

119TH CONGRESS  
2D SESSION

# S. 3959

To focus limited Federal resources on the most serious offenders.

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IN THE SENATE OF THE UNITED STATES

MARCH 2, 2026

Mr. DURBIN (for himself, Mr. LEE, Mr. BOOKER, Mr. SCHATZ, Mr. KING, Mr. KAINE, Ms. WARREN, Mr. MARKEY, Mr. BLUMENTHAL, Mr. SANDERS, and Mr. WICKER) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## 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 2026”.

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), by adding  
2 at the end the following:

3 “(61) The term ‘courier’ means a defendant  
4 whose role in the offense was limited to transporting  
5 or storing drugs or money.”; and

6 (2) in section 401(b)(1) (21 U.S.C.  
7 841(b)(1))—

8 (A) in subparagraph (A), in the flush text  
9 following clause (viii)—

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

12 (ii) by striking “15 years” and insert-  
13 ing “10 years”; and

14 (B) in subparagraph (B), in the flush text  
15 following clause (viii)—

16 (i) by striking “5 years” and inserting  
17 “2 years”; and

18 (ii) by striking “not be less than 10  
19 years” and inserting “not be less than 5  
20 years”.

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

24 (1) in paragraph (1), in the flush text following  
25 subparagraph (H)—

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

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

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

17 (2) in paragraph (2), in the flush text following  
18 subparagraph (H)—

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

21 (B) by striking “person commits” and in-  
22 serting “person, other than a courier, com-  
23 mits”; and

24 (C) by inserting “If a person who is a cou-  
25 rier commits such a violation, the person shall

1           be sentenced to a term of imprisonment of not  
2           less than 2 years and not more than life. If a  
3           person who is a courier commits such a viola-  
4           tion after a prior conviction for a serious drug  
5           felony or serious violent felony has become  
6           final, the person shall be sentenced to a term  
7           of imprisonment of not less than 5 years and  
8           not more than life.” before “Notwithstanding  
9           section 3583”.

10       (c) APPLICABILITY TO PENDING AND PAST CASES.—

11           (1) DEFINITION.—In this subsection, the term  
12       “covered offense” means a violation of a Federal  
13       criminal statute, the statutory penalties for which  
14       were modified by this section.

15           (2) PENDING CASES.—This section, and the  
16       amendments made by this section, shall apply to any  
17       sentence imposed after the date of enactment of this  
18       Act, regardless of when the offense was committed.

19           (3) PAST CASES.—In the case of a defendant  
20       who, before the date of enactment of this Act, was  
21       convicted or sentenced for a covered offense, the sen-  
22       tencing court may, on motion of the defendant, the  
23       Bureau of Prisons, the attorney for the Government,  
24       or on its own motion, impose a reduced sentence

1 after considering the factors set forth in section  
2 3553(a) of title 18, United States Code.

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

4 (a) DIRECTIVE TO SENTENCING COMMISSION.—Pur-  
5 suant to its authority under section 994(p) of title 28,  
6 United States Code, and in accordance with this section,  
7 the United States Sentencing Commission shall review and  
8 amend, if appropriate, its guidelines and its policy state-  
9 ments applicable to persons convicted of an offense under  
10 section 401 of the Controlled Substances Act (21 U.S.C.  
11 841) or section 1010 of the Controlled Substances Import  
12 and Export Act (21 U.S.C. 960) to ensure that the guide-  
13 lines and policy statements are consistent with the amend-  
14 ments made by section 2 of this Act.

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

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

24 (2) the findings and conclusions of the United  
25 States Sentencing Commission in its October 2011

1 report to Congress entitled, Mandatory Minimum  
2 Penalties in the Federal Criminal Justice System;

3 (3) the fiscal implications of any amendments  
4 or revisions to the sentencing guidelines or policy  
5 statements made by the United States Sentencing  
6 Commission;

7 (4) the relevant public safety concerns involved  
8 in the considerations before the United States Sen-  
9 tencing Commission;

10 (5) the intent of Congress that penalties for  
11 violent, repeat, and serious drug traffickers who  
12 present public safety risks remain appropriately se-  
13 vere; and

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

16 (c) EMERGENCY AUTHORITY.—The United States  
17 Sentencing Commission shall—

18 (1) promulgate the guidelines, policy state-  
19 ments, or amendments provided for in this Act as  
20 soon as practicable, and in any event not later than  
21 120 days after the date of enactment of this Act, in  
22 accordance with the procedure set forth in section  
23 21(a) of the Sentencing Act of 1987 (28 U.S.C. 994  
24 note), as though the authority under that Act had  
25 not expired; and

1           (2) pursuant to the emergency authority pro-  
2           vided under paragraph (1), make such conforming  
3           amendments to the Federal sentencing guidelines as  
4           the Commission determines necessary to achieve  
5           consistency with other guideline provisions and ap-  
6           plicable law.

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

8           Not later than 6 months after the date of enactment  
9           of this Act, the Attorney General shall submit to the Com-  
10          mittee on the Judiciary of the Senate and the Committee  
11          on the Judiciary of the House of Representatives a report  
12          outlining how the reduced expenditures on Federal correc-  
13          tions and the cost savings resulting from this Act will be  
14          used to help reduce overcrowding in the Federal Bureau  
15          of Prisons, help increase proper investment in law enforce-  
16          ment and crime prevention, and help reduce criminal re-  
17          cidivism, thereby increasing the effectiveness of Federal  
18          criminal justice spending.

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

20          (a) DEFINITIONS.—In this section—

21               (1) the term “criminal regulatory offense”  
22               means a Federal regulation that is enforceable by a  
23               criminal penalty; and

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

1 (b) REPORT ON CRIMINAL STATUTORY OFFENSES.—  
2 Not later than 1 year after the date of enactment of this  
3 Act, the Attorney General shall submit to the Committee  
4 on the Judiciary of the Senate and the Committee on the  
5 Judiciary of the House of Representatives a report, which  
6 shall include—

7 (1) a list of all criminal statutory offenses, in-  
8 cluding a list of the elements for each criminal stat-  
9 utory offense; and

10 (2) for each criminal statutory offense listed  
11 under paragraph (1)—

12 (A) the potential criminal penalty for the  
13 criminal statutory offense;

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

19 (C) the mens rea requirement for the  
20 criminal statutory offense.

21 (c) REPORT ON CRIMINAL REGULATORY OF-  
22 FENSES.—

23 (1) REPORTS.—Not later than 1 year after the  
24 date of enactment of this Act, the head of each Fed-  
25 eral agency described in paragraph (2) shall submit

1 to the Committee on the Judiciary of the Senate and  
2 the Committee on the Judiciary of the House of  
3 Representatives a report, which shall include—

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

6 (B) for each criminal regulatory offense  
7 listed under subparagraph (A)—

8 (i) the potential criminal penalty for a  
9 violation of the criminal regulatory offense;

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

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

18 (2) AGENCIES DESCRIBED.—The Federal agen-  
19 cies described in this paragraph are the Department  
20 of Agriculture, the Department of Commerce, the  
21 Department of Education, the Department of En-  
22 ergy, the Department of Health and Human Serv-  
23 ices, the Department of Homeland Security, the De-  
24 partment of Housing and Urban Development, the  
25 Department of the Interior, the Department of

1 Labor, the Department of Transportation, the De-  
2 partment of the Treasury, the Commodity Futures  
3 Trading Commission, the Consumer Product Safety  
4 Commission, the Equal Employment Opportunity  
5 Commission, the Export-Import Bank of the United  
6 States, the Farm Credit Administration, the Federal  
7 Communications Commission, the Federal Deposit  
8 Insurance Corporation, the Federal Election Com-  
9 mission, the Federal Labor Relations Authority, the  
10 Federal Maritime Commission, the Federal Mine  
11 Safety and Health Review Commission, the Federal  
12 Trade Commission, the National Labor Relations  
13 Board, the National Transportation Safety Board,  
14 the Nuclear Regulatory Commission, the Occupa-  
15 tional Safety and Health Review Commission, the  
16 Office of Congressional Workplace Rights, the Postal  
17 Regulatory Commission, the Securities and Ex-  
18 change Commission, the Securities Investor Protec-  
19 tion Corporation, the Environmental Protection  
20 Agency, the Small Business Administration, the  
21 Federal Housing Finance Agency, and the Office of  
22 Government Ethics.

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

1           (1) the Attorney General shall establish a pub-  
2           licly accessible index of each criminal statutory of-  
3           fense listed in the report required under subsection  
4           (b) and make the index available and freely acces-  
5           sible on the website of the Department of Justice;  
6           and

7           (2) the head of each agency described in sub-  
8           section (c)(2) shall establish a publicly accessible  
9           index of each criminal regulatory offense listed in  
10          the report required under subsection (c)(1) and  
11          make the index available and freely accessible on the  
12          website of the agency.

13          (e) RULE OF CONSTRUCTION.—Nothing in this sec-  
14          tion shall be construed to require or authorize appropria-  
15          tions.

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