

116TH CONGRESS
1ST SESSION

S. 2850

To focus limited Federal resources on the most serious offenders.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 13, 2019

Mr. LEE (for himself, Mr. DURBIN, Ms. BALDWIN, Ms. HARRIS, Mr. KAINE, Mr. WHITEHOUSE, Mr. LEAHY, Mr. BOOKER, Mr. BLUMENTHAL, Mr. WYDEN, Mr. KING, and Ms. WARREN) 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 2019”.

6 **SEC. 2. SENTENCING MODIFICATIONS FOR CERTAIN DRUG** 7 **OFFENSES.**

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

1 (1) in section 102 (21 U.S.C. 802)—

2 (A) by redesignating paragraph (58) as
3 paragraph (59);

4 (B) by redesignating the second paragraph
5 (57) (relating to “serious drug felony”) as
6 paragraph (58); and

7 (C) by adding at the end the following:

8 “(60) 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 subparagraph (A), in the flush text
14 following clause (viii)—

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

17 (ii) by striking “15 years” and insert-
18 ing “10 years”; and

19 (B) in subparagraph (B), in the flush text
20 following clause (viii)—

21 (i) by striking “5 years” and inserting
22 “2 years”; and

23 (ii) by striking “not be less than 10
24 years” and inserting “not be less than 5
25 years”.

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

4 (1) in paragraph (1), in the flush text following
5 subparagraph (H)—

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

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

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

21 (2) in paragraph (2), in the flush text following
22 subparagraph (H)—

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

1 (B) by striking “person commits” and in-
2 serting “person, other than a courier, com-
3 mits”; and

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

14 **SEC. 3. DIRECTIVE TO THE SENTENCING COMMISSION.**

15 (a) DIRECTIVE TO SENTENCING COMMISSION.—Pur-
16 suant to its authority under section 994(p) of title 28,
17 United States Code, and in accordance with this section,
18 the United States Sentencing Commission shall review and
19 amend, if appropriate, its guidelines and its policy state-
20 ments applicable to persons convicted of an offense under
21 section 401 of the Controlled Substances Act (21 U.S.C.
22 841) or section 1010 of the Controlled Substances Import
23 and Export Act (21 U.S.C. 960) to ensure that the guide-
24 lines and policy statements are consistent with the amend-
25 ments made by section 2 of this Act.

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

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

10 (2) the findings and conclusions of the United
11 States Sentencing Commission in its October 2011
12 report to Congress entitled, Mandatory Minimum
13 Penalties in the Federal Criminal Justice System;

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

18 (4) the relevant public safety concerns involved
19 in the considerations before the United States Sen-
20 tencing Commission;

21 (5) the intent of Congress that penalties for
22 violent, repeat, and serious drug traffickers who
23 present public safety risks remain appropriately se-
24 vere; and

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

3 (c) **EMERGENCY AUTHORITY.**—The United States
4 Sentencing Commission shall—

5 (1) promulgate the guidelines, policy state-
6 ments, or amendments provided for in this Act as
7 soon as practicable, and in any event not later than
8 120 days after the date of enactment of this Act, in
9 accordance with the procedure set forth in section
10 21(a) of the Sentencing Act of 1987 (28 U.S.C. 994
11 note), as though the authority under that Act had
12 not expired; and

13 (2) pursuant to the emergency authority pro-
14 vided under paragraph (1), make such conforming
15 amendments to the Federal sentencing guidelines as
16 the Commission determines necessary to achieve
17 consistency with other guideline provisions and ap-
18 plicable law.

19 **SEC. 4. REPORT BY ATTORNEY GENERAL.**

20 Not later than 6 months after the date of enactment
21 of this Act, the Attorney General shall submit to the Com-
22 mittees on the Judiciary of the House of Representatives
23 and the Senate a report outlining how the reduced expend-
24 itures on Federal corrections and the cost savings result-
25 ing from this Act will be used to help reduce overcrowding

1 in the Federal Bureau of Prisons, help increase proper in-
 2 vestment in law enforcement and crime prevention, and
 3 help reduce criminal recidivism, thereby increasing the ef-
 4 fectiveness of Federal criminal justice spending.

5 **SEC. 5. REPORT ON FEDERAL CRIMINAL OFFENSES.**

6 (a) DEFINITIONS.—In this section—

7 (1) the term “criminal regulatory offense”
 8 means a Federal regulation that is enforceable by a
 9 criminal penalty; and

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

12 (b) REPORT ON CRIMINAL STATUTORY OFFENSES.—

13 Not later than 1 year after the date of enactment of this
 14 Act, the Attorney General shall submit to the Committee
 15 on the Judiciary of the Senate and the Committee on the
 16 Judiciary of the House of Representatives a report, which
 17 shall include—

18 (1) a list of all criminal statutory offenses, in-
 19 cluding a list of the elements for each criminal stat-
 20 utory offense; and

21 (2) for each criminal statutory offense listed
 22 under paragraph (1)—

23 (A) the potential criminal penalty for the
 24 criminal statutory offense;

1 (B) the number of prosecutions for the
 2 criminal statutory offense brought by the De-
 3 partment of Justice each year for the 15-year
 4 period preceding the date of enactment of this
 5 Act; and

6 (C) the mens rea requirement for the
 7 criminal statutory offense.

8 (c) REPORT ON CRIMINAL REGULATORY OF-
 9 FENSES.—

10 (1) REPORTS.—Not later than 1 year after the
 11 date of enactment of this Act, the head of each Fed-
 12 eral agency described in paragraph (2) shall submit
 13 to the Committee on the Judiciary of the Senate and
 14 the Committee on the Judiciary of the House of
 15 Representatives a report, which shall include—

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

18 (B) for each criminal regulatory offense
 19 listed under subparagraph (A)—

20 (i) the potential criminal penalty for a
 21 violation of the criminal regulatory offense;

22 (ii) the number of violations of the
 23 criminal regulatory offense referred to the
 24 Department of Justice for prosecution in
 25 each of the years during the 15-year period

preceding the date of enactment of this
Act; and

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

(2) AGENCIES DESCRIBED.—The Federal agencies described in this paragraph are the Department of Agriculture, the Department of Commerce, the Department of Education, the Department of Energy, the Department of Health and Human Services, the Department of Homeland Security, the Department of Housing and Urban Development, the Department of the Interior, the Department of Labor, the Department of Transportation, the Department of the Treasury, the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Equal Employment Opportunity Commission, the Export-Import Bank of the United States, the Farm Credit Administration, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Election Commission, the Federal Labor Relations Authority, the Federal Maritime Commission, the Federal Mine Safety and Health Review Commission, the Federal Trade Commission, the National Labor Relations Board, the National Transportation Safety Board,

1 the Nuclear Regulatory Commission, the Occupa-
2 tional Safety and Health Review Commission, the
3 Office of Compliance, the Postal Regulatory Com-
4 mission, the Securities and Exchange Commission,
5 the Securities Investor Protection Corporation, the
6 Environmental Protection Agency, the Small Busi-
7 ness Administration, the Federal Housing Finance
8 Agency, and the Office of Government Ethics.

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

11 (1) the Attorney General shall establish a pub-
12 lically accessible index of each criminal statutory of-
13 fense listed in the report required under subsection
14 (b) and make the index available and freely acces-
15 sible on the website of the Department of Justice;
16 and

17 (2) the head of each agency described in sub-
18 section (c)(2) shall establish a publically accessible
19 index of each criminal regulatory offense listed in
20 the report required under subsection (c)(1) and
21 make the index available and freely accessible on the
22 website of the agency.

1 (e) RULE OF CONSTRUCTION.—Nothing in this sec-
2 tion shall be construed to require or authorize appropria-
3 tions.

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