

111TH CONGRESS  
2D SESSION

# S. 4045

To amend section 924 of title 18, United States Code, to clarify and strengthen the armed career criminal provisions, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

DECEMBER 17, 2010

Mr. SPECTER introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To amend section 924 of title 18, United States Code, to clarify and strengthen the armed career criminal provisions, 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 “Armed Career Crimi-  
5       nal Sentencing Act of 2010”.

6       **SEC. 2. FINDINGS.**

7       Congress finds the following:

8               (1) Armed career criminals are certain individ-  
9       uals deemed to be particularly culpable and dan-

gerous because of their prior criminal convictions  
and their possession of a firearm.

(2) The purpose of section 924(e) of title 18, United States Code, (in this section referred to as “section 924(e)”) has been, and continues to be, to provide certain and severe punishment for these armed recidivist offenders, and also to protect the public from the distinctive risk and acute harms posed by them.

(3) The requirement of the Supreme Court of the United States under *Taylor v. United States*, 495 U.S. 575 (1990) and *Shepard v. United States*, 544 U.S. 13 (2005), that district courts apply a “categorical approach” when determining whether certain prior convictions trigger an enhanced sentence under section 924(e), has led to increased litigation and inconsistent sentencing results, placing an onerous burden on the judicial system and rendering the protection of public safety haphazard.

(4) The “categorical approach” prevents Federal judges from looking at reliable evidence of the facts of the qualifying prior convictions and instead only permits Federal judges to review the language of the statute of conviction and certain limited judicial records. The Supreme Court of the United

1 States has said that its reading of section 924(e) in  
2 this regard is colored, in part, by concern that to  
3 permit a more probing judicial inquiry could raise  
4 right-to-jury-trial issues because the sentence en-  
5 hancement under section 924(e) increases the statu-  
6 tory maximum sentence of 10 years under section  
7 922(g) of title 18, United States Code, to life im-  
8 prisonment. Under *Appendi v. New Jersey*, 530  
9 U.S. 466, 490 (2000), a case decided after the date  
10 of enactment of the Firearms Owners' Protection  
11 Act (Public Law 99–308; 100 Stat. 449), which ini-  
12 tially added section 924(e), any facts (other than  
13 prior convictions) which may be used to increase the  
14 sentence of a defendant beyond the statutory max-  
15 imum sentence must be proven to a jury beyond a  
16 reasonable doubt.

17 (5) Despite the best efforts of Federal prosecu-  
18 tors to enforce section 924(e) for the safety of the  
19 community, there have been numerous instances in  
20 which armed career criminals have not been sen-  
21 tenced consistent with congressional intent due to  
22 the precedent that has significantly narrowed the ap-  
23 plicability of section 924(e) and prevented judges  
24 from exercising their historic sentencing discretion  
25 and judgment.

1           (6) Few statutory sentencing issues have led to  
2       such a ceaseless stream of costly and time-con-  
3       suming litigation at every level of the Federal court  
4       system as the determination of whether the broad  
5       range of offenses under State and local law qualify  
6       categorically as crimes of violence or serious drug  
7       trafficking offenses.

8           (7) Congress finds that significant disparities in  
9       the content and formulation of State criminal law  
10      have resulted, under Supreme Court precedent, in  
11      the unreasoned divergence of criminal sentences  
12      based on fortuities such as differing charging and  
13      recordkeeping practices among the 50 States, Fed-  
14      eral territories, and thousands of counties and par-  
15      ishes across the United States. In the judgment of  
16      Congress, fundamental principles of equality and  
17      fair treatment, as well as the imperative of vigor-  
18      ously protecting public safety, require far more uni-  
19      form administration and implementation of the sen-  
20      tencing provisions under section 924(e).

21          (8) Congress further believes that Federal  
22      judges should be entrusted to continue their historic  
23      role and judgment as sentencing fact finders capable  
24      of examining and evaluating reliable evidence to de-

1        termine if a particular conviction or series of convic-  
2        tions merits enhancement.

3            (9) To allow judges to return to their tradi-  
4        tional sentencing roles and to make the sentencing  
5        judgments traditionally assigned to courts under the  
6        Constitution of the United States, this Act lowers  
7        the maximum sentence under section 924(e) from  
8        life to 25 years, and increases the maximum sen-  
9        tence under section 922(g) of title 18, United States  
10      Code, from 10 years to 25 years so that the exercise  
11      of the traditional sentencing discretion of the court  
12      to enhance a sentence as permitted by section 924(e)  
13      for armed career criminals will not increase the stat-  
14      utory maximum sentence and thereby implicate  
15      Apprendi principles.

16            (10) Because sentences for violations of section  
17      922(g) of title 18, United States Code, by individ-  
18      uals who are not armed career criminals will com-  
19      monly fall in the range of 10 years or less by oper-  
20      ation of the advisory sentencing guidelines and the  
21      reasonable judgment of the sentencing courts, Con-  
22      gress does not anticipate that there will be many re-  
23      sulting changes in the length of sentence for those  
24      individuals, although the increased statutory max-  
25      imum will apply.

1           (11) To ensure that an inflexible application of  
2       section 924(e) does not result in overly harsh re-  
3       sults, this Act gives prosecutors the discretion to file  
4       a notice advising the defendant and the court wheth-  
5       er the prosecutor will seek to invoke all, some, or  
6       none of the prior convictions of the defendant to  
7       trigger the penalty enhancement.

8   **SEC. 3. DEFINITION.**

9       Section 924(e)(2) of title 18, United States Code, is  
10   amended—

11           (1) by striking subparagraph (B) and inserting  
12       the following:

13                   “(B) the term ‘qualifying offense’ means—

14                           “(i) a serious drug offense; or

15                           “(ii) any crime, or any attempt, con-  
16       spiracy, or solicitation to commit a crime—

17                           “(I) that is—

18                                   “(aa) punishable by impris-  
19       onment for a term of more than  
20       1 year; or

21                                   “(bb) an act of juvenile de-  
22       linquency involving the use or  
23       carrying of a firearm, knife, or  
24       destructive device that would be  
25       punishable by imprisonment for a

1 term of more than 1 year if com-  
2 mitted by an adult; and

3 “(II) that, according to any reli-  
4 able evidence—

5 “(aa) is burglary, arson, or  
6 extortion;

7 “(bb) has as an element—

8 “(AA) the use, at-  
9 tempted use, or threatened  
10 use of physical force, how-  
11 ever slight, against the per-  
12 son of another individual; or

13 “(BB) that serious bod-  
14 ily injury intentionally,  
15 knowingly, or recklessly re-  
16 sulted from the offense con-  
17 duct;

18 “(cc) involved the unlawful  
19 manufacture, possession, use,  
20 sale, transfer, importation, or  
21 distribution of an explosive or ex-  
22 plosive device, nuclear or chem-  
23 ical material, or a weapon of  
24 mass destruction (as defined in

1 section 2332a of title 18, United  
2 States Code); or

3 “(dd) involved conduct that,  
4 without regard to the formal ele-  
5 ments of the crime—

6 “(AA) presented a seri-  
7 ous potential risk of bodily  
8 injury to another; or

9 “(BB) intentionally,  
10 knowingly, or recklessly re-  
11 sulted in serious bodily in-  
12 jury to another; and”; and

13 (2) in subparagraph (C), by striking “a violent  
14 felony” and inserting “an offense described in sub-  
15 paragraph (B)(ii)”.

16 **SEC. 4. SENTENCING.**

17 Section 924 of title 18, United States Code, is  
18 amended—

19 (1) in subsection (a)—

20 (A) in paragraph (2), by striking “(g),”;  
21 and

22 (B) by adding at the end the following:

23 “(8) Whoever knowingly violates section 922(g) shall  
24 be fined under this title, imprisoned not more than 25  
25 years, or both.”; and



1 (2) in subsection (e)(1)—

2 (A) by inserting “(A)” before “In the case  
3 of”;

4 (B) by striking “a violent felony or a seri-  
5 ous drug offense, or both” and inserting “quali-  
6 fying offenses”;

7 (C) by striking “imprisoned not less than  
8 fifteen years” and inserting “imprisoned for not  
9 less than 15 years and not more than 25  
10 years”; and

11 (D) by adding at the end the following:

12 “(B)(i) No person who is convicted of an offense  
13 under section 922(g) shall be sentenced to imprisonment  
14 for the mandatory minimum term of years under subpara-  
15 graph (A), unless before trial, or before entry of a plea  
16 of guilty, the United States attorney files an information  
17 with the court (and serves a copy of such information on  
18 the person or counsel for the person) stating in writing  
19 the previous convictions to be relied upon. Except as pro-  
20 vided in clause (ii), any proceedings under this subpara-  
21 graph shall be conducted in accordance with the proce-  
22 dures under section 411 of the Controlled Substances Act  
23 (21 U.S.C. 851).

24 “(ii) In determining whether a person shall be sen-  
25 tenced to imprisonment for the mandatory minimum term

1 of years under subparagraph (A) based on previous convic-  
2 tions, the court—

3 “(I) is not limited to the elements of the statute  
4 of conviction and shall consider the facts of the pre-  
5 vious conviction as presented in the judicial records  
6 of the previous conviction, the presentence report, or  
7 any other reliable evidence presented to the court;  
8 and

9 “(II) shall determine whether the person has  
10 such previous convictions by a preponderance of the  
11 evidence.”.

12 **SEC. 5. DIRECTIVE TO UNITED STATES SENTENCING COM-**  
13 **MISSION.**

14 (a) **DIRECTIVE.**—Pursuant to the authority under  
15 section 994(p) of title 28, United States Code, and in ac-  
16 cordance with this section, the United States Sentencing  
17 Commission shall review the Federal Sentencing Guide-  
18 lines and policy statements applicable to an offense de-  
19 scribed in section 924(e)(1) of title 18, United States  
20 Code, to reflect the amendment made by this Act to sec-  
21 tion 924(e)(2)(B) of title 18, United States Code.

22 (b) **REQUIREMENTS.**—In revising the Federal Sen-  
23 tencing Guidelines and policy statements to reflect the  
24 amendment to section 924(e)(2)(B) of title 18, United

1 States Code, made by this Act, the United States Sen-  
2 tencing Commission shall—

3 (1) revise the definition of the term “crime of  
4 violence” under section 4B1.2 of the Federal Sen-  
5 tencing Guidelines; and

6 (2) revise sections 4B1.1 and 4B1.4 of the Fed-  
7 eral Sentencing Guidelines to reflect that a sen-  
8 tencing court may consider all reliable evidence pre-  
9 sented to make a factual determination whether the  
10 prior conviction of a defendant is a qualifying of-  
11 fense, as defined in section 924(e)(2)(B) of title 18,  
12 United States Code, as amended by this Act.

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