 sion of law, nothing in section 201 of title 18, United  
 18 States Code, or any other provision of law, shall be con-  
 19 strued to prohibit any otherwise lawful giving, promising,  
 20 or offering by a prosecutor of leniency, witness protection,  
 21 or any other thing of value within the reasonable exercise  
 22 of prosecutorial discretion, in exchange for the testimony  
 23 of any person, including any—

24 (1) offer or grant of immunity from prosecu-  
 25 tion;

1           (2) offer to advise a court or parole board of  
2           the extent of the cooperation by the person with the  
3           prosecutor, or any advice so given; or

4           (3) plea bargain agreement.

5           (b) EFFECTIVE DATE.—This section shall be con-  
6           strued to have taken effect on October 23, 1962.

○