

114TH CONGRESS
1ST SESSION

H. R. 2944

To improve public safety, accountability, transparency, and respect for federalism in Federal criminal law by applying the findings of the bipartisan Over-Criminalization Task Force and 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

JUNE 25, 2015

Mr. SENSENBRENNER (for himself, Mr. SCOTT of Virginia, Mr. LABRADOR, Mr. CUMMINGS, Mr. FARENTHOLD, Ms. LOFGREN, Mr. COLLINS of Georgia, Mr. COHEN, Mr. BISHOP of Michigan, Mr. JOHNSON of Georgia, Mrs. LOVE, Ms. JUDY CHU of California, Mr. BARTON, Mr. GUTIÉRREZ, Mr. YOHO, Ms. BASS, Mr. YOUNG of Alaska, Mr. RICHMOND, Mr. RIGELL, Mr. JEFFRIES, Mr. MCCLINTOCK, and Mr. CÁRDENAS) 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 the findings of the bipartisan Over-Criminalization Task Force and 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Sensenbrenner-Scott
 5 Over-Criminalization Task Force Safe, Accountable, Fair,
 6 Effective Justice Reinvestment Act of 2015” or the “Sen-
 7 senbrenner-Scott SAFE Justice Reinvestment Act of
 8 2015”.

9 **SEC. 2. TABLE OF CONTENTS.**

10 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. Creation of a citizen complaint process.

Sec. 105. Exclusion of acquitted conduct and discretion to disregard manipulated conduct from consideration during sentencing.

Sec. 106. 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—ADDRESSING INFORMATION DISPARITY AND ACCURACY
 IN CRIMINAL PROSECUTIONS TO PROTECT INNOCENCE MORE
 ROBUSTLY AND TO REDUCE THE NUMBER OF WRONGFUL
 CONVICTIONS**

Sec. 201. Findings and declarations.

Sec. 202. Reauthorization of the Innocence Protection Act of 2004.

Sec. 203. Accuracy and reliability of evidence in criminal cases; addressing information disparity in criminal cases.

Sec. 205. Notification relating to forensic, prosecutorial, or law enforcement misconduct.

- Sec. 206. Remedies.
 Sec. 207. Toolkits for State and local government.

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

- Sec. 301. Eligibility for prejudgement probation.
 Sec. 302. Sentence of probation.
 Sec. 303. Directive to the Sentencing Commission regarding use of probation.
 Sec. 304. Establishing accountability evidence-based problem solving court programs.

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 mandatory 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.

Subtitle B—Expanding the Ability To Apply for Compassionate Release

- Sec. 411. 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.

Subtitle C—Clarification of Congressional Intent on Certain Recidivist
 Penalties

- Sec. 421. Amendments to enhanced penalties provision.

TITLE V—IMPLEMENTING EVIDENCE-BASED PRACTICES TO
 REDUCE RECIDIVISM

Subtitle A—Revision of Statutory Sentence Credits

- Sec. 501. Delivery and incentives to complete in-prison recidivism reduction
 programming.
 Sec. 502. Postsentencing risk and needs assessment system and in-prison re-
 cidivism reduction programming.

Subtitle B—Training and Oversight of Mental Health and Substance Abuse
 Treatment

- Sec. 511. Mental health and de-escalation training.
- Sec. 512. Authorizing grants to States for the use of medication-assisted treatment for heroin, opioid, or alcohol abuse in residential substance abuse treatment.
- Sec. 513. Performance-based contracting for residential reentry centers.

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

- Sec. 521. Graduated sanctioning system.
- Sec. 522. Graduated responses to technical violations of supervision.
- Sec. 523. Targeted and proportional penalties for revocation of probation.
- Sec. 524. Targeted and proportional penalties for violations of supervised release.

Subtitle D—Focus Supervision Resources on High-Risk Offenders

- Sec. 531. Earned discharge credits for compliant supervisees.
- Sec. 532. Elimination of mandatory revocation for minor drug violations.

Subtitle E—Creating a Performance-Incentive Funding Program

- Sec. 541. Calculation of savings.
- Sec. 542. Distribution of performance incentive funding.
- Sec. 543. Use of performance incentive funding.
- Sec. 544. Definitions.

Subtitle F—Maximizing Public Safety Returns on Corrections Dollars

- Sec. 551. Clarification or original congressional intent regarding calculation of good time conduct credit.
- Sec. 552. Analysis of fiscal implications for inclusion in presentence reports.
- Sec. 553. Investing in and supporting SAFE law enforcement.

TITLE VI—PREVENTION AND INTERVENTION INITIATIVES
INCREASING GOVERNMENT TRANSPARENCY ACCURACY

- Sec. 601. Report on mandatory minimums.
- Sec. 602. Federal defender added as a nonvoting member of the Sentencing Commission.
- Sec. 603. Budget and inmate population impact of legislation on the Federal corrections system.
- Sec. 604. 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 January 1, 2016, and every
13 year thereafter, the Attorney General shall, in consultation
14 with relevant entities within the executive branch, compile
15 a listing of the various Federal law violations that carry
16 criminal penalties. To ensure that individuals have fair no-
17 tice of prohibited conduct and the criminal penalties they
18 bring, the Attorney General shall publicize the existence
19 of this database and publish the database on the Depart-
20 ment of Justice website.

21 (b) OVERSIGHT TO ADDRESS OVER-FEDERALIZA-
22 TION.—Each executive branch agency must obtain the ex-
23 press prior approval of the Attorney General for each
24 added criminal penalty resulting from agency regulation.
25 The Attorney General shall condition that approval on a

1 sunsetting of the added criminal penalty not later than
2 5 years after it takes effect.

3 **SEC. 102. PROCEDURES TO REDUCE OVER-FEDERALIZA-**
4 **TION.**

5 (a) IN GENERAL.—Not later than 180 days after the
6 date of the enactment of this Act, the Attorney General
7 shall create and implement procedures—

8 (1) to provide coordination by Federal prosecu-
9 tors and law enforcement agencies with other Fed-
10 eral agencies to determine—

11 (A) whether unlawful conduct that involves
12 the administrative competencies of other Fed-
13 eral agencies is best addressed by civil sanctions
14 or criminal charges; and

15 (B) if such conduct is best addressed by
16 criminal charges, whether diversion or criminal
17 prosecution is more appropriate; and

18 (2) to provide coordination by Federal prosecu-
19 tors and law enforcement agencies with State pros-
20 ecutors and law enforcement agencies to reduce du-
21 plicative prosecutions of the same offender for the
22 same conduct at both State and Federal levels.

23 (b) REPORT BY INSPECTOR GENERAL.—Not later
24 than 1 year after the date of the enactment of this Act,
25 the Inspector General of the Department of Justice shall

1 report to the Congress, for the period beginning on the
2 date of the enactment of this Act and ending as closely
3 as feasible to the date on which the report is made, on—

4 (1) the number of cases referred from law en-
5 forcement or other agencies for Federal prosecution
6 in which the alleged unlawful conduct—

7 (A) involved the administrative com-
8 petencies of Federal agencies other than the
9 Department of Justice that could have been
10 handled civilly by a Federal agency; or

11 (B) could have, in the judgment of the At-
12 torney General, been prosecuted at the State
13 level;

14 (2) the number of cases accepted for Federal
15 prosecution, and the estimated Federal correctional
16 costs of those cases in prison bed-years; and

17 (3) the number of cases declined for Federal
18 prosecution after referral by law enforcement or
19 other agencies and the estimated Federal correc-
20 tional savings in prison bed-years.

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

22 (a) **GUIDANCE BY ATTORNEY GENERAL.**—Not later
23 than 180 days after the date of the enactment of this Act,
24 the Attorney General, in consultation with the Criminal
25 Law Committee of the Judicial Conference of the United

1 States, the United States Probation and Pretrial Services,
2 and a Federal public or community defender from the De-
3 fender Services Advisory Group, shall create and imple-
4 ment procedures to reduce overincarceration due to pre-
5 trial detention in order to—

6 (1) reduce overcrowding of pretrial detention
7 facilities; and

8 (2) reduce the cost of pretrial detention.

9 (b) CONSIDERATIONS TO BE TAKEN INTO ACCOUNT
10 IN CREATING PROCEDURES.—In carrying out subsection

11 (a), the Attorney General shall take into consideration—

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

14 (2) whether in some or most cases where a
15 summons would not be sufficient, a bond or other al-
16 ternative would be preferable to pretrial detention;

17 (3) the need to avoid seeking bonds that offend-
18 ers are unable to meet, which are then tantamount
19 for pretrial detention;

20 (4) the extent to which pretrial detention re-
21 sults from the disproportionate pretrial detention of
22 individuals with fewer economic means;

23 (5) the impact of pretrial detention on loss of
24 employment and housing; and

1 (6) the need to avoid pretrial detention that is
2 not necessary to ensure the appearance of the de-
3 fendant as required and the safety of the public.

4 (c) **REPORT BY INSPECTOR GENERAL.**—Not later
5 than 1 year after the date of the enactment of this Act,
6 the Inspector General of the Department of Justice shall
7 report to the Congress on the procedures created under
8 this section, and address whether and to what extent those
9 procedures are likely to accomplish their intended pur-
10 poses. In the report, the Inspector General may include
11 recommendations for further changes in procedures that
12 would better accomplish the purposes set forth in sub-
13 section (a), taking into account the considerations de-
14 scribed in subsection (b).

15 **SEC. 104. CREATION OF A CITIZEN COMPLAINT PROCESS.**

16 (a) **IN GENERAL.**—The Attorney General shall, not
17 later than 180 days after the date of the enactment of
18 this Act, create a confidential and secure online complaint
19 process to the Office of Professional Responsibility for the
20 Department of Justice, for the use of defendants who have
21 been sentenced who believe that their prosecutions were
22 mishandled by Federal prosecutors or law enforcement of-
23 ficers. The Attorney General shall publicize the availability
24 of this resource.

1 (b) ANNUAL REVIEW AND REPORTS.—Taking into
2 account the remedies provided in section 206, the Office
3 of the Inspector General, shall—

4 (1) conduct an annual review of the citizen
5 complaint process to determine whether the Office of
6 Professional Responsibility has taken appropriate
7 disciplinary measures against prosecutors who have
8 mishandled cases or engaged in misconduct; and

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

14 **SEC. 105. EXCLUSION OF ACQUITTED CONDUCT AND DIS-**
15 **CRETION TO DISREGARD MANIPULATED CON-**
16 **DUCT FROM CONSIDERATION DURING SEN-**
17 **TENCING.**

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

23 (b) PROVIDING DISCRETION TO DISREGARD CER-
24 TAIN FACTORS IN SENTENCING.—

1 (1) TITLE 18, UNITED STATES CODE.—Section
2 3553 of title 18, United States Code, is amended by
3 adding at the end the following:

4 “(g) DISCRETION TO DISREGARD CERTAIN FAC-
5 TORS.—A court, in sentencing a defendant convicted
6 under the Controlled Substances Act, the Controlled Sub-
7 stances Import and Export Act, any offense deriving its
8 penalties from either such Act, or an offense under section
9 924(c) based on a drug trafficking crime, may disregard,
10 in determining the statutory range, calculating the guide-
11 line range or considering the factors set forth in section
12 3553(a), any type or quantity of a controlled substance,
13 counterfeit substance, firearm or ammunition that was de-
14 termined by a confidential informant, cooperating witness,
15 or law enforcement officer who solicited the defendant to
16 participate in a reverse sting or fictitious stash-house rob-
17 bery.”.

18 (2) CONTROLLED SUBSTANCES ACT.—Section
19 401(b)(1) of the Controlled Substances Act (21
20 U.S.C. 841(b)(1)) is amended by adding at the end
21 the following:

22 “(F) In the case of a person who conspires to commit
23 an offense under this title, the type and quantity of the
24 controlled or counterfeit substance for the offense that was

1 the object of the conspiracy shall be the type and quantity
2 involved in—

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

4 “(ii) any unlawful act of a co-conspirator
5 that—

6 “(I) the defendant agreed to jointly under-
7 take;

8 “(II) was in furtherance of that unlawful
9 act the defendant agreed to jointly undertake;
10 and

11 “(III) was intended by the defendant.”.

12 (3) CONTROLLED SUBSTANCES IMPORT AND
13 EXPORT ACT.—Section 1010(b) of the Controlled
14 Substances Import and Export Act (21 U.S.C.
15 960(b)) is amended by adding at the end the fol-
16 lowing:

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

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

23 “(B) any unlawful act of a co-conspirator
24 that—

1 “(i) the defendant agreed to jointly under-
2 take;

3 “(ii) was in furtherance of that unlawful
4 act the defendant agreed to jointly undertake;
5 and

6 “(iii) was intended by the defendant.”.

7 (4) DIRECTIVE TO THE SENTENCING COMMIS-
8 SION.—Pursuant to its authority under section
9 994(p) of title 28, United States Code, and in ac-
10 cordance with this section, the United States Sen-
11 tencing Commission shall review and amend its
12 guidelines and policy statements applicable to rel-
13 evant conduct to ensure that they are consistent
14 with the amendments made by this section.

15 (5) DEFINITIONS.—The following definitions
16 apply in this section:

17 (A) REVERSE STING.—The term “reverse
18 sting” means a situation in which a person who
19 is a law enforcement officer or is acting on be-
20 half of law enforcement initiates a transaction
21 in which the person offers to sell a controlled
22 substance, counterfeit substance, firearms or
23 ammunition to a targeted individual.

24 (B) STASH HOUSE.—The term “stash
25 house” means a location where drugs and/or

1 money are stored in furtherance of a drug dis-
2 tribution operation.

3 (C) FICTITIOUS STASH HOUSE ROB-
4 BERY.—The term “fictitious stash house rob-
5 bery” means a situation in which a person who
6 is a law enforcement officer or is acting on be-
7 half of law enforcement describes a fictitious
8 stash house to a targeted individual and invites
9 the targeted individual to assist the person in
10 robbing such fictitious stash house.

11 **SEC. 106. FOCUSING FEDERAL CRIMINAL PENALTIES FOR**
12 **SIMPLE POSSESSION TO PLACES OF SPECIAL**
13 **FEDERAL INTEREST IN RECOGNITION OF**
14 **THE BALANCE OF POWER BETWEEN THE**
15 **FEDERAL GOVERNMENT AND THE STATES.**

16 Section 404 of the Controlled Substances Act (21
17 U.S.C. 844) is amended by inserting after “It shall be un-
18 lawful for any person” each place it appears the following:
19 “within the special maritime and territorial jurisdiction of
20 the United States (as defined for the purposes of title 18,
21 United States Code)”.

1 **TITLE II—ADDRESSING INFOR-**
2 **MATION DISPARITY AND AC-**
3 **CURACY IN CRIMINAL PROS-**
4 **ECUTIONS TO PROTECT INNO-**
5 **CENCE MORE ROBUSTLY AND**
6 **TO REDUCE THE NUMBER OF**
7 **WRONGFUL CONVICTIONS**

8 **SEC. 201. FINDINGS AND DECLARATIONS.**

9 The Congress finds and declares the following:

10 (1) The goal of a law enforcement investigation
11 is to apprehend the person or persons responsible for
12 the commission of a crime.

13 (2) Mistaken eyewitness identification has been
14 shown to have contributed to the wrongful conviction
15 in 72 percent of the Nation's 325 exonerations of in-
16 nocent persons, including 20 who served time on
17 death row and 30 who pled guilty. These innocents
18 served an average of 13.5 years in prison before ex-
19 oneration and release. No one benefits from a
20 wrongful conviction—except the real perpetrator,
21 who remains free to commit additional crimes. In
22 half of the exoneration cases, the same DNA used
23 to exonerate the innocent was used to identify the
24 real perpetrator. Over 141 violent crimes could have

1 been prevented had the real perpetrator been identi-
2 fied instead of the innocent.

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

9 (A) improving the accuracy of eyewitness
10 identification;

11 (B) preserving and analyzing forensic evi-
12 dence;

13 (C) recording confessions and interroga-
14 tions;

15 (D) discounting the inherent unreliability
16 of informant or cooperator testimony;

17 (E) improving the quality of defense coun-
18 sel;

19 (F) providing for postconviction DNA test-
20 ing; and

21 (G) increasing compensation to the wrong-
22 fully convicted.

23 (4) Policies and procedures to improve the ac-
24 curacy of eyewitness identifications such as those
25 recommended by the National Academy of Sciences,

1 the United States National Institute of Justice, the
2 International Association of Chiefs of Police, the
3 American Bar Association, the Michigan Bar Association,
4 the New Jersey Office of the Attorney General,
5 the Wisconsin Office of the Attorney General,
6 the California Commission on the Fair Administration
7 of Justice, and the North Carolina Actual Innocence
8 Commission are readily available.

9 (5) More accurate eyewitness identifications increase
10 the ability of police and prosecutors to convict
11 the guilty and protect the innocent.

12 (6) The integrity of the criminal justice process
13 is enhanced by adherence to best practices in evidence
14 gathering.

15 (7) Federal, State, and local governments will
16 benefit from the improvement of the accuracy of eyewitness
17 identifications.

18 (8) The value of properly preserved biological
19 evidence has been enhanced by the discovery of modern
20 DNA testing methods, which, coupled with a
21 comprehensive system of DNA databases that store
22 crime scene and offender profiles, allow law enforcement
23 to improve its crime-solving potential.

24 (9) Tapping the potential of preserved biological
25 evidence requires the proper identification, collection,

1 preservation, storage, cataloguing and organization
2 of such evidence.

3 (10) Law enforcement agencies indicate that
4 “cold” case investigations are hindered by an inability
5 to access biological evidence that was collected in
6 connection with criminal investigations.

7 (11) Innocent people mistakenly convicted of
8 the serious crimes for which biological evidence is
9 probative cannot prove their innocence if such evidence
10 is not accessible for testing in appropriate circumstances.
11

12 (12) It is well established that the failure to update
13 policies regarding the preservation of evidence
14 squanders valuable law enforcement resources, manpower
15 hours and storage space.

16 (13) Simple but crucial enhancements to protocols
17 for properly preserving biological evidence can
18 solve old crimes, enhance public safety and settle
19 claims of innocence.

20 (14) Existing Federal, State, and local law regarding
21 consideration of new evidence postconviction
22 fails to adequately account for the enduring probative
23 value of DNA evidence.

24 (15) During his 2005 State of the Union address,
25 President George W. Bush urged that, “[i]n

1 America, we must make doubly sure no person is
2 held to account for a crime he or she did not com-
3 mit, so we are dramatically expanding the use of
4 DNA evidence to prevent wrongful conviction”.

5 (16) United States Attorney General Eric Hold-
6 er expressed his hope, in the interest of justice and
7 identifying the true perpetrators of crimes, that “all
8 levels of government will follow the Federal Govern-
9 ment’s lead by working to expand access to DNA
10 evidence”.

11 (17) Emerging DNA testing technologies can
12 enhance the quality of justice.

13 (18) The scientifically reliable results of DNA
14 testing provide the certainty and finality that bolster
15 the public’s trust in our Federal, State, and local
16 criminal justice systems.

17 (19) In addition to the wrongfully convicted and
18 their families, crime victims, law enforcement, pros-
19 ecutors, courts and the public are harmed whenever
20 individuals guilty of crimes elude justice while inno-
21 cent individuals are imprisoned for crimes they did
22 not commit.

23 (20) Our Federal, State, and local governments
24 must enhance their procedures for considering post-
25 conviction DNA testing so that all credible claims of

1 innocence based on newly discovered evidence can be
2 properly evaluated.

3 (21) Properly audio and video recorded custo-
4 dial interrogations provide the best evidence of the
5 communications that occurred during an interroga-
6 tion; prevent disputes about how an officer con-
7 ducted himself or treated a suspect during the
8 course of an interrogation; prevent disputes about
9 the account of events the defendant originally pro-
10 vided to law enforcement; spare judges and jurors
11 the time necessary and need to assess which account
12 of an interrogation to believe; and enhance public
13 confidence in the criminal process, it is the Con-
14 gress' intent to encourage the video and audio re-
15 cording of all custodial interrogations.

16 (22) An informant is a person who was not a
17 victim of a crime who offers to provide information
18 or assistance to law enforcement in exchange for le-
19 niency or some other benefit. The testimony of in-
20 formants, who were not at the scene of the crime
21 and who have reason to seek leniency from the
22 criminal justice system, is inherently suspect. How-
23 ever, truthful informant testimony may still be im-
24 portant in solving crimes.

1 (23) Rewarding informants, either tacitly or ex-
2 plicitly, by the Government produces dangerous in-
3 centives to manufacture or fabricate testimony.
4 Thus, it is incumbent upon the judicial system to as-
5 sess whether informant testimony is reliable.

6 (24) The use of informant testimony without a
7 system to properly assess its reliability or corrob-
8 orate its substance provides fertile ground for ob-
9 struction of the fair administration of justice.

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

14 (26) The failure to properly educate law en-
15 forcement, defense lawyers, prosecutors, judges and
16 other fact finders about the vulnerabilities inherent
17 in informant testimony enables improper consider-
18 ation of such testimony, which can seriously under-
19 mine the integrity of our criminal justice system.

20 **SEC. 202. REAUTHORIZATION OF THE INNOCENCE PROTEC-**
21 **TION ACT OF 2004.**

22 The Innocence Protection Act of 2004 (18 U.S.C.
23 3600 note) is amended—

1 (1) in section 412(b) (42 U.S.C. 14136e(b)), by
2 striking “2005 through 2009” and inserting “2016
3 through 2021”; and

4 (2) in section 426(a) (42 U.S.C. 14163e(a)), by
5 striking “2005 through 2009” and inserting “2016
6 through 2021”.

7 **SEC. 203. ACCURACY AND RELIABILITY OF EVIDENCE IN**
8 **CRIMINAL CASES; ADDRESSING INFORMA-**
9 **TION DISPARITY IN CRIMINAL CASES.**

10 (a) IN GENERAL.—Not later than 180 days after the
11 date of enactment of this Act, the Attorney General shall,
12 in consultation with the Federal Public or Community De-
13 fender from the Defender Services Advisory Group, the
14 American Bar Association, the American Law Institute,
15 and other expert organizations, including the Innocence
16 Project, create training and best practices to be imple-
17 mented by Federal prosecutors and law enforcement offi-
18 cers prior to trial, consistent with the constitutional rights
19 of the defendant, that increase protection for the innocent
20 by reducing the inaccuracy and unreliability of evidence
21 relied upon in criminal cases, including—

22 (1) procedures and protocols for collecting,
23 marking, preserving, cataloguing, and handling evi-
24 dence;

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

4 (3) training on interviewing witnesses to elimi-
5 nate suggestive tactics that lead to false or unreli-
6 able identifications and memories;

7 (4) training to eliminate cross-racial identifica-
8 tion mistakes;

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

11 (6) requiring audio and video recording of all
12 interviews and interrogations in connection with any
13 defendant's prosecution;

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

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

19 (9) permitting the defendant to thoroughly pre-
20 pare for trial and minimize surprise at trial by pro-
21 viding prompt discovery to the defendant;

22 (10) reducing interruptions and complications
23 during trial to the extent practicable and avoid un-
24 necessary and repetitious trials by identifying and
25 resolving evidentiary disputes prior to trial;

1 (11) minimizing the procedural and substantive
2 inequities among similarly situated defendants, par-
3 ticularly between indigent defendants and non-
4 indigent defendants; and

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

7 (b) INITIAL DISCLOSURE TO DEFENDANTS.—The
8 Attorney General shall instruct Federal prosecutors and
9 law enforcement agents, upon request by the defendant
10 and not later than 14 days after such request, to permit
11 the defendant to inspect and to copy or photograph the
12 full contents of all investigative and case files, excepting
13 only privileged material or attorney work product, to per-
14 mit inspection, copying, testing, and photographing of dis-
15 closed documents or tangible objects, including the fol-
16 lowing documents or tangible objects:

17 (1) All relevant recorded, written, and oral
18 statements of the defendant or of any codefendant
19 that are within the possession or control of the Gov-
20 ernment, and any documents relating to the acquisi-
21 tion of such statements.

22 (2) The names and addresses of all persons
23 known to the Government to have information con-
24 cerning the offense charged, together with all writ-
25 ten statements of any such person that are within

1 the possession or control of the Government and
2 that relate to the subject matter of the offense
3 charged.

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

6 (4) Any information regarding any inquiry, so-
7 licitation, or agreement between the Government and
8 any individual that constitutes an inquiry into or so-
9 licitation of cooperation or testimony of the indi-
10 vidual.

11 (5) Any reports or written statements of any
12 expert the Government intends to call as a witness
13 at trial, including results of physical or mental ex-
14 aminations, scientific tests, experiments, compari-
15 sons, a written description of the substance of the
16 proposed testimony of the expert, the expert's opin-
17 ion, and the underlying basis of that opinion, if that
18 report or written statement of the expert is material
19 to preparing the defense or the Government intends
20 to use the item in its case-in-chief at trial. At the
21 defendant's request, the Government must give to
22 the defendant a written summary of any testimony
23 that the Government intends to use under the Fed-
24 eral Rules of Evidence during its case-in-chief at
25 trial. If the Government requests discovery under

1 rule 16(b)(1)(C)(ii) of the Federal Rules of Criminal
2 Procedure and the defendant complies, the Govern-
3 ment must, at the defendant's request, give to the
4 defendant a written summary of testimony that the
5 Government intends to use the Federal Rules of Evi-
6 dence as evidence at trial on the issue of the defend-
7 ant's mental condition. The summary provided
8 under this paragraph must describe the witness's
9 opinions, the bases and reasons for those opinions,
10 and the witness's qualifications.

11 (6) Any tangible objects, including books, pa-
12 pers, documents, photographs, buildings, places, or
13 any other objects, which pertain to the case or which
14 were obtained from or belong to the defendant, and
15 the identity of any tangible objects if the item is ma-
16 terial to preparing the defense or the Government
17 intends to use the item in its case-in-chief at trial.

18 (7) Any record of prior criminal convictions,
19 pending charges, or probationary status of the de-
20 fendant or of any codefendant or cooperating wit-
21 ness, and insofar as known to the Government, any
22 record of convictions, pending charges, or proba-
23 tionary status that may be used to impeach of any
24 witness to be called by either party at trial.

1 (8) Any material, documents, or information re-
2 relating to lineups, showups, and picture or voice iden-
3 tifications, if it is relevant to preparing the defense
4 or the Government intends to use the item in its
5 case-in-chief.

6 (9) Any material or information within the Gov-
7 ernment's possession or control which tends to ne-
8 gate the guilt of the defendant as to the offense
9 charged or would tend to mitigate punishment of the
10 defendant.

11 (10) Any evidence of character, reputation, or
12 other conduct of the defendant that the Government
13 has investigated.

14 (11) If the defendant's conversations or prem-
15 ises were subject to electronic surveillance (including
16 wiretapping) in connection with the investigation or
17 prosecution of the case, any transcripts, notes,
18 memos, recordings, or other materials derived from
19 such surveillance.

20 (12) Any tangible object obtained through a
21 search and seizure, including any information, docu-
22 ments, or other material relating to the acquisition
23 of that object, if the object, information, or docu-
24 ment, or material is material to preparing the de-
25 fense or the Government intends to use that object,

1 information, document, or material in its case-in-
2 chief.

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

7 (c) PROMPT DISCLOSURE OF ADDITIONAL INFORMA-
8 TION LATER ADDED TO THE INVESTIGATIVE OR CASE
9 FILE.—Upon completing the initial disclosure required
10 under subsection (b), the Government shall, not later than
11 14 days after information of the sort described in sub-
12 section (b) is added to the investigative or case file, dis-
13 close the full contents of that additional information, ex-
14 cepting only privileged material or attorney work product,
15 to permit inspection, copying, testing, and photographing
16 of disclosed documents or tangible objects, including the
17 documents or tangible objects described in subsection (b),
18 irrespective of whether the Government intends to rely on
19 such information at trial and irrespective of whether or
20 not the Government considers such information material
21 or exculpatory.

22 (d) PROTECTIVE ORDER.—

23 (1) IN GENERAL.—Upon written application by
24 the Government, the court may grant a protective
25 order limiting the scope or timing of disclosure re-

1 quired by this section, or limiting the persons to
2 whom such disclosure may be made or disseminated.

3 (2) REQUIREMENTS FOR GRANTING.—The ap-
4 plication shall be granted only to the extent the Gov-
5 ernment demonstrates that such disclosure would
6 cause—

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

9 (B) the release of information that would
10 compromise a significant national security in-
11 terest; or

12 (C) the violation of privacy rights, pro-
13 tected by Federal law, of a non-law-enforcement
14 witness.

15 (3) NATURE OF ORDER IF GRANTED.—If grant-
16 ed, the protective order shall be narrowly tailored to
17 limit the scope, timing or extent of disclosure only
18 to the extent necessary to address the particularized
19 need for delayed, limited or nondisclosure, while pro-
20 tecting the defendant’s right to prepare for trial or
21 sentencing to the extent possible.

22 (4) APPLICATION MAY BE EX PARTE.—The
23 written application may be made ex parte so long as
24 the Government provides notice to the defendant of
25 the general nature of the application, and the de-

1 defendant is given an opportunity to be heard on
2 whether an ex parte application is necessary, wheth-
3 er any protective order is warranted, and the param-
4 eters of any protective order. If the application re-
5 mains sealed, it shall be preserved in the record for
6 appellate review.

7 **SEC. 205. NOTIFICATION RELATING TO FORENSIC, PROS-**
8 **ECUTORIAL, OR LAW ENFORCEMENT MIS-**
9 **CONDUCT.**

10 (a) NOTICE.—Not later than 30 days after a finding
11 by the Attorney General that a Federal prosecutor or law
12 enforcement officer involved in a Federal criminal case has
13 engaged in misconduct or a Federal forensic facility or
14 technician has provided flawed analysis or testimony, the
15 Attorney General shall inform each defendant in whose
16 case that prosecutor, law enforcement officer, forensic fa-
17 cility, or forensic technician was involved.

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

21 (1) the forensic evidence underlying the defend-
22 ant’s case to be re-tested by another validated Gov-
23 ernment facility as well as by the defendant’s inde-
24 pendent forensic expert at the Government’s ex-
25 pense; and

1 (2) the investigative and prosecutorial case file
2 in the defendant's case, including any attorney work
3 product.

4 (c) FAILURE TO COMPLY.—The Attorney General's
5 failure to comply with any requirement of this section enti-
6 tles the defendant to appropriate judicial relief.

7 (d) HABEAS RELIEF.—A defendant who receives a
8 notice under subsection (a) and whose conviction has be-
9 come final is entitled to seek judicial relief under section
10 2255 of title 28, United States Code, notwithstanding any
11 procedural limitation or bar to such relief, so long as the
12 defendant exercised due diligence in seeking relief after
13 receiving the notice described in subsection (a).

14 **SEC. 206. REMEDIES.**

15 (a) WITHIN THE DEPARTMENT OF JUSTICE.—The
16 Attorney General shall take appropriate disciplinary meas-
17 ures to sanction any failure of a Federal prosecutor or
18 law enforcement officer to comply in good faith with the
19 procedures and requirements created by or under this
20 title.

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

1 **SEC. 207. TOOLKITS FOR STATE AND LOCAL GOVERNMENT.**

2 Not later than 180 days after the date of the enact-
3 ment of this Act, the Attorney General shall provide tool-
4 kits regarding training in best practices developed under
5 this title to State and local governments and encourage
6 them to adopt these practices to protect the innocent.

7 **TITLE III—ENCOURAGING AC-**
8 **COUNTABILITY WITH GREAT-**
9 **ER USE OF EVIDENCE-BASED**
10 **SENTENCING ALTERNATIVES**
11 **FOR LOWER-LEVEL OFFEND-**
12 **ERS**

13 **SEC. 301. ELIGIBILITY FOR PREJUDGEMENT PROBATION.**

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

21 **SEC. 302. SENTENCE OF PROBATION.**

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

24 “(a) IN GENERAL.—

25 “(1) PROBATION GENERALLY AVAILABLE.—Ex-
26 cept as provided in paragraph (2), a defendant who

1 has been found guilty of an offense may be sen-
2 tenced to probation.

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

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

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

9 “(C) the defendant is sentenced at the
10 same time to a term of imprisonment for the
11 same or a different offense that is not a petty
12 offense.

13 “(3) PRESUMPTION OF PROBATION FOR CER-
14 TAIN OFFENDERS.—The court shall sentence an oth-
15 erwise eligible defendant to probation, if the defend-
16 ant is a first-time Federal offender whose place of
17 residence allows for Federal probation supervision
18 and who did not engage in violent conduct as a part
19 of the offense, unless the court, having considered
20 the nature and circumstances of the offense and the
21 history and characteristics of the defendant, finds on
22 the record that a term of probation would not be ap-
23 propriate. However, a defendant convicted of a Fed-
24 eral sex offense, as described in section 111 of the
25 Sex Offender Registration and Notification Act, is

1 not subject to a presumption of probation under this
2 paragraph.”.

3 **SEC. 303. DIRECTIVE TO THE SENTENCING COMMISSION**
4 **REGARDING USE OF PROBATION.**

5 (a) DIRECTIVE TO THE SENTENCING COMMISSION.—
6 Pursuant to its authority under section 994(p) of title 28,
7 United States Code, and in accordance with this section,
8 the United States Sentencing Commission shall review and
9 amend its guidelines and its policy statements applicable
10 to persons eligible for probation to ensure that the guide-
11 lines and policy statements are consistent with the amend-
12 ments made by sections 301 and 302.

13 (b) CONSIDERATIONS.—In carrying out this section,
14 the United States Sentencing Commission shall con-
15 sider—

16 (1) the mandate of the United States Sen-
17 tencing Commission, under section 994(g) of title
18 28, United States Code, to formulate the sentencing
19 guidelines in such a way as to “minimize the likeli-
20 hood that the Federal prison population will exceed
21 the capacity of the Federal prisons”;

22 (2) the fiscal implications of any amendments;

23 (3) relevant public safety concerns; and

1 (4) the intent of Congress that prison be re-
 2 served for serious offenders for whom prison is most
 3 appropriate.

4 **SEC. 304. ESTABLISHING ACCOUNTABILITY EVIDENCE-**
 5 **BASED PROBLEM SOLVING COURT PRO-**
 6 **GRAMS.**

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

10 **“CHAPTER 207A—PROBLEM-SOLVING**
 11 **COURT PROGRAMS**

“Sec.

“3157. Establishment of problem-solving court programs.

“3158. Evaluation of problem-solving court programs.

“3159. Definitions.

12 **“§ 3157. Establishment of problem-solving court pro-**
 13 **grams**

14 “(a) IN GENERAL.—A United States district court
 15 may establish a problem-solving court program in its dis-
 16 trict.

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

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

9 **“§ 3158. Evaluation of problem-solving court pro-**
10 **grams**

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

16 **“§ 3159. Definitions**

17 “In this chapter—

18 “(1) the term ‘problem-solving court program’
19 means a judge-involved intensive intervention, super-
20 vision, and accountability process in which a defend-
21 ant participates, either before conviction, sentencing,
22 or other disposition or upon being sentenced to a
23 term of probation or upon release from a sentence
24 of incarceration, that may include substance abuse,

1 mental health, employment, or veterans’ programs;
2 and

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

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

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

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 mandatory minimum penalties set forth in subparagraph
24 (A) of subsection (b)(1) apply only if the defendant was

1 an organizer or leader of a drug trafficking organization
2 of five or more participants.

3 “(2) The mandatory minimum penalties set forth in
4 subparagraph (B) of subsection (b)(1) apply only if the
5 defendant was an organizer, leader, manager, or super-
6 visor of a drug trafficking organization of five or more
7 participants.

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

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

13 “(B) the defendant was not a leader, organizer,
14 manager, or supervisor, but was otherwise employed
15 in a drug trafficking organization of five or more
16 participants.

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

19 “(A) the type and quantity of the controlled or
20 counterfeit substance does not violate subparagraph
21 (A) or (B) of subsection (b)(1); and

22 “(B) the defendant is not a leader, organizer,
23 manager, or supervisor of or otherwise employed by
24 a drug trafficking organization of five or more par-
25 ticipants.

1 “(5) The penalties set forth in section 404 shall apply
2 to prosecutions under this section if—

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

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

7 “(6) Notwithstanding subsection (b)(1)(D), any per-
8 son who violates subsection (a) of this section by distrib-
9 uting a small amount of marijuana for no remuneration
10 shall be treated as provided in section 404 and section
11 3607 of title 18, United States Code.”.

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

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

16 “(4) In the case of less than 50 kilograms of mari-
17 huana, except in the case of 50 or more marihuana plants
18 regardless of weight, 10 kilograms of hashish, or one kilo-
19 gram of hashish oil, such person shall, except as provided
20 in paragraphs (4) and (5) of section 401(b), be sentenced
21 to a term of imprisonment of not more than 5 years, a
22 fine not to exceed the greater of that authorized in accord-
23 ance with the provisions of title 18, United States Code,
24 or \$250,000, if the defendant is an individual or
25 \$1,000,000 if the defendant is other than an individual,

1 or both. If any person commits such a violation after a
2 prior conviction for a felony drug offense has become final,
3 such person shall be sentenced to a term of imprisonment
4 of not more than 10 years, a fine not to exceed the greater
5 of twice that authorized in accordance with the provisions
6 of title 18, United States Code, or \$500,000 if the defend-
7 ant is an individual or \$2,000,000 if the defendant is other
8 than an individual, or both. Notwithstanding section 3583
9 of title 18, United States Code, any sentence imposing a
10 term of imprisonment under this paragraph shall, in the
11 absence of such a prior conviction, impose a term of super-
12 vised release of at least 2 years in addition to such term
13 of imprisonment and shall, if there was such a prior con-
14 viction, impose a term of supervised release of at least 4
15 years in addition to such term of imprisonment.”; and

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

17 “(5) In the case of a violation of subsection (a) in-
18 volving a controlled substance in schedule III, such person
19 shall be sentenced in accordance with paragraphs (1)
20 through (4) of this subsection and subsection (e).”.

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

1 “(e) CLARIFYING ORIGINAL CONGRESSIONAL INTENT
2 REGARDING APPLICATION OF PENALTIES UNDER THE
3 CONTROLLED SUBSTANCES IMPORT AND EXPORT ACT.—

4 “(1) The mandatory minimum penalties set
5 forth in paragraph (1) of subsection (b) apply only
6 if the defendant was an organizer or leader of a
7 drug trafficking organization of five or more partici-
8 pants.

9 “(2) The mandatory minimum penalties set
10 forth in paragraph (2) of subsection (b) apply only
11 if the defendant was an organizer, leader, manager,
12 or supervisor of a drug trafficking organization of
13 five or more participants.

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

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

19 “(B) the defendant was not a leader, orga-
20 nizer, manager, or supervisor, but was other-
21 wise employed in a drug trafficking organiza-
22 tion of five or more participants.

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

1 “(A) the type and quantity of the con-
2 trolled or counterfeit substance does not violate
3 paragraph (1) or (2) of subsection (b); and

4 “(B) the defendant is not a leader, orga-
5 nizer, manager, or supervisor of or otherwise
6 employed by a drug trafficking organization of
7 five or more participants.

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

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

13 “(B) the defendant’s role was minor or
14 minimal.

15 “(6) Notwithstanding paragraph (4) of sub-
16 section (b), whoever violates subsection (a) of this
17 section by distributing a small amount of marijuana
18 for no remuneration shall be treated as provided in
19 section 404 of the Controlled Substances Act and
20 section 3607 of title 18, United States Code.”.

21 (d) DEFINITIONS.—In this section and section 401(i)
22 of title II:

23 (1) The term “participant” means a person who
24 is criminally responsible for the commission of the

1 offense, and does not include a law enforcement offi-
2 cer or a person acting on behalf of law enforcement.

3 (2) The term “organizer” or “leader” is a per-
4 son who, over a significant period of time—

5 (A) exercised primary decisionmaking au-
6 thority over the most significant aspects of the
7 criminal activity;

8 (B) engaged in significant planning of the
9 acquisition or distribution of large quantities of
10 drugs or sums of money for the initiation and
11 commission of the offense;

12 (C) recruited and paid accomplices;

13 (D) delegated tasks to other participants
14 on a regular basis;

15 (E) received a significantly larger share of
16 the proceeds of the crime than other partici-
17 pants; and

18 (F) exercised supervisory control or au-
19 thority over at least four other participants who
20 meet the definition of “manager” or “super-
21 visor” in subsection (d)(3) over a substantial
22 period of time.

23 (3) The term “manager” or “supervisor” is a
24 person who, over a significant period of time—

1 (A) exercised some decisionmaking author-
2 ity over significant aspects of the criminal activ-
3 ity;

4 (B) received a larger share of the proceeds
5 of the crime than most other participants; and

6 (C) provided ongoing, day-to-day super-
7 vision of, or specialized training to, at least four
8 other participants over a substantial period of
9 time.

10 (e) APPLICABILITY TO OTHER CONTROLLED SUB-
11 STANCES OFFENSES DERIVING THEIR PENALTIES
12 THEREFROM.—The amendments made by this section
13 apply to any provision of law for which the penalties are
14 derived from any of those sections.

15 **SEC. 402. MODIFICATION OF CRITERIA FOR “SAFETY**
16 **VALVE” LIMITATION ON APPLICABILITY OF**
17 **CERTAIN MANDATORY MINIMUMS.**

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

20 (1) in the matter preceding paragraph (1), by
21 inserting “or under any provision of law for which
22 the penalties are derived from any of those sections,
23 or section 924(c) of this title in relation to a drug
24 trafficking crime,” before “the court shall impose”;

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

1 “(1) the defendant—

2 “(A) does not have a criminal history cat-
3 egory higher than I after any downward depar-
4 ture under the sentencing guidelines;

5 “(B) does not have—

6 “(i) a criminal history category higher
7 than II after any downward departure
8 under the sentencing guidelines;

9 “(ii) any prior conviction for an of-
10 fense that has as an element the use, at-
11 tempted use, or threatened use of physical
12 force against the person of another; and

13 “(iii) the offense of conviction that
14 is—

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

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

20 “(III) a Federal crime of ter-
21 rorism (as defined in section
22 2332b(g)(5));

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

1 “(V) conspiring to use and invest
2 illicit drug profits under section 414
3 of the Controlled Substances Act; or

4 “(C) committed the offense as the result
5 of—

6 “(i) mental illness, cognitive deficits,
7 or a history of persistent or serious sub-
8 stance abuse or addiction;

9 “(ii) financial, emotional, or mental
10 distress;

11 “(iii) trauma suffered while serving on
12 active duty in an armed conflict zone for a
13 branch of the United States military; or

14 “(iv) victimization stemming from any
15 combination of physical, mental, emotional,
16 or psychological abuse or domestic vio-
17 lence, if the offense was committed at the
18 direction of another individual who—

19 “(I) was a more culpable partici-
20 pant in the instant offense or played
21 a significantly greater role in the of-
22 fense; or

23 “(II) effectively coerced the de-
24 fendant’s involvement in the offense
25 by means of threats or abuse either

1 personally or from any person or
2 group;”;

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

4 “(2) the defendant did not use violence or cred-
5 ible threats of violence in connection with the of-
6 fense;” and

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

8 “(4) the defendant was not convicted under sec-
9 tion 401 of the Controlled Substances Act or section
10 1010(b) of the Controlled Substances Import and
11 Export Act for being an organizer, leader, manager,
12 or supervisor of a drug trafficking of five or more
13 participants, and was not engaged in continuing
14 criminal enterprise, as defined in section 408 of the
15 Controlled Substances Act; and”.

16 (b) LIMITATION ON USE OF CERTAIN INFORMATION
17 TO DETERMINE GUIDELINE RANGE.—Section 3553 of
18 title 18, United States Code, as amended by section
19 105(b)(1) of this Act, is amended further by adding at
20 the end the following:

21 “(h) LIMITATION ON USE OF CERTAIN INFORMATION
22 TO DETERMINE GUIDELINE SENTENCE.—Information
23 and evidence provided by the defendant pursuant to sub-
24 section (f)(5) shall not be used by the court in determining
25 the applicable guideline range.”.

1 **SEC. 403. CONSISTENCY IN THE USE OF PRIOR CONVIC-**
2 **TIONS FOR MANDATORY SENTENCING EN-**
3 **HANCEMENTS.**

4 (a) DEFINITION OF FELONY DRUG OFFENSE.—Sec-
5 tion 102(44) of the Controlled Substances Act (21 U.S.C.
6 802(44)) is amended to read as follows:

7 “(44) For the purpose of increased punishment based
8 on a prior conviction for a ‘felony drug offense’, the term
9 ‘felony drug offense’—

10 “(A) means an offense under Federal or State
11 law that—

12 “(i) has as an element the knowing manu-
13 facture, distribution, import, export, or posses-
14 sion with intent to distribute a controlled sub-
15 stance;

16 “(ii) is classified by the applicable law of
17 the jurisdiction as a felony for which a max-
18 imum term of imprisonment of 10 years or
19 more is prescribed by law; and

20 “(iii) for which a sentence of imprisonment
21 exceeding 1 year and 1 month was imposed and
22 was not suspended; but

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

24 “(i) the conviction occurred more than 10
25 years before the defendant’s commission of the

1 instant offense, excluding any period during
2 which the defendant was incarcerated;

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

7 “(iii) the conviction has been reversed, va-
8 cated, set aside, or otherwise vitiated by judicial
9 action;

10 “(iv) the conviction was expunged;

11 “(v) the defendant has been pardoned or
12 had civil rights restored; or

13 “(vi) the conviction was unconstitutional
14 under the caselaw of the United States Su-
15 preme Court in effect at the time the conviction
16 occurred or after the conviction became final.”.

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

21 “(57) For the purpose of increased punishment based
22 on a prior conviction for a ‘drug trafficking offense’, that
23 term has the same meaning as the term ‘felony drug of-
24 fense’ under paragraph (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 imposed and not suspended” after
12 “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 “imprisonment for 35
21 years, a fine”; and

22 (ii) in the flush text following clause
23 (viii), by striking “term of life imprison-
24 ment without release” and inserting “im-
25 prisonment for 35 years”;

1 (B) in subparagraph (B), in the flush text
2 following clause (viii), by striking “life impris-
3 onment, a fine” and inserting “imprisonment
4 for 35 years, a fine”; and

5 (C) in subparagraph (C), by striking “life
6 imprisonment, a fine” and inserting “imprison-
7 ment for 35 years, a fine”.

8 (2) RETROACTIVE EFFECT.—The amendments
9 made by this subsection apply with respect to convic-
10 tions occurring before, on, or after the date of the
11 enactment of this Act.

12 (f) PROCEDURES RELATED TO SEEKING ENHANCED
13 DRUG PENALTIES FOR DRUG TRAFFICKING.—Section
14 411 of the Controlled Substances Act (21 U.S.C. 851) is
15 amended by striking paragraph (2) of subsection (a) and
16 inserting the following:

17 “(2) No person who is convicted of an offense under
18 this part shall be sentenced to increased punishment by
19 reason of a prior conviction if—

20 “(A) except as provided in paragraph (4), the
21 Government fails, before trial, or before entry of a
22 plea of guilty, to file an information with the court
23 and serves a copy of such information on the person
24 or counsel for that person, stating any previous con-

1 conviction upon which the Government intends to rely
2 for the enhanced penalty;

3 “(B) the person was not convicted as alleged in
4 the information;

5 “(C) the conviction is for simple possession of
6 a controlled substance, the offense was classified as
7 a misdemeanor under the law of the jurisdiction in
8 which the proceedings were held, or the proceedings
9 resulted in a disposition that was not deemed a con-
10 viction under that law;

11 “(D) the conviction has been dismissed, ex-
12 punged, vacated, or set aside, or for which the per-
13 son has been pardoned or has had civil rights re-
14 stored;

15 “(E) the conviction is invalid; or

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

18 “(3) An information may not be filed under this sec-
19 tion—

20 “(A) if the increased punishment which may be
21 imposed is imprisonment for a term in excess of
22 three years unless the person either waived or was
23 afforded prosecution by indictment for the offense
24 for which such increased punishment may be im-
25 posed; or

1 “(B) more than 10 years after the date the
2 judgment for the prior conviction was entered, ex-
3 cluding any period during which the defendant was
4 incarcerated.

5 “(4) Upon a showing by the Government that facts
6 regarding prior convictions could not with due diligence
7 be obtained prior to trial or before entry of a plea of guilty,
8 the court may postpone the trial or the taking of the plea
9 of guilty for a reasonable period for the purpose of obtain-
10 ing those facts.

11 “(5) Clerical mistakes in the information, or in the
12 underlying conviction records, may be amended at any
13 time prior to the pronouncement of the sentence.

14 “(6) The Government shall bear the burden of proof
15 beyond a reasonable doubt regarding the existence and ac-
16 curacy of any prior conviction alleged.

17 “(7) The person with respect to whom the informa-
18 tion was filed may challenge a prior conviction before sen-
19 tence is imposed.

20 “(8) If a prior conviction that was a basis for in-
21 creased punishment under this part has been vacated in
22 any State or Federal proceeding, or is for an offense that
23 no longer qualifies as a felony drug offense under United
24 States Supreme Court or relevant circuit caselaw, the per-
25 son shall be resentenced to any sentence available under

1 the law at the time of resentencing, not to exceed the origi-
2 nal sentence.”.

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

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

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

17 **SEC. 404. CLARIFICATION OF APPLICABILITY OF THE FAIR**
18 **SENTENCING ACT.**

19 (a) DEFENDANTS PREVIOUSLY SENTENCED.—A
20 court that imposed a sentence for a covered offense, may,
21 on motion of the defendant, the Director of the Bureau
22 of Prisons, the attorney for the Government, or the court,
23 impose a reduced sentence as if sections 2 and 3 of the
24 Fair Sentencing Act of 2010 were in effect at the time
25 the covered offense was committed.

1 (b) DEFINITION OF COVERED OFFENSE.—In this
2 section, the term “covered offense” means a violation of
3 a Federal criminal statute, the statutory penalties for
4 which were modified by section 2 or 3 of the Fair Sen-
5 tencing Act of 2010 (Public Law 111–220; 124 Stat.
6 2372), that was committed before August 3, 2010.

7 **SEC. 405. ELIGIBILITY FOR RESENTENCING BASED ON**
8 **CHANGES IN LAW.**

9 Section 3582(c) of title 18, United States Code, is
10 amended—

11 (1) by striking “and” at the end of paragraph
12 (1);

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

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

16 “(3) in the case of a defendant who was sen-
17 tenced to a term of imprisonment for an offense for
18 which the minimum or maximum term of imprison-
19 ment was subsequently reduced as a result of the
20 amendments made by the Sensenbrenner-Scott
21 SAFE Justice Reinvestment Act of 2015, upon mo-
22 tion of the defendant, counsel for the defendant,
23 counsel for the Government, or the Director of the
24 Bureau of Prisons, or, on its own motion, the court
25 may reduce the term of imprisonment consistent

1 with that reduction, after considering the factors set
2 forth in subsections (a) and (d) through (g) of sec-
3 tion 3553 to the extent applicable. If the court does
4 grant a sentence reduction, the reduced sentence
5 shall not be less than permitted under current statu-
6 tory law. If the court denies a motion made under
7 this paragraph, the movant may file another motion
8 under this subsection, not earlier than 5 years after
9 each denial, which may be granted if the offender
10 demonstrates the offender's compliance with recidi-
11 vism-reduction programming or other efforts the of-
12 fender has undertaken to improve the likelihood of
13 successful re-entry and decrease any risk to public
14 safety posed by the defendant's release.”.

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

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

1 guidelines and policy statements are consistent with the
2 amendments made by this title.

3 (b) CONSIDERATIONS.—In carrying out this section,
4 the United States Sentencing Commission shall con-
5 sider—

6 (1) the mandate of the United States Sen-
7 tencing Commission, under section 994(g) of title
8 28, United States Code, to formulate the sentencing
9 guidelines in such a way as to “minimize the likeli-
10 hood that the Federal prison population will exceed
11 the capacity of the Federal prisons”;

12 (2) the relevant public safety concerns;

13 (3) the intent of Congress that violent, repeat,
14 and high-level drug traffickers who present public
15 safety risks receive sufficiently 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; and

20 (5) the need to reduce and prevent racial dis-
21 parities in Federal sentencing.

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

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

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

6 “(A) a violent felony as defined in section
7 924(e)(2)(B) of title 18; or

8 “(B) an offense under—

9 “(i) section 401 of the Controlled
10 Substances Act;

11 “(ii) section 1002(a), 1005, or 1009
12 of the Controlled Substances Import and
13 Export Act; or

14 “(iii) chapter 705 of title 46, United
15 States Code; and

16 “(2) has previously been convicted of two or
17 more prior offenses, each of which is—

18 “(A) classified by the applicable law of the
19 relevant jurisdiction as a felony;

20 “(B) is a felony as defined in section
21 102(13); and

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

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

4 **Subtitle B—Expanding the Ability**
5 **To Apply for Compassionate Re-**
6 **lease**

7 **SEC. 411. ABILITY TO PETITION FOR RELEASE TO EX-**
8 **TENDED SUPERVISION FOR CERTAIN PRIS-**
9 **ONERS WHO ARE MEDICALLY INCAPACI-**
10 **TATED, GERIATRIC, OR CAREGIVER PARENTS**
11 **OF MINOR CHILDREN AND WHO DO NOT**
12 **POSE PUBLIC SAFETY RISKS.**

13 (a) **ELIGIBILITY.**—Subparagraph (A) of section
14 3582(c)(1) of title 18, United States Code, is amended
15 to read as follows:

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

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

24 “(ii) the defendant—

25 “(I) is at least 60 years of age;

1 “(II) has an extraordinary health
2 condition; or

3 “(III) has been notified that—

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

10 “(bb) is unable to care for
11 the child any longer; and

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

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

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

24 “(1) A Federal conviction for homicide in which
25 the prisoner was proven beyond a reasonable doubt

1 to have had the intent to cause death and death re-
2 sulted.

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

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

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

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

16 “(2) that—

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

19 “(B) the prisoner’s release—

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

21 and

22 “(ii) would not endanger public safety.

23 “(g) PROCEDURE FOR COURT DETERMINATION.—(1)
24 Upon receipt of a prisoner’s motion under subsection
25 (c)(1)(A), the court, after obtaining relevant contact infor-

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

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

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

14 “(A) the prisoner meets the criteria pursuant to
15 section (c)(1)(A); and

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

18 “(4) In determining a prisoner’s motion for a modi-
19 fication of sentence under subsection (c)(1)(A) the court
20 shall consider the following:

21 “(A) The age of the prisoner and years served
22 in prison.

23 “(B) The criminogenic needs and risk factors of
24 the offender.

25 “(C) The prisoner’s behavior in prison.

1 “(D) An evaluation of the prisoner’s community
2 and familial bonds.

3 “(E) An evaluation of the prisoner’s health.

4 “(F) A victim statement, if applicable, pursuant
5 to paragraph (1).

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

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

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

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

22 “(i) SUBSEQUENT MOTIONS.—If the court denies a
23 prisoner’s motion pursuant to subsection (c)(1)(A), the
24 prisoner may not file another motion under subsection
25 (c)(1)(A) earlier than one year after the date of denial.

1 If the court denies the motion due to incorrect legal con-
2 clusions or facts or other mistakes by the court, probation
3 officer, or counsel, the prisoner may file another motion
4 under that subsection without regard to this limitation.

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

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

13 **Subtitle C—Clarification of Con-**
14 **gressional Intent on Certain Re-**
15 **cidivist Penalties**

16 **SEC. 421. AMENDMENTS TO ENHANCED PENALTIES PROVI-**
17 **SION.**

18 Section 924(c) of title 18, United States Code, is
19 amended—

20 (1) in paragraph (1)(C), by striking, “In the
21 case of a second or subsequent conviction under this
22 subsection” and inserting “If a person is convicted
23 under this subsection after a prior conviction under
24 this subsection has become final”; and

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

1 “(6) In this subsection, the term ‘during and in rela-
 2 tion to’ does not include any possession not on the person
 3 of, or within arm’s reach and otherwise readily and imme-
 4 diately accessible to the defendant at the time and place
 5 of the offense.”.

6 **TITLE V—IMPLEMENTING EVI-**
 7 **DENCE-BASED PRACTICES TO**
 8 **REDUCE RECIDIVISM**

9 **Subtitle A—Revision of Statutory**
 10 **Sentence Credits**

11 **SEC. 501. DELIVERY AND INCENTIVES TO COMPLETE IN-**
 12 **PRISON RECIDIVISM REDUCTION PROGRAM-**
 13 **MING.**

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

16 “(e) IN-PRISON PROGRAMMING.—

17 “(1) IN-PRISON PROGRAMMING.—In order to
 18 carry out the requirement of subsection (b) that
 19 every prisoner with a substance abuse problem have
 20 the opportunity to participate in appropriate sub-
 21 stance abuse treatment, and to address the
 22 criminogenic needs of Federal offenders more gen-
 23 erally, the Director of the Bureau of Prisons shall,
 24 subject to the availability of appropriations—

1 “(A) provide residential substance abuse
2 treatment for all eligible offenders, with priority
3 for such treatment accorded based on eligible
4 prisoners’ proximity to release date;

5 “(B) provide cognitive-based therapy for
6 all eligible offenders;

7 “(C) provide workforce development
8 through participation in the Federal Prison In-
9 dustries; and

10 “(D) provide vocational and occupational
11 training.

12 “(2) INCENTIVES FOR PRISONER’S SUCCESSFUL
13 COMPLETION OF PROGRAMMING.—

14 “(A) Any prisoner who in the judgment of
15 the Director of the Bureau of Prisons has suc-
16 cessfully completed a program of residential
17 substance abuse treatment or cognitive behav-
18 ioral therapy provided under paragraph (1) of
19 this subsection, shall be eligible for a reduction
20 of incarceration by up to one year.

21 “(B) Any prisoner who, in the judgment of
22 the Director of the Bureau of Prisons, has com-
23 pleted at least 30 days of work for Federal
24 Prison Industries or vocational and occupa-
25 tional training shall be eligible to have the total

1 period of incarceration reduced by up to the
2 total number of days of work for Federal Pris-
3 on Industries or vocational and occupational
4 training, but not to exceed one year.

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

9 (b) CORRESPONDING AMENDMENTS TO EXISTING
10 LAW.—Section 3624(a) of title 18, United States Code,
11 is amended by striking “as provided in subsection (b)”
12 and inserting “as provided in subsection (b) and section
13 3621(e) and section 3621A(f)(3)”.

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

17 **SEC. 502. POSTSENTENCING RISK AND NEEDS ASSESSMENT**
18 **SYSTEM AND IN-PRISON RECIDIVISM REDUC-**
19 **TION PROGRAMMING.**

20 (a) DEVELOPMENT OF SYSTEM.—

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

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

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

7 (C) in accordance with section 3621(f) of
8 title 18, United States Code, document eligible
9 prisoners' required recidivism reduction pro-
10 grams or productive activities in a case plan
11 and their progress in completing the elements
12 of that case plan.

13 (2) RESEARCH AND BEST PRACTICES.—In de-
14 signing the Assessment System, the Attorney Gen-
15 eral shall use available research and best practices in
16 the field and consult with academic and other crimi-
17 nal justice experts as appropriate.

18 (3) RISK AND NEEDS ASSESSMENT TOOL.—In
19 carrying out this subsection, the Attorney General
20 shall prescribe a suitable intake assessment tool to
21 be used in carrying out subparagraphs (A) and (B)
22 of paragraph (1), and suitable procedures to com-
23 plete the documentation described in subparagraph
24 (C) of paragraph (1). The Attorney General shall
25 ensure that the assessment tool produces consistent

1 results when administered by different people, in
2 recognition of the need to ensure interrater reli-
3 ability.

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

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

13 **“§ 3621A. Postsentencing risk and needs assessment**
14 **system**

15 “(a) ASSIGNMENT OF RECIDIVISM REDUCTION PRO-
16 GRAMS OR PRODUCTIVE ACTIVITIES.—In recognition that
17 some activities or excessive programming may be counter-
18 productive for some prisoners, the Attorney General may
19 provide guidance to the Director of the Bureau of Prisons
20 on the quality and quantity of recidivism reduction pro-
21 gramming or productive activities that are both appro-
22 priate and effective for each prisoner.

23 “(b) BUREAU OF PRISONS TRAINING.—The Attorney
24 General shall develop protocols and programs for Bureau
25 of Prisons personnel responsible for using the Post-Sen-

1 tencing Risk and Needs Assessment System (hereinafter
2 in the section referred to as the ‘Assessment System’) cre-
3 ated under the Sensenbrenner-Scott SAFE Justice Rein-
4 vestment Act of 2015. Such training protocols shall in-
5 clude a requirement that such personnel demonstrate com-
6 petence in administering the assessment tool, including
7 interrater reliability, on a biannual basis.

8 “(c) QUALITY ASSURANCE.—In order to ensure that
9 the Director of the Bureau of Prisons is using the Assess-
10 ment System in an appropriate and consistent manner,
11 the Attorney General, the Government Accountability Of-
12 fice, and the Office of the Inspector General shall monitor
13 and assess the use of the Assessment System and shall
14 conduct separate and independent periodic audits of the
15 use of the Assessment System at Bureau of Prisons facili-
16 ties.

17 “(d) EVIDENCE-BASED ASSESSMENT SYSTEM AND
18 RECIDIVISM REDUCTION PROGRAMMING.—

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

23 “(A) to guide the prisoner’s rehabilitation
24 while incarcerated; and

1 “(B) to reduce the likelihood of recidivism
2 after release.

3 “(2) CASE PLANS.—

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

8 “(i) include programming and treat-
9 ment requirements based on the prisoner’s
10 identified criminogenic needs and risk fac-
11 tors, as determined by the assessment sys-
12 tem;

13 “(ii) ensure that a prisoner whose
14 criminogenic needs and risk factors do not
15 warrant recidivism reduction programming
16 participates in and successfully complies
17 with productive activities, including prison
18 jobs; and

19 “(iii) ensure that each eligible pris-
20 oner participates in and successfully com-
21 plies with recidivism reduction program-
22 ming or productive activities, including
23 prison jobs, throughout the entire term of
24 incarceration of the prisoner.

1 “(B) TIME CONSTRAINTS.—The Director
2 of the Bureau of Prisons shall ensure that the
3 requirements set forth in the case plan are fea-
4 sible and achievable prior to the prisoner’s re-
5 lease eligibility date.

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

8 “(i) provide the prisoner with a writ-
9 ten copy of the case plan and require the
10 prisoner’s case manager to explain the con-
11 ditions set forth in the case plan and the
12 incentives for successful compliance with
13 the case plan; and

14 “(ii) review the case plan with the
15 prisoner once every 6 months after the
16 prisoner receives the case plan to assess
17 the prisoner’s progress toward successful
18 compliance with the case plan and any
19 need or eligibility for additional or dif-
20 ferent programs or activities.

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

23 “(A) IN GENERAL.—Except as provided in
24 subparagraph (C), the Director of the Bureau
25 of Prisons shall, in addition to any other credit

1 or reduction a prisoner receives under any other
2 provision of law, award earned time credit to-
3 ward service of the prisoner's sentence of 10
4 days for each calendar month of successful
5 compliance with the prisoner's case plan. A
6 prisoner who is detained before sentencing shall
7 earn credit for participating in programs or ac-
8 tivities during that period under this para-
9 graph. The total time credits that a prisoner
10 may earn under this paragraph shall not exceed
11 120 days for any year of imprisonment. A pris-
12 oner may receive credit at the end of each year
13 of the sentence being served, beginning at the
14 end of the first year of the sentence. For pur-
15 poses of this section, the first year of the sen-
16 tence shall begin on the date the sentence com-
17 menced under section 3585(a) less any credit
18 for prior custody under section 3585(b). Any
19 credits awarded under this section shall vest on
20 the date the prisoner is released from custody.

21 “(B) AVAILABILITY.—An eligible prisoner
22 may receive under subparagraph (A) credit for
23 successful compliance with case plan require-
24 ments for participating in programs or activities
25 before the date of enactment of this Act if the

1 Director of the Bureau of Prisons determines
2 that such programs or activities were the same
3 or equivalent to those created pursuant to this
4 section before the date of the enactment of this
5 subsection.

6 “(C) EXCLUSIONS.—No credit shall be
7 awarded under this subparagraph to any pris-
8 oner serving a sentence of imprisonment for
9 conviction for any of the following offenses:

10 “(i) A Federal conviction for homicide
11 in which the prisoner was proven beyond a
12 reasonable doubt to have had the intent to
13 cause death and death resulted.

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

16 “(iii) A Federal sex offense, as de-
17 scribed in section 111 of the Sex Offender
18 Registration and Notification Act.

19 “(D) PARTICIPATION BY INELIGIBLE PRIS-
20 ONERS.—The Director of the Bureau of Prisons
21 shall make all reasonable efforts to ensure that
22 every prisoner participates in recidivism reduc-
23 tion programming or productive activities, in-
24 cluding a prisoner who is excluded from earning
25 time credits.

1 “(E) OTHER INCENTIVES.—The Director
2 of the Bureau of Prisons shall develop policies
3 to provide appropriate incentives for successful
4 compliance with case plan requirements, in ad-
5 dition to the earned time credit described in
6 subparagraph (A), including incentives for pris-
7 oners who are precluded from earning credit
8 under subparagraph (C). Such incentives may
9 include additional commissary, telephone, or
10 visitation privileges for use with family, close
11 friends, mentors, and religious leaders.

12 “(F) PENALTIES.—The Director of the
13 Bureau of Prisons shall amend its Inmate Dis-
14 cipline Program to reduce credits previously
15 earned under subparagraph (A) for prisoners
16 who violate the rules of the institution in which
17 the prisoner is imprisoned, a recidivism reduc-
18 tion program, or a productive activity, which
19 shall provide—

20 “(i) levels of violations and cor-
21 responding penalties, which may include
22 loss of earned time credits;

23 “(ii) that any loss of earned time
24 credits shall not apply to future earned

1 time credits that the prisoner may earn
2 subsequent to a rule violation; and

3 “(iii) a procedure to restore earned
4 time credits that were lost as a result of a
5 rule violation based on the prisoner’s indi-
6 vidual progress after the date of the rule
7 violation.

8 “(4) RECIDIVISM REDUCTION PROGRAMMING
9 AND PRODUCTIVE ACTIVITIES.—Beginning not later
10 than one year after the date of the enactment of the
11 Sensenbrenner-Scott SAFE Justice Reinvestment
12 Act of 2015, the Attorney General, shall, subject to
13 the availability of appropriations, make available to
14 all eligible prisoners appropriate recidivism reduction
15 programming or productive activities, including pris-
16 on jobs. The Attorney General may provide such
17 programming and activities by entering into partner-
18 ships with any of the following:

19 “(A) Nonprofit organizations, including
20 faith-based and community-based organizations
21 that provide recidivism reduction programming,
22 on a paid or volunteer basis.

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

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

3 “(i) deliver occupational and voca-
4 tional training and certifications in Bureau
5 of Prisons facilities;

6 “(ii) provide equipment to facilitate
7 occupational and vocational training or em-
8 ployment opportunities for prisoners;

9 “(iii) employ prisoners; or

10 “(iv) assist prisoners in prerelease
11 custody or supervised release in finding
12 employment.

13 “(e) DEFINITIONS.—In this section the following
14 definitions apply:

15 “(1) CASE PLAN.—The term ‘case plan’ means
16 an individualized, documented accountability and be-
17 havior change strategy developed by the Director of
18 the Bureau of Prisons to prepare offenders for re-
19 lease and successful reentry into the community.
20 The case plan shall focus on the offender’s
21 criminogenic needs and risk factors that are associ-
22 ated with the risk of recidivism.

23 “(2) CRIMINOGENIC NEEDS AND RISK FAC-
24 TORS.—The term ‘criminogenic needs and risk fac-
25 tors’ means characteristics and behaviors that are

1 associated with the risk of committing crimes and
2 that when addressed through evidence-based pro-
3 gramming are diminished. These factors include but
4 are not limited to—

5 “(A) criminal thinking;

6 “(B) criminal associates;

7 “(C) antisocial behavior and personality;

8 “(D) dysfunctional family;

9 “(E) low levels of employment;

10 “(F) low levels of education;

11 “(G) substance abuse;

12 “(H) mental health issues or cognitive
13 deficits; and

14 “(I) poor use of leisure time.

15 “(3) DYNAMIC RISK FACTOR.—The term ‘dy-
16 namic risk factor’ means a characteristic or at-
17 tribute that has been shown to be associated with
18 risk of recidivism and that can be modified based on
19 a prisoner’s actions, behaviors, or motives, including
20 through completion of appropriate programming or
21 other means in a prison setting.

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

1 “(A) a prisoner serving a sentence of
2 incarceration for conviction of a Federal
3 offense; but

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

6 “(i) would present a danger to
7 himself or others if permitted to par-
8 ticipate in recidivism reduction pro-
9 gramming; or

10 “(ii) is serving a sentence of in-
11 carceration of less than 1 month.

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

18 “(6) RECIDIVISM REDUCTION PROGRAM.—The
19 term ‘recidivism reduction program’ means a group
20 or individual activity that—

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

24 “(B) may include—

25 “(i) substance abuse treatment;

- 1 “(ii) classes on social learning and life
2 skills;
3 “(iii) classes on morals or ethics;
4 “(iv) academic classes;
5 “(v) cognitive behavioral treatment;
6 “(vi) mentoring;
7 “(vii) occupational and vocational
8 training;
9 “(viii) faith-based classes or services;
10 and
11 “(ix) victim-impact classes or restora-
12 tive justice programs.

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

18 “(8) RECOVERY PROGRAMMING.—The term ‘re-
19 covery programming’ means a course of instruction
20 or activities that has been demonstrated to reduce
21 substance abuse or dependence among participants,
22 or to promote recovery among individuals who have
23 substance abuse issues.

24 “(9) RELEASE ELIGIBILITY DATE.—The term
25 ‘release eligibility date’ means the earliest date at

1 which the offender could be released after accruing
2 the maximum number of earned time credits for
3 which the offender is eligible.

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

12 “(A) Regularly attended and actively par-
13 ticipated in appropriate recidivism reduction
14 programs or productive activities, as set forth
15 in the eligible prisoner’s case plan.

16 “(B) Did not regularly engage in disrup-
17 tive activity that seriously undermined the ad-
18 ministration of a recidivism reduction program
19 or productive activity.

20 “(11) EARNED TIME CREDITS.—The term
21 ‘earned time credits’ means credit toward service of
22 the prisoner’s sentence as described in subsection
23 (f)(3).”.

24 (c) CLERICAL AMENDMENT.—The table of sections
25 at the beginning of subchapter C of chapter 229 of title

1 18, United States Code, is amended by inserting after the
2 item relating to section 3621 the following:

“3621A. Postsentencing risk and needs assessment system.”.

3 **Subtitle B—Training and Oversight**
4 **of Mental Health and Substance**
5 **Abuse Treatment**

6 **SEC. 511. MENTAL HEALTH AND DE-ESCALATION TRAINING.**

7 (a) IN GENERAL.—Not later than 1 year after the
8 date of the enactment of this Act, the Attorney General
9 shall, in consultation with the Substance Abuse and Men-
10 tal Health Services Administration, and subject to the
11 availability of appropriations, provide to criminal justice
12 agencies specialized and comprehensive training in proce-
13 dures to de-escalate encounters between law enforcement
14 or corrections officers and civilians, inmates, or detainees,
15 and to identify and appropriately respond to incidents in
16 which the unique needs of individuals who have a mental
17 illness or cognitive deficit are involved.

18 (b) DEFINITION OF CRIMINAL JUSTICE AGENCIES.—
19 In this section the term “criminal justice agencies” in-
20 clude—

21 (1) Federal corrections agencies and any con-
22 tractors carrying out corrections functions;

23 (2) Federal law enforcement agencies, including
24 Federal prosecutors; and

1 (3) other Federal criminal justice agencies that
2 the Attorney General deems appropriate.

3 **SEC. 512. AUTHORIZING GRANTS TO STATES FOR THE USE**
4 **OF MEDICATION-ASSISTED TREATMENT FOR**
5 **HEROIN, OPIOID, OR ALCOHOL ABUSE IN**
6 **RESIDENTIAL SUBSTANCE ABUSE TREAT-**
7 **MENT.**

8 (a) IN GENERAL.—Section 1904 of the Omnibus
9 Crime Control and Safe Streets Act of 1968 (42 U.S.C.
10 3796ff–3) is amended—

11 (1) in subsection (d), by striking “pharma-
12 cological treatment” and inserting “pharmacological
13 treatment or medication assisted treatment not sub-
14 ject to diversion”; and

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

16 “(e) DEFINITIONS.—In this section—

17 “(1) the term ‘medication assisted treatment’
18 means the use of medications approved by the Food
19 and Drug Administration, in combination with coun-
20 seling or behavioral therapies, to treat heroin, opioid,
21 or alcohol addiction; and

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

1 (b) REPORT ON MEDICATION ASSISTED TREATMENT
2 FOR OPIOID AND HEROIN ABUSE PILOT PROGRAM.—The
3 Director of the Bureau of Prisons shall submit within 90
4 days of enactment of this Act to the Committees on the
5 Judiciary and Appropriations of the Senate and House of
6 Representatives a report and evaluation of the current
7 pilot program within the Bureau of Prisons to treat heroin
8 and opioid abuse through medication assisted treatment.
9 The report shall include a description of plans to expand
10 access to medication assisted treatment for heroin and
11 opioid abuse for Federal prisoners in appropriate cases.

12 (c) REPORT ON THE AVAILABILITY OF MEDICATION
13 ASSISTED TREATMENT FOR OPIOID AND HEROIN
14 ABUSE.—Within 90 days after the date of the enactment
15 of this Act, the Director of the Administrative Office of
16 the United States Courts shall submit a report to the
17 Committees on the Judiciary and Appropriations of the
18 Senate and the House of Representatives assessing the
19 availability of and capacity for the provision of medication
20 assisted treatment for opioid and heroin abuse among
21 treatment-service providers serving Federal offenders
22 under supervised release and including a description of
23 plans to expand access to medication assisted treatment
24 that is not subject to diversion for heroin and opioid abuse

1 whenever appropriate among Federal offenders under su-
2 pervised release.

3 **SEC. 513. PERFORMANCE-BASED CONTRACTING FOR RESI-**
4 **DENTIAL REENTRY CENTERS.**

5 (a) IN GENERAL.—The Director of the Bureau of
6 Prisons shall—

7 (1) revise its policies and procedures related to
8 contracting with providers of Residential Reentry
9 Centers to—

10 (A) meet the standards of performance-
11 based contracting; and

12 (B) include, among the standards of per-
13 formance—

14 (i) a reduction in the recidivism rate
15 of offenders transferred to the Residential
16 Reentry Center; and

17 (ii) an annual evaluation of these out-
18 comes;

19 (2) require that new or renewed contracts with
20 providers of Residential Reentry Centers meet the
21 standards of performance-based contracting;

22 (3) review existing contracts with providers of
23 Residential Reentry Centers prior to renewal and
24 update as necessary to reflect the standards of per-
25 formance-based contracting; and

1 (4) ensure performance-based contracts are ac-
2 tively managed to meet the standards of perform-
3 ance-based contracting.

4 (b) EXCEPTIONS.—In those cases where it would not
5 be cost effective to use performance-based contracting
6 standards, the Director of the Bureau of Prisons shall pro-
7 vide an explanation for this determination to the Attorney
8 General, who may exempt a contract from the require-
9 ments outlined in subsection (a)(2). Each exemption must
10 be approved in writing by the Attorney General before the
11 Director of the Bureau of Prisons enters into the contract.

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

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

17 (A) Identify expected deliverables, perform-
18 ance measures, or outcomes; and render pay-
19 ment contingent upon the successful delivery of
20 those expected deliverables, performance meas-
21 ures or outcomes.

22 (B) Include a quality assurance plan that
23 describes how the contractor’s performance will
24 be measured against the expected deliverables,
25 performance measures, or outcomes.

1 (C) Include positive and negative incentives
2 tied to the quality assurance plan measure-
3 ments.

4 (2) RECIDIVISM RATE.—The term “recidivism
5 rate” refers to the number and percentage of offend-
6 ers who are arrested for a new crime or commit a
7 technical violation of the terms of supervision that
8 results in revocation to prison during the period in
9 which the offender is in the Residential Reentry
10 Center.

11 (3) RESIDENTIAL REENTRY CENTERS.—The
12 term “Residential Reentry Centers” means privately
13 run centers which provide housing to Federal pris-
14 oners who are nearing release.

15 (d) DEADLINE FOR CARRYING OUT SECTION.—The
16 Director of the Bureau of Prisons shall complete initial
17 compliance with the requirements of this section not later
18 than 1 year after the date of the enactment of this Act.

19 (e) EVALUATION.—Not later than 2 years after the
20 date of the enactment of this Act, the Government Ac-
21 countability Office and Office of the Inspector General of
22 the Department of Justice shall each issue a report on
23 the progress made by the Director of the Bureau of Pris-
24 ons in implementing this section.

1 **Subtitle C—Implementing Swift,**
2 **Certain, and Proportionate**
3 **Sanctions for Violations of Con-**
4 **ditions of Probation or Super-**
5 **vised Release**

6 **SEC. 521. GRADUATED SANCTIONING SYSTEM.**

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

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

20 (2) allow officers to respond quickly to technical
21 violations of supervision.

22 (b) DEVELOPMENT OF GRADUATED SANCTIONING
23 SYSTEM.—In designing the graduated sanctioning system,
24 the United States Probation and Pretrial Services and the
25 Criminal Law Committee of the Judicial Conference shall

1 use available research and best evidence-based practices
2 in the field, and shall consult with other stakeholders, in-
3 cluding current trial attorneys from the Department of
4 Justice and a Federal public or community defender from
5 the Defender Services Advisory Group.

6 (c) CONTENT OF GRADUATED SANCTIONING SYS-
7 TEM.—

8 (1) Graduated sanctions may include—

9 (A) verbal warnings;

10 (B) increased reporting requirements;

11 (C) curfew requirements;

12 (D) electronic monitoring;

13 (E) increased substance abuse testing or
14 treatment;

15 (F) mental health counseling or treatment;

16 (G) behavioral therapy or anger manage-
17 ment;

18 (H) community service; and

19 (I) loss of earned discharge credits pursu-
20 ant to section 3610.

21 (2) In determining appropriate sanctions, the
22 United States Probation and Pretrial Services and
23 the Criminal Law Committee of the Judicial Com-
24 mittee shall consider—

25 (A) the severity of the current violation;

1 (B) the number and severity of previous
2 supervision violations;

3 (C) the rehabilitative options available; and

4 (D) the costs of incarceration.

5 (d) PROBATION AND PRETRIAL SERVICES TRAIN-
6 ING.—The Criminal Law Committee of the Judicial Con-
7 ference and the United States Probation and Pretrial
8 Services shall develop training protocols for staff respon-
9 sible for recommending graduated sanctions, which shall
10 include—

11 (1) initial training to educate staff and judges
12 on how to use the graduated sanctioning system, as
13 well as an overview of the relevant research regard-
14 ing supervision practices shown to reduce recidivism
15 and improve offender outcomes;

16 (2) continuing education; and

17 (3) periodic training updates.

18 (e) CONTINUOUS QUALITY IMPROVEMENT.—In order
19 to ensure that the United States Probation and Pretrial
20 Services is using graduated sanctions in an appropriate
21 and consistent manner, the Judicial Conference shall—

22 (1) establish performance benchmarks and per-
23 formance assessments for probation officers, proba-
24 tion supervisors, and probation and pretrial services;
25 and

1 (2) establish continuous quality improvement
 2 procedures that include, but are not limited to, data
 3 collection, monitoring, periodic audits, probation of-
 4 ficer and supervisor performance assessments, and
 5 corrective action measures.

6 **SEC. 522. GRADUATED RESPONSES TO TECHNICAL VIOLA-**
 7 **TIONS OF SUPERVISION.**

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

11 **“§ 3609. Graduated responses to technical violations**
 12 **of supervision**

13 “(a) IN GENERAL.—If a court determines that a
 14 technical violation of supervision warrants an alternative
 15 to arrest or incarceration, the court may modify the terms
 16 of supervision by imposing a graduated sanction as an al-
 17 ternative to revocation.

18 “(b) RECOMMENDATION AND IMPOSITION OF GRAD-
 19 UATED SANCTIONS.—A probation officer in recommending
 20 an appropriate sanction, and a court in determining an
 21 appropriate sanction, shall use the graduated sanctioning
 22 system established pursuant to the Sensenbrenner-Scott
 23 SAFE Justice Reinvestment Act of 2015. The procedure
 24 for the imposition of graduated sanctions shall include the
 25 following:

1 “(1) NOTICE OF GRADUATED SANCTIONS.—

2 Upon determining that a technical violation of su-
3 pervision warrants an alternative to arrest or incar-
4 ceration, a probation officer, with the concurrence of
5 that officer’s probation supervisor, shall serve on the
6 supervisee a Notice of Graduated Sanctions, which
7 shall include—

8 “(A) a description of the violation of su-
9 pervision;

10 “(B) an appropriate graduated sanction or
11 sanctions to be imposed, as determined under
12 the graduated sanctioning system;

13 “(C) an inquiry whether the supervisee
14 wishes to waive the supervisee’s right to a rev-
15 ocation or modification proceeding under the
16 Federal Rules of Criminal Procedures; and

17 “(D) notice of the person’s right to retain
18 counsel or to requested the counsel be ap-
19 pointed if the person cannot afford to obtain
20 counsel.

21 “(2) EFFECT OF SUPERVISEE ELECTIONS
22 AFTER NOTICE.—If the supervisee admits to the al-
23 leged violation of supervision, agrees to waive the
24 right to a revocation or modification hearing, and
25 agrees in writing to submit to the graduated sanc-

1 tion or sanctions as set forth in the Notice of Grad-
2 uated Sanctions, the specified sanction shall imme-
3 diately be imposed. If the supervisee does not admit
4 to the alleged violation, does not agree to waive the
5 right to the revocation or modification hearing, does
6 not agree to submit to the specified sanction or
7 sanctions, or if the supervisee fails to complete the
8 graduated sanction or sanctions to the satisfaction
9 of the probation officer and that officer’s supervisor,
10 then the probation officer may commence super-
11 vision revocation or modification proceedings.

12 “(c) DEFINITIONS.—In this section:

13 “(1) CRIMINOGENIC RISK AND NEEDS FAC-
14 TORS.—The term ‘criminal risk and needs factors’
15 means the characteristics and behaviors that are as-
16 sociated with the risk of committing crimes and,
17 that when addressed with evidence-based program-
18 ming are diminished.

19 “(2) EVIDENCE-BASED PRACTICES.—The term
20 ‘evidence-based practices’ means policies, procedures,
21 and practices that scientific research demonstrates
22 reduce recidivism.

23 “(3) GRADUATED SANCTIONS.—The term
24 ‘graduated sanctions’ means an accountability-based,
25 graduated series of sanctions applicable to

1 supervisees to hold such supervisees accountable for
2 their actions by providing appropriate and propor-
3 tional sanctions for each violation of supervision.

4 “(4) SANCTIONING GRID.—The term ‘sanc-
5 tioning grid’ means a list of graduated responses for
6 use in responding to supervisee behavior that vio-
7 lates a condition or conditions of supervision, with
8 responses ranging from less restrictive to more re-
9 strictive based on the seriousness of the violation
10 and the number and severity of prior violations.

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

15 “(6) TECHNICAL VIOLATION.—The term ‘tech-
16 nical violation’ means conduct by a person on super-
17 vision that violates a condition or conditions of su-
18 pervision, including a new arrest for a crime alleg-
19 edly committed while on supervision or criminal
20 charges that have been filed but not yet resulted in
21 a conviction. The term ‘technical violation’ does not
22 include a conviction for a crime committed while the
23 person was on supervision.

24 “(7) PROBATION OFFICER.—The term ‘proba-
25 tion officer’ means an employee of the United States

1 Probation and Pretrial Services who is directly re-
2 sponsible for supervising individual supervisees.

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

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

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

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

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

17 (c) CONFORMING AMENDMENTS.—

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

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

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

1 (C) by adding after paragraph (9) the fol-
2 lowing:

3 “(10) for a felony or misdemeanor, that the
4 court may modify the term of probation by imposing
5 a graduated sanction if the probationer has waived
6 the right to a hearing under the Federal Rules of
7 Criminal Procedure.”.

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

16 (3) DUTIES OF PROBATION OFFICERS.—Section
17 3603 of title 18, United States Code, is amended—

18 (A) in paragraph (2) by striking “to the
19 degree required by the conditions specified by
20 the sentencing court” and inserting “to the de-
21 gree required by section 3609 and the condi-
22 tions specified by the sentencing court”; and

23 (B) in paragraph (3) by striking “use all
24 suitable methods, not inconsistent with the con-
25 ditions specified by the court” and inserting

1 “use a system of graduated sanctions and in-
2 centives designed to deter and respond imme-
3 diately to violations of supervision conditions,
4 not inconsistent with the conditions specified by
5 the court”.

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

9 **SEC. 523. TARGETED AND PROPORTIONAL PENALTIES FOR**
10 **REVOCAION OF PROBATION.**

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

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

21 “(1) continue the defendant on probation for
22 the remaining duration of the term of probation,
23 with the option to modify or impose additional con-
24 ditions; or

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

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

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

13 “(1) continue the defendant on probation for
14 the remaining duration of the original term of pro-
15 bation, with the option to modify or impose addi-
16 tional conditions; or

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

1 **SEC. 524. TARGETED AND PROPORTIONAL PENALTIES FOR**
2 **VIOLATIONS OF SUPERVISED RELEASE.**

3 (a) PENALTIES FOR NONTECHNICAL VIOLATIONS OF
4 SUPERVISED RELEASE.—Section 3583 of title 18, United
5 States Code, is amended—

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

8 “(3) 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 offenses that resulted in the term
12 of supervised release, without any credit earned to-
13 ward discharge under section 3610, if the court,
14 pursuant to the Federal Rules of Criminal Proce-
15 dure applicable to revocation of probation or super-
16 vised release, finds by a preponderance of the evi-
17 dence that the defendant violated a condition of re-
18 lease, except that a defendant whose term is revoked
19 under this paragraph may not be required to serve
20 on any such revocation more than 5 years in prison
21 if the offense that resulted in the term of supervised
22 release is a class A felony, more than 3 years in
23 prison if such offense is a class B felony, more than
24 2 years in prison if such offense is a class C or D
25 felony, or more than one year in any other case; or”;
26 and

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

2 “(l) CONTINUATION OR REVOCATION FOR NONTECH-
3 NICAL VIOLATIONS OF SUPERVISED RELEASE.—If the de-
4 fendant commits a nontechnical violation of supervised re-
5 lease prior to the expiration or termination of the term
6 of supervised release, the court may, after a hearing under
7 the provisions of the Federal Rules of Criminal Procedure,
8 and after considering the factors set forth in section
9 3553(a)—

10 “(1) continue the defendant on supervised re-
11 lease for the remaining duration of the original term
12 of supervised release, with the option to modify or
13 impose additional conditions; or

14 “(2) revoke the term of supervised release and
15 require the defendant to serve in prison all or part
16 of the term of supervised release authorized by stat-
17 ute for any or all the offenses that resulted in the
18 term of supervised release, without any credit earned
19 toward discharge under section 3610.”.

20 (b) PENALTIES FOR TECHNICAL VIOLATIONS OF SU-
21 PERVISED RELEASE.—Section 3583 is amended by insert-
22 ing after subsection (g) the following:

23 “(h) CONTINUATION OR REVOCATION FOR TECH-
24 NICAL VIOLATIONS OF SUPERVISED RELEASE.—If the de-
25 fendant commits a technical violation of supervised release

1 prior to the expiration or termination of the term of super-
2 vised release, the court may, after opportunity for a hear-
3 ing under the Federal Rules of Criminal Procedure and
4 after considering the factors set forth in section 3553(a)—

5 “(1) continue the defendant on supervised re-
6 lease for the remaining duration of the term of pro-
7 bation, with the option to modify or impose addi-
8 tional conditions; or

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

16 **Subtitle D—Focus Supervision**
17 **Resources on High-Risk Offenders**

18 **SEC. 531. EARNED DISCHARGE CREDITS FOR COMPLIANT**
19 **SUPERVISEES.**

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

1 **“§ 3610. Incentivizing compliance with supervision**
2 **conditions**

3 “(a) IN GENERAL.—A probation officer shall have
4 the authority to award positive reinforcements for a de-
5 fendant who is in compliance with the terms and condi-
6 tions of supervision. These positive reinforcements may in-
7 clude—

8 “(1) verbal recognition;

9 “(2) reduced reporting requirements; and

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

12 “(b) CREDITS FOR EARNED DISCHARGE.—
13 Supervisees shall be eligible to earn discharge credits for
14 complying with the terms and conditions of supervision.
15 These credits, once earned, shall reduce the period of su-
16 pervision.

17 “(1) DETERMINATION OF AWARD.—The proba-
18 tion officer shall award 30 days of earned discharge
19 credits for each calendar month in which the of-
20 fender is in compliance with the terms and condi-
21 tions of supervision. If the offender commits a viola-
22 tion of supervision during the month, credits shall
23 not be awarded for that month.

24 “(2) DISCHARGE FROM SUPERVISION.—Once
25 the combination of time served on supervision and
26 earned discharge credits satisfies the total period of

1 supervision, upon motion of any party or upon the
2 court's own motion, the court shall terminate the pe-
3 riod of supervision. The probation officer shall notify
4 the parties and the court in writing at least 60 days
5 prior to the termination of supervision. The 60-day
6 period shall include the accrual of all earned dis-
7 charge credits to that point.

8 “(c) DEFINITIONS.—In this section:

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

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

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

17 “(4) TERMINATION OF SUPERVISION.—The
18 term ‘termination of supervision’ means discharge
19 from supervision at or prior to the expiration of the
20 sentence imposed by the court.

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

24 “(6) VIOLATION OF SUPERVISION.—The term
25 ‘violation of supervision’ means conduct by a person

1 on supervision that violates a condition of super-
2 vision.”.

3 (b) CLERICAL AMENDMENT.—The table of sections
4 at the beginning of subchapter A of chapter 229 of title
5 18, United States Code, is amended by inserting after the
6 item relating to section 3609 (as added by section 522(b))
7 the following new item:

“3610. Incentivizing compliance with supervision conditions.”.

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 **SEC. 532. ELIMINATION OF MANDATORY REVOCATION FOR**
12 **MINOR DRUG VIOLATIONS.**

13 (a) REMOVING SUBSTANCE-RELATED VIOLATIONS AS
14 GROUNDS FOR MANDATORY REVOCATION OF SUPERVISED
15 RELEASE.—Section 3583(g) of title 18, United States
16 Code, is amended—

17 (1) in the flush text following paragraph (4), by
18 striking “require the defendant to serve a term of
19 imprisonment not to exceed the maximum term of
20 imprisonment authorized by subsection (e)(3)” and
21 inserting “require the defendant to serve a term of
22 imprisonment not to exceed 60 days unless otherwise
23 authorized under subsection (f)”;

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

1 (3) by inserting “or” at the end of paragraph
2 (2); and

3 (4) by striking “or” at the end of paragraph
4 (3).

5 (b) REMOVING SUBSTANCE-RELATED VIOLATIONS AS
6 GROUNDS FOR MANDATORY REVOCATION OF PROBA-
7 TION.—Section 3565(b) of title 18, United States Code,
8 is amended—

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

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

18 **Subtitle E—Creating a Perform-**
19 **ance-Incentive Funding Pro-**
20 **gram**

21 **SEC. 541. CALCULATION OF SAVINGS.**

22 (a) CALCULATION OF REVOCATION BASELINE.—

23 (1) GENERAL RULE.—The Director of the Ad-
24 ministrative Office of the Courts, in consultation
25 with the Director of the Bureau of Prisons and the

1 United States Sentencing Commission, shall cal-
2 culate for each Federal judicial district a baseline
3 revocation rate.

4 (2) METHOD OF CALCULATION.—The baseline
5 revocation rate for a judicial district is the percent-
6 age equivalent of the ratio of the total number of
7 adult supervisees sent to prison from that district
8 during the baseline period to the total number of
9 adult supervisees sent to prison nationally during
10 the same period.

11 (3) DEFINITIONS.—In this subsection—

12 (A) the term “sent to prison” means sent
13 to Federal or State prison—

14 (i) for a revocation of probation or su-
15 pervised release; or

16 (ii) for a conviction of a new felony of-
17 fense.

18 (B) The term “baseline period” means the
19 period beginning January 1, 2012, and ending
20 December 31, 2014.

21 (b) ANNUAL REVOCATION CALCULATIONS.—At the
22 conclusion of the calendar year following the implementa-
23 tion of subsection (a), and every calendar year thereafter,
24 the Director of the Administrative Office of the Courts,
25 in consultation with the Director of the Bureau of Prisons

1 and the United States Sentencing Commission shall cal-
2 culate the following measures:

3 (1) AVERAGE MARGINAL REVOCATION COST.—

4 The average marginal revocation cost, which is the
5 average cost to incarcerate a supervisee revoked to
6 prison in the previous year, including average length
7 of stay times average marginal cost per day.

8 (2) NATIONWIDE REVOCATION RATE.—The na-

9 tionwide revocation rate, which is calculated as the
10 number of supervisees nationwide sent to prison in
11 the previous year as a percentage of the nationwide
12 supervision population as of June 30 of that year.

13 (3) DISTRICT REVOCATION RATES.—For each

14 judicial district, the district's revocation rate, which
15 is calculated as the number of supervisees from that
16 district sent to prison in the previous year as a per-
17 centage of the district's supervision population as of
18 June 30th of that year.

19 (4) REDUCTION IN REVOCATION RATE.—For

20 each judicial district, the reduction in revocation
21 rate is the number of adult supervisees from each
22 district not revoked to prison, which is calculated
23 based on the reduction in the district's revocation
24 rate as calculated under paragraph (3) from the dis-
25 trict's baseline revocation rate as calculated under

1 subsection (a). In making this estimate, the Director
2 of the Administrative Office of the Courts, in con-
3 sultation with the Director of the Bureau of Prisons
4 and the Judicial Conference of the United States,
5 may adjust the calculation to account for changes in
6 each district's caseload in the most recent completed
7 year as compared to the district's adult supervision
8 population during the years 2012 through 2014.

9 (c) CATEGORIZATION OF JUDICIAL DISTRICTS.—An-
10 nually, at the conclusion of each calendar year, the Direc-
11 tor of the Administrative Office of the Courts, in consulta-
12 tion with the Director of the Bureau of Prisons and the
13 United States Sentencing Commission, shall assign the
14 appropriate supervision revocation tier to each judicial dis-
15 trict for which it was estimated that the judicial district
16 successfully reduced its revocation rate, as provided by
17 subsection (b)(4). The tiers are defined for the purposes
18 of this subtitle as follows:

19 (1) TIER 1.—A tier 1 district is one which has
20 a district revocation rate, as defined in subsection
21 (b)(3), that is no more than 25 percent higher than
22 the nationwide revocation rate, as defined in sub-
23 section (b)(2).

24 (2) TIER 2.—A tier 2 district is one which has
25 a district revocation rate, as defined in subsection

1 (b)(3), that is more than 25 percent above the na-
2 tionwide revocation rate, as defined in subsection
3 (b)(2).

4 **SEC. 542. DISTRIBUTION OF PERFORMANCE INCENTIVE**
5 **FUNDING.**

6 (a) DISTRIBUTION OF REVOCATION REDUCTION IN-
7 CENTIVE PAYMENTS.—Annually, the Director of the Ad-
8 ministrative Office of the Courts, in consultation with the
9 Director of the Bureau of Prisons and the United States
10 Sentencing Commission, shall calculate a revocation re-
11 duction incentive payment for each eligible judicial dis-
12 trict, pursuant to section 541, for the most recently com-
13 pleted calendar year, as follows:

14 (1) REVOCATION REDUCTION INCENTIVE PAY-
15 MENTS FOR TIER 1 DISTRICTS.—For a tier 1 dis-
16 trict, the district's revocation reduction incentive
17 payment is equal to the estimated number of
18 supervisees successfully prevented from being sent to
19 prison, as defined by section 541(b)(4) multiplied by
20 45 percent of the costs to the Director of the Bu-
21 reau of Prisons to incarcerate a supervisee who is
22 revoked to prison, as defined in section 541(b)(1).

23 (2) REVOCATION REDUCTION INCENTIVE PAY-
24 MENTS FOR TIER 2 DISTRICTS.—For a tier 2 judicial
25 district, its revocation rate shall equal the estimated

1 number of supervisees successfully prevented from
2 being sent to prison, as defined by section 541(b)(4)
3 multiplied by 40 percent of the costs to the Bureau
4 of Prisons to incarcerate in prison a supervisee
5 whose supervision is revoked.

6 (b) DISTRIBUTION OF GRANTS FOR HIGH-PER-
7 FORMING DISTRICTS.—

8 (1) FUNDING RESERVED FOR HIGH-PER-
9 FORMING DISTRICTS.—Annually, the Director of the
10 Administrative Office of the Courts, in consultation
11 with the Director of the Bureau of Prisons and the
12 United States Sentencing Commission, shall cal-
13 culate 5 percent of the total savings attributed to
14 those districts that successfully reduce the number
15 of supervisees revoked to prison for the purposes of
16 providing high-performance grants.

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

19 (A) with supervisee revocation rates more
20 than 50 percent below the nationwide average
21 in the most recently completed calendar year;
22 and

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

1 (3) ADMINISTRATION OF GRANTS FOR HIGH-
2 PERFORMING DISTRICTS.—

3 (A) The Administrative Office of the
4 Courts may make a high performance grant to
5 a district in a year in which that district does
6 not also receive a supervision revocation reduc-
7 tion payment under subsection (a).

8 (B) The chief probation officer, in con-
9 sultation with the chief judge, in a judicial dis-
10 trict that qualifies for both a high performance
11 grant and a supervision revocation reduction
12 payment shall inform the Administrative Office
13 of the Courts, by a date designated by the Ad-
14 ministrative Office of the Courts, whether the
15 judicial district should receive the high perform-
16 ance grant or the supervision failure reduction
17 incentive payment.

18 (C) The Administrative Office of the
19 United States Courts shall seek to ensure that
20 each qualifying judicial district that submits a
21 qualifying application for a high performance
22 grant receives a proportionate share of the
23 grant funding available, based on the popu-
24 lation of adults age 18 to 25, inclusive, in that
25 judicial district.

1 (c) PAYMENTS.—The Administrative Office of the
2 United States Courts shall disburse the revocation reduc-
3 tion incentive payments and high performance grants cal-
4 culated for any calendar year to judicial districts in the
5 following fiscal year.

6 **SEC. 543. USE OF PERFORMANCE INCENTIVE FUNDING.**

7 (a) ESTABLISHMENT OF A SUPERVISION PERFORM-
8 ANCE INCENTIVE FUND.—Each district probation office
9 is hereby authorized to establish a Supervision Perform-
10 ance Incentive Fund (hereinafter in this section referred
11 to as the “Fund”), to receive all amounts allocated to the
12 judicial district for the purposes of implementing this sec-
13 tion. In any fiscal year for which a district probation office
14 receives sums to be expended for the implementation of
15 this section, those sums, including any interest, shall be
16 made available to the chief probation officer of that dis-
17 trict probation office, not later than 30 days after the de-
18 posit of those moneys into the fund.

19 (b) AUTHORIZED USE OF FUNDS.—Funds received
20 through appropriations for the purposes of this subtitle
21 shall be used by the chief probation officer or his designee
22 to provide supervision and rehabilitative services for Fed-
23 eral supervisees, and shall be spent on implementing or
24 enhancing evidence-based community corrections practices
25 and programs, which may include the following:

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

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

5 (3) Implementing and expanding treatment and
6 services associated with problem-solving courts that
7 are proven to reduce recidivism among the targeted
8 population.

9 (4) Expanding the availability of evidence-based
10 rehabilitation programs, including drug and alcohol
11 treatment, mental health treatment, employment
12 programs, services for victims of domestic violence,
13 services for veterans, and cognitive behavioral ther-
14 apy.

15 (5) Expanding the availability, in terms of
16 hours and geographic locations, of day reporting
17 centers and the reporting hours of existing probation
18 offices to accommodate supervisees' work, education,
19 and/or child care schedules.

20 (6) Hiring social workers to assist supervisees
21 in applications for social services and programs on
22 the local, State, and Federal level.

23 (7) Evaluating the effectiveness of rehabilita-
24 tion and supervision programs and ensuring pro-
25 gram fidelity.

1 (c) MANDATORY EVALUATION.—

2 (1) IN GENERAL.—Except as provided in para-
3 graph (2), the chief probation officer, in consultation
4 with the chief judge of the judicial district, shall de-
5 vote at least 5 percent of all funding received
6 through the Fund to evaluate the effectiveness of
7 those programs and practices implemented or ex-
8 panded with the funds provided pursuant to this sec-
9 tion.

10 (2) WAIVER OF REQUIREMENT.—A chief proba-
11 tion officer may petition the Administrative Office of
12 the United States Courts for waiver of this restric-
13 tion, and the Administrative Office of the United
14 States Courts shall have the authority to grant such
15 a petition, if the Chief Probation Officer can dem-
16 onstrate that the department is already devoting suf-
17 ficient funds to the evaluation of these programs and
18 practices.

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

23 **SEC. 544. DEFINITIONS.**

24 In this subtitle:

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

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

9 (3) COMMUNITY CORRECTIONS PROGRAM.—The
10 term “community corrections program” means an
11 evidence-based recidivism reduction program estab-
12 lished pursuant to this subtitle, consisting of a sys-
13 tem of services dedicated to all of the following
14 goals:

15 (A) Enhancing public safety through the
16 management and reduction of a supervisee’s
17 risk of recidivism while under supervision.

18 (B) Supporting supervisees’ achievement of
19 stability of employment and housing by using a
20 range of supervision tools, sanctions, and serv-
21 ices applied to supervisees for the purpose of re-
22 ducing criminal conduct and promoting behav-
23 ioral change that reduces recidivism and pro-
24 motes the successful reintegration of offenders
25 into the community.

1 (C) Holding offenders accountable for their
2 criminal behaviors and for successful compli-
3 ance with applicable court orders and conditions
4 of supervision.

5 (D) Improving public safety outcomes for
6 persons placed on supervision, as measured by
7 their successful completion of supervision and
8 commensurate reduction in the rate of
9 supervisees sent to prison as a result of a rev-
10 ocation or conviction for a new crime.

11 (4) EVIDENCE-BASED PRACTICES.—The term
12 “evidence-based practices” means supervision poli-
13 cies, procedures, programs, and practices that sci-
14 entific research demonstrates reduce recidivism
15 among people on probation or supervised release.

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

19 (6) SUPERVISION.—The term “supervision” has
20 the meaning given that term in section 3609 of title
21 18, United States Code.

22 (7) REVOCATION.—The term “revocation”
23 means a judicial process to revoke supervision that
24 imposes confinement.

1 **Subtitle F—Maximizing Public**
2 **Safety Returns on Corrections**
3 **Dollars**

4 **SEC. 551. CLARIFICATION OR ORIGINAL CONGRESSIONAL**
5 **INTENT REGARDING CALCULATION OF GOOD**
6 **TIME CONDUCT CREDIT.**

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

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

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

1 (b) PRESENTENCE REPORTS.—Section 3552(a) of
2 title 18, United States Code, is amended by adding at the
3 end the following “The appropriate officials of the United
4 States Probation and Pretrial Services shall provide infor-
5 mation on the average annual cost of the kinds of sen-
6 tences available as part of the Presentence Investigation
7 Report. For the purposes of this subsection the average
8 annual cost of incarceration is the figure per fiscal year
9 as published by the Director of the Bureau of Prisons.
10 The average annual fiscal costs of alternatives to incarcer-
11 ation for that judicial district shall be compiled by the
12 United States Probation and Pretrial Services.”.

13 (c) DIRECTIVE TO THE SENTENCING COMMISSION.—
14 Pursuant to its authority under section 994(p) of title 28,
15 United States Code, and in accordance with this section,
16 the United States Sentencing Commission shall amend its
17 guidelines and its policy statements to ensure that the
18 guidelines and policy statements are consistent with the
19 amendments made by this section and reflect the intent
20 of Congress that an analysis of fiscal implications be in-
21 cluded in presentence reports and considered in the im-
22 position of appropriate sentences.

23 (d) DIRECTIVE TO THE JUDICIAL CONFERENCE.—
24 Pursuant to its authority under section 334 of title 28,
25 United States Code, and in accordance with this section,

1 the Judicial Conference of the United States shall propose
2 an amendment to the Federal Rules of Criminal Procedure
3 consistent with the amendments made by this section to
4 reflect the intent of Congress that an analysis of fiscal
5 implications shall be included in presentence reports and
6 considered in the imposition of appropriate sentences.

7 **SEC. 553. INVESTING IN AND SUPPORTING SAFE LAW EN-**
8 **FORCEMENT.**

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

10 (1) Most law enforcement officers walk into
11 risky situations and encounter tragedy on a regular
12 basis. Some, such as the police who responded to the
13 carnage of the Sandy Hook Elementary School, wit-
14 ness horror that stays with them for the rest of their
15 lives. Others are physically injured in carrying out
16 their duties, sometimes needlessly, through mistakes
17 made in high stress situations. The recent notable
18 deaths of officers are stark reminders of the risk of-
19 ficers face. As a result, physical, mental, and emo-
20 tional injuries plague many law enforcement agen-
21 cies. However, a large proportion of officer injuries
22 and deaths are not the result of interaction with of-
23 fenders but the outcome of poor physical health due
24 to poor nutrition, lack of exercise, sleep deprivation,
25 and substance abuse. Yet these causes are often

1 overlooked or given scant attention. Many other in-
2 juries and fatalities are the result of vehicular acci-
3 dents. The wellness and safety of law enforcement
4 officers is critical not only to themselves, their col-
5 leagues, and their agencies, but also to public safety.

6 (2) Officer suicide is also a problem. Police died
7 from suicide 2.4 times as often as from homicides.
8 And though depression resulting from traumatic ex-
9periences is often the cause, routine work and life
10 stressors—serving hostile communities, working long
11 shifts, lack of family or departmental support—are
12 frequent motivators too.

13 (3) According to estimates of the United States
14 Bureau of Labor Statistics, more than 100,000 law
15 enforcement professionals are injured in the line of
16 duty each year. Many are the result of assaults,
17 which underscores the need for body armor, but
18 most are due to vehicular accidents.

19 (b) AUTHORIZED USES.—Funds obligated, but sub-
20 sequently unspent and deobligated, may remain available,
21 to the extent provided in appropriations Acts, for use as
22 specified under this section in ensuing fiscal years. The
23 further obligation of such funds by the Attorney General
24 for such purpose shall not be delayed, directly or indi-

1 rectly, in any manner by any officer or employee in the
2 executive branch.

3 (1) A national “Blue Alert” warning system to
4 enlist the help of the public in finding suspects after
5 a law enforcement officer is killed in the line of
6 duty.

7 (2) Counseling and support services for family
8 members of law enforcement officers who are killed
9 in the line of duty.

10 (3) National toll-free mental health hotline spe-
11 cifically for law enforcement officers, which is both
12 anonymous and peer-driven and has the ability and
13 resources to refer the caller to professional help if
14 needed.

15 (4) Continuing research in the efficacy and im-
16 plementation of an annual fitness, resilience, nutri-
17 tion, and mental health check, in recognition that
18 many health problems afflicting law enforcement of-
19 ficers, notably cardiac issues, are cumulative.

20 (5) Expanding Federal pension plans and
21 incentivizing State and local pension plans to recog-
22 nize fitness for duty exams as definitive evidence of
23 valid duty or nonduty related disability in recogni-
24 tion of the fact that officers injured in the line of
25 duty are often caught in limbo, without pay, unable

1 to work but also unable to obtain benefits because
2 “fitness for duty” exams are not recognized as valid
3 proof of disability and because they cannot receive
4 Social Security.

5 (6) Implementing research-based findings into
6 the number of hours an officer should work consecu-
7 tively and in total within a 24–48 hour period, in-
8 cluding special findings on the maximum number of
9 hours an officer should work in a high-risk or high-
10 stress environment (e.g. public demonstrations or
11 emergency situations) by implementing those find-
12 ings federally and providing incentives for State and
13 local law enforcement to do the same.

14 (7) Providing individual tactical first-aid kits
15 that contain tourniquets, an Olaes modular bandage,
16 and QuickClot gauze, and training in hemorrhage
17 control to every law enforcement officer on the Fed-
18 eral level and providing incentives for State and
19 local enforcement agencies to do so.

20 (8) Providing antiballistic vests and body armor
21 to every law enforcement officer on the Federal level,
22 and providing incentives for State and local law en-
23 forcement agencies to do so.

24 (9) Providing pepper spray to every correctional
25 worker in medium, high, and maximum security

1 Federal prisons and instituting a training program
2 to educate workers on how to use the spray respon-
3 sibly and effectively for self-defense purposes only,
4 and providing incentives for State and law enforce-
5 ment agencies to do so.

6 (10) Researching and developing the design
7 specifications or modifications for body-worn cam-
8 eras with the input of Federal, State, and local law
9 enforcement leaders and providing the devices or
10 funding to purchase the device to every Federal law
11 enforcement and correctional agency and State and
12 local officer, in recognition of the fact that these de-
13 vices reduce unwarranted complaints against officers
14 while also vindicating civilians who have been mis-
15 treated.

16 (11) Researching, developing, and providing
17 best practices for Federal, State, and local law en-
18 forcement on the acquisition, use, retention, and dis-
19 semination of auditory, visual, and biometric data
20 from law enforcement in a constitutional manner, in
21 consultation with civil rights and civil liberties orga-
22 nizations, as well as law enforcement research
23 groups and other experts.

24 (12) Hiring of additional law enforcement and
25 correctional officers at the Federal level and pro-

1 viding incentives for State and local governments to
2 do so, in recognition of the fact that it is not the
3 length of incarceration but the certainty of being
4 caught that has a deterrent effect.

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

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

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

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

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

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

18 (19) Providing funding to State and local gov-
19 ernments and law enforcement agencies to imple-
20 ment the Attorney General’s best practices on infor-
21 mation and resource parity and innocence protec-
22 tion, including “open file” discovery practices, evi-
23 dence 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 evidence-based programs to
9 assist communities in developing comprehensive re-
10 sponses to youth violence through coordinated pre-
11 vention and intervention initiatives.

12 (22) Hiring social workers, psychologists, psy-
13 chiatrists, therapists, and counselors for Federal
14 prisons and providing funding to State and local
15 governments to do the same as they are uniquely
16 qualified to address the release preparation needs of
17 inmates.

18 (23) Providing funding to State and local law
19 enforcement agencies to provide and expand hiring
20 and retention incentives for officers with under-
21 graduate and graduate degrees.

22 (24) Providing additional funding to Federal,
23 State, and local government agencies to provide com-
24 petent and effective counsel for indigent defendants.

1 (25) Providing funding for a competitive 5-year
2 grant to a nationally recognized, nonpartisan, sci-
3 entifically sound, research organization, with an ad-
4 visory board comprised of local, State, and Federal
5 law enforcement leaders, and subject matter experts,
6 to create a national nonpunitive, forward-focused
7 peer review, training, and improvement center with
8 the goal of improved safety outcomes for officers and
9 civilians that would—

10 (A) establish a “critical incident review”
11 mechanism, similar to those used in medicine
12 and aviation, as a comprehensive, protective,
13 and accurate way of examining the cir-
14 cumstances surrounding an incident to accu-
15 rately identify problems on a systemic level to
16 reduce the number and types of problems, to
17 improve policing outcomes, refine policies and
18 practices, and build upon meaningful conversa-
19 tions and research to see what can be improved
20 with cooperation of the law enforcement agen-
21 cies involved;

22 (B) establish the data input form and in-
23 frastructure of a “near miss” database and for
24 every policing incident in which an officer or ci-
25 vilian life is lost or substantial force to review

1 knowledge gained from past tragedies in order
2 to disseminate it to prevent future ones and to
3 encourage new learning and sustainable, stake-
4 holder-driven change;

5 (C) study, recommend, and establish an
6 “officer-involved shooting database” for use
7 when firearms have been used against law en-
8 forcement officers and where officers have used
9 firearms against civilians to review knowledge
10 gained from past tragedies to distinguish be-
11 tween actual risk versus perceived risk on the
12 part of the civilian or officer and to develop
13 best practices;

14 (D) advance training, technical assistance
15 and knowledge around mental health issues that
16 occur within the criminal justice system, includ-
17 ing providing training and funding for de-esca-
18 lation techniques, coordination among other
19 government agencies, information-sharing, di-
20 version initiatives, jail and prison strategies, es-
21 tablishment of learning sites, suicide prevention,
22 and assistance and infrastructure for calls for
23 service and law enforcement triage capabilities;

24 (E) study, invest in, and apply policing re-
25 search tools that develop forecasts based upon

1 evolving technology, social movements, environ-
2 mental changes, economic factors, and political
3 events; and

4 (F) educate and facilitate the advance of
5 evidence-based policing to encourage policing
6 use of the best available scientific evidence to
7 control crime and disorder and enhance officer
8 safety and wellness.

9 (26) 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 (c) FUNDS TO SUPPLEMENT, NOT SUPPLANT, EX-
15 ISTING FUNDS.—Funds disbursed pursuant to this section
16 shall not be used to supplant existing State or local funds
17 utilized for these purposes, but rather to supplement them.

18 (d) ACCOUNTING.—Every year, the Department of
19 Justice shall provide an accounting of the reprogrammed
20 funds to ensure the funds are disbursed and expended in
21 a manner to maximize public safety and make needed im-
22 provements to the criminal justice system. The Attorney
23 General shall report the findings to the relevant congres-
24 sional committees.

1 **TITLE VI—PREVENTION AND**
2 **INTERVENTION INITIATIVES**
3 **INCREASING GOVERNMENT**
4 **TRANSPARENCY ACCURACY**

5 **SEC. 601. REPORT ON MANDATORY MINIMUMS.**

6 Not later than one year after the date of the enact-
7 ment of this Act, the Government Accountability Office
8 (GAO), in coordination with the Attorney General, shall
9 provide a report to Congress listing all existing mandatory
10 minimum penalties in force, including brief summaries of
11 the conduct prohibited by each and how frequently the
12 mandatory minimum is imposed.

13 **SEC. 602. FEDERAL DEFENDER ADDED AS A NONVOTING**
14 **MEMBER OF THE SENTENCING COMMISSION.**

15 (a) IN GENERAL.—Subsection (a) of section 991 of
16 title 28, United States Code, is amended—

17 (1) by striking “one nonvoting member.” at the
18 end of the first sentence and inserting “two non-
19 voting members.”; and

20 (2) by inserting before the last sentence the fol-
21 lowing: “A Federal public or community defender
22 designated by the Judicial Conference of the United
23 States with the advice of the Defender Services Ad-
24 visory Group shall be a nonvoting member of the
25 Commission.”.

1 (b) CONFORMING AMENDMENT.—The final sentence
2 of section 235(b)(5) of the Comprehensive Crime Control
3 Act of 1984 (18 U.S.C. 3551 note) is amended by striking
4 “nine members, including two ex officio, nonvoting mem-
5 bers” and inserting “ten members, including three non-
6 voting members”.

7 **SEC. 603. BUDGET AND INMATE POPULATION IMPACT OF**
8 **LEGISLATION ON THE FEDERAL CORREC-**
9 **TIONS SYSTEM.**

10 (a) IMPACT ANALYSIS.—

11 (1) WHEN REQUIRED.—Upon request by the
12 chair or ranking member of the Committee on the
13 Judiciary of either the Senate or the House of Rep-
14 resentatives with respect to legislation referred to
15 that committee that amends sentencing or correc-
16 tions policy or creates a new criminal penalty, the
17 Attorney General shall, before the final committee
18 vote on ordering the legislation reported, provide the
19 requesting party an impact analysis.

20 (2) CONTENTS.—The impact analysis shall con-
21 tain—

22 (A) an estimate of the Federal budgetary
23 impact of the legislation, both overall and bro-
24 ken down by each agency affected in the execu-
25 tive and judicial branches; and

1 (B) an estimate of the legislation's 10-year
2 prison bed impact on Federal facilities.

3 (b) AMENDMENTS.—Upon request by the chair or
4 ranking member of the Committee on the Judiciary of the
5 Senate or House of Representatives with respect to any
6 legislation ordered reported favorably by that committee
7 with amendment, the Attorney General shall, not later
8 than 30 days after the request is made, provide the re-
9 questing party with an updated impact analysis.

10 (c) INCLUSION OF IMPACT ANALYSIS OR STATE-
11 MENT.—The chair or ranking member shall include in the
12 committee report, or in additional, separate, or dissenting
13 views appended to the report, as the case may be, any
14 impact analysis provided at the request of that chair or
15 ranking member. If the Attorney General does not provide
16 an impact analysis in a timely manner, the chair or rank-
17 ing member shall instead include in the committee report
18 or views, a statement that the impact analysis was not
19 provided.

20 (d) EFFECT OF FAILURE TO COMPLY WITH RE-
21 QUIREMENTS OF SECTION.—The Attorney General shall
22 make every effort to provide an impact analysis required
23 under this section, and the requesting party shall make
24 every effort to give the Attorney General sufficient notice
25 to do so. However, failure to provide the impact analysis

1 does not give rise to any point of order regarding the legis-
2 lation. Failure by a chair or ranking member to include
3 matter as required by this section in a report or views
4 appended to the report does not give rise to a point of
5 order regarding the legislation.

6 **SEC. 604. REPORTS.**

7 (a) ANNUAL REPORTS BY THE ATTORNEY GEN-
8 ERAL.—Not later than January 1, 2016, and every year
9 thereafter, the Attorney General shall submit to the Con-
10 gress, a report that contains the following:

11 (1) Analysis of demographic (age, race/eth-
12 nicity, gender) data on Federal offenders, including
13 by offender demographics, the types of offenses for
14 which offenders in that demographic have—

15 (A) had their cases presented to the De-
16 partment of Justice but not charged;

17 (B) been charged but dismissed;

18 (C) been charged initially with mandatory
19 minimums, including the type of mandatory
20 minimum charged;

21 (D) been charged in a superseding indict-
22 ment with mandatory minimums;

23 (E) plea bargained in exchange for the De-
24 partment of Justice not charging mandatory

1 minimums, including the type of mandatory
2 minimum plea bargained away;

3 (F) been initially charged with mandatory
4 minimums but were withdrawn or dismissed,
5 listed by type of mandatory minimum; and

6 (G) been convicted, the length of sentence
7 they received, and the judicial district in which
8 they were sentenced to track whether unwar-
9 ranted sentencing disparities are occurring in
10 certain districts.

11 (2) An analysis of current and projected sav-
12 ings associated with this Act and the amendments
13 made by this Act.

14 (3) Developments in training and development
15 and research on the Department of Justice in con-
16 junction with the Department of Defense, on non-
17 lethal tools of policing.

18 (b) ANNUAL REPORTS BY THE DIRECTOR OF THE
19 BUREAU OF PRISONS.—Not later than January 1, 2016,
20 and every January 1 thereafter, the Director of the Bu-
21 reau of Prisons, in consultation with the Inspector General
22 of the Department of Justice, shall submit to Congress
23 a report that contains the following information, cat-
24 egorized by race, national origin, gender, age, and religion:

25 (1) PRISON DATA.—

1 (A) The number of offenders entering pris-
2 on on a new offense.

3 (B) The number of offenders entering pris-
4 on on a revocation of supervision.

5 (C) The average sentence length for a new
6 prison sentences by offense type.

7 (D) The average sentence length for of-
8 fenders entering prison for a probation revoca-
9 tion.

10 (E) The average sentence length for of-
11 fenders entering prison for a supervised release
12 revocation.

13 (F) The average percentage of the sen-
14 tence imposed served in prison as compared to
15 community, home, or residential reentry center.

16 (G) The average percentage of prison sen-
17 tence served in prison by offense type for of-
18 fenders entering on a new offense.

19 (H) The number of offenders in solitary
20 confinement, including their race, gender, age,
21 reason for solitary confinement, length of stay
22 in solitary confinement, the number of total
23 stays in solitary confinement, the total time of
24 stay in solitary confinement, and the number of
25 those offenders with mental health issues, cog-

1 nitive deficits, substance abuse issues, or com-
2 bat-related post-traumatic stress disorder.

3 (I) Total prison population by offense type
4 and by the type of admission into prison.

5 (J) Recidivism rate by offense type.

6 (2) DATA RELATED TO EXPANDED EARNED
7 TIME CREDIT AND RECIDIVISM REDUCTION PRO-
8 GRAMMING.—

9 (A) The number and percentage of offend-
10 ers who have earned time credit in the prior
11 year.

12 (B) The average amount of time credit
13 earned per offender in the prior year.

14 (C) The average amount of time credit
15 earned by offenders released from prison in the
16 prior year.

17 (D) Additional information as requested by
18 the relevant committees.

19 (E) A summary and assessment of the
20 types and effectiveness of the recidivism reduc-
21 tion programs and productive activities in facili-
22 ties operated by the Director of the Bureau of
23 Prisons, including—

1 (i) evidence about which programs
2 and activities have been shown to reduce
3 recidivism;

4 (ii) the capacity of each program and
5 activity at each facility, including the num-
6 ber of prisoners enrolled in each program
7 and activity; and

8 (iii) identification of any problems or
9 shortages in capacity of such programs
10 and activities, and how they should be
11 remedied.

12 (3) DATA RELATED TO RELEASE TO EXTENDED
13 SUPERVISION FOR CERTAIN MEDICALLY INCAPACI-
14 TATED AND GERIATRIC PRISONERS.—

15 (A) The number of offenders who peti-
16 tioned for release to extended supervision pur-
17 suant to section 3582(c)(1)(A) of title 18,
18 United States Code.

19 (B) The number of offenders who peti-
20 tioned and were denied release to extended su-
21 pervision pursuant to section 3582(c)(1)(A) of
22 title 18, United States Code, and the common
23 reasons for denial.

24 (C) The number of offenders released to
25 extended supervision pursuant to section

1 3582(c)(1)(A) of title 18, United States Code,
2 who were revoked in the previous year.

3 (c) ANNUAL REPORTS BY THE DIRECTOR OF THE
4 ADMINISTRATIVE OFFICE OF THE COURTS.—Not later
5 than January 1, 2016, and every January 1 thereafter,
6 the Director of the Administrative Office of the Courts,
7 in consultation with the Judicial Conference, shall submit
8 to the appropriate committees of Congress, and publish
9 publically, a report that contains the following:

10 (1) PROBATION DATA.—

11 (A) The number of offenders sentenced to
12 probation in the previous year.

13 (B) The number of offenders supervised on
14 probation.

15 (C) The number of probationers revoked
16 for a technical violation.

17 (D) The number of probationers who were
18 convicted of a new felony offense and sentenced
19 to a term of imprisonment, in either a local,
20 State, or Federal facility.

21 (2) SUPERVISED RELEASE DATA.—

22 (A) The number of offenders placed on
23 postrelease supervision in the following year.

24 (B) The number of offenders supervised on
25 postrelease supervision.

1 (C) The number of offenders on supervised
2 release revoked for a technical violation.

3 (D) The number of offenders on supervised
4 released who were convicted of a new felony of-
5 fense and sentenced to a term of imprisonment,
6 in either a local, State, or Federal facility.

7 (3) DATA RELATED TO THE IMPOSITION OF
8 THE GRADUATED SANCTIONING SYSTEM.—

9 (A) The number and percentage of offend-
10 ers who have one or more violations during the
11 year.

12 (B) The average number of violations per
13 offender during the year.

14 (4) DATA RELATED TO THE IMPOSITION OF
15 EARNED TIME CREDITS.—

16 (A) The number and percentage of offend-
17 ers who qualify for earned discharge in one or
18 more months of the year.

19 (B) The average amount of credits earned
20 per offender within the year.

21 (C) The average probation sentence length
22 for offenders sentenced to Federal probation.

23 (D) The average supervision sentence
24 length for offenders released to supervised re-
25 lease.

1 (E) The average time spent on Federal
2 probation for offenders successfully completing
3 probation.

4 (F) The average time spent on supervised
5 release for offenders successfully completing su-
6 pervised release.

7 (5) DATA RELATED TO PROBLEM-SOLVING
8 COURTS.—

9 (A) Total number of participants.

10 (B) Total number of successful partici-
11 pants.

12 (C) Total number of unsuccessful partici-
13 pants.

14 (D) Total number of participants who were
15 arrested for a new criminal offense while in the
16 problem-solving court program.

17 (E) Total number of participants who were
18 convicted of a new felony or misdemeanor of-
19 fense while in the problem-solving court pro-
20 gram.

21 (F) Any other data or information as re-
22 quired by the relevant committees.

23 (d) DEFINITIONS.—In this title, the following defini-
24 tions apply:

1 (1) RECIDIVISM.—The term “recidivism”
2 means the return to Federal prison of an offender
3 not later than 3 years after the date of release.

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

○