

114TH CONGRESS
1ST SESSION

S. 502

To focus limited Federal resources on the most serious offenders.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 12, 2015

Mr. LEE (for himself, Mr. DURBIN, Mr. CRUZ, Mr. LEAHY, Mr. FLAKE, Mr. BOOKER, Mr. PAUL, Mr. WHITEHOUSE, and Mr. COONS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To focus limited Federal resources on the most serious offenders.

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 “Smarter Sentencing
5 Act of 2015”.

6 **SEC. 2. APPLICABILITY OF STATUTORY MINIMUMS.**

7 Section 3553(f)(1) of title 18, United States Code,
8 is amended by striking “defendant” and all that follows
9 through “point” and inserting “criminal history category
10 for the defendant is not higher than category 2”.

1 **SEC. 3. CLARIFICATION OF APPLICABILITY OF THE FAIR**
2 **SENTENCING ACT.**

3 (a) **DEFINITION OF COVERED OFFENSE.**—In this
4 section, the term “covered offense” means a violation of
5 a Federal criminal statute, the statutory penalties for
6 which were modified by section 2 or 3 of the Fair Sen-
7 tencing Act of 2010 (Public Law 111–220; 124 Stat.
8 2372), that was committed before August 3, 2010.

9 (b) **DEFENDANTS PREVIOUSLY SENTENCED.**—A
10 court that imposed a sentence for a covered offense, may,
11 on motion of the defendant, the Director of the Bureau
12 of Prisons, the attorney for the Government, or the court,
13 impose a reduced sentence as if sections 2 and 3 of the
14 Fair Sentencing Act of 2010 (Public Law 111–220; 124
15 Stat. 2372) were in effect at the time the covered offense
16 was committed.

17 (c) **LIMITATIONS.**—No court shall entertain a motion
18 made under this section to reduce a sentence if the sen-
19 tence was previously imposed or previously reduced in ac-
20 cordance with the amendments made by sections 2 and
21 3 of the Fair Sentencing Act of 2010 (Public Law 111–
22 220; 124 Stat. 2372) or if a motion made under this sec-
23 tion to reduce the sentence was previously denied. Nothing
24 in this section shall be construed to require a court to re-
25 duce any sentence pursuant to this section.

1 **SEC. 4. SENTENCING MODIFICATIONS FOR CERTAIN DRUG**
2 **OFFENSES.**

3 (a) CONTROLLED SUBSTANCES ACT.—The Con-
4 trolled Substances Act (21 U.S.C. 801 et seq.) is amend-
5 ed—

6 (1) in section 102 (21 U.S.C. 802), by adding
7 at the end the following:

8 “(57) The term ‘courier’ means a defendant
9 whose role in the offense was limited to transporting
10 or storing drugs or money.”; and

11 (2) in section 401(b)(1) (21 U.S.C.
12 841(b)(1))—

13 (A) in the flush text following clause
14 (viii)—

15 (i) by striking “10 years or more”
16 and inserting “5 years or more”;

17 (ii) by striking “such person shall be
18 sentenced to a term of imprisonment which
19 may not be less than 20 years and” and
20 inserting “such person shall be sentenced
21 to a term of imprisonment of not less than
22 10 years and”; and

23 (iii) by striking “mandatory term of
24 life imprisonment without release” and in-
25 serting “term of imprisonment of not less
26 than 25 years”; and

1 (B) in the flush text following clause
 2 (viii)—

3 (i) by striking “5 years” and inserting
 4 “2 years”; and

5 (ii) by striking “not be less than 10
 6 years” and inserting “not be less than 5
 7 years”.

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

11 (1) in paragraph (1), in the flush text following
 12 subparagraph (H)—

13 (A) by inserting “, other than a person
 14 who is a courier,” after “such violation”;

15 (B) by striking “person commits” and in-
 16 serting “person, other than a courier, com-
 17 mits”; and

18 (C) by inserting “If a person who is a cou-
 19 rier commits such a violation, the person shall
 20 be sentenced to a term of imprisonment of not
 21 less than 5 years and not more than life. If a
 22 person who is a courier commits such a viola-
 23 tion after a prior conviction for a felony drug
 24 offense has become final, the person shall be
 25 sentenced to a term of imprisonment of not less

1 than 10 years and not more than life.” before
2 “Notwithstanding section 3583”; and

3 (2) in paragraph (2), in the flush text following
4 subparagraph (H)—

5 (A) by inserting “, other than a person
6 who is a courier,” after “such violation”;

7 (B) by striking “person commits” and in-
8 serting “person, other than a courier, com-
9 mits”; and

10 (C) by inserting “If a person who is a cou-
11 rier commits such a violation, the person shall
12 be sentenced to a term of imprisonment of not
13 less than 2 years and not more than life. If a
14 person who is a courier commits such a viola-
15 tion after a prior conviction for a felony drug
16 offense has become final, the person shall be
17 sentenced to a term of imprisonment of not less
18 than 5 years and not more than life.” before
19 “Notwithstanding section 3583”.

20 **SEC. 5. DIRECTIVE TO THE SENTENCING COMMISSION.**

21 (a) DIRECTIVE TO SENTENCING COMMISSION.—Pur-
22 suant to its authority under section 994(p) of title 28,
23 United States Code, and in accordance with this section,
24 the United States Sentencing Commission shall review and
25 amend, if appropriate, its guidelines and its policy state-

1 ments applicable to persons convicted of an offense under
2 section 401 of the Controlled Substances Act (21 U.S.C.
3 841) or section 1010 of the Controlled Substances Import
4 and Export Act (21 U.S.C. 960) to ensure that the guide-
5 lines and policy statements are consistent with the amend-
6 ments made by sections 2 and 4 of this Act and reflect
7 the intent of Congress that such penalties be decreased
8 in accordance with the amendments made by section 4 of
9 this Act.

10 (b) CONSIDERATIONS.—In carrying out this section,
11 the United States Sentencing Commission shall con-
12 sider—

13 (1) the mandate of the United States Sen-
14 tencing Commission, under section 994(g) of title
15 28, United States Code, to formulate the sentencing
16 guidelines in such a way as to “minimize the likeli-
17 hood that the Federal prison population will exceed
18 the capacity of the Federal prisons”;

19 (2) the findings and conclusions of the United
20 States Sentencing Commission in its October 2011
21 report to Congress entitled, Mandatory Minimum
22 Penalties in the Federal Criminal Justice System;

23 (3) the fiscal implications of any amendments
24 or revisions to the sentencing guidelines or policy

1 statements made by the United States Sentencing
2 Commission;

3 (4) the relevant public safety concerns involved
4 in the considerations before the United States Sen-
5 tencing Commission;

6 (5) the intent of Congress that penalties for
7 violent, repeat, and serious drug traffickers who
8 present public safety risks remain appropriately se-
9 vere; and

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

12 (c) EMERGENCY AUTHORITY.—The United States
13 Sentencing Commission shall—

14 (1) promulgate the guidelines, policy state-
15 ments, or amendments provided for in this Act as
16 soon as practicable, and in any event not later than
17 120 days after the date of enactment of this Act, in
18 accordance with the procedure set forth in section
19 21(a) of the Sentencing Act of 1987 (28 U.S.C. 994
20 note), as though the authority under that Act had
21 not expired; and

22 (2) pursuant to the emergency authority pro-
23 vided under paragraph (1), make such conforming
24 amendments to the Federal sentencing guidelines as
25 the Commission determines necessary to achieve

1 consistency with other guideline provisions and ap-
 2 plicable law.

3 **SEC. 6. REPORT BY ATTORNEY GENERAL.**

4 Not later than 6 months after the date of enactment
 5 of this Act, the Attorney General shall submit to the Com-
 6 mittees on the Judiciary of the House of Representatives
 7 and the Senate a report outlining how the reduced expend-
 8 itures on Federal corrections and the cost savings result-
 9 ing from this Act will be used to help reduce overcrowding
 10 in the Federal Bureau of Prisons, help increase proper in-
 11 vestment in law enforcement and crime prevention, and
 12 help reduce criminal recidivism, thereby increasing the ef-
 13 fectiveness of Federal criminal justice spending.

14 **SEC. 7. REPORT ON FEDERAL CRIMINAL OFFENSES.**

15 (a) DEFINITIONS.—In this section—

16 (1) the term “criminal regulatory offense”
 17 means a Federal regulation that is enforceable by a
 18 criminal penalty; and

19 (2) the term “criminal statutory offense”
 20 means a criminal offense under a Federal statute.

21 (b) REPORT ON CRIMINAL STATUTORY OFFENSES.—

22 Not later than 1 year after the date of enactment of this
 23 Act, the Attorney General shall submit to the Committee
 24 on the Judiciary of the Senate and the Committee on the

1 Judiciary of the House of Representatives a report, which
 2 shall include—

3 (1) a list of all criminal statutory offenses, in-
 4 cluding a list of the elements for each criminal stat-
 5 utory offense; and

6 (2) for each criminal statutory offense listed
 7 under paragraph (1)—

8 (A) the potential criminal penalty for the
 9 criminal statutory offense;

10 (B) the number of prosecutions for the
 11 criminal statutory offense brought by the De-
 12 partment of Justice each year for the 15-year
 13 period preceding the date of enactment of this
 14 Act; and

15 (C) the mens rea requirement for the
 16 criminal statutory offense.

17 (c) REPORT ON CRIMINAL REGULATORY OF-
 18 FENSES.—

19 (1) REPORTS.—Not later than 1 year after the
 20 date of enactment of this Act, the head of each Fed-
 21 eral agency described in paragraph (2) shall submit
 22 to the Committee on the Judiciary of the Senate and
 23 the Committee on the Judiciary of the House of
 24 Representatives a report, which shall include—

1 (A) a list of all criminal regulatory of-
2 fenses enforceable by the agency; and

3 (B) for each criminal regulatory offense
4 listed under subparagraph (A)—

5 (i) the potential criminal penalty for a
6 violation of the criminal regulatory offense;

7 (ii) the number of violations of the
8 criminal regulatory offense referred to the
9 Department of Justice for prosecution in
10 each of the years during the 15-year period
11 preceding the date of enactment of this
12 Act; and

13 (iii) the mens rea requirement for the
14 criminal regulatory offense.

15 (2) AGENCIES DESCRIBED.—The Federal agen-
16 cies described in this paragraph are the Department
17 of Agriculture, the Department of Commerce, the
18 Department of Education, the Department of En-
19 ergy, the Department of Health and Human Serv-
20 ices, the Department of Homeland Security, the De-
21 partment of Housing and Urban Development, the
22 Department of the Interior, the Department of
23 Labor, the Department of Transportation, the De-
24 partment of the Treasury, the Commodity Futures
25 Trading Commission, the Consumer Product Safety

1 Commission, the Equal Employment Opportunity
2 Commission, the Export-Import Bank of the United
3 States, the Farm Credit Administration, the Federal
4 Communications Commission, the Federal Deposit
5 Insurance Corporation, the Federal Election Com-
6 mission, the Federal Labor Relations Authority, the
7 Federal Maritime Commission, the Federal Mine
8 Safety and Health Review Commission, the Federal
9 Trade Commission, the National Labor Relations
10 Board, the National Transportation Safety Board,
11 the Nuclear Regulatory Commission, the Occupa-
12 tional Safety and Health Review Commission, the
13 Office of Compliance, the Postal Regulatory Com-
14 mission, the Securities and Exchange Commission,
15 the Securities Investor Protection Corporation, the
16 Environmental Protection Agency, the Small Busi-
17 ness Administration, the Federal Housing Finance
18 Agency, and the Office of Government Ethics.

19 (d) INDEX.—Not later than 2 years after the date
20 of enactment of this Act—

21 (1) the Attorney General shall establish a pub-
22 lically accessible index of each criminal statutory of-
23 fense listed in the report required under subsection
24 (b) and make the index available and freely acces-

1 sible on the website of the Department of Justice;
2 and

3 (2) the head of each agency described in sub-
4 section (c)(2) shall establish a publically accessible
5 index of each criminal regulatory offense listed in
6 the report required under subsection (c)(1) and
7 make the index available and freely accessible on the
8 website of the agency.

9 (e) RULE OF CONSTRUCTION.—Nothing in this sec-
10 tion shall be construed to require or authorize appropria-
11 tions.

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